Approved SNA 5/8/25

REPUBLIC OF KENYA

HARAMBEE

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025

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FIFTH REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES, ADMINISTRATION AND AGRICULTURE ON THE CONSIDERATION OF THE AUDITOR GENERAL'S REPORTS ON THE FINANCIAL STATEMENTS OF SELECTED STATE CORPORATIONS

DIRECTORATE OF AUDIT, APPROPRIATIONS & GENERAL-PURPOSE COMMITTEES.

CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 05 AUG 2025 Tuesday
TABLED BY: Hon. Emmanuel Wangwe, MP (Chairperson)
CLERK AT THE TABLE: Lomale

NATIONAL ASSEMBLY
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List of Abbreviations/Acronyms

PIC-SSAA - Public Investments Committee on Social Services Administration and Agriculture

Ag. - Acting

AG - Attorney General

CEO - Chief Executive Officer

CS - Cabinet Secretary

DCI - Directorate of Criminal Investigations

DG - Director General

EACC - Ethics and Anti-Corruption Commission

FY - Financial Year

GoK - Government of Kenya

IAS - International Accounting Standards

NSSF – National Social Security Fund

KEMFRI - Kenya Marine and Fisheries Research Institute

NHIF – National Hospital Insurance Fund

KBC– Kenya Broadcasting Corporation

CHAIRPERSON'S FOREWORD

The Public Investments Committee on Social Services, Administration and Agriculture is one of the six Watchdog Committees in the thirteenth Parliament that examines reports of the Auditor-General laid before the National Assembly to ensure efficiency and effectiveness in the use of public resources. The Committee is established pursuant to National Assembly Standing Order 206 B.

The Public Investment on Social Services, Administration and Agriculture, with regard to the agriculture, public administration, health, and social protection sectors; examines the reports and accounts of public investments, examine the reports of the Auditor-General on public investments; and in the context of the autonomy and efficiency of the public investments, examine whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent Commercial practices. This ensures implementation of *Article 229(8)* of the Constitution on reports laid before the House by the Auditor- General.

In examining the accounts of the Auditor General, the Committee invited accounting officers in each of the State Corporations under review adduce evidence before it.

There are more than four hundred (400) State Corporations undertaking different mandates in their respective sectors. Due to this large number, the previous Public Investments Committees had been unable to conclude examination of the accounts of the Auditor General of these State Corporations. Considering the workload and the backlog, the National Assembly resolved to amend the standing orders by splitting the Public Investment Committee into three Committees, Public Investments Committee on Social Services, Administration and Agriculture (PIC-SSAA) being one of them.

The Committee (PIC-SSAA) with a view to clear the backlog in examining the reports of the Auditor General, embarked on the process of inviting the accounting officers for the State Corporations under its mandate to adduce evidence before it.

This report contains observations, findings and recommendations arising from examination of reports of the Auditor-General for four (4) state corporations for different financial years. The report is structured as follows:

i) general observations to each of the cross-cutting queries;
ii) recommendations to each of the cross-cutting queries;
iii) audit queries identified by the Auditor General in his audit reports of each state corporation.
iv) management responses to each of the queries;
v) Committee observations/ findings on each query; and
vi) Committee recommendations to each query raised

In this report, the Committee makes policy recommendations and at the same time recommends specific actions against specific officers. It further recommends further investigations of certain matters by competent investigative agencies such as the EACC and the DCI.

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

I also extend my appreciation to my fellow Members of the Committee whose 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 Social Services, Administration and Agriculture and pursuant to National Assembly Standing Order 199(6), it is my pleasant duty and honour to present the 5th Report of the Public Investments Committee on Social Services Administration and Agriculture on the examination of the Reports of the Auditor General on the Financial Statements of four (4) State Corporations.

HON. EMMANUEL WANGWE CBS, MP
CHAIRPERSON – PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES, ADMINISTRATION AND AGRICULTURE

EXECUTIVE SUMMARY

The 5th Report of the Public Investments Committee on Social Services, Administration and Agriculture contains the Committee examination of four (4) State Corporations.

In its examination and scrutiny of the audited financial statements of the various State Corporations, the Committee 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 laws in mind including, the Constitution, the Public Finance Management Act, 2012 and the attendant Regulations, the Public Audit Act, 2015, the State Corporations Act, and the Public Procurement & Asset Disposal Act, 2015.

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 the report contains the Committee general observations / findings on cross cutting issues, and its recommendations.

Part three of the report contains reports of the specific State Corporations, Committee Observations, findings and finally, Committee recommendations on the State Corporations.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Public Investments Committee is established under the National Assembly Standing Order (S.O.) 206B and is responsible for the examination of the working of public investments based on their audited reports and accounts. It is mandated to –

    i) examine the reports and accounts of public investments;
    ii) examine the reports, if any, of the Auditor General on public investments; and
    iii) Examine, in the context of the autonomy and efficiency of 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, was guided by the Constitution of Kenya and the following statutes and regulations in carrying out its mandate;

    i) The Public Finance Management Act, 2012;
    ii) The Public Audit Act, 2015;
    iii) The State Corporations Act, 1986;
    iv) The Public Procurement and Assets Disposal Act, 2015;
    v) The National Assembly Standing Orders; and
    vi) The National Assembly (Powers and Privileges) Act, 2017.

1.2 Committee Membership

3. The Committee membership comprises –

S/No	Member's Name	Constituency	Party
1.	Hon. Emmanuel Wangwe, MP CBS– **Chairperson**	Navakholo	ODM
2.	Hon. Caleb Amisi Luyai, MP- **Vice Chairperson**	Saboti	ODM
3.	Hon. Ferdinand Kevin Wanyonyi, MP	Kwanza	FORD-K
4.	Hon. Martin Peters Owino, MP	Ndhiwa	ODM
5.	Hon. Amb. Benjamin Langat,MP	Ainamoi	UDA
6.	Hon. Nixon Nicholas Ngikor Ngikolong, MP	Turkana East	Jubilee
7.	Hon. (Dr.) Lilian Gogo, MP	Rangwe	ODM
8.	Hon. Fatuma Jehow Abdi MP	Wajir	ODM
9.	Hon. Umulker Sheikh Kassim	Mandera	UDM
10.	Hon Elijah Njore Njoroge Kururia, MP	Gatundu North	Independent
11.	Hon. Caleb Mule Mutiso,MP	Machakos Town	MCCP
12.	Hon.Bishop Emeritus (Dr.) Jackson Kipkemoi Kosgei, MP	Nominated	UDA
13.	Hon. Joshua Kivinda Kimilu, MP	Kaiti	WDM
14.	Hon. Michael Wambugu Wainaina, MP	Othaya	UDA
15.	Hon. Paul Nabuin Ekwom, MP	Turkana North	ODM

1.3 Committee Secretariat

4. The following members of the Secretariat facilitated the Committee:

Mr. Aden Abdullahi

Principal Clerk Assistant I-Head of Secretariat

Ms. Christine Mariita **Clerk Assistant III**	Ms. Mercy Kinyua **Legal Counsel II**
Mr. Enock Manwa **Clerk Assistant III**	Mr. Thomas Ogwel **Fiscal Analyst I**
Ms. Esther Kariuki **Hansard Officer III**	Mr. Wesley Abugah **Research Officer III**
Mr. Moses Esamai **Audio Officer**	Ms. Maryan Gabow **Communication Officer III**
Mr. Stanley Langat **Senior Sergeant-At-Arms**	Mr Yakub Ahmed **Media Relations Officer II**

1.4 Committee Proceedings

5. In its inquiry into whether the affairs of public investments are managed in accordance with sound business principles and prudent commercial practices, the Committee received both oral and written evidence from Chief Executive Officers of various State Corporations.

6. To produce this report, the Committee held seventeen (18) sittings in which it examined the evidence adduced by the accounting officers of the four (4) State Corporations.

7. The recommendations are found under various sections of the report on each of the State Corporations examined.

8. The recommendations on the issues raised by the Auditor General for the various State Corporations are found under appropriate sections of the report for each of the State Corporations covered.

9. These observations and recommendations, if considered and implemented, will enhance accountability, effectiveness, transparency, efficiency, prudent management, commercial viability and value for money in State Corporations and the public investments sector as a whole.

General Committee Observations and Recommendations

Lack of Possession and ownership documents on land and buildings.

10. The Committee observed and noted with concern that Kenya Broadcasting Corporation (KBC) and National Hospital Insurance Fund did not possess title documents for land and buildings in their occupation. KBC does not have title deeds or other legal documents of ownership for 32 parcels of land. Also, the title deed for LR.NO. 209/5918 - Broadcasting house Nairobi measuring 2.8 acres in which the KBC headquarters are situated, was in the name of Chief Secretary, Colony and Protectorate of Kenya a body corporate duly established by the Chief Secretary (incorporation) ordinance 1958, in addition National Hospital Insurance Fund does not possess ownership documents for Land Ref: No. LR.24968 measuring 10 hectares situated at Karen valued at Kshs.93,712675. Further, the parcel of land is in dispute and the matter is in court.

Committee Recommendations

11. The Committee recommended that –

    1) Within three (3) upon adoption of this report, the Accounting Officers should liaise with the Cabinet Secretaries for the respective State Corporations, , Ministry of Land, Public Works Housing and Urban Development and the National Land Commission and fast-track the process of acquiring title deeds, resolve disputes between state

corporations and ensure legal actions are taken against private individuals who have illegally acquired public land.

2) Within two (2) months upon adoption of this report, the Cabinet Secretary for Land, Housing and Urban Development and the Chairman, National Land Commission should put caveats on all the parcels of State Corporations land that are in private hands and report back to the National Assembly.
3) Within six (6) months upon adoption of this report, the Accounting Officers through the National Land Commission should prioritize and expedite resolving ownership issues surrounding parcels of land belonging to his/her State Corporations and report its status back to the National Assembly.
4) The National Assembly should enact a law prescribing that all public land ownership documents should centrally be held under the custody of the National Treasury for safekeeping.

Delay in availing documents to the Auditor-General

12. The Committee observed that some accounting officers did not avail complete and reconciled financial and accounting records/documentation in time for audit review and verification during the audit exercise leading to unnecessary queries. This is contrary to the provisions of Article 226 of the Constitution and Section 68(2) of the PFM Act 2012 which requires that the financial and accounting records are presented within three (3) months after the close of the financial year. Section 62 of the public Audit Act of 2015 obligates accounting officers to provide required documents for audit failure to which they be sanctioned.

Committee Recommendations

13. The Committee recommended that –

1) Accounting officers should always comply with the provisions of Section 68(2) of the Public Finance Management Act of 2012 by submitting all the required information for audit within the stipulated timelines.
2) The Accounting Officer who fails to provide required information for audit pursuant to 62(1) of the Public Audit Act, CAP 412B should be prosecuted for the offence pursuant to Section 62(2) of the Public Audit Act CAP412B.

Matters pending in Court

14. The Committee observed that a number of litigations concerning ownership of land of State Corporations and other legal matters have been pending before the courts of law for long despite resolutions of the House through previous PIC reports calling for the expeditious conclusion of the cases.

Committee Recommendations

15. The Committee recommended that –

1) Within three months upon adoption of this report, the Inspector-General, Inspectorate of State Corporations should carry out a review of all entities with pending Court cases, prepare a comprehensive status report and submit it to the National Assembly with a copy to the Attorney General who will initiate the process of fast-tracking the conclusion of the cases within reasonable time.
2) The Accounting Officers should strive to embrace Alternative Dispute Resolution Mechanisms in the resolution of disputes before going to court.

Delayed Accountability of Imprest.

16. The Committee noted that some State Corporations were in breach of Section 71 of the Public Finance Management Act CAP 412A and the attendant regulations that require surrender of imprests within seven days upon conclusion of the assignment for which the said imprest was issued.

Committee recommendations

17. The Committee recommended that –

    1) The Accounting Officers should ensure that imprest advanced to officers is surrendered within the stipulated period of seven (7) days after return to the work station in accordance with section 93 of the Public Finance Management (National Government) Regulations, 2015.
    2) Within six months of the adoption of this report, the Accounting Officers who will have failed to take necessary steps to ensure that all outstanding imprests within their jurisdictions are recovered from the due date should be surcharged the full amount due. The Accounting Officer should submit a status report with evidence of recovery to the Auditor-General for audit and reporting.

Under funding/ low Budgetary disbursements

The Committee noted with concern, instances where state corporations that relied on exchequer appropriations were under-funded or had low budgetary disbursements despite their budgets being initially approved. Consequently, this resulted in effects on the planned activities that impacted negatively on the service delivery to the public/beneficiaries due to limitation in the financial capabilities of the said institutions.

Committee recommendations

The Committee recommends that the Cabinet Secretary National Treasury endeavors to allocate and disburse adequate funds as appropriated to the state corporations funded by the National Government. The Cabinet Secretary National Treasury should ensure at all times that the budgets are realistic, achievable and always adhere to annual work plans, procurement supports in coming up with the structure of the corporate bond as well as managing the documentation and the due diligence process. A Placing Agent is the bank that acts as the sales agent of the corporate bond issuance to investors. Registrar is responsible for keeping the register of bondholders after the issue and Fiscal Agent is responsible for the financial duties i.e. receiving funds from investors upon the issue of a corporate band and allocation of the notes to investors as well as payment of periodic interest and principal amounts on redemption to the investors. The role of Arrangers and Placing agents for the 2017 notes was played jointly by Stanbic Bank Limited and Absa Bank Kenya Limited while the role of Registrars and Fiscal agents was played by Stanbic Bank Limited.

29. A pricing supplement for the 2017 notes was approved by the CMA and submitted to the NSE. A copy of the approved pricing supplement is enclosed for your information. EABL decided to redeem the 2017 Notes on 28th June 2021 which was nine months before their scheduled maturity date of 28th March 2022. The early redemption was carried out in accordance with condition 6(b) of the terms and conditions set out in the IM and section 3 of the pricing supplement, which allow for early redemption of all or part of the Notes subject to certain conditions. The conditions were duly met and EABL opted for early redemption. This commercial decision was communicated through a public announcement in two newspapers of nationwide circulation in Kenya. The public announcement was approved by the CMA as required by law. A copy of the public announcement is enclosed for your information.

30. NSSF, being one of the subscribers, had invested KES 469,300,000 in the 2017 Notes in two fund accounts: one account with KES 248,300,000 and the second account with KES 221,000,000 through its custodian (KCB Bank Kenya Limited) who submitted its application to the arrangers and placing agents of the MTN Programme. KCB Bank Kenya Limited were the custodians for both accounts since the issue date until 19th March 2019 when Stanbic Bank Kenya Limited were appointed as custodians of the KES 248,300,000 fund.

The following payments were effected through its custodian, KCB Bank Kenya Limited:

Interest payments		
Payment Date	NSSF A /CA	NSSF A/CB
02.10.2017	17,495,395.35	15,485,785.70
03.04.2018	17,688,714.65	15,743,882.15
01.10.2018	17,495,395.35	15,571,817.85
01.04.2019	17,592,055.00	15,657,850.00
30.09.2019	17.592.055.00	15,657,850.00
30.03.2020	17,592,055.00	15,657,850.00
28.09.2020	17,592,055.00	15,657,850.00
29.03.2021	17,592,055.00	15,657,850.00
28.06.2021		7,828,925.00
	140,639,780.35	132,919,660.70

Principal Payments		
Payment Date	NSS A/CA	NSSF A/CB
28.06.2021		221,000,000.00
		221,000,000.00

The following payments were effected through its custodian, Stanbic Bank Kenya Limited:

Payment Date		NSSF A/CA
Interest Payments		
28.06.2021		8,796,027.50
		8,796,027.50
Principal Payments		
28.06.2021		248,300,000.00
		248,300,000.00

31. We have set out in the annexure to this letter, a letter from Stanbic Bank Investor Services, confirming the periodic interest payments made to NSSF during the term of the 2017 Notes into its two fund accounts noted as A/C A and A/C B in the letter together with the principal repayments on the date of the redemption.

Committee Observations

The committee observed that –

i) There was a prospectus/memorandum of understanding between the Fund and East African Breweries Limited (EABL) regarding the investment in a corporate bond issued in April 2017. Although, the prospectus outlined the terms and conditions of the investment, including an early redemption condition where the principal amount invested and the accrued interest will be credited to the investor's account, the determination of the redemption date was left solely at the discretion of the issuer (EABL). This implies that the plan favoured EABL at the expense NSSF and other similar investors where NSSF had an opportunity cost/loss Kshs. 24,937,428.75
ii) The committee noted that there was initially a discrepancy regarding the recording of interest income earned from the EABL corporate bond in the fund's cashbook. The management failed to explain or demonstrate to the auditors that the interest income was indeed recorded in the cashbook on 28/06/2021 and was duly included in the income reported for the year 2020/2021.
iii) The bank statements confirmed the receipt of the principal amount invested in the corporate bond, totaling Kshs. 469,300,000 from EABL and there was no loss on capital invested except for the expected return on investment.

iv) The Board approval for the investment, bid documents and the signed indenture agreement between the issuer and the investor (NSSF) were not provided to the committee.

Committee Recommendations

The Committee recommends that –
Within three months upon adoption of this report, EACC to investigate the investment process with a view to establishing whether there was any member of the Board, staff of NSSF or consultant who misled the Fund in to investing in the corporate bond occasioning loss of expected returns of Kshs. 24,937,428.75.

2.0 Repairs and Maintenance

32. The statement of changes in net assets available for benefits reflects general administrative costs totaling Kshs. 2,527,523,139, as further disclosed in Note 14 to the financial statements. The balance includes repairs and maintenance expenditure totaling Kshs. 192,007,944 which in turn includes Kshs. 25,159,576 relating to 2019/ 2020 financial year.
33. Further, the balance includes payments totaling Kshs. 1,392,000 made for information technology training and which is, therefore, not related to repairs and maintenance expenditure.
34. In the circumstances, the repairs and maintenance expenditure totaling Ksh 192, 007, 944 is not fairly stated.

Management Response

35. The financial statements were adjusted by making a prior year adjustment to correct the position. Going forward, the contracts and invoicing has been aligned to match the financial reporting of the Fund. The repairs and maintenance expense is an amalgamation of all costs/expenses that relate to repairs and maintenance, software maintenance being among them.

Committee Observations

The committee observed that –

i) The response does not address the questions raised by the Auditor-General. The Fund applies accrual accounting as opposed to cash basis of accounting. The disclosure of 2019/2020 expenditure as expenditure in 2020/2021 is misplaced. The explanation that the error was corrected through prior year adjustment is not valid as the expenditure in question relates to a prior year treated as current expenditure.
ii) The explanation that the repairs and maintenance expense is an amalgamation of all costs/expenses that relate to repairs and maintenance, software maintenance being among them is invalid since training is not part of repairs cost.

Committee Recommendations

The Committee Recommends that –

The Committee reprimands the then Accounting Officer and the finance officer who signed the financial statements for issue and the then internal auditors who ought to ensure controls are in place with regard to recording and accountability and any other officer involved in preparation of the financial statements in question.

3.0 <u>Cash and Bank Balance</u>

36. The Committee heard that, the statement of net assets available for benefits reflects cash and bank balances totaling Kshs. 571,000,978 as further disclosed in Note 16 to the financial statements. However, the balance contains the following anomalies:

<u>3.1 Bank Overdraft</u>

37. Note 16 to the financial statements reflects an overdrawn cashbook balance amounting to Kshs.206,903,663 whose cashbook was, however, not updated, closed or balanced. Management explained that the overdrawn cashbook balance arose as a result of Electronic Funds Transfer (EFT), Real Time Gross Settlement (RTGS) and cash deposit transactions made by employers who delayed in submitting returns to the Fund for posting to the cashbook. However, Management did not provide sufficient records to support the balance and did not disclose the controls established to prevent such omissions.

Management response

38. The balance of Kshs 206,903,663 is not a bank overdraft. The issue arose because of timing difference between when employers especially National Treasury, Departments and County Governments wire money into the Fund's accounts and when the payroll by product (returns) are submitted to the Fund for receipting. Contribution is receipted/posted into member accounts and not employer accounts. Incomplete data on the beneficiary is very key when receipting money in the Fund's cashbooks and the Fund must go back and obtain the returns to reconcile and post which takes time for the Government bodies to produce.

39. The Fund has engaged employers and sensitized them on how to generate UPNs (unique payment number) from the online eservice, before making payments to the Fund. However, not all employers have embraced this solution especially County Governments, Ministries and National Treasury which still make payments without generating the UPNs which is an online means of submitting returns. To give evidence of the engagement
40. The Fund has integrated its system with banks and embraced e –services which is a platform for employers to file returns online.

Committee Observation

The committee observed that –

i) The Committee in its 2019/2020 report had observed that, NSSF asserted of implementing SSPAS and SAP system as a strategy to go paperless and that benefit payment process is now completely automated. Further, the Fund has integrated its system with banks and embraced e –services which is a platform for employers to file returns online. The systems still suffer deficiency in performance of some modules as evidenced by the audit queries in the past audits and the corresponding management response.

ii) The overdrawn cash is an indication that the Fund had exhausted the funds available for use and had drawn cheques against un-accounted for contributions which may be irregular expenditure met out the funds available for beneficiaries.

iii) The un-accounted for Members Contributions continue to earn investment incomes that cannot be attributed to any beneficiary nor retraced to the time of contribution. It will hard for the NSSF to identify the beneficiary and match them to their respective benefits and the related earning from it. The incomes might be utilized by the fund to run its day to day operations at the expense of the beneficiaries.

Committee Recommendations

1) As recommended in the 2019/2020 committee report, the Auditor-General should undertake an ICT systems audit on the SSPAS and SAP system with a view to establishing
   a) The functionality of the two systems in terms of the modules procured, the functional modules, payments made to acquire the systems, any licensee paid, reports expected to be produced and what it is capable of producing; In this respect ascertain and report on value for money for the two systems and their cost outlay.
   b) The audit trails and weaknesses that might lead to loss of audit trail;
   c) The controls in place and security of the public funds;
   d) The Auditor-General shall then report to the Public Investment Committee on social services, Administration and Agriculture through the clerk of the National Assembly.

2) As similarly recommended in the committee report for 2019/2020; Within three months upon adoption of this report, EACC to investigate the procurement process of the two systems SSPAS and SAP with a view to establishing whether there were any economic crimes perpetuated by the Fund officers through in the procurement process. Also provide a comprehensive report on the subsequent costs inform of annual license fees and costs of improvement to the systems, deficiencies in the systems functionality and officers who may been involved in initiating the procurement of the weak system. The reports should be submitted to the Public Investment Committee on social services, Administration and Agriculture through the clerk of the National Assembly. If any officer is found culpable, he/she should be held personally liable for the loss, DPP should initiate a legal process to recover the amount so lost from the concerned officer at the prevailing CBK rates.

3) The Auditor-General should carry out an audit on the management of NSSF funds with a view to establishing whether the amount expended is within the legally allowed thresholds with respect to the asset base and report in the subsequent audit cycle 2023/2024 in accordance with Article 229 (4).

3.2 Unpresented Cheques and Other Outstanding Cash Balances

41. The Committee heard that, the bank reconciliation statement for the month of June, 2021 for one of the Fund's bank accounts revealed long outstanding balances relating to bounced EFTs and unpresented cheques totaling to Kshs. 14,723,119. Further, the bank reconciliation statement reflected payments in bank statement not in cashbook totaling to Kshs. 169,640,238 which had not been investigated and explained in accordance with Regulation 90 (3) of the Public Finance Management (National Government), Regulations, 2015. The Regulation requires each Accounting Officer to investigate and take appropriate action to correct discrepancies noted when reconciling bank statements.

42. In view of these discrepancies, the accuracy and completeness of cash and balance Kshs.571,000,978 as at 30 June ,2021 could not be confirmed.

Management Response

43. The management informed the Committee an amount of Kshs 14, 723,119 relate to benefits which are wired to members or beneficiaries using EFT, but for one reason or another, the payments are returned back. Members provide bank details including bank accounts which are entered in the benefit processing system after they are thoroughly checked and confirmed. However, we have noted that some members provide **dormant** bank accounts, making the payments to bounce.
44. The payments are resolved by resuming them back to the system with the correct details for a second processing. This process is continuous.

45. The Kes 169,640,238 is an amalgamation of payments in several accounts. Out of these, Kes 100,000,000 was the result of a system error during transition from the old system to the current one and has since been resolved. The balance of 69,640,238 relates erroneous postings by the bank which have also been resolved.

Committee observations

i) The Committee in its report for 2019/2020 had noted with concern the explanation given by the accounting officer for the Kshs. 100 million payments in the bank statement not in cashbook out of the Kshs. 134,335,976 queried then in the audit report which has now increased to Kshs.169,640,238. This implies that the bank has been drawing the Fund's money without the requisite Authority and approval.
ii) Arising from the above observations the committee had requested the Auditor-General to do a forensic audit on the Kshs.100million that appeared suspicious based on the accounting officer's submissions and was waiting for the forensic Audit report.

plans and revenue collection capabilities of the respective corporations in compliance with Regulation 44(2) of the PFM (National Government) Regulations, 2015

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE NATIONAL SOCIAL SECURITY FUND (NSSF) FOR THE FINANCIAL YEAR 2020/2021.

1.0 Investment Income

18. The Committee heard that, the statement of changes in net assets available for benefits reflects investment income totaling Kshs. 21,635,609,454 which includes interest on corporate bonds totaling Kshs.124,734,473 as reflected in Note 8(a) to the financial statements. However, interest income totaling Kshs.16,624,953 earned from corporate bonds of a listed company were not recorded in the Cashbook. No explanation was provided for the omission.

19. In the circumstance, the investment income balance totaling Kshs. 21,635,609,454 included in the investment income balance for the year ended 30 June, 2021 could not be confirmed.

Management response.

20. The management informed the Committee that, the issue relates to the East African Breweries Limited (EABL) Medium Term Note, a corporate bond.

21. The Fund through the contracted Fund Managers, invested KES 469,300,000.00 in East African Breweries Limited (EABL) Medium Term Note, a corporate bond which was issued in April 2017, at 14.17%, with an expected maturity date of March 2022. However, to save on interest costs, EABL redeemed the bond on 14th June 2021 and credited the amounts to the Fund due (maturity plus accrued interest) on 28th June 2021– **EABL early redemption notice)**. The Fund received **KES 485,924,952.50** on 28th June 2022, which comprised of **KES 469,300,000.00** principal plus accrued interest of **KES 16,624,952.50 -Extract of KCB and Stanbic Bank statements)**. The Fund got its full value for the bond.

Further submissions by EABL, EABL'S MTN PROGRAMME

22. The Chief Executive Officer of EABL informed the Committee that, In 2015, East African Breweries Limited (EABL) sought and received approvals from the Capital Markets Authority (CMA) to establish a public medium term note programme (MTN Programme) for an amount of KES 11 billion to finance its operations. The MTN Programme was divided into two tranches: a Kenya Shillings 5 billion 5-year tranche issued in 2015 (2015 notes) and a Kenya Shillings 6 billion 5-year tranche issued in 2017 (2017 notes).

23. An MTN Programme comprises of various corporate bond tranches which are offered for subscription to eligible investors in the Republic of Kenya and allows individuals and corporate entities to invest in the bond. These bonds typically have a duration of 5 to 10 years and serve as a mechanism for companies to raise funds via the capital markets.

24. When a company in Kenya decides to issue a public corporate bond that is to be listed, it is required by law to prepare and submit an Information Memorandum (IM) and pricing supplement to the CMA for approval. The IM and pricing supplement are also required to be submitted to the Nairobi Securities Exchange (NSE). This IM is a comprehensive document designed to provide potential investors with the necessary information to make informed decisions about their investment. It covers various aspects of the company, including its background, business operations, financial performance, details about its directors and senior management, and any risks associated with the bond issuance, among other pertinent information. Furthermore, the IM outlines the terms and conditions of the bond issuance. The pricing supplement is supplemental to the IM and contains the commercial details of individual tranches of the notes issued under the MTN Programme including principal amount, issue price, currency of issue, denomination of the notes, interest/coupon rates, default interest rate, interest payment dates, minimum redemption amounts among others.

25. When an MTN programme is established, the investors who lend funds to the issuing company (referred to as an "issuer") participate under the terms and conditions that have been set out in the IM and other offer documents (such as the pricing supplement). Upon successful application, the investors receive notes, representing the lace value of the investment. These notes yield returns in the form of interest payments or coupons that are paid over the bond's tenor, with the principal investment sum generally repaid upon the bond's maturity, or earlier, if the issuer opts for early redemption.

26. In compliance with regulatory requirements, EABL prepared an IM for its KES 11 billion MTN Programme which was approved by the CMA and submitted to the NSE. The IM, prepared in 2015, was therefore applied for both 2015 notes and 2017 notes. A copy of the approved IM is enclosed for your information. Both the 2015 notes and 2017 notes were listed on the fixed income market segment of the NSE.

THE 2017 NOTES AND NSSF'S INVESTMENT

27. On 13th March 2017, an offer for the KES 6 billion 2017 opened. The 2017 notes were offered at a fixed rate coupon of 14.17%. A subscription rate of 100% was achieved as at the close of the offer on 24th March 2017. The notes were allotted on 27th March 2017 and on 3rd April 2017, the notes were successfully issued. The 2017 notes were scheduled to mature on 28th March 2022.

28. When a company in Kenya decides to issue a public corporate bond, it is required by law to appoint among others; Arrangers, Placing Agents, Registrars and Fiscal Agents. An arranger is the bank that supports in managing the corporate bond issuance process. It

iii) The Accounting officer(s) for the duration that the reconciling items have been outstanding have been in breach of Regulation 90 (3) of the PFM (National Government) Regulations 2015, that states that the accounting Officers shall ensure any discrepancies noted during bank reconciliation exercise, are investigated immediately and appropriate action taken including updating the relevant cash books. The accounting officer had taken a long time to clear outstanding reconciling items.

Committee recommendations

The committee maintained the recommendations made for the year ended 30th June 2020 as follows;

1) Within the current audit cycle and by 31st December, 2024 as stipulated in Article 229 (4) of the Constitution of Kenya 2010, the Auditor-General should submit the forensic Audit report as requested by the Public Investment Committee on social services, Administration and Agriculture through the clerk of the National Assembly.
2) Within three months upon adoption of this report, EACC to investigate whether there were any economic crimes perpetuated by the Fund officers through manipulation of cash books and other financial records or non-disclosure of material facts and submit a report to the Public Investment Committee on social services, Administration and Agriculture through the clerk of the National Assembly. If any officer is found culpable, he/she should be held personally liable for the loss, DPP should initiate a legal process to recover the amount so lost from the concerned officer at the prevailing CBK rates.
3) The committee reprimands the then accounting officer and any other officer(s) responsible for preparing bank reconciliation then for breach of Regulation 90 (3).

4.0 <u>Rental Debtors</u>

46. The Committee heard that, the statement of net assets available for benefits reflects receivables and prepayments totaling Kshs.4,072,961,233 which include rental income debtors totaling Kshs.1,001,072,176, as further disclosed in Note 23 to the financial statements. The debtors increased by Kshs.230,962,739 or 30% from Kshs.770,109,437 reported in the year ended 30 June 2020. Review of the debtors aging analysis revealed debtors totaling to Kshs.541,755,371 which have been outstanding for more than two (2) years. No explanation was provided by Management for the failure to collect the rent arrears or write them off as bad debts in accordance with the provisions of Section 157(1) of the Public Finance Management (National Government) Regulations, 2015.

47. In the circumstances, the accuracy and recoverability of rental debtors balance totaling Kshs.1,001,072,176 as at 30 June, 2021 could not be confirmed.

Management Response

48. The management informed the Committee that, during the financial year 2020/21 the debtors position was Kshs. 1,001,072,172, which was an increase from Kshs. 770,109,437 in 2019/2020. This included the debtor's amount of Kshs. 541,755,371. This increase is attributed to the impact of Covid-19 whereby most business under performed hence affecting the payments by our tenants. The Fund has entered into payment plans with the tenants on how to pay their arrears this has reduced the arrears to Kshs. 631,174,154.20.

Committee observations

The committee observe that –

The increase in debtors of Kshs.230,962,739 and the issue of debtors totaling to Kshs.541,755,371 which have been outstanding for more than two (2) years were attributed to the impact of Covid-19 whereby most business under performed hence affecting the payments by the tenants. The explanation for the cause of the delay in recovery is untenable since the two years the debts have been outstanding was beyond the Covid-19 effects.

Committee Recommendations

The Committee recommends that –

With three months upon adoption of this report, the auditor-General should review composition and position of the rent debtors and report in the subsequent audit cycle 2023/2024 in accordance with Article 229 (4) of the Constitution.

5.0 Payables and Accruals

49. The Committee heard that, the statement of net assets available for benefits reflects payables and accruals totaling Kshs.1,431,691,147 which include payables due to vendors totaling Kshs.173,047,633 as further disclosed in Note 32 to the financial statements. However, included in the payables due to vendors totaling Kshs.173,047,633 is Kshs.20,262,695 owed to the Fund by landlords, fuel suppliers, staff, and cash floats advanced to property managers. The long outstanding deposits are receivables but are incorrectly included in the payables balance.
50. Further, the payables and accruals balance totaling Kshs.1,431,691,147 includes returned benefits totaling Kshs.266,336,140. No explanation was provided for failure to clear the long outstanding returned benefits for the years 2012 to 2021.
51. In the circumstances, the accuracy, completeness and fair statement of the payables and accruals balance totaling Kshs.1,431,691,147 as at 30 June, 2021 could not be confirmed.

Management response

52. The management informed the Committee that, the amount of Kshs. 20,262,695 included in payables due to vendors relate to security deposits for landlords, petrol suppliers and property managers' floats. The amount is refunded to the Fund at the end of tenancy or change of petrol suppliers. For property managers, this is a standing imprest which they account for every month end and any balance returned at the end of contract. The balance reported is net of any outstanding payments at the end of the financial year.

53. Going forward deposits will be accounted for differently as part of receivables and not netted off with payables.

54. The Kshs. 266,336, 140 relate to uncollected cheques before the Fund started wiring benefits to the members accounts.

55. The Fund put an advert in the dailies and local radio stations informing members to contact the nearest NSSF branches to launch their claims. Further, details including mobile numbers of the beneficiaries have been sent to the branches who in turn have contacted chiefs to find the beneficiaries.

56. The beneficiaries have been responding albeit slowly. Currently the balance stands at Kshs. 155 million and the process is going on.

Committee Observations

The committee observed that –

i) The Kshs.20,262,695 owed to the Fund by landlords, fuel suppliers, staff, and cash floats advanced to property manager are receivables but were incorrectly included in the payables balance. This implies that the financial statements were inaccurate and misrepresented.

ii) The Kshs. 266,336,140 related to uncollected cheques before the Fund started wiring benefits to the members accounts. This implies that the Fund had not tied it beneficiaries accounts to their respective contributions.

Committee Recommendations

The committee recommended that –

1) The committee reprimands the then Accounting Officer for the delay in resolving issues of uncollected cheques as and when they are drawn.

2) Within three months upon adoption of this report, EACC should investigate how the uncollected benefits are accounted for and invested, how the accruing returns on the investments are attributed to the respective beneficiary accounts and how unclaimed

benefits are transmitted to the unclaimed Assets Authority and whether there are any diversions of the unaccounted contributions or uncollected benefits and submit a report to the Public Investment Committee on Social Services, Administration and Agriculture through the Clerk of the National Assembly. If any officer is found culpable, he/she should be held personally liable for the loss,DPP should initiate a legal process to recover the amount so lost from the concerned officer (s) at the prevailing CBK rates.

6.0 Stores and Supplies

57. The Committee heard that, the statement of net assets available for benefits reflects stores and supplies totaling Kshs.79,304,872, as further disclosed in Note 22 to the financial statements. However, the stores management software system indicated total stock balance of Kshs. 59,734,163 described as 'stock on transit since 2013' resulting to unexplained variance of Kshs.19,570,709. Further, the balance does not include stocks from thirty-five (35) of the Fund's Branches which did not provide their respective stock take reports as at 30th June, 2021.
58. In addition, the Fund's stores management software system had major limitations as physical count of stock could not be reconciled to actual values and the software could not detect and record loss of stores or adjustments of stock made through the system.
59. In the circumstances, the accuracy, valuation and existence of the stores and supplies balance of Kshs.79,304,872 as at 30th June, 2021 could not be confirmed. Further, the significant weaknesses in the stores management system may enhance the risk of stock losses and stock outs.

Management response

60. The management informed the Committee that, the figure of Kshs.19,570,709.00 is the difference between the stock ledger balance and that of stock in transit. A reconciliation of the same was done and the issue was resolved.

Committee Observations

The committee observed that –

i) The stores management software system indicated a balance of Kshs. 59,734,163 described as 'stock on transit since 2013'. It is unlikely that stock can remain in transit for over eight years and this could have been lost stock or lost public funds disguised as stock in transit.
ii) The existence of stock worth Kshs.19,570,709 was unexplained.
iii) Stock from thirty-five (35) of the Fund's Branches were excluded from the Funds stock as at 30th June, 2021. The financial statements were therefore misstated.
iv) The then Accounting Officer was in breach of Regulations 139 and 140 of the PFM (National Government) Regulations, 2015.

Committee recommendations

The Committee recommends that –

1) Within three months upon adoption of this report, EACC should investigate the stock balance of Kshs. 59,734,163 described as 'stock on transit since 2013 with a view to establish whether the stock was lost or public funds were lost and disguised as stock in transit. If any officer is found culpable, he/she should be held personally liable for the loss,DPP should initiate a legal process to recover the amount so lost with interest from the concerned officer (s) at the prevailing CBK rates.

2) The Committee reprimands the then Accounting Officer for breach of Regulations 139 and 140 of the PFM (National Government) Regulations, 2015.

Other Matters

1.0 Budgetary Control and Performance

61. The Committee heard that, statement of comparison of budget and actual amounts indicates that the Fund's revenue budget for the year under review amounted to Kshs.39,963,301,000 and actual revenue Kshs. 41,910,987,694 resulting to a surplus of Kshs.1,947,686,694 equivalent to 5% of the budget. Management attributed the favorable revenue variance to the improved earnings in the bond and equities market in the financial year under review. Similarly, the statement of comparison of budget and actual amounts indicates that the Fund had budgeted to spend Kshs. 8,249,997,000 against the actual expenditure of Kshs. 7,077,506,126 resulting to an under-expenditure of Kshs.1,172,490,874. The variance was mainly caused by reduction of staff costs by Kshs. 989,210,432 due to delay in recruitment of senior managers and delayed implementation of the Fund's Collective Bargaining Agreement (CBA).

Management response

62. The management informed the Committee that, the under absorption of Kshs. 1,172,490,874 was caused by reduction in staff costs due to delay in recruitment of senior managers and the delayed implementation of the CBA.
63. The Fund did try to fill in the vacant positions vide an advertisement that was run in the Daily nation of 2015. The process stalled due to court that was filed against the process. The Fund made another attempt to fill the positions vide an advertisement put out on 23rd December,2021 where another court case was brought up on 5th January, 2022 and ruling was given that Human Resource Instruments be taken to Public Service Commission (PSC). This was duly done on 28th April, 2022.
64. The Human resource instruments were approved in September 2022 by the Public Service Commission and the Fund is in the process of filling the positions. The current CBA (2021-2023) has been finalised and implemented.

Committee observations

The committee observed that –

i. The Fund indicated that they tried to fill in the vacant positions vide an advertisement that was run in the Daily nation of 2015. However, the under-absorption for the year ended 30th June, 2021 could not be affected by transactions of 2015.
ii. The delay in recruitment of senior managers and delayed implementation of the Fund's Collective Bargaining Agreement (CBA) associated with court cases may imply that the management has been breaching the legal provisions leading to court cases that then lead to wastage of Funds money in form of legal costs.
iii. The Accounting Officer had delayed to have the Human Resource Instruments approved by the Public Service Commission.

Committee Recommendation

The Committee recommends that –

i. The Accounting Officer should ensure at all times that the budgets are realistic, achievable and always adhere to annual work plans, procurement plans and revenue collection schedules in compliance with Regulation 44(2) of the PFM (National Government) Regulations, 2015.
ii. The Committee reprimands the then Accounting Officer for delay in having the Human Resource Instruments approved in time.

2.0 Prior Year Issues

65. The Committee heard that, the following issues reported in previous audit reports had not been resolved as at 30th June,2021.

2.1 Prior Audit Issues

66. The audit report for the year ended 30th June, 2020 raised several unsatisfactory issues in regard to balances reflected in the financial statements, lawfulness and effectiveness in use of resources and effectiveness of internal controls, risk Management and governance.
67. The report of Management on progress made in resolving the issues indicates that activities intended to resolve some of the issues were ongoing as at 30th June, 2021. However, the report does not provide disclosure on several issues raised in the audit report.

Management response

68. The management informed the Committee that, the actual status of all the issues will be confirmed after they are discussed by Parliament.

Committee observations

The committee observed that –

i) The matter on prior year audit issues was not adequately responded to.
ii) The Accounting officer did not comply with Section 31(1) (a) of the public audit Act 2015, which indicates that within three months after Parliament or the County Assembly has debated and considered the final report of the Auditor General and made recommendations, a State Organ or a public entity that had been audited shall, as a preliminary step, submit a report on how it has addressed the recommendations and findings of the previous year's audit. Also, the Public Sector Accounting Standards Board has prescribed the Financial Reporting Framework where the entity is supposed to indicate the action it has taken to resolve an issue and its status.

Committee recommendations

i) The committee reprimands the then Accounting officer for breach of the Section 31(1) (a) of the public Audit Act, 412B and Financial Reporting Framework as prescribed the Public Sector Accounting Standards Board.

2.2 Unrecovered Project Mobilization Fees

69. The Committee heard that, examination of records on the stalled Nyayo Embakasi Estate Phase VI construction project indicated that mobilization fees totaling Kshs. 215,540,774 paid to the contractor had not been recovered as directed in previous reports of the Public Accounts Committee (PAC). No satisfactory explanation was provided by the Management for the failure to recover the fees which will amount to loss of public funds if not recovered.

Management response

Background

70. The management informed the Committee that, the proposed Nyayo Estate Phase 6 development comprised of 16 Shops, 16 One Bedroomed Apartments, 272 Three Bedroomed Apartments and 19 Three Bedroomed Maisonettes on some of the undeveloped residential/shops plots and two of the primary school plots that required approval from the then Nairobi City Council (now Nairobi City County Government).

71. The contract was awarded to M/S China Jiangxi International for a contract sum of Kshs. 2,155,407,742.20 for a contract period of 78 weeks commencing 2nd June, 2013.

Stalling of the Project

72. The project stalled when the Nairobi City County Government (NCCG) declined to grant the requisite Change of User approvals for the plots meant for the development. The Board of Trustees held a number of engagements with the NCCG but the stalemate persists to date.

Status

i) Of the planned 324 units of the project, 44 units have been completed, sold under the Tenant Purchase Scheme (TPS) programme and handed over to the owners. The Fund received a total of Kshs. 359,600,000.00 from the sale.

ii) At the 174th meeting of the Board of Trustees held on 9th April, 2017 having noted the historical background of the said project and the fact that the Fund could not obtain the change of user as required, the Board resolved that the Fund should stop the project at that point.

iii) The project consultants have certified an amount Kshs.274,675,065.92 as the value of the work carried out;

iv) Following the stalling of the project, the Fund has requested the Contractor to refund the outstanding portion of the advance payment of Kshs. 168,766,208.30;

v) The Fund is pursuing alternative dispute resolution mechanism to get the deposit refunded.

Further submissions by the Accounting Officer on Nyayo Embakasi Estate Phase VI Construction Project

1.0 BACKGROUND

73. Nyayo Estate, Embakasi is located at Embakasi Village off the Eastern bypass. The Fund constructed and sold phases I to V consisting of 4774 residential units successfully between 1995 and 2015. The Estate is widely recognized as one of the best planned and managed estates in the region.
74. In the original plan of the development of Nyayo Estate Embakasi, several plots were planned for development of schools. The approved scheme had provision for 6 nursery schools and 3 primary Schools to cater for the population within and outside the scheme. However, two of the Nursery School plots were developed as both Nursery and Primary School, hence reducing the need for additional primary schools.
75. Bearing in mind that the Estate already had two schools and with a view to derive maximum value for the investment, the Board of Trustees at the 161st meeting held on 11th December, 2012 approved the development of Nyayo Estate Embakasi Phase 6.
76. This investment was conceived as what is commonly known as an In-Fill development. The existing 4774 units seat on 200 acres which amounts to less than 24 units an acre.
77. This density compares very favorably with most of the comparable developments in Nairobi.
78. The proposed Nyayo Estate Phase 6 development comprised of 16 Shops, 16 One Bedroomed Apartments, 272 Three Bedroomed Apartments and 19 Three Bedroomed Maisonettes on some of the undeveloped plots.
79. The projected cost, revenue and profits for the proposed investment were as follows:

Item	Amount
Projected Development Cost	2,312,766,480
Projected Sales	2,786,000,000
Development Profit	473,233,520

Development Margin	20.5%

80. The expected additional returns from the Tenant Purchase Scheme for the units made the investment very attractive to the Board of Trustees.
81. The contract was awarded to M/S China Jiangxi International for a contract sum of KES 2,155,407,742.20 for a contract period of 78 Weeks commencing 2nd June, 2013.

2.0 STALLING OF THE PROJECT

82. Some of the targeted plots required approval from the then Nairobi City Council (now Nairobi City County Government) for change of user. The project stalled when the Nairobi City County Government (NCCG) declined to grant the requisite Change of User approvals for the plots meant for the development. The Board of Trustees held a number of engagements with the NCCG but the stalemate persists to date.
83. The Nairobi County Government insisted that the Fund hands over to the County some of the plots, develops 3 stream primary school and a secondary school on some of the other plots. The County also demanding a letter of no-objection from the existing residents of the estate. This letter was not forthcoming.

3.0 STATUS

i) Of the planned 324 units of the project, 44 units have been completed:

Item	Amount (KES)
Contract Sum	2,155,407,742
Certified Works for 44 Units	274,675,066
Certified Payments to-date	227,900,500
Outstanding Payment	46,774,566
Mobilization payment	215,540,774
Net Mobilization Amount	168,766,208

ii) The 44 units developed were sold under the Tenant Purchase Scheme (TPS) programme and handed over to the owners. The sales realized revenues amounting to KES 359,600,000.00

iii) At the 174th meeting of the Board of Trustees held on 9th April, 2017 having noted the historical background of the said project and the fact that the Fund could not obtain the requisite approvals, the Board resolved that the Fund should stop the project at the point it is and explore options of exiting the project at the earliest opportunity;

iv) The project has since been certified as frustrated by the Project Manager and Consulting Architect M/S Symbion (K) Limited and is in the final stages of closure;

v) Following the stalling of the project, The Fund has demanded the Contractor to refund the outstanding mobilization amount of KES 215,540,774;

vi) The recovery of the mobilization amount has been factored into the computation of the final account by the Project QS M/S Davson Ward which indicates an outstanding amount of KES 168,766,208.28;

vii) The Fund is pursuing alternative dispute resolution mechanism to resolve the outstanding issues with the project.

Further, submissions by the contractor China Jiangxi

i) The Committee was provided with the contractual agreement between china Jiangxi and the National Social Security Fund for the Construction works of Nyayo Embakasi phase agreement.

ii) The Committee was further informed that the Contractor had not declined to repay the amount advanced. The client, NSSF, was still working on the project's final account and as per the terms of the contract, clause 23.7(appendix 3) any amount due will be recovered in the final account. The final account will comprise of work done to date, contractual claims associated with the reduction of scope of work and any other expenses or losses incurred by the Contractor. We however remain optimistic that the project will be implemented as earlier envisaged.

Inspection Visit by the Committee

84. The committee visited the Nyayo Estate Embakasi Phase 6 project on a fact-finding mission. The members wanted to establish how many houses were constructed and sold. What happened to unconstructed 272 houses and whether the advance payment of Kshs. 215,540,774 paid to the contractor was recoverable. Further, the committee wanted to establish why some of the targeted plots required approval from the then Nairobi City Council (now Nairobi City County Government) for change of user and the reasons why the project stalled when the Nairobi City County Government (NCCG) declined to grant the requisite Change of User approvals for the plots meant for the development.

Committee observations

The committee observed that –

i. The proposed Nyayo Estate Phase 6 development comprised of 324 units of the project, comprising 16 Shops, 16 One Bedroomed Apartments, 272 Three Bedroomed Apartments and 19 Three Bedroomed Maisonettes on some of the undeveloped plots and open spaces.
ii. Out of the planned 324 units of the project, 44 units have been completed and sold out as confirmed during the project visit. 16 of the 44 completed units were located in block 328, 16 others in block 290 and 12 in blocks 479 and 480. This left 280 units to be accounted for.
iii. For the 280 units to be accounted for, the members were taken to blocks 296 and 817 on which 96 and 176 units respectively (all adding up to 272 units) were to be constructed. This left 8 units unaccounted for.
iv. The committee established that these two plots/blocks (blocks 296 and 817) were initially approved for public schools and hence probably the reason why the County refused to grant approval for change of user.
v. Block 817 was to be exchanged with a similar size undeveloped plot/block that was deemed easily accessible for school purposes.
vi. The PIC 22nd report had placed the completed units at 52 while the NSSF responded to and showed the members 44 units leading to an unexplained variance of 8 units.

vii. This investment was conceived as an In-Fill development rather than a completely new phase.

viii. There was unrecovered Kshs.168,766,208 arising from the initial advance of Kshs. 215,540,774 after deducting Kshs. 46,774,566 recovered from a former payment.

ix. The NSSF did not seek all the requisite approvals before commencing the project thus discrediting the Fund's capacity in project planning and implementation.The State Department of Public Works was not involved in the project from the onset.

x. The Committee during the inspection visit and vide letter Ref: NA/DAA&GPC/PIC-SSAA/2024/ (84) dated 2nd September, 2024 sought further information from the Accounting Officer NSSF to enable the Committee to make an informed conclusion on whether public funds were utilized in a lawful, authorized, effective, efficient, economic and transparent way. The additional information sought and provided to the Committee in respect of the following was not adequate as requested;

a. The feasibility study report for the construction of Nyayo Embakasi phase VI project.

b. The contractual agreement signed between NSSF and M/s China Jiangxi International for the construction of 324 units at Nyayo Embakasi Phase VI at a contract sum of Kshs.2,155,407,742.20.

c. Comprehensive report of the Nyayo Embakasi Phase VI Construction Project detailing the status of the project that comprised of sixteen (16) shops, sixteen (16) one bedroom apartments, two seventy two (272) three bedroomed apartments and nineteen (19) three bedroomed maisonettes that was awarded to M/s China Jiangxi international for a contract sum of Kshs. 2,155,407,742.20;

d. The total amount of money paid by the Fund for the construction of Nyayo Embakasi Phase VI Project and the progress made by the Fund to recover the project mobilization fees of Kshs. 215,540,774 that was paid to the contractor and;

e. the copies of the requisite approval letters for the construction of Nyayo Embakasi Phase VI project from the County Government of Nairobi.

Committee Recommendations

The committee recommended that –

i. Within three months upon adoption of this report, EACC to investigate how the project was initiated including Board Approval, the procurement process done before approval for the change of user, what necessitated the change of user, how the contractor or any other consultant was engaged before the project was approved, any loss of funds either in capital or opportunity cost for the lost alternate investment for the Kshs.215,540,744, the officers who may been engaged in any vice with regard to this project and the accountability of the eight (8) missing housing units. A report to be submitted to the Committee. If any officer is found culpable, he/she should be held personally liable for the loss, DPP should initiate a legal process against the culpable person(s).In the event of loss of Kshs. 215,540,744, all the officers that failed to seek approvals from the Nairobi City County should be individually held responsible.

ii. Within three months upon adoption of this report, the Accounting Officer shall take the necessary steps to expedite the project approvals by Nairobi City County Government for the continuation of the project in order to avoid any further losses in terms of contractual claims by the contractor for time lost (idle times)

iii. The committee reprimands the then accounting officer and any other officer involved in the implementation of the failed project.

iv. Within three months upon adoption of his report, the Accounting Officer in consultation with the Nairobi City County should, within the legal provisions, expedite the project approval process and continuation of the project to avoid further losses in terms of contractual claims by the contractor for idle time.

Non-Compliance with the National Social Security Fund Act, 2013

85. The Committee heard that, the statement of net assets available for benefits reflects investment management expenses of Kshs. 508,604,076 and operating costs of Kshs. 6,568,902,050 all totaling to Kshs. 7,077,506,126 which is approximately 2.5% of the Fund's net assets of Kshs. 284,486,627,670 as at 30th June, 2021. This is contrary to Section 50 of the National Social Security Fund Act, 2013 which stipulates those expenses paid out of the Fund shall not exceed two per cent (2%) of the total Fund assets in the first year from the commencement date and thereafter be reduced and capped at one and a half percent (1.5%) in the sixth year following the commencement date.
86. Failure by Management to contain the expenses at 1.5% or below, of the Fund's assets eight (8) years after the commencement date is, therefore, irregular.

Management response

87. The management informed the Committee that, the of ratio of 1.5% was premised on the fact that new rates under NSSF Act No. 45 of 2013 was to take effect in 2014 and grow the revenue thereby growing the Fund's net assets. Immediately after 2014, some sections were taken to court stopping implementation.

88. The law required the Fund administration expenses to be at below 2% of the Fund value at the end of 1st of implementation and then progressively go down to 1.5% at the end of the 5th year. New rates came to effect in February 2023 and the Fund projects that by FY 2023/2024 which is the 1st year of implementation, the Fund will have achieved her target of 2%.

Committee Observations

The committee observed that –

i. The NSSF Act 2013 that commenced in 2014 or any court ruling does not provide for suspension of the rate of expenditure of (1.5%) the Fund's net assets in the sixth year following the commencement date.

ii. The accounting officer's statement that there were new rates that came to effect in February 2023 and the Fund projected that by FY 2023/2204 which was the 1st year of implementation, it will have achieved her target of 2% was an invalid explanation for breach of the law in the year 2020/2021 as the new rates were not applicable then.

iii. NSSF exceeded the allowed rate of expenditure of 1.5% by Kshs, 2,831,002,450 in the year of audit 2020/2021.

Committee Recommendations

The committee recommended that –

i. The committee reprimands the then accounting officer for breach of Section 50 of the National Social Security Fund Act, 2013 which stipulates those expenses paid out of the Fund shall not exceed two per cent (2%) of the total Fund assets in the first year from the commencement date and thereafter be reduced and capped at one and a half percent (1.5%) in the sixth year following the commencement date.

ii. Within three months upon adoption of this report, EACC to investigate how much have been paid in excess of the legally provided rates of 2% and 1.5% in the respective years and submit a report to the Public Investment Committee on Social Services, Administration and Agriculture through the Clerk of the National Assembly. If any of the then accounting officer (s) is found culpable for over expenditure, he/she should be held personally liable for the loss, DPP should initiate a legal process to recover the amount so lost through over expenditure from the concerned officer at the prevailing CBK rates.

Lack of Policy for Doubtful Debts Provisioning

89. The Committee heard that, the statement of changes in net assets available for benefits and Note 15 to the financial statements reflects provisions totaling Kshs.129,778,343. However, some of the provisions were made in relation to financially stable companies and individuals. Review of the controls on debt Management indicated that the Fund did not have a documented policy for setting provisions for doubtful debts.
90. In the absence of the policy, the risk of loss of the Fund's resources through invalid debtors' provisions may be high.

Management Response

Management has presented a policy on provision for doubtful debts for Board approval.

Committee Observations

The committee observed that –

i. The NSSF Management had a draft policy on provision for doubtful debts awaiting Board approval.

ii. The provisions of Kshs. 129,778,343 includes some provisions made in relation to financially stable companies and individuals. The basis upon which the specific provisions were made which could be used to unfairly write off debts that could be recovered from the debtors was not clear.

Committee recommendations

The committee recommends that –

i) Within three months upon adoption of this report, EACC to investigate the provisions of Kshs. 129,778,343 with respect to who the debtors are, when and how they were engaged and submit a report to the Public Investment Committee on Social Services, Administration and Agriculture through the Clerk of the National Assembly. If any of the then accounting officer (s) is found culpable for financial misconduct, he/she should be held personally liable for the loss, DPP should initiate a legal process to recover the amount so lost through over expenditure from the concerned officer at the prevailing CBK rates.

EXAMINATION OF THE AUDITOR'S GENERAL REPORT OF THE KENYA MARINE AND FISHERIES RESEARCH INSTITUTE (KMFRI) FOR THE FINANCIAL YEARS 2019/2020 AND 2020/2021.

91. Mr. James Mwaluma the Ag.CEO of Kenya Marine and Fisheries Research Institute (KEMFRI) was accompanied by Mr. Abraham Kagwima (Head of Corp.Service) Ms. Elizabeth Nabwire (Ag.DFA), Dr.Erick Ochieng (Director)and Mr. Isack Kojo (SCM) appeared before the committee to adduce evidence on the Audited accounts of the Kenya Marine and Fisheries Research Institute (KEMFRI) for the Financial year 2019/2020 to 2020/2021.

Financial Year 2019/2020

1.0 Property, Plant and Equipment

1.1 Un-surveyed Land and Lack of Ownership Documents

92. The Committee heard that the Institute owns unsurveyed land located in Baringo, Sangoro and Mtwapa measuring 2.35 hectares, 0.7 hectares, and 13.4 acres respectively. However, as had been previously reported, the properties have not been valued nor included in the reported property, plant and equipment balance of Kshs. 1,770,216,144 as at 30th June, 2020. Further, other than allotment letters for the 2 parcels of land in Baringo, ownership documents for the land parcels were not provided and management reported that the land in Mtwapa was encroached on before the transfer from the Kenya Agricultural Research Institute (KARI) was complete.

Management Responses

1. **Baringo Land**

93. The Institute has allotment letters to the two parcels of land (PDP no. R/B/355/99/01 measuring 2.35 hectares and PDP No. 80826/48 measuring 1.7 hectares) located in Kampi ya Samaki – Baringo as submitted.

a) Unsurveyed Land:

Land Parcel PDP No. R/B/355/99/01 Measuring Approximately 2.35 Ha

94. This parcel of land was submerged by the waters of Lake Baringo. On 9th February 2024, the Institute wrote to the NLC seeking the titling of the land in Baringo as per letter that was provided .The NLC responded on 14th June 2024 advising KMFRI to follow up with the Ministry of Lands, Public Works, Housing, and Urban Development with a view of obtaining the ownership document as per letter provided.
95. KMFRI management hasalso been actively pursuing allocation of alternative land by the County government of Baringo given that the parcel of land is at risk of being fully submerged by water which keeps rising. On 1st May 2023, the management wrote a letterto the Governor as provided for allocation of 10 acres of Land for the construction of a research facility in Marigat. The County Government of Baringo responded to the Institute on 24thMay 2023 as provided communicating allocation of 5 acres of Land for construction of a research facility. The County planners and surveyors visited the site on 25thMay 2023 to survey the parcel jointly with the water Engineer. Following the visit by the County planners and surveyors, the County Government of Baringo prepared a draft Part Development Plan (PDP). The County Government of Baringo advertised the Part Development Plan on 29thFebruary 2024 as provided in and the public was given 60 days to inspect the same and concur or object the proposed PDP. The inspection period of the PDP ended on 30thApril 2024 with no objections. The Institute is now following up the titling process.

b) Lack of Ownership Documents

Land Parcel PDP No. 80826/48 Measuring Approximately 1.7 Hectares

96. Pursuit of title to this parcel of land was derailed by the ongoing litigation in court, details of which are set out below:
97. The land had a squatter who had filed a case - ELC CAUSE NO. 30 of 2020 – challenging KMFRI's ownership of the land. The court ruled in KMFRI's favor in a judgment delivered on 22 July 2021, giving the encroacher six (6) month notice to vacate as was provided .The Institute wrote to the encroacher with an eviction notice on 14th October 2021giving the encroacher upto 22nd January 2022 to vacate the land as guided by the ruling as was provided.
98. The encroacher appealed against the ruling at the ELC in Eldoret(ELC MISC APP. NO. E035 of 2021) and obtained a court order on28thSeptember2021, restraining KMFRI from evicting the encroacher for a period of 6 months as was provided .
99. In the intervening period the Attorney General, representing KMFRI followed up on the matter and kept the Institute apprised of the process as was provided.
100. On 12th May 2022 the court dismissed the case ELC MISC APP. NO. E035 of 2021 as was provided. However, as stated in para 8 of the ruling of ELCLMISC/E003/2023before the Land and Environment court in Kabarnet town,for some unknown reason the file found itself back in court and the matter proceeded for a full hearing and dismissed on 15th May 2024 as was provided .Following the determination of the case, the Institute has:

i. initiated the process to evict the encroacher by issuing her the eviction notice.
ii. written to the NLC seeking the titling of the land in Baringo as per the letters provided.

2. **Sangoro Land**

101. In 1983 KMFRI approached the community at Sangoro to provide land for establishing a laboratory near river Sondu Miriu.The request was granted, and 2.19 hectares was provided by 10 individual landowners for 10 parcels of land.The Institute has managed to acquire four titles measuring 0.7 hectares as was provided valued at Kshs. 1,202,000 as per the attachment
102. Further, the Institute is in the process of transferring the other six pieces of land measuring 1.49 hectaresfollowing the guidance from the Attorney General to engage the National Lands Commission in the process. The NLC met the landowners and KMFRI management to validate the valuation report before issuance of an advisory to guide the transfer process as attached.

Title Number	Registered owner	Area in Ha	Market Value (Kshs)
Ksm/Koguta West/5499	KMFRI	0.05	125,000
Ksm/Koguta West/5485	KMFRI	0.23	368,000
Ksm/Koguta West/5496	KMFRI	0.11	275,000
Ksm/Koguta West/5492	KMFRI	0.31	434,000
Sub Total		**0.7 Ha**	**1,202,000**
Ksm/Koguta West/5861	Samuel Aoko Agola	0.42	546,000
Ksm/Koguta West/5863	Otieno OriwoOkore	0.27	405,000
Ksm/Koguta West/5858	John Otieno Nyambune	0.25	375,000
Ksm/Koguta West/5871	Joseph Oluoch Ongawo	0.17	340,000
Ksm/Koguta West/5886	Martha Adoyo Ouko & Jared Ouko Ouma	0.17	340,000
Ksm/Koguta West/5492	Esther Akoth Owak	0.21	336,000
Sub Total		**1.49 Ha**	**2,342,000**

103. The valuation of the ten parcels of land has been conducted by NLC and the valuation report dated 28th May 2024 provided to the Institute, valuing the parcels at Kshs. 3.544 million as per the attachment.
104. The NLC met the transferors on 29th June 2024 and validated the draft valuation report as part of their advisory to the land transfer. The institute will factor budget during FY 2024/25 to pay the owners as per NLC valuation report.

3. **Mtwapa land**

105. The land was a government crown land measuring 13.6 hectares allocated to KARI for research purposes. Kenya Agricultural Research Institute (KARI) ceded 10 acres (MN/III/2944) adjacent to the ocean to KMFRI in the year 1990 for establishment of research station for aquaculture purposes as per the attachment.
106. Before completion of the transfer process to KMFRI, the Institute learnt that the land was reallocated by the Commissioner of Lands in the year 1995 to private developers as provided.
107. To secure the ceded land, KMFRI engaged NLC, EACC and DCI on the matter in order to revert the land back to KMFRI as provided.
108. The EACC responded on 24th January 2023 requesting KMFRI to record statement and avail certified copies. KMFRI complied with the request from EACC as provided.
109. The DCI also responded on 7th March 2023 and indicated investigations into the matter had commenced as provided. KMFRI awaits feedback from NLC, EACC, DCI, and the outcome of the court cases. In FY 2022/23, the Parliamentary Committee on Implementation visited KMFRI Mtwapa Land with the KMFRI management. KMFRI awaits further direction.

Committee Observations

The Committee observed that, on the unsurveyed land:

i) The Accounting Officer was in breach of International Public Sector Accounting Standards (IPSAS 17) which require entities to disclose sufficient, relevant and representationally faithfully information about property, plant and equipment to enable users of its financial statements to understand and evaluate the effect property plant and equipment has on the financial position, financial performance and cash flows of the entity.

ii) Arising from observation (i) above, the institute land located in Baringo, Sangoro and Mtwapa measuring 2.35 hectares, 0.7 hectares, and 13.4 acres respectively have not been valued; consequently they were not reflected in the financial statements leading to understatement of the balances. Despite having not undertaken valuation, the Institute ought to have captured the historical values of the properties in the financial statements.

iii) Further, the Committee on Lack of Ownership Documents observed that; other than allotment letters for the 2 parcels of land in Baringo, the ownership documents for the other land parcels were not provided. Also, the land in Mtwapa was encroached on before the transfer from the Kenya Agricultural Research Institute (KARI) was completed.

iv) There is a risk of asset mismanagement due to lack of proper documentation, valuation, and surveying of the land parcels which may compromise value for money in utilization of the properties.

Committee Recommendations

i) Within three months upon adoption of this report, the Accounting Officer- KMFRI should undertake a professional valuation of the parcels of land and accurately reflect them in the financial statements of the entity.

ii) Within three months upon adoption of this report, the Accounting Officer- KMFRI should engage the National Lands Commission to fast track the regularization and acquisition of the title deeds of the parcels of land.

1.1 Sale of the Kongowea Land

110. The committee heard that, the Institute on 26th January 2007 sold the Kongowea parcel of land LR No. 6034/1/MN-Kongowea Mombasa, measuring approximately 1.998 hectares valued at Kshs.22.8 million to a private developer at a price of Kshs 15,020,000. However, the title was transferred to the purchaser before the Institute received the full amount of the sale price. In addition, the lawyer who received the money on behalf of the Institute on 26th March, 2009 did not remit the same to the Institute until 2010/2011 financial year when he transmitted Kshs. 13,444,923, leaving a balance of Kshs. 1,575,077 and any interest was below the market value of Kshs. 22,800,000, resulting to a probable loss of Kshs. 7,780,000. As at 30th June, 2020, the balance of Kshs. 1,575,077 had not been remitted to the Institute. No explanation was provided for the transfer of property before receiving full consideration and also why the property was sold below market value.

Management Reponses

111. Kongowea land was acquired in 1991 at a cost of Kshs 10 million for development of staff houses. However, the Government changed the policy of housing staff by introducing house allowances. The land was therefore considered a non-core asset and recommended for disposal by the KMFRI Board of Management. The Institute's intention was to sell the Kongowea Plot and use the sale proceeds in the construction of a Marine and Ocean Services Centre at the headquarters as per minute of 40th Session of the Board minute number 4.6 on page 9 as provided.

112. Following the decision to sell the land, the necessary approvals were obtained from the Ministry of Finance-Treasury and the Parent Ministry as per the attachment and the Board of Management resolution to dispose the Kongowea Land.

113. Kongowea land was advertised for sale as per Public Procurement and Disposal Act, 2005 and was sold for Kshs. 15,020,000 to Kongowea Properties Limited. At the time of sale, the land LR No. 6034/1/MN was valued at Kshs. 14,820,000 as per the valuation certificate from Ministry of Lands as per the attachment. The land was located adjacent to the Kongowea 'wakulima' market and, prior to the sale, was carried at a book value of Kshs. 22.8 million which could not be realized due to invasion by squatters and hawkers as observed by the KMFRI Tender Committee.

114. The land transfer documents were signed on 15 July 2008, as stated in paragraph 3.2.12 of the minutes of the special session of the Board held on 8th July 2009 as provided.

115. The sale process of Kongowea Land was handled through the institute lawyers and the land was transferred upon payment of full price as per letter from the Lawyer. Before conveyance

of the sales amount to KMFRI, the lawyers utilized Kshs. 1,175,077 to settle municipal land rates and Rates Clearance Certificate as per the attachment.

116. The process of settlement of the land rates took some time and there were no prior express instructions to the lawyer to invest the money in an interest earning account while the funds were in their custody.

117. The balance of the Ksh. 400,000 paid as tender deposit from the bidder was offset from the sales price.

118. On 24th June 2009 a meeting was held with the Minister and PS for the Parent Ministry in which the Minister indicated that the Government Policy was that public land should not be sold, as stated in paragraph 3.2.14 of the minutes of the special session of the Board held on 8th July, 2009. The sale process of the land was halted.

119. The Board of Management deliberated the matter during the special session held on 8 July 2009 as provided in which the institutional lawyer was invited to give legal opinion on the consequences of cancelling the sale of the plot.

120. The lawyer advised the KMFRI Board of Management that the sale of the plot had been concluded and the purchaser was in possession of ownership documents, land transfer documents and the title deed.

121. He further advised that the consequences for cancellation of the sale contract will be:

i. The purchaser will file a case for compensation for general damages.
ii. The purchaser will also seek special damages in respect of specific costs incurred by the purchaser such as removing the squatters and erection of the perimeter wall.
iii. Punitive damages: the court will consider the matter as an injustice and award prohibitive damages exceeding the then current value of the land.

122. A new valuation of the land was conducted in 2009 and the new value was placed at Kshs. 36.8 million as per the attachment.

123. The BOM recommended that a report be written and sent to the Minister with two options:

i. Complete the sale process by indicating the justifications.
ii. Cancelling the sale process and giving detailed financial implications.

124. The report was sent to the Minister on 16 July 2009 through the Permanent Secretary as per correspondence attached.

125. The matter was addressed in the 19th PIC report and the Parliamentary Committee on implementation visited in the FY 2022/23 and observed that the land had encroachers. The 24th PIC Report recommended that the Institute should follow-up on implementation of PIC's 19threport, which were:

i. That the EACC investigates the circumstances surrounding the disposal of the property.
ii. That the Government repossesses the land and reverts it for use by KMFRI.

126.The matter is still with the EACC for investigations and KMFRI awaits outcome of the investigations.

Committee Observations

The Committee observed that –

iii) The matter on sale of Kongowea land was addressed in the PIC 19th and 24th Reports where the Committee observed that, the institute land which was considered critical to the development of research in the Country, was disposed off through a flawed disposal process below the market price. In particular the Committee was concerned why the parcel was sold at a price of Kshs. 15,020,000 whereas its then market value was Kshs.22,800,000 leading to a loss of KSh.7.8 million.

iv) Further the Committee had recommended that EACC should investigate the disposal process including the role played by the then Director (Dr. Johnson Kazungu) in the process and that the government should repossess and revert the land to KMFRI.

v) The title to the Kongowea parcel of land had been transferred to the purchaser before the Institute received the full sale price.

vi) The lawyer who received the money on behalf of the Institute delayed in remitting it. The delay eroded the value of public money due to inflationary pressures.

Committee Recommendation

The Committee recommends that –

Within three months upon adoption of this report, the EACC should fastrack the investigation into the circumstances surrounding the sale of the Kongowea parcel of land, including the roles played by the Institute's officials and the lawyer involved. EACC should bring the matter to its logical conclusion. Further the Committee on implementation should follow up on the previous Committee recommendations.

Loss of Deep-Sea Observatory Rover

127.The Committee heard that, in Note 22 to the financial statements, the reported property, plant and equipment balance of Ksh. 1,770,216,144 includes an amount of Ksh. 531,106,878 in respect to research vessels. The research vessels included a deep-sea observatory rover acquired at the cost of Ksh. 13,242,599 in 2018/2019 financial year. However, the equipment was not physically verified as it was reportedly lost in the deep sea and the loss was reported at a local police station on 16th July, 2019. As of February 2021, the equipment has not been traced. Under the circumstances, the accuracy, existence and completeness of property, plant and equipment balance of Ksh. 1,770,216,144 could not be confirmed.

Management responses

128. The management informed the Committee that, it is true that the amount of Kshs. 531,106,878 in respect of research vessels includes Kshs.13, 242,599 being the cost of deep-sea observatory rover.

129. The deep-sea observatory rover is remotely operated equipment that collects high-resolution color images and videos that can be used to identify organisms and visualize seafloor features. The ROV measured; width 19.6 inches by; height 14.9 inches by; length 24.8 inches and weighing 26kgs is connected to boat-based controller by a 300m tether cable.

130. KMFRI encountered strong tidal currents while carrying out a survey in Mombasa Marine Park on 3/7/19 which turned the boat exposing the ROV tether cable to the boat propeller leading to a strong pull tension to the ROV connection forcing the ROV to tear away from the cable connection joint. A search and recovery operation was jointly conducted by KMFRI, Beach Management Units (BMUs) and KWS divers in the area where the equipment was lost. However, due to poor visibility accessioned by turbid water from rain runoffs, the search team could not locate the rover. All the BMUs in Kwale, Mombasa up to Kilifi were informed of the missing equipment including a picture of the equipment. The equipment has never been traced.

131. The incident was reported to Nyali Police OB number OB. No. 51/3/7/19 as evidenced.

Committee Observations

The Committee observed that –

i) The loss of the deep-sea observatory rover, valued at Ksh. 13,242,599 negatively affected the value of total Assets of the Institute. There was no documentary evidence that the Rover was insured and that a claim had been launched. This implies that the management was in breach of section 72 (1) of PFMA CAP 412A and section 160 (1) of the Public Procurement and Asset Disposal Act, CAP 412C.

ii) In the prevailing circumstances that the recovery of the asset or compensation of the same is remote, the management ought to have initiated the process of seeking a write off of the Asset's value of Kshs. 13,242,599 from the Institute's books of Accounts.

Committee Recommendations

The Committee recommends that –

i. Within three months upon the adoption of this report, the Accounting Officer – KMFRI Institute to ensure that the write off process is undertaken in line with the provisions of the

Section 69 of the PFM Act, CAP 412A.

ii. The Committee reprimands the then accounting officer for failing to insure the institute assets and breach of section 72 (1) of PFMA CAP 412A and section 160 (1) of the Public Procurement and Asset Disposal Act, CAP 412C.

2. Cash and Cash Equivalents

132. The Committee heard that, the statement of financial position reflects cash and cash equivalents balance of Kshs. 418,024,098 which, as disclosed under Note 19 to the financial statements includes cash in hand of Kshs.306,247. However, the cash in hand balance included Kshs.165,112 being cash held at Baringo station which differed with the nil balance reflected in the cash count certificate. Although Management explained that the money was stolen from the station's cash office, no evidence of the action taken against the officer responsible or that the incident was reported to the police was provided for audit verifications.

133. In the circumstances, the accuracy and existence of the reported cash in hand balance of Kshs. 306,247 could not be confirmed.

Management responses

134. The management informed the Committee that, the balance of cash in hand of Kshs. 306,247 as reflected in Note 19 of the Financial Statements includes an amount of Kshs. 165,112 that was lost from KMFRI Baringo Station cash office. The matter was reported to the police and a suspect was arrested and later arraigned in court. The case was heard by the Principal Magistrate's Court, Kabarnet. The case file number was: CRIMINAL CASE NO. 45 OF 2016. The case was determined, and a ruling made on 18 August 2016, where the accused was acquitted as provided.

135. The matter was tabled before the 24th sitting of the Public Investment Committee. The Committee recommended that the accounting officer should ensure implementation of cashless transactions beginning the 2022/2023 financial year and also consider writing off the stolen cash if it cannot be recovered.

136. The Institute has since implemented the committee's recommendation by:

i. Rolling out an integrated Enterprise Resource Planning System (ERP) system to ensure all transactions are done online, and payments for services are now being processed through E-Citizen platform.

ii. In accordance with the PFM Act 2012, the Institute sought authority from the Cabinet Secretary, The National Treasury through the parent ministry to write off the lost funds amounting to Kshs 165,112 as per correspondence provided.

137. The Institute received approval from The National Treasury to write off the lost funds on 27th February 2024 as provided. The write off has been effected in the Institute's books of account in the FY2023-2024.

Committee Observations

The Committee observed that –

i. The institute lost Kshs. 165,112 reportedly held at the Baringo station through theft or pilferage by its staff that could not be prosecuted and sustained in the court and hence the alleged culprit acquitted. Therefore the management was in breach of regulation 165 of the PFM (National Government) Regulations, 2015 on risk management, fraud prevention and internal controls.

ii. The Management's explanation that the money was stolen from the station's cash office is not convincing and was not supported by any evidence.

Committee Recommendation

138. The Committee reprimands the then Accounting Officer for breach of breach of regulation 165 of the PFM (National Government) Regulations, 2015.

3. Doubtful Receivables from Former Staff

139. The Committee heard that, the Statement of financial position reflects a balance of Kshs. 241,983,352 under receivables from non-exchange transactions which as disclosed in Note 20 to the financial statements, includes medical advances amounting to Kshs.5, 248,071. However, the medical advances include amounts of Kshs. 1,455,416 in respect of advances to staff who have since left the Institute and could not be traced. Management indicated that the officers passed on before recoveries were made. Consequently, recoverability of the receivables from non-exchange transactions balance of Kshs. 1,455,416 from former staff could not be confirmed.

Management response

140. The management informed the Committee that,, in accordance with section 34 the Employment Act, 2007, which requires an employer to provide employees with medicines including medical attention during serious illness, KMFRI's terms and conditions of service implemented a cost sharing medical scheme where KMFRI had in place a contributory medical scheme in which KMFRI paid the full medical bill to the health facility, recovered 25% of the bill from the employee's pay and absorbed the remaining 75%.

141. The receivable balance of Kes 1,455,416 comprised of Kes 1,358,435 being medical advance balances due from employees who passed away while in service and Kshs. 96,981 due from an employee for which Kshs. 27,886has been recovered leaving an outstanding balance of Kshs.69,095 as attached.Below is a table setting out the balances:

Name of Officer	Personal No (PN)	Balance at Time of Exit (Kes)	Remarks
Jacob Ojuok	001067	121,117	Deceased
NgisighaSowene	001576	1,017,451	Deceased

Fredrick Mwadzala	002101	89,794	Deceased
Meshack Okirigiti	000101	130,073	Deceased
Sub Total		**1,358,435**	
Walter O. Olang	000095	96,981	Retired.
Total		**1,455,416**	

142. KMFRI management deems the amounts irrecoverable and has written to the Cabinet Secretary, the National Treasury seeking authority to write off the irrecoverable debts in accordance with the PFM Act, 2012.The letter initiating the process in September 2022 is provided .Follow up on approval from the Cabinet Secretary of The National Treasury is ongoing as per correspondence provided.

Committee Observations

i) The Committee observed that, the Kshs.1,358,435 medical advances were due from employees who passed away while in service. Also out of the Kshs. 96,981 due from an employee only Kshs. 27,886 had been recovered leaving an outstanding balance of Kshs.69,095 although the employee has since retired before full recovery.

ii) The explanation that, the Kshs.1,358,435 medical advances were due from employees who passed away while in service could not be substantiated in absence of any documentary evidence inform of death notification.

iii) The situation highlights a potential weakness in the Institute's internal controls related to the management of medical advances and other receivables.

iv) Despite the Board of the Institute having sought the approval of a write off of the Kshs. 1,455,416 from the National Treasury on 30th September, 2022, there is neither a feedback to the request nor any evidence that the Institute has fast tracked the granting of the sought write-off.

Committee Recommendations

The Committee reprimands the then Accounting Officer for failing to take necessary actions to recover the outstanding balance of Kshs.69,095 from the retired staff.

OTHER MATTER

1. **Budgetary Control and Performance**

143. The committee heard that the statement of comparison of budget and actual amounts reflects a final revenue budget and actual revenue on comparable basis of Kshs. 1,723,162,292 and Kshs. 2,252,784,212 respectively resulting to an over-funding of Kshs. 529,621,920 or 31%

of the budget. Similarly, the Institute had an approved expenditure budget of Kshs. 1,701,167,292 against an actual expenditure of Kshs. 2,219,171,201 resulting to an overall over expenditure of Kshs. 518,003,909 or 30%.

144. The over-funding and over expenditure occurred mainly due to receipts of Kshs.618, 257,500 from the State Department of Fisheries and The Blue Economy to undertake marine stock assessment, an expenditure item which had not been provided for in the budget for 2019/2020 financial year.

Management Response

145. The Public Sector Accounting Standards Board (PSASB) requires KMFRI to prepare its financial statements in accordance with the International Public Sector Accounting Standards (IPSAS) accruals. The Board further requires the provision of commentaries (explanations) on significant underutilization (where utilization is below 90%) and any overutilization as required under IPSAS 24.14.

Explanation of Revenue Variance of KES 529,621,920

146. The variance, which equaled 31% of the budgeted revenue, arose because KMFRI's reported actual revenue included a transfer of KES 618,257,500 from the State Department of Fisheries under an Authority to Incur Expenditure (AIE) to undertake a Marine Stock Assessment in Kenya's Exclusive Economic Zone (EEZ) in the Indian Ocean. These funds had been appropriated under the parent ministry's printed estimates but the AIE to spend them was granted to KMFRI due to its unique technical capacity to undertake the exercise.

147. The actual revenue before the inclusion of the AIE from the state department was lower than the budgeted revenue by KES 88,635,579 which was 5% of the budgeted revenue of KES 1,723,162,293. KMFRI was therefore not required to explain the variance as it was below the 10% threshold as per PSASB guidelines.

148. This is illustrated in the table below:

Details	Budgeted Revenue	Actual Revenue	Variance (Kes)	Variance (%)
Grants for Recurrent	1,257,900,000	1,164,475,000	93,425,000	7.4%
Balance B/F	315,512,293	315,512,293	-	0.0%
AIA	16,750,000	13,095,165	3,654,835	21.8%
Grants from Donors	133,000,000	141,444,256	(8,444,256)	-6.3%
Sub Total	**1,723,162,293**	**1,634,526,714**	**88,635,579**	**5.1%**
Marine Stock	-	618,257,500	(618,257,500)	

Assessment AIE.				
Total	**1,723,162,293**	**2,252,784,214**	**(529,621,921)**	**-30.7%**

149.KMFRI's printed budget estimates for the FY 2019/2020 were Kshs. 1,257,900,000in addition to the printed estimates, the approved budget had a balance brought forward of Kshs. 315,512,293 which was revoted to fund core activities. Further, the Institute budgeted for AIA of Kes. 16,750,000 and Donor grants of Kshs. 133,000,000 totaling to Kshs. 1,723,162,293. During the year, KMFRI received AIE of Kshs. 618,257,500 from the Parent Ministry to implement Marine Stock Assessment due to the Institute's technical capacity.

Explanation of Expenditure Variance of KES 518,003,909

150.The variance, which equaled 30% of the budgeted expenditure, arose because KMFRI's reported actual expenditure under an AIE of KES 618,257,500 from the State Department of Fisheries under an Authority to Incur Expenditure (AIE) to undertake a Marine Stock Assessment in Kenya's Exclusive Economic Zone (EEZ) in the Indian Ocean. These funds had been appropriated under the parent ministry's printed estimates but the AIE to spend them was granted to KMFRI due to its unique technical capacity to undertake the exercise.

151.The actual expenditure before the expenditure under the AIE from the state department was lower than the budgeted expenditure by KES 100,253,591 which was 6% of the budgeted expenditure of KES 1,701,167,292. KMFRI was therefore not required to explain the variance as it was below the 10% threshold as per PSASB guidelines.

152.This is illustrated in the table below:

Details	**Budgeted Expenditure**	**Actual Expenditure**	**Variance (Kes)**	**Variance (%)**
Employee costs	703,493,599	700,309,036	3,184,563	0.5%
Use of goods and services	17,442,400	16,880,162	562,238	3.2%
Board of management costs	22,500,000	21,718,646	781,354	3.5%
Repair and maintenance	28,660,000	29,004,130	(344,130)	-1.2%
General expenses	929,071,293	833,001,727	96,069,566	10.3%
Sub Total	**1,701,167,292**	**1,600,913,701**	**100,253,591**	**5.9%**
Marine stock	-	618,257,500	(618,257,500)	
Total	**1,701,167,292**	**2,219,171,201**	**(518,003,909)**	**-30.4%**

Committee Observations

The Committee observed that –

The overfunding and the over-expenditure arose because KMFRI's received Kshs. 618,257,500 from the State Department of Fisheries under an Authority to Incur Expenditure (AIE) to undertake a Marine Stock Assessment in Kenya's Exclusive Economic Zone (EEZ) in the Indian Ocean. These funds had been appropriated under the parent ministry's printed estimates but the AIE to spend them was granted to KMFRI due to its unique technical capacity to undertake the exercise. This implies that KEMFRI was in breach of section 44 of the PFM Act CAP 412A for failing to regularize extra receipts and expenditure by way of a grant that ought to have been re-budgeted through a supplementary budget.

Committee Recommendations

The Committee recommends that –

The Committee reprimands the then KMFRI CEO for not regularizing the over-expenditure through a supplementary estimates and eventual breach of section 44 of the PFM Act CAP 412A.

1. **PV Doria Operationalization**

153. The Committee heard that, as reported previously, records provided for audit review indicated that in the financial year 2018/2019, the Institute had a budget of Kshs. 627,597,545 for research programmes, out of which a total of Kshs. 116,594,000 was budgeted for PV Doria operationalization expenses. However, an amount of Kshs. 37,886,770 of the funds was transferred to the State Department for Fisheries under unclear circumstances and expenditure returns from the State Department of Fisheries were not provided for audit verification.

154. Consequently, the propriety of the expenditure and compliance with Section 54 (1) of the Public Finance Management (National Government) Regulations, 2015 which prohibits payments made out of funds earmarked for specific activities for purposes other than those activities, could not be confirmed.

Management response

155. The management informed the Committee that, PV Doria was acquired by the Government during FY2018/2019and placed under the Parent Ministry after the budget had already been printed .Since there was no budget provided within the printed estimates that financial year to operationalize PV Doria, KMFRI was required to fund under the vessels pending allocation of a separate budget allocation under the Parent Ministry in the subsequent FY 2019/2020. The National Treasury confirmed operationalization of PV Doria with its budget to be under State Department for Fisheries via letter Ref No. RES 1166/18/01(13) dated 15th October 2018 as provided.

156.It is true that included in the Institute budget was an amount of Kshs. 116,594,000 with respect to the operationalization of PV Doria Patrol Vessel and Kshs. 37,886,770 of the budgets was used for the commissioning of the vessel.

157.The Institute transferred the funds from the vessels budget allocation to the State Department for Fisheries & the Blue Economy (SDF&BE) as instructed by the accounting officer (Principal Secretary-SDF&BE) as was attached.

158.The matter was tabled before the 24th sitting of the Public Investment Committee. The Committee recommended that the accounting officer for KMFRI should always adhere to the PFM Act 2012 on application of funds, and the Office of the Auditor General should audit expenditure relating to PV Doria in the 2022/2023 audit cycle.

Committee Observations

The Committee observed that –

The then Accounting Officer irregularly transferred Kshs. 37,886,770 to the State Department for Fisheries which was in breach of Section 54 (1) of the Public Finance Management (National Government) Regulations, 2015 which prohibits payments made out of funds earmarked for specific activities for purposes other than those activities.

Committee Recommendations

The Committee recommends that –

The Committee reprimands the then Accounting Officer for breach of Section 54 (1) of the Public Finance Management (National Government) Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCE

1. **Construction of Shimoni Office and Laboratory Block – Use of Force Account**

159.The Committee heard that, in 2018/2019 financial year, an amount of Kshs. 12,058,468 was incurred on the construction of Shimoni Office and laboratory through force account method. Records indicated that the Institute tendered and awarded the works to a contractor, but the contract was later cancelled, and the works done by casuals. This was done contrary to Section 109 of the Public Procurement and Asset Disposal Act, 2015 which states that," a procuring entity may use force account by making recourse to the state or public officers and using public assets, equipment and labour which are competitive and where quantities of work involved are small and scattered or in remote locations for which qualified construction firms are unlikely to tender at reasonable price and the quantities of works cannot be defined in advance'.

160. There was no justification for use of force account as Shimoni is not a remote area and several firms had responded to the advertisement and were willing to work in the area. Although the Management has indicated that the contract was cancelled because the quotes received were high, the conditions for use of the force account method were not met including supervision of the work by the Engineers from the Public Works Department.

Management Response

161. The management informed the Committee that, it is true that included in the work in progress of Kshs. 34,405,403 is an amount of Kshs. 12,058,463 in respect to the construction of Shimoni office and laboratory. To secure the land from grabbers, urgent measures were taken by constructing a perimeter fence and a small office structure to deter the invaders. The Institute Management's decision to use force account was informed by the following provisions of the Public Procurement and Assets Disposal Act, 2015 (PPADA, 2015). S. 109(2) States that "a procuring entity may use force account by making recourse to the state or public officers and using public assets, equipment and labor which are competitive The Institute engaged its masons, supported by casual laborers, to complete the project which has since attracted approximate funding of Ksh. 1billion for the National Mariculture Research Training Center and Ksh. 350 million from the KEMSFED World bank funded project, The Institute utilized its Resident Engineer to supervise the project.

162. The matter was presented before the 24th sitting of the Public Investment Committee as provided and was subsequently resolved.

Committee Observations

The Committee observed that –

i) The matter on Construction of Shimoni Office and Laboratory Block was addressed in the 24th PIC report where the Committee observed the force account procurement method was not justified in a project that cost Kshs. 12,000,000. In this respect the Committee then recommended that, the Accounting officer KMFRI should adhere to the Public Procurement and Asset Disposal Act, CAP 412C.
ii) The use of the force account method for the construction of the Shimoni Office and laboratory was improper and did not meet the conditions outlined in Section 109 of the Public Procurement and Asset Disposal Act, 2015.
iii) There was no evidence of supervision by engineers from the Public Works Department, which is a requirement when using the force account method. The lack of proper supervision and the use of casual labor might have compromised the quality of the construction work.

Committee Recommendation

The Committee recommends that –

i) Within three months upon adoption of this report, EACC to initiate an investigation on the circumstances surrounding the cancellation of the contract and the decision to use the force account method.if any person/officer is found culpable as per the EACC report, the DPP to institute a legal process of prosecuting them.

ii) The Committee reprimands the then Accounting Officer for the breach of the Public procurement law by using the inappropriate procurement method.

2. Procurement of Research Vessels Equipment

163. The Committee heard that, as in the previous year, the statement of financial position as of 30th June 2019 reflected a balance of Kshs. 1,734,161,109 under property, plant and equipment which as disclosed in Note 20 of the financial statements, included an amount of Kshs. 281,613,777 in respect of research vessels bought during the financial year 2018/2019. However, a review of the procurement documents revealed the following anomalies.

3.1 Use of wrong tender documents

164. The Institute issued International Competitive Bidding (ICB) tender document instead of National Competitive Bidding (NCB) as per the advertisement placed in a local daily newspaper dated 16 January, 2019 and the Kenya Marine and Fisheries Research Institute website, contrary to Section 58 (1) of the Public Procurement and Asset Disposal Act, 2015 which requires public entities to use the standard documents from the Public Procurement Regulatory Authority.

Omission of Confidential Business Questionnaire Form

165. The confidential business questionnaire form as per the standard documents issued by the Public Procurement Regulatory Authority was missing in the Tender documents. Instead, the management used a form titled" bidders' information" which does not provide information on the nature of business, registration certificate, value of business, names of directors and their nationalities.

a. Excess payments on Inland Transportation

166. Instructions to bidders Clause 15.7 (Price Schedule) included the cost of inland transportation and other services required in the purchaser's country to convey the goods to their final destination. However, records availed for audit review indicated that the Institute incurred unexplained additional expenditure of Kshs. 2,433,627 on inland transportation and other services. Consequently, the validity of expenditure of Kshs. 2,433,627 on inland transportation could not be confirmed.

Management response

167. The Management informed the Committee that, it is true that the reported balance of Kshs. 1,734,161,109 included Kshs. 281,613,777 in respect of research vessels equipment and submitted as below:

3.1 Use of Wrong Tender Documents

168. It is true that the document used was for ICB instead of NCB. Although the ICB document was used, all the necessary NCB procurement processes were adhered to as per the requirements of the PPDA. The Institute has since put measures in place to ensure that subsequently, the correct tender documents are used in all its procurement processes.

3.2 Omission of Confidential Business Questionnaire Form

169. It is true that the Confidential Business Questionnaire Form was missing in the tender documents. The Institute regrets the error and has since put measures in place to ensure that subsequently, tender documents must be reviewed at various levels in the procurement function publishing.

3.3 Excess Payments on Inland Transportation

170. The procured equipment was sensitive laboratory equipment that required specialized inspection by our instrumentation technician based in Mombasa Headquarters. This is what informed the instruction to be delivered in Mombasa Headquarters. As per the schedule of events for the procurement the equipment were to be distributed to the respective stations on passing the tests by the instrumentation technician and the inspection acceptance committee.

171. The amount of Kshs. 2,433,627 was incurred by the Institute to transport the equipment to the various KMFRI stations following the Inspection and acceptance by KMFRI instrumentalists at Mombasa Headquarters. It would have been uneconomical to send the inspection and acceptance team including the instrumentation technician to carry out the exercise in the various stations.

172. The matter was tabled before the 24th sitting of the Public Investment Committee. The Committee recommended that the EACC should investigate the entire procurement exercise with a view to preferring charges on persons that may be found culpable as attached.

173. The EACC invited the Institute to record statements and submit necessary documentation in aiding their investigations as per various letters from EACC provided of which the Institute fully complied. The matter is awaiting the outcome of the EACC investigations. It is true that the Confidential Business Questionnaire Form was also missing in the documentation.

Committee Observations

The Committee observed that –

i) The matter on procurement of research vessels equipment's was addressed in 24th PIC report in which the Committee observed that, the management had accepted all the breaches either intentionally or with intent to defraud the tax payers. This could only be an earthed by competent investigative agencies and therefore EACC was called upon to investigate.

ii) The Committee upholds the observations and recommendations in the 24th PIC Report.

Committee Recommendations

The Committee recommends that –

i) Within three months upon adoption of this report, the EACC should submit a status report on their findings to the Committee. DPP should take up the matter if there is any officer found culpable of any loss or breach of the law.
ii) The Committee on implementation to follow up on the implementation of the recommendations of the audit Committee.
iii) The Committee reprimands the then Accounting Officer for failure to adhere to Section 58 (1) of the Public Procurement and Asset Disposal Act, 2015.

Financial Year 2020/2021

1. Property, Plant and Equipment – Loss of Deep-Sea Observatory Rover

174. The Committee heard that the statement of financial position reflects the property, plant and equipment balance of Kshs. 1,792,769,015 and as disclosed under Note 24 to the financial statements. As reported previously, the additions of Kshs. 386,552,403 to assets in the financial year 2018/2019 included an amount of Kshs. 281,613,777 relating to research vessels out of which Kshs. 13,242,599 was in respect of the cost of deep-sea observatory rover. However, the equipment was not physically verified as it was reportedly lost in deep sea and the loss was reported at a local police station on 16th July, 2019. As of February 2022, the equipment had not been traced or a decision taken to adjust the cost of the existing balance of property, plant and equipment. In the circumstances, accuracy and completeness of the property, plant and equipment balance of Kshs. 1.792,769,015 could not be confirmed.

Management response

175. The Management informed the Committee that, it is true that the amount of Kshs. 531,106,878 in respect of research vessels includes Kshs.13, 242,599 being the cost of deep-sea observatory rover.

176. The deep-sea observatory rover is remotely operated equipment that collects high-resolution color images and videos that can be used to identify organisms and visualize seafloor features. The ROV measured; width 19.6 inches by; height 14.9 inches by; length 24.8 inches and weighing 26kgs is connected to boat-based controller by a 300m tether cable. KMFRI encountered strong tidal currents while carrying out a survey in Mombasa Marine Park on 3/7/19 which turned the boat exposing the ROV tether cable to the boat propeller leading to a strong pull tension to the ROV connection forcing the ROV to tear away from the cable connection joint. A search and recovery operation was jointly conducted by KMFRI, BMUs and KWS divers in the area where the equipment was lost. However, due to poor visibility accessioned by turbid water from rain runoffs, the search team could not locate the rover. All the BMUs in Kwale, Mombasa up to Kilifi were informed of the missing equipment including a picture of the equipment. The equipment has never been traced. The incident was reported to Nyali Police OB number OB. No. 51/3/7/19 as provided.

177. KMFRI management deems the deep-sea observatory rover irrecoverable from the deep sea and will seek authority from Cabinet Secretary National Treasury to write off Kshs.13,242,599 from the Institute's books in accordance with the provisions of the PFM Act 2012.

Committee Observations

The Committee upholds the observations and attendant recommendations made on the issue as deliberated in its report for the Financial Year 2019/2020 as follows;

i) The loss of the deep-sea observatory rover, valued at Ksh. 13,242,599 negatively affected the value of total Assets of the Institute. There was no documentary evidence that the Rover was insured and that a claim had been launched. This implies that the management was in breach of section 72 (1) of PFMA CAP 412A and section 160 (1) of the Public Procurement and Asset Disposal Act, CAP 412C.

ii) In the prevailing circumstances that the recovery of the asset or compensation of the same is remote, the management ought to have initiated the process of seeking a write off of the Asset's value of Kshs. 13,242,599 from the Institute's books of Accounts.

Committee Recommendations

The Committee recommends that –

iii. Within three months upon the adoption of this report, the Accounting Officer – KMFRI Institute to ensure that the write off process is undertaken in line with the provisions of the Section 69 of the PFM Act, CAP 412A.

iv. The Committee reprimands the then accounting officer for failing to insure the institute assets and breach of section 72 (1) of PFMA CAP 412A and section 160 (1) of the Public Procurement and Asset Disposal Act, CAP 412C.

2. **Doubtful Receivables from Non-Exchange Transactions**

178. The Committee was informed that the statement of financial position reflects receivables from non-exchange transactions balance of Kshs. 209,325,246 and as disclosed under Note 23 to the financial statements. These receivables include medical advances totaling Kshs. 4,799,799 issued to staff to cater for COVID-19 pandemic, out of which an amount of Kshs. 1,358,435 is owed by four deceased staff. Further, analysis of staff debtors schedule revealed that other five deceased employees owe the Institute an amount of Kshs. 335,146.

179. In the circumstances, recoverability of the receivables from non-exchange transactions amounting to Kshs. 1,693,581 could not be confirmed.

Management response

180. The Management informed the Committee that, in accordance with section 34 the Employment Act, 2007, which requires an employer to provide employees with medicines including medical attention during serious illness, KMFRI's terms and conditions of service implemented a cost sharing medical scheme where KMFRI had in place a contributory medical scheme in which KMFRI paid the full medical bill to the health facility, recovered 25% of the bill from the employee's pay and absorbed the remaining 75%.

181. The receivable balance of Kshs. 1,358,435 that could not be confirmed comprises of medical advance balances due from employees who passed away while in service as shown in the table below:

Name of Officer	Personal No (PN)	Balance at Time of Exit (Kes)	Remarks
Jacob Ojuok	001067	121,117	Deceased
NgisighaSowene	001576	1,017,451	Deceased
Fredrick Mwadzala	002101	89,794	Deceased
Meshack Okirigiti	000101	130,073	Deceased
Sub Total		**1,358,435**	

182. KMFRI management deems the amounts irrecoverable and has written to the Cabinet Secretary, the National Treasury seeking authority to write off the irrecoverable debts in accordance with the PFM Act, 2012. The letter initiating the process in September 2022 is provided. Follow up on approval from the Cabinet Secretary of The National Treasury is ongoing as per correspondence provided.KMFRI has since implemented a comprehensive medical insurance scheme to avoid recurrence of the matter.

Committee Observations

The Committee upholds similar observations and attendant recommendations made on the same issue as deliberated in its report for the Financial Year 2019/2020 as follows;

i) The Committee observed that, the Kshs. 1,693,581 medical advances were due from employees who passed away while in service. However, the explanation that, the medical advances were due from employees who passed away while in service could not be substantiated in absence of any documentary evidence inform of death notification.
ii) The situation highlights a potential weakness in the Institute's internal controls related to the management of medical advances and other receivables.
iii) Despite the Board of the Institute having sought the approval of a write off of the Kshs. 1,693,581 from the National Treasury on 30th September, 2022, there is neither a feedback to the request nor any evidence that the Institute has fast tracked the granting of the sought write-off.

Committee Recommendations

The Committee reprimands the then Accounting Officer for failing to provide the necessary documentation to support the deaths inform of death notification.

OTHER MATTER

1. **Budgetary control and performance**

183. The committee heard that the statement of comparison of budget and actual amounts reflects a final revenue budget and actual revenue on comparable basis of Kshs. 2,392,880,191 and Kshs. 2,176,299,294 respectively, resulting in a revenue shortfall of Kshs. 216,580,898 or 9% of the budget. Similarly, the Institute had an approved expenditure budget of Kshs. 2,392,880,191 against an actual expenditure of Kshs.2,035,492,368, resulting in an overall under-expenditure of Kshs.474,837,028 or 20%. The revenue shortfall and under-expenditure might have impacted negatively on delivery of services.

Management response

184. The Management informed the Committee that, the revenue shortfall and under-expenditure occurred mainly due to under collections on Public Contribution and Donations item during the period under review. Public Contribution and Donations is made up of funding received from donors in response to the research proposals developed by the Institute researchers. Such funding is mainly based on the donors financing agreement milestones which in many cases would not be in tandem with the government financial year hence leading to timing differences for disbursement of funds.

185. The Institute budgeted for major repair and maintenance of its Research Vessel (RV Mtafiti) alongside other buildings repairs. It was anticipated that the tendering process would be undertaken and completed as per statutory timelines and awarded during FY 2021/2022. However, due to complexity of RV Mtafiti repairs often involving importation of spare parts hence the Institute was not able to fully absorb the budget as anticipated. The balances carried forward were revoted in FY 2022/2023 to facilitate the outstanding works for the vessel.

Committee Observations

The Committee observed that –

i) The institute based its projections of revenue and expenditure on weak assumptions hence substantially missed the budgetary targets.

ii) The revenue shortfall and under-expenditure amounting to Kshs. 216,580,898 and Kshs.474, 837,028 respectively adversely impacted on the delivery of services by the institute.

Committee Recommendations

The Committee recommends that –

The Accounting Officer should ensure at all times that the budgets are realistic, achievable and always adhere to annual work plans, procurement plans and revenue collection schedules in compliance with Regulation 44(2) of the PFM (National Government) Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN THE USE OF PUBLIC RESOURCES

1. **Failure to Observe Fiscal Responsibility Principles on Compensation of Employees**

186. The committee heard that the statement of financial performance reflects the expenditure of Kshs. 841,445,730 in respect of employees' costs, which represent 38.7% of the total revenue of Kshs. 2,176,315,690. This contravenes Regulation 26 (1)(a) of the Public Finance Management Regulations, 2015, which provides that, National Government's expenditure on the compensation of employees (including benefits and allowances) shall not exceed 35 percent of the National Government's equitable share of the revenue raised nationally plus other revenues generated by the National Government. In the circumstances, Management was in breach of law.

Management response

187. The Management informed the Committee that, Regulation 26 of the Public Finance Management (National Government) Regulations 2015 is a guidance on the fiscal responsibilities of the National Treasury, as set out in section 15 of the Public Finance Management Act 2012.

188. KMFRI's establishment during the FY 2020/21 was 1,362 officers against an in-post of 765 officers (70 percent technical and 30 percent support team). The technical personnel available are not enough to support the specialized fields of Blue Economy Research (marine geologists, climatologists, geo-physicists, hydrographers, engineers, anthropologists, sociologists, economists, development studies experts, physical oceanographers) to effectively address the Institute's mandate. The salaries paid are within the approved salary scales in accordance with Salaries and Remuneration Commission, however the amount that remains above the Personnel Emolument, for Operations and Maintenance (O&M), is very

low and not adequate to fund the operations of the Institute. Over the years KMFRI has bidded for resources to increase the O&M to achieve the 35% required in the PFM Act, 2012.

189. KMFRI will continue with efforts to raise additional resources including through research proposals while maintaining slower growth for wage bill to gradually achieve the prescribed 35% to ensure fiscal discipline.

Committee Observations

The Committee observed that –

The institute contravened Regulation 26(1)(a) of the Public Finance Management (National Government) Regulations, 2015, which provides that, National Government's expenditure on the compensation of employees (including benefits and allowances) shall not exceed 35 percent of the National Government's equitable share of the revenue raised nationally plus other revenues generated by the National Government.

Committee Recommendations

The Committee recommends that –

The Institute should progressively align their expenditure and their establishment requirements to the provisions of Regulation 26 (1) (a) of the Public Finance Management Regulations. This should include seeking more funding from the National Treasury to meet the critical technical staffing requirement. Should the vice continue without improvement then the Accounting Officer for the time being in place stands reprimanded.

2. **Failure to recover Training costs from former employees**

190. The Committee heard that, records provided for audit review indicated that the Institute trained ten employees at a total cost of Kshs. 18,467,328.50. However, the employees left the Institute before the expiry of their bond periods and the amounts had not been recovered as of 30th June, 2021. No explanation was provided for the failure to recover the outstanding amounts from these former employees including using law enforcement agencies.

Management response

191. The Management informed the Committee that, it is true that the financial statements disclosed contingent assets of Kshs. 18,467,328 as of 30th June, 2021 being the total cost owed to the Kenya Marine and Fisheries Research Institute from former staff who breached their bonding contracts. The matter was reported to the Inspector General of State Corporations to assist in the recovery of the outstanding amounts as per correspondences provided. Out of the Kshs.18,467,328, the Institute was able to recover Kshs.1,840,572 as provided.

192.Further, the Institute management has written to the current employers of the former KMFRI employees to inform them of the breach of the bonding contracts and requested them to deduct and remit the amount owing to KMFRI. Letters to the current employers as provided.

Committee Observations

The Committee observed that –

i) The total amount of Kshs. 18,467,328.50 spent on training ten employees was not initially recovered, despite their premature departure from the Institute. However the management claimed to have recovered Kshs.1,840,572 which could not be confirmed with documentary evidence.

ii) No legal action or involvement of law enforcement agencies has been undertaken to recover the amounts owed by the former employees.

Committee Recommendations

The Committee recommends that –

Within three months upon adoption of this report, the Accounting Officer should initiate a legal process to recover the amounts outstanding from the affected former staff or the Inspector General, Inspectorate of State Corporations should surcharge (with interest at the prevailing CBK rates) the then accounting officer for failing to recover training costs when legally due.

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENT OF NATIONAL HOSPITAL INSURANCE FUND FOR THE FINANCIAL YEAR 2018/2019 -2020/2021

FINANCIAL YEAR 2018/2019

1.0 Financial Performance

193.The Committee heard that, during the year under review, the Fund reported a deficit of Kshs. 3,671,996,374 (2017/2018 – surplus Kshs. 295,922,867) resulting in reduction of retained earnings from Kshs. 23,043,974,174 as at 30 June, 2018 to Kshs. 19,371,977,800 as at 30th June ,2019. The Fund's performance is on a downward trend and if strategies are not put in place to reverse the trend, the Fund is likely to experience financial difficulties in future.

Management response

194.The management informed the Committee that, the Fund plays a central role in financing health care in Kenya with a key objective of making health services more effective, accessible and affordable aimed at delivering the ideals of Vision 2030. To address its sustainability, the

Fund during the Financial year 2019/20 focused on membership growth and improved retention rate to increase revenue collection and at the same time to put a check on escalation of claims. The strategies include aggressive employer compliance and member communication as well as reduction of benefit expenditures by reducing instances of fraud and sealing of gaps. In addition, the Fund put in place other measures aimed at enhanced service delivery, enriched customer experience and managing benefit expenditures within the prescribed loss ratio. These strategies were key to improving the financial base, performance and sustainability of NHIF. They included: Upgraded Customer Experience Centre; The Management strengthened the call centre by modernizing and deploying additional staff members. This enhanced efficiency by enabling compliance activities to be pursued and enforced electronically.

195. Member & Employers Self-Care Platforms; In a bid to enhance the customer experience, NHIF developed Self-Care platforms namely, My NHIF App, USSD Code: *155#, Website: www.nhif.or.ke in order to digitize registration with NHIF and selection of outpatient healthcare providers. Through these self-care platforms, members are carrying out self-registration including selection of the preferred outpatient healthcare providers thereby reducing chances of fraud.

196. Benefits Pre-authorization; the management has increased efficiency and enhanced controls of the pre-authorization platform. To augment the controls and boost efficiency, the function was centralized using a Case-Center Model based at the NHIF Headquarters.

197. Enhancement of Electronic Claims Processing; NHIF implemented an e-claim platform for management of medical claims. The e-claims system has been greatly enhanced over the period making it more efficient.

198. Mobilizing resources to expand coverage and to cushion from rising health-care costs. NHIF has been steadfast in engaging and lobbying County governments, National Government Constituencies Development Fund (NG-CDF) and other stakeholders in support for indigents.

199. The Management also continues to improve communication to achieve better business productivity and outcomes. With these initiatives, NHIF has been well geared towards quality, improved services and improved retention rate. Specifically, NHIF has increased the number of bulk SMSs to members mainly to remind informal sector members to make contributions that are due and to notify members when their cards have been used to access care. This is to reduce instances of impersonations and other fraudulent activities.

200. Biometric identification and registration. NHIF has scaled-up the roll-out of registration and identification of beneficiaries using biometrics to all members and the roll-out of electronic claims management system to complete the digital transformation set-up. Linking the identification to e-claim reduce the administrative burden and expense generally associated with manual claims processing and submission and ensure quick processing of claims.

Committee Observations

The committee observed that –

i) The Fund as at 30th June 2020, also reported a deficit of Kshs.1,156,934,012 resulting in reduction in retained earnings to Kshs.18,237,948,239.

ii) Further, as at 30th June, 2021, the Fund reported a revenue shortfall amounting to 22,790,080,000 wherein the actual receipts were Kshs. 57,918,358,000 against budgeted receipts of Kshs. 80,708,438,000 whereas the actual expenditure for the year amounted to Kshs. 75,198,084,000 pointing to a dismal performance in the year and therefore the strategies envisaged to improve performance did not work or there were undisclosed revenue leakages.

iii) The Fund(NHIF) has transitioned to Social Health Authority(SHA) and it would be important to track the performance through Assets and Liabilities handed over to SHA.

Committee Recommendations

The Committee recommended that –

Within three months upon adoption of this report, the Accounting Officer to submit to the Auditor-General for Audit, a comprehensive and well-documented handing over report detailing all the assets including investments and properties in dispute and liabilities as prepared by the outgoing NHIF management to the incoming Social Health Authority Management. The Auditor-General shall audit and submit the report to the Committee.

2.0 Property, Plant & Equipment

2.1 Land Situated at Karen – 10 Hectares

201. The Committee heard that, as previously reported, included in the property, plant and equipment balance of Kshs.13,325,730,197 in the statement of financial position as at 30 June 2019 is land valued at Kshs.298,589,665 which includes an amount of Kshs.93,712,675 for land Ref. No.LR 24968/2 measuring 10 hectares situated at Karen. However, the ownership of land is in dispute and the matter is in court. Information available indicates that as per the Public Investments Committee (PIC) recommendations on the 21st and 22nd reports, the Directorate of Criminal Investigations (DCI) has commenced investigations to establish whether there was fraud in the transfer of ownership of the land and prosecute any person who may have been identified as having breached the law. However, progress made on the investigation has not been disclosed in the financial statements.

Management response

202. The management informed the Committee that, the Fund invested in the acquisition of Land, Survey and Designs of a Medical Centre of Excellence and Institute. This was part of the Fund's efforts to respond to challenges related to provision of quality healthcare. Documents available indicate that the proposed medical Centre was to consist of a Referral Centre, Medical Education Centre, Medical Research Centre, resource center and support Facilities.

203.The purchase of the property commenced in 2001 after identification of a property in Karen, which was deemed suitable for the project. The purchase was approved by the full Board on the 27th March 2002 vide board minutes attached. The Fund undertook valuation of the property, by initially appointing Tyson Limited and subsequently obtaining a valuation report from Ministry of Lands and settlement, Ref No. VAL. 852/V/8 dated 24th January 2002. The letter from the Ministry ascertained the value of the property as at that period was Kenya Shillings One Hundred Million Five Sixty-Nine Thousand Seven Hundred only (Kshs. 100,569,700/=).

204.The property; Land Reference No 24968/2 is approximately 9.250 hectares (22.86 acres) and held on leasehold interest for a term of 99 years from 1st March 1999. The property is situated in the Karen Plains Road off Karen Road approximately 12 kilometers west of the City Centre.

205.The Fund further appointed a law firm Kipkenda Lilan & Co Advocates who oversaw the entire purchase process as per attached correspondence between NHIF and the law firm. The advocate executed a sale agreement with the purchase price for the entire property being determined at Kshs. 93,712,675. As per the title, the transfer was successfully done on 20th December 2002. Attached find transfer and copy of grant.

206.In September 2004, NHIF learnt that a contractor had been commissioned by a third party (Crown line Freighters Ltd) to develop the said plot, claiming ownership. The Fund instructed M/S. Rachier and Amollo advocates to protect the interest of the Fund by pursuing appropriate action to restrain the third party from interfering with the property.

207.The Fund is pursuing the matter and has already taken the necessary steps to ensure the matter is determined in its favor. The Fund is relying on the evidence from the Commissioner of Lands confirming that the land is registered under the Fund's Board of Management. The Commissioner of Lands in his letter referenced 186267/7 dated 10th May 2006 and 186267/T.C/17 dated 22nd August 2007 addressed to the Attorney General stated categorically that the property L.R. NO. 209/24968/2/R 87345 is registered in favor of the NHIF board of management.

208.The Attorney General's office in their letter referenced AG/MLS/292/04 dated 9th November 2009 confirmed receipt of the instructions from the Commissioner of Lands and put up a defense of the land.

209.The matter was moved to the Environment and Land Division and assigned a new number HCCC.ELC NO. 691 of 2011. This was in a bid to ensure the matter is expedited.

210.NHIF filed an application seeking an inhibition (caveat) on the tittle of the land to bar any subsequent registration of a right/interest over the said parcel of land until the matter is fully heard and determined. The court allowed the application on 27th July 2016 and issued orders that NHIF can put up a fence around the entire property, and an order inhibiting registration of any dealing with the parcel of land.

Inquiry by the National Land Commission

211.Following the recommendations by PIC that the National Land Commission conducts further investigations on the issue of the land within six months after adoption of the Report, The National Land Commission indeed notified NHIF of the inquiry as mandated under Section 6 of the National Land Commission Act. NHIF attended the inquiry on 15th June 2017 and made its submissions before the Commission.

212. The Commission pronounced itself and observed that the issue of ownership of the said parcel of Land was in Court.

Current status

213. In the 21st Public Investment Committee Report on the Audited Financial statements of State Corporations the above issue was discussed, and as per recommendations given by Public Investment Committee, the Directorate of Criminal Investigations commenced the inquiry/ investigations on the land and its acquisition in the year 2018. The DCI engaged the Chief Land Registrar from Ministry of Lands, the Land Surveyor from Survey of Kenya, Chief Valuer from Nairobi City County Government and all parties who hold titles to the land. DCI requested NHIF to surrender the original titles for purposes of investigation and attached find letter surrendering the title to DCI.

214. The Fund wrote a reminder to DCI on 20th May 2022 requesting an update on the same. Further, the Directorate of Criminal Investigations vide letter Ref NO. DCI/IB/LFIU/SEC/4/4/1/VOL.XLVI/125 dated 21st August 2023 (Appendix A-12) advised the Fund to fence the property and to follow up with ODDP on the case in court. NHIF wrote to Ministry of Lands, public Works and Urban Development requesting for costing of the fence which the Ministry replied via their letter Ref: QD 108/GEN/VOL. XII/45 dated 18th May 2023 with the attached cost estimates; (Appendix A-13). Based on these estimates NHIF is in the process of seeking a supplementary budget to facilitate the fencing of the Land.

215. On the 15th May 2023, two businessmen were arraigned at the Mililani Law Courts where they were charged with conspiring to defraud NHIF land (Appendix A-14).

216. The current status of the matter indicates that the criminal matter is still ongoing Nairobi Criminal Case NO. E341 of 2023 - Republic vs Peter David Leparkwo & Fredrick Kimemia Kimani. The matter was in court on 9th April 2024 for mention and issuance of directions, however, the same was stayed pending determination a judicial application review filed by one of the accused.

Other additional supporting documents

i. A copy of court injunction barring NHIF from developing the Karen Land (appendix A15)
ii. Letter dated 27th December 2005 from NHIF to AG on the disputed Land (Appendix 16)
iii. NHIF letter dated 12th May 2008 to commissioner of lands requesting their appearance in court (Appendix A-17)
iv. NHIF letter dated 13TH Feb 2009 to PS medical services, being an updated on the case (Appendix A-18)
v. NHIF letter dated 13th July 2009 to AG, request for AG to intervene and give clear instruction on NHIF defense (Appendix A-19)
vi. NHIF letter dated 7th October 2009 to AG, request for a meeting between NHIF and AG on the land dispute to chart way forward (Appendix A-20)
vii. AG letter dated 9th November 2009 to NHIF, confirming receipt of Instruction from the commissioner of lands (Appendix A-21)

viii. NHIF letter dated 11th Feb 2010 to AG, seeking status of the amendment of the defense (Appendix A-22)

ix. AG letter dated 23rd April 2010 to NHIF, providing status of the amendment of the defense (Appendix A-23)

x. NHIF letter dated 14th May 2010 to AG, requesting AG to fast-track the matter in court (Appendix A-24).

Committee Visit to the disputed land

217. The Committee visited the said property on 20th February 2024 on a fact-finding mission.

Committee Observations

The Committee observed that –

i. During the visit to the said property on 20th February, 2024 the committee observed that there was a new encroachment by another private developer who had already supplied building materials to the site and a group of locals was on site to protect their interests led by a Mr. David Leparakwo who claimed to be in possession of original title deed and had been paying land rates to the County Government of Nairobi over the years. This by implication meant that NHIF may have not done due diligence when acquiring the land from the alleged rightful owner.(Kaskazi Traders)

ii. The matter had been discussed by the Public Investment Committee in their past reports and it had been observed that;

iii. The National Land Commission could not confirm the ownership of impugned land as the matter was in court;

iv. The Fund had obtained a court order to fence the land but had been unable to do so due to interference from squatters;

v. The Fund had tried to secure the land by placing security guards at the site but were arrested;

vi. A Mr. David Leparakwo had appeared before the Committee and produced a title deed for the land issued on 29th October, 2013. The title is held in trust for the rest of the Emowuo Olarro Self Help Group. The group acquired the land in the form of a grant from the immediate former owner, Mr. A.J Faulkner in 1982.

vii. Apart from Mr. Leparakwo's group, the land is claimed by eight other parties: National Hospital Insurance Fund (NHIF), Crownline Freighters, Kaskazi Traders Ltd., Nectel Kenya Ltd., Gifted Community Initiative Programme, Cirtex Ltd., Kenpark Holdings Ltd. and Page Investments. Ltd and now a ninth claimant is on site.

viii. The Nairobi Deputy County Commissioner, in a letter to the National Lands Commission dated 26th August, 2016 indicated that the allotment letter and title deed used by Kaskazi Traders was unlawful and invalid and also indicated that the IR No. used (No. 87345) was also obtained unlawfully since the IR's location was not in Karen. The Attorney General's office further stated the title which Kaskazi Traders Limited used to sell the land to the National Hospital Insurance Fund (NHIF) was unlawful, invalid and should be cancelled. This puts in doubt the claim to the land by NHIF.

ix. The committee had in its 21st report had recommended that the Chief Justice fast tracks the hearing and determination of case no. HCCC.ELC NO. 691 of 2011; and the Fund secures the disputed parcel of land through fencing and hire a competent security firm to guard the property until the case is fully determined. None of these recommendations had been implemented.

x. Despite a pending appeal and all the encroachments, claims and counter claims, there was a subsisting court order confirming ownership status of the ownership of the land in favour of NHIF.

xi. Some of the payments were effected before the transfer agreement had been signed.

xii. Upon physical inspection and verification of the land, the Committee observed that, the size of the land looked smaller than the reported 25 acres.

Committee Recommendations

The Committee recommends that –

(i) The committee on Implementation should follow on implementation of past PICs recommendations.

(ii) Within three months upon adoption of this report, the accounting officer NHIF (SHA) should in consultation with the Attorney-General and the National Land Commission pursue legal remedies to bring the matter on Karen Land to its logical conclusion.

(iii) The EACC and DCI should undertake an investigation with a view to establishing whether there was any fraud with respect to the acquisition and transfer of ownership of the land. If any officer is found culpable, he/she should be prosecuted for breaching the law.

(iv) Within three months upon adoption of this report, the Accounting Officer in consultation with Government Surveyor to survey, beacon and demarcate the land and issue abeacon certificate for the NHIF Karen land.

2.2 Proposed Resource Centre at Karen Land

218. The Committee heard that, included in the property, plant and equipment balance of Kshs. 13,325,730,197 as at 30th June, 2019 is a work in progress balance of Kshs.1,444,687,484 being payments for drawings and designs for the proposed Resource Centre and whose construction has not yet commenced since the land was acquired fifteen years ago. As noted in the previous year, the management has however explained that construction of the Resource Centre has not yet commenced because of lack of approval from parent Ministry and the land ownership dispute in court.

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

Management response

220. The management informed the Committee that, it was true that as at 30th June, 2019, work in progress ended and amount of Kshs.1,444,687,484, in respect of payments for the proposed resource center on the Karen Land whose construction has not yet commenced. The amount comprises arbitration award to the consultants and further payments to other professionals

that had been engaged. They include quantity surveys, business plans and financial analysis consultancy, legal fees, architectural design services and feasibility study. A number of these payments arose from arbitration award as below:-

i. In the year 2001/2002 the Fund planned to build a Resource Centre on the land acquired in Karen. The establishment and implementation of a Resource Centre on the land was approved by the board in 2002.
ii. The then Chief Executive commissioned various consultants in accordance with the Architects and Quantity Surveyors Act Cap 525 of the Laws of Kenya to carry out a feasibility study on the development of a resource center.
iii. Arbitration by Architects and Quantity Surveyors on the Proposed Resource Centre
iv. The Architects and Quantity Surveyors did the work as commissioned and submitted their report together with their fee notes for Kshs. 734,524,029.25. Upon delay by the Fund to honor the fee notes, The Architects and Quantity Surveyors then commenced Arbitration proceedings against the Fund for the demand for their fees. The Arbitrator after reviewing the matter reduced the claim from Kshs. 734,524,029.25 and awarded the Architects and Quantity Surveyors Kshs. 352,131,345.15. Following the decision of the Arbitrator and claimants' filing of documents to enforce the Award, the Funds Lawyers gave their opinion that the Award be challenged at the High Court. The Fund disputed the award and proceeded to the high court to seek redress.
v. Upon further guidance from the parent ministry to terminate the court processes and negotiate with the consultants with a view to settle pending bills in accordance with work done, a letter from Ministry. NHIF and the Architects and Quantity Surveyors recorded a consent order in the High Court and the matter was settled. The Architects and Quantity Surveyors were paid a sum of Kshs. 407,107,645.00. Claims lodged by engineers and other consultants totaling Kshs. 333,846,784 were arrived at after settlement deeds were entered into on 24th June, 2011.The claims were fully paid.

The Karen Medical Centre of Excellence

221. The Original Project was revised to a Medical Center of Excellence and a Vision 2030 flagship project for the Ministry of Health following approval of a cabinet memorandum on the NHIF Medical Resource Centre as communicated to NHIF CEO by the Minister of Health in a letter ref. MMS/ADM/1/16/1 dated 4th December 2008 (Appendix B-6). The Karen Medical center of excellence project led to litigations from the consultants.
222. Litigation arising from the Dispute on the Karen Medical Centre of Excellence
223. The following are the litigations commenced by the Consultants in respect to the Karen Medical Centre of Excellence:

i) High Court Civil Suit No. 504 of 2016: National Hospital Insurance Fund Vs. Baseline Architects Ltd.
ii) Rebman Ambalo Malala T/A Ujenzi Consultants Vs NHIF HCCC NO. 25 OF 2016
iii) Comm Case No. 255 Of 2016 - NHIF Vs. Eng. Peter Scott and Manga And Associates
iv) Civil Suit No. 176 Of 2017 – Professional Consultants Ltd –Vs- NHIF

21st Report of PIC – Committee recommendations

230. This matter was presented to the committee in its last sitting where it recommended that –

i) The Fund fast tracks the hearing and determination of case HCCC.ELC NO.691 of 2011; and
ii) The Fund secures the disputed parcel of land through fencing and hire a competent security firm to guard the property until the case is fully determined (Appendix B-7).

Current Status

231. Although the case has not come to its logical conclusion, the Fund has pursued the case regarding ownership of the land in Karen through the DCI and the matter is court.

232.Reference is made to the pending matters in court and communications showing the status of the cases. The dispute of ownership and the dispute with the quantity surveyors is still unresolved, except for the matter of Baseline Architects. The Court of Appeal upheld the decision of the High Court and ruled in favor of the Fund, attached is a copy of the Judgment (Appendix B-8).

233.NHIF Vs Crownline Freighters and others Nairobi ELC No. 691 of 2011 (as Consolidated with ELC 152 of 2018) was mentioned before the court on 9th May 2022 and the court gave the parties more time to file relevant documents. The Fund filed its defense on 25th October 2022 and is currently awaiting directions from the courts.

234.According to the DCI findings the parcel of land in question is registered in favor of National Hospital Insurance Fund. The Fund has taken steps to ensure the ownership rights of the Fund are protected, even as it awaits the determination of the Court matter.

235.NHIF vs Crownline Freighters and others, Nairobi ELC No. 691 0f 2011 (as consolidated with ELC 152 of 2018) was heard on the 22nd and on the 23rd April 2024.The matter was adjourned to 22nd and 23rd October 2024, for further hearing after one of the defendants filed bulky documents. The Fund confirms that it has complied with provisions of Rule 11 of the Civil Procedure Rules and is ready to proceed with the hearing.

236.In the Matter of Arbitration between Manga & Associates vs NHIF, the matter came up before the Arbitrator however a query was raised on instructions noting the Attorney General's Office in regard to engagement of external counsel. Fund has already sought guidance from the Attorney General noting that this was an existing matter. Attorney general responded and approved use of Ogetto Otachi Advocates to represent the Fund on the Karen land matters and the cases related to the same. This matter was scheduled for mention on the 14th of September 2023 to confirm compliance. However, the matter did not proceed by reason that the Tribunal did not sit. Parties were advised by the Arbitrators Secretary to await further directions. Hearing was scheduled for 9th October 2023, but this did not proceed as the tribunal did not affirm its proceeding schedule.

237.In the matter of Arbitration between Manga and Associate vs NHIF. The matter came up before the Tribunal on 24th May 2024.The Counsel on behalf of the Fund affirmed on the need for clarity as to the particular representatives that have the authority to attend the arbitral proceeding for privacy purposes. The Fund also requested for additional time to consult and formulate a relevant strategy due to the claimant serving additional evidentiary outside the allowed period. Consequently, the Tribunal allowed the request and scheduled the mention to verify the status of filing for the 26th of July 2024 with a tentative hearing date towards the end of 2024.

238.HCCC No. 25 of 2016 Rebman Ambalo t/a Ujenzi Consultant vs NHIF (Consolidated with HCCC No. 176 of 297 Professional Consultant Limited vs NHIF). The Fund introduced the then Chief Executive Officer as a witness and an expert witness, in procurement matters to support the Fund's defense. The matter came up for mention on 6th February 2023, however, the matter did not proceed to hearing by reason that the learned judge was away on his annual leave. Consequently, the matter was rescheduled for mention on 24th March 2023. However, the matters were reallocated to be placed and seized by the Learned Justice Sifuna.

239.This matter last came up in court on the 4th of July 2023 where the court directed that parties file their respective trial bundles and the same was scheduled for mention on 23rd of October 2023 to verify compliance. This case is still on going.

240.With the Court of Appeal upholding the High Court ruling (Cause No. 504 of 2016) in Fund's favor on the matter of Baseline Architects, the Fund is relying on this judicial precedence and is confident that the cases listed under b) and c) above shall be dispensed with in Fund's favor.

241.HCC No. 25 of 2016 Rebman Amalo T/A Ujenzi Consultants vs NHIF (Consolidated with HCCC No. 176 of 297 Professional Consultant Limited vs NHIF). The matter came up for mention on 20th May 2024, however the court did not proceed due to engagements in other official duties. Find a schedule of breakdown of Kshs. 1,444,687,484 (Appendix B-9)

Committee Observations

The Committee observed that –

i) The matter had been discussed in the previous PIC reports and despite the Committee making various observations and recommendations, no action or progress has been made to implement the envisaged project or resolve the various litigations arising from the contractual engagements or the land on which the project will be situated.

ii) The Fund had made payments of Kshs.1,444,687,484 for drawings and designs for the proposed Resource Centre.

iii) By the time the Fund changed the project from a proposed Resource Center to a Medical Center of Excellence, the land was already in dispute.This exposed the Fund to further litigation arising from the Medical Center project. The management committed the Fund to incur further nugatory expenditure without a justified cause.

iv) The Accounting officer and the staff involved in the procurement process engaged the same Architects and Consultants for the Medical Center project without subjecting the contract to competitive bidding despite the fact that the scope and specification of the project was different to the proposed Resource Center.

v) The land was undeveloped when the Committee visited the site on 20th February 2024 and had another private developer had claimed ownership in addition to the earlier ones.

Committee Recommendations

The Committee recommends that –

i) Within three months upon adoption of this report, the Accounting Officer NHIF/ SHA in consultation with the Attorney-General and the National Land Commission should pursue the expeditious prosecution and conclusion of the cases in addition to the arbitration pertaining to the consultancies to their logical conclusion with a view to safeguarding the ownership interest in the land and settling the disputes.

ii) Within three months upon adoption of this report, the EACC should undertake an investigation into how the consultants were engaged, whether there was fraud, corruption or other financial improprieties in the construction of the proposed resource centre and whether there was any breach of the law in the engagement process or wastage of public funds. If any officer is found culpable, he/she should be held personally liable for the financial loss, DPP should initiate a legal process to recover the amount so lost with interest from the concerned officer(s) at the prevailing CBK rates.

2.3 Construction of Multi Storey Car Park

242. The Committee heard that, as previously reported, the National Hospital Insurance Fund entered into an agreement with local construction firm for construction and completion of a multi storey car park at a contract sum of Kshs.909,709,305. The project commenced in May 2002 and was scheduled for completion in August 2003. The contract sum was later revised upwards to Kshs. 1,179,611,756 or approximately 30% above the original contract sum of Kshs. 909,709,305.

243. Records available indicate that the car park was completed in July 2008 at a total cost of Kshs.3,342,120,239. Additional amount of Kshs.626,635,998 and Kshs.4,706,521 were incurred in 2009/2010 financial year and 2010/2011 financial year, respectively on the Car Park increasing its total expenditure to Kshs.3,973,462,758 as at 30 June 2011. This resulted into an increase of approximately 337% over and above the original contract sum of Kshs.909,709,305. The costs escalation was not justified.

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

245. In the circumstances, it has not been possible to ascertain whether the property, plant and equipment balance of Kshs, 13,325,730,197 as at 3o June 2029 is fairly stated.

Management response

246. The management informed the Committee that, the Car Park is a seven storey Building with basement floors, which is designed to accommodate 780 cars. The project commenced in May

2002 and was scheduled for completion in August 2003. The original cost of the project was Kshs. 909,709,305.40 over a contract period of 65 weeks.

247.The completion period was revised from August 2003 due to suspensions of all projects by the Government vide Treasury circular no. 10 dated 22nd May 2003 as well as the Fund giving preference to core strategic activities resulting to reduced cash flow.

248.As per contract with N.K. brothers, NHIF evoked contract provision for variations and introduced vehicular lifts hence the variation in cost from the initial 909,709,305.40. The cost could not be retained at the original cost of Kshs. 909,709,305.40 since the Contractor had already increased the service area of the project. This led to Design changes to the structure and foundation works. An additional basement floor was created to cater for the displaced area arising because of vehicular lifts, ramps and design overhaul. This led to an increase in service area and an additional cost of Kshs. 673, 465,787.10 making the total cost to be Kshs. 1,583,175,092.50. The vehicular lifts were later found not to be viable leading to downward variation to Kshs. 1,179,611,756.00 as observed in audit report. See attached board minutes on the inclusion of Vehicular lifts.

249.The variation from Kshs. 1,179,611,756.00 to Kshs. 3,342,120,239.00 was due to price escalations as per contract provisions. These were contractual claims which were as per contract provisions and mostly occasioned by delays in completion period and upward increase in cost of materials. From the documents available, these were part of the reasons that necessitated the price escalation.

250.The Chief Quantity Surveyor Min of Roads and Public works released the final certificate on 10th August 2007.

251.As noted in the audit report the Multi Storey Car Park was completed in July 2008. The Fund wrote to the Chief Quantity Surveyor under Ministry of Public Works vide letter Ref HF/C/958VOL.X/114 requesting for a technical report on the completed Multi Storey Car Park. The Chief Quantity Surveyor replied vide letter Ref. No. QD15/GEN/1369- on the draft final account recommending release of the retention money after the issue of certificate of making Good Defects and payment of 60% of the projected Final Account. In June 2009 the Architect's completion certificate was issued to NHIF.

252.On 30th of March 2010 the Fund received Final Account from the chief quantity surveyor instructing payment of the final dues to the contractor Ref. No. QD15/GEN/1613 (Appendix C-9) Payments totaling to Kshs. 626,635,998.00 incurred in 2009/10 and Kshs. 4,706,521 incurred in 2010/11 are related to pending claims which were payable to the contractor after completion of the Multi Storey Car Park.

253.The Fund appeared before the PIC Committee on 15th of March 2018 and this matter was discussed thereafter the Committee visited the Car park Building.

21st Report of PIC – Committee Recommendations

254.This matter was presented to the 21st PIC Committee, where it recommended that Ethics and Anti-Corruption Commission should fast track investigations into the procurement process of the Multi-Storage Car Park, with a view of preferring charges against all those found culpable of defrauding the Fund.

Current Status

255.Some of the organizations that are currently occupying the building are government institutions such as Ministry of environment, Kenya Fishery Services, NACADA, Cabinet affairs office, National Land Commission, Kenya Copyrights Board, Water services Regulatory Board, Cabinet Secretariat, Kenya Roads Board, Kenya Water Towers Agency and other small private firms as well as NHIF's Nairobi branch office.

256.The matter was therefore referred to EACC as directed by Public Investment Committee and EACC commenced investigations by requesting for original documentation. In September 2022 the Fund's CEO was invited by EACC to record a statement on status of the documents. EACC guided that they would give way forward.

Additional Information

257.Further to the request from PIC through Ref: NA/DAA&OSC/PIC-SSAA/2023/ (122) dated 4th September 2023, the management would wish to submit as follows.

258.The escalation of the project cost was tabled before the NHIF Board project committee meeting held on 29th July 2005. Information from the minutes indicates that the Chief Architect noted that the main factors contributing to price escalations were:

i. Contractual claims mainly due to prolongation of the contract and delay in payments.
ii. Price escalation.
iii. Mechanical installation and equipment.
iv. Extended service parking (between NHIF building and Maji House).
v. Adjustment to the storey heights by 600mm.

259. Copy of the board minutes

Committee visit to the Project

260.The Committee visited the project on 20th February 2024 with a view to establish the completion status of the project, it occupancy as submitted by the Accounting officer and the car park utilization capacity.

Committee Observations

The Committee observed that –

i. During the project visit the Committee observed that although the Accounting officer indicated that some organizations were currently occupying the building including Ministry of environment, Kenya Fishery Services, NACADA, Cabinet affairs office, National Land Commission, Kenya Copyrights Board, Water services Regulatory Board, Cabinet Secretariat, Kenya Roads Board, Kenya Water Towers Agency and other small private firms as well as NHIF's Nairobi branch office, only Judiciary had stored its documents in one of the Floors and the other tenants had vacated the premises. The reason for such mass vacation was not clear. Further, the parking was seriously under-utilized with huge idle capacity and therefore the project was a waste of public resources, poorly thought-out and planned despite the huge resources sunk into it.

ii. This matter had been dealt with in the previous PIC reports, that is the 13th 16th 19th and 21st, wherein the Committee observed the unprofessional manner in which the project was executed.

iii. The previous PICs recommended that the EACC investigates the procurement process of the project and comes up with appropriate recommendations regarding any breach of law.

Committee Recommendations

The Committee recommends that –

Within three months upon adoption of this report, the EACC should fast-rack the investigation on how the project was initiated, feasibility done, construction works procured, how the contract price was varied by approximately 337% over and above the original contract sum of Kshs.909,709,305 in breach of the law and eventually how the vehicular lift was introduced midway into the project and finally found unimplementable. The investigation should also establish whether there was fraud, corruption or other financial improprieties in the construction of the car park and whether there was any breach of the law in the engagement process or wastage of public funds. If any officer is found culpable, he/she should be held personally liable for the financial loss, DPP should initiate a legal process to recover the amount so lost with interest from the concerned officer(s) at the prevailing CBK rates.

3.0 Unquoted Investments

261.The Committee heard that, as previously reported, the statement of financial position reflects a balance of Kshs. 394,654,576 under unquoted investments which, as disclosed at Note 28 to the financial statements, includes an amount of Kshs. 340,454,576 in respect of a loan advanced by the Fund to Moi Teaching and Referral Hospital (MTRH) at an interest rate of 3% per annum. However, the loan was not supported with a signed loan agreement between the Fund and MTRH. Although the management has acknowledged the omission, explanations on how the anomaly will be resolved and the fall-back plan in case of default by the Hospital was not provided. Further, available information indicate that the loan balance has not been reflected in MTRH financial statements for the year ended 30th June, 2019. The unquoted investment balance of Kshs. 394,654,576 also includes shares of Kshs. 54,200,000 in Consolidated Bank of Kenya for which no dividend have been paid in the past.

262.Under the circumstances, the investment in Consolidated Bank shares is impaired.

263.Consequently, the validity of unquoted investment balance of Kshs. 394,654,576 as at 30 June 2019 could not be confirmed as fairly stated.

Management response

264. The management informed the Committee that, MTRH, wrote to NHIF vide a letter Ref NO. ELD/MTRH/ADMIN/1/VOL.IV/2015 dated 12th July 2017 forwarding a proposal requesting financing for the purchase of the Radiation Oncology equipment.

265. A Board Paper was prepared and presented to the Finance and Investment Committee on the proposal to offer loan facility to MTRH. The Board approved a loan facility of Kshs Kshs.312,669,869.20

266. NHIF wrote to MMA advocates on 12th July, 2018, Ref No. HF/HOSP/3/1 VOL.1/8 requesting them to prepare a finance contract between NHIF and MTRH for approved amount of Kshs.312,669,869.20 The instructions included the total amount advanced and legal fees which would be recovered over a period of 10 years at an interest rate of 3% per annum.

Current status

265. The Board approved the execution of the contract upon review of loan amortization. The contract between NHIF And MTRH was signed on 23rd Oct,2024. The Fund continues to recover the loan from MTRH's claim payment at the rate of Kshs. 3,019,164 per month towards the repayment of the loan and the outstanding balance as at 30th June, 2024 stood at Kshs 120,637,811.

Committee Observations

i. The Loan amount of Kshs. 340,454,576 advanced by the Fund to Moi Teaching and Referral Hospital (MTRH) at an interest rate of 3% per annum was not initially supported with a signed loan agreement between the Fund and MTRH. However the two institutions signed an agreement on 23rd October, 2023 and not 23rd October, 2024 as indicated in the management submission.

ii. The loan amount as per the loan agreement is Kshs. 312,669,869.2 with an additional charge of Kshs.7,236,298.08. the legal charges could have been avoided if the two institutions used their internal legal departments and therefore it was nugatory expenditure.

iii. There was an unexplained extra charge of Kshs. 20,548,385.72 arising from the difference between the loan amount reflected as Khs. 340,454,576 and the agreement amount of Kshs. 312,669,869.2 with an additional legal charges of Kshs.7,236,298.08.

iv. The Accounting Officer was in breach of the fiduciary duties assigned to him by advancing the Fund money to MTRH without valid signed loan Agreement which is not one of the core mandate of the Fund.

v. The management acknowledged the omission, and formalized the process where the contract between NHIF And MTRH was signed on 23rd Oct,2024.

vi. The Fund continues to recover the loan from MTRH's claim payment at the rate of Kshs. 3,019,164 per month towards the repayment of the loan and the outstanding balance as at 30th June, 2024 stood at Kshs 120,637,811.

Committee Recommendations

The Committee reprimands the then Accounting officer for failing to ensure that a valid Loan agreement was in place before advancing the funds.

3.1 Shares in Consolidated Bank – Kshs. 54,200,000

266. The Committee heard that, on the Ordinary shares held at Consolidated Bank Ltd, it is true that the Fund included the total value at cost of Kshs. 54,200,000 in its financial statements. These are comprised 590,000 ordinary shares valued at Kshs. 11,800,000 and 2,120,000 preference shares valued at Kshs. 42,400,000 totaling to Kshs. 54,200,000.
267. The Fund as at the close of the financial year did not consider the investment in Consolidated Bank Ltd as impaired considering that the Bank remained a going concern, and the Fund could claim full ownership of the investment.

Current status

268. Management, however, having explored all recovery options provided for in its policies, has now reviewed its position and given the lapse of time with no change in the dividend position considered the investment as impaired and its recoverability doubtful. It has therefore created a provision to reflect this position in its books in the financial year 2022/2023.

Committee Observations

The Committee observed that –

i) The investment comprising of 590,000 ordinary shares valued at Kshs. 11,800,000 and 2,120,000 preference shares valued at Kshs. 42,400,000 totaling to Kshs. 54,200,000 had been deemed impaired and its recoverability doubtful, although the bank still continues to operate.
ii) The NHIF Management, having explored all recovery options provided for in its policies have declared the deposits impaired and its recoverability doubtful, without disclosing the steps taken to dispose off the shares.
iii) The Consolidated bank Shares have not been publicly traded at NSE and therefore, it was not clear how NHIF made the decision to invest in the share.

iv) NHIF has not been earning dividend for the amount invested in the bank despite the consolidated making profits. This was not a prudent financial investment when holding capital that was not earning any dividends and increase in value.

Committee Recommendations

The Committee recommends that –

Within three months upon adoption of this report, the Accounting officer should provide a comprehensive report on status of the investments as to whether they exist and their economic value with a view to recover the amount so lost with interest at the prevailing CBK rates from the concerned Accounting officer.

4.0 Short Term Investments

269.The Committee heard that, as previously reported, included in the statement of financial position as at 30th June, 2019 is short term investments balance of Kshs.13,625,153,816 which is net of provision for impaired investments of Kshs.1,304,410,609. The provision includes an amount of Kshs. 49,500,000 which had been deposited by the Fund on 26th June, 2001 at the Consolidated Bank of Kenya. The entire deposit of Kshs.49,500,000 was off-set by the Bank against a guarantee executed by the former Chief Executive Officer of the Fund on behalf of Euro Bank Limited. It was not clear the circumstances under which the Fund's deposit was used as a guarantee by the then Chief Executive Officer.

270.Although the Public Investment Committee recommended in the 21st Report as follows;

271.The then CEO of NHIF be held accountable for any losses incurred in the irregular investment of the surplus funds in Consolidated Bank and therefore be surcharged for Kshs.40,065,205.45, being the value of the un-deposited cheque No.022477 of 23rd September, 2002 from Euro Bank;

272.The then Consolidated Bank of Kenya CEO and Finance Manager should be held accountable for colluding with NHIF to mismanage the invested funds;

273.In view of the fact that the Fund had no capacity to provide guarantee for a loan to a private bank, Consolidated Bank should pay the amount of Kshs.49.5 million owed to the Fund;

274.The then Senior Management of Consolidated Bank including the then Managing Director, and Finance Manager should also be held accountable for colluding with NHIF to mismanage the invested funds.

275.The former Managing Director of Consolidated Bank should be surcharged for the funds that were advanced to Euro Bank in overnight lending. He should further be held accountable for the Kshs.49.5 million which the Bank could not recover from Euro Bank and consequently offset the same against the fixed deposits of NHIF.

276.NHIF should relentlessly pursue Consolidated Bank for recovery of Kshs.49.5 million;

277.NHIF CEO must ensure that all financial investments by the Fund are done in accordance with Treasury Circular No.10 of 1992 and section 28(1) of the Public Finance Management Act.

278.No action appears to have been taken to recover the Kshs. 49,500,000 the Fund lost. In the circumstance, it has not been possible to confirm whether the short-term investment balance of Kshs. 13,625,153,816 is fairly stated.

Management response

279.The management informed the Committee that, in June 2001 NHIF placed a fixed deposit with consolidated bank of Kshs. 600 million. In August 2001 the then Chief Executive of NHIF made a guarantee on behalf of Euro Bank to enable Consolidated Bank to use the Fixed Deposit as security. When Euro Bank defaulted on payment, consolidated bank was unable to recover payment and therefore offset Kshs.49.5 million from the total amount of Kshs. 600 million investments by the Fund.

280.On 20th February 2003, the Central Bank of Kenya appointed the Deposit Protection Fund Board to liquidate and wind up the operations of Euro bank Limited. Therefore, in its capacity as the Statutory Liquidator the Deposit Protection Fund Board had taken over all the affairs of Euro bank Limited including all records.

281.The Fund had deposited funds with Euro bank Ltd and at the time of the liquidation, therefore a lawyer Ahmednasir Abdikadir and Co Advocates was appointed to pursue the matter of Euro bank with a view to pursuing the Directors of the Bank.

282.Following the advice of the Advocate a suit was filed against the following: -

i. The deposit Protection Fund Board
ii. Euro bank Limited
iii. Solomon Bundi Mathamia
iv. John Paul Wachira Munge
v. Firdosh EbrahiJamal
vi. Harry Mutuma Kathurima

283.The 6th Defendant filed a Chamber Summons seeking orders that the Plaintiff's suit be struck out against him. Justice L. Njagi delivered the ruling on 29th October, 2003 where he directed that since the Suit against the 6th Defendant had been withdrawn, the plaintiff should pay the 6th Defendant costs of the Suit, which was to be taxed.

284.The 6th Defendant filed a Bill of Cost on 4th November 2003 where he claimed Kshs 11,072,767. The billed was taxed and a ruling delivered on 31st March 2004 taxed at Kshs 8,282,772. The fund filed an objection to the Registrar's Ruling on 8th august 2004 and further filed a chamber summons seeking to set aside the taxing master's ruling in its entirety. Justice Kamau, who dismissed our application with costs to the 6th Defendant, delivered a ruling on this application on 28th July 2014. Vide a letter dated 18th December 2014, the advocates of the 6th Defendant requested for the payment of their taxed costs and accrued interest, as well as the costs of the dismissed application, making a total of Kshs 19,231,031. The advocates of the Fund engaged the 6th Defendant to have them reduce the amount they were demanding.The 6th Defendant accepted a sum of Kshs 10,000,000 as the final settlement.

285.The first and second defendant also filed an application to strike out the suit against them. The parties made their submissions about the suit and on 28th June 2013, the Judge allowed the application seeking to have the matter struck out. The court allowed the application with costs to the 1st and 2nd Defendant.

286.On 14th May 2014, the 1st and 2nd Defendant filed their Bill of Cost at Kshs 23,480,914. The Fund's advocates objected to the same through written submissions. The ruling was delivered on 16th November 2017; the bill was taxed at Kshs 10,000,000.

287.Because the advocates had filed to set down the matter for hearing, the Fund withdrew the instructions on 20th April 2018 from the firm of Ahmed Nasir, Abdikadir and Co Advocates and on 6th September 2018, the firm of Migos Ogama and Co was instructed to take up the matter as evidenced by letter reference HF/LD/19 VOL.II/(12).

288.This matter was handled by the Inspectorate of State Corporations, which was of the view that the Fund had no capacity to provide a guarantee for a loan to a private bank. The Inspectorate of State Corporation further noted that consolidated bank should pay back the amount of Kshs. 49.5 million. The Fund is still following up with the Bank for the refund.

21st Report of PIC – Committee Recommendations

i) The Fund acknowledges the 21st PIC committee report observation that action be taken by relevant government agencies as recommended in its 19th report.
ii) PIC also recommended in its 21st Report that the query should be excluded from subsequent Reports of the Auditor General, provided that the management makes full disclosure of this unresolved matter in its financial statements as required by the International Accounting Standards no. 37.
iii) Management has since continued to make full disclosure of the matter in its annual reports as recommended in the 21st PIC committee report.

Current status

289.This matter (HCCC NO. 505 OF 2003) came up before Lady Justice Njoki Mwangi on the 25th of May 2023 for Notice to show cause why it should not be dismissed for nonprosecution. The Fund's Advocates successfully defended the Notice to Show Cause and the Court fixed the case for hearing on the 28th of September 2023. The Court further directed the parties to file any additional documents they may wish to rely on within 30 days.

290.Management has, made full disclosure of the matter in its 2020/2021 financial statements as required by the International Accounting Standard (IAS) No. 37 and as recommended in the 21st PIC committee report.

Additional Information

291.Additionally, as per letter ref MO/N/0341/16/18 dated 13th June 2023 the matter came up for hearing on 28th September 2023. However, it was set aside, and parties were asked to obtain a new date in the registry.

Committee Observations

The Committee observed that –

i) This matter (HCCC NO. 505 OF 2003) is actively in court

ii) The matter was handled by the Inspectorate of State Corporations, which was of the view that the Fund had no capacity to provide a guarantee for a loan to a private bank and therefore Consolidated Bank should pay the amount of Kshs.49.5 million owed to the Fund.

Committee Recommendations

The Committee recommends that –

i. NHIF should relentlessly pursue Consolidated Bank for recovery of Kshs.49.5 million.

ii. The Accounting Officer, NHIF should ensure at all times that all financial investments by the Fund are done in accordance with the National Treasury guidelines.

5.0 Long outstanding R.D. Cheques

292.The Committee heard that, the statement of financial position reflects a balance of Kshs. 6,730,698,196 under trade and other receivables which, as disclosed in Note 29 to the financial statements, includes R.D. Cheques amounting to Kshs 19,061,721 which had been outstanding for more than six (6) months and were therefore stale.

293.Consequently, the accuracy and validity of return to drawer balance of Kshs. 19,061,721 as at 30 June 2019 could not be confirmed.

Management response

294.The management informed the Committee that, it is true that there are long outstanding RD Cheques amounting to Kshs. 19,061,721 as at 30 June 2019. However, NHIF has managed to recover an amount of Kshs. 3,043,450 leaving a balance of 16,018,270. The Fund continues to pursue the employers with the aim of making the employers replace the RD Cheques.

295.However, the Fund has now changed its policy on Returned to Drawer Cheques to ensure that there never arises any RD cheque from contributions received. This will ensure that only Cheques that go through at the bank are recognized as revenue.

Current status

296.Management conducted an exercise to clear these outstanding issues and as at 23rd September 2024, 35 employers have replaced the RD cheques amounting to Kshs. 1,476,985.00.

297.Out of the 477 employers whose RD totaled to Kshs. 14,589,681.00, there were 168 closed companies whose RD cheques totaled 5,332,807.00. These companies shall be forwarded to the Board for consideration for write off. Further It has been established that a total of 245 Employers are active and these have been assigned to respective branch offices to pursue with a view of collection of unremitted contributions as well as any bank charges and penalties that have accrued. Finally, Management is unable to trace 67 Employers totaling to Kshs. 2,252,806 due to the fact that the Fund is unable to trace them at their respective addresses as per the NHIF Data Base. NHIF is engaging sister government agencies to try and trace the companies. This collaboration aims to locate the non-traceable companies through shared resources and information.

298. Further to address the issue of RD Cheques Management has implemented a system module that automatically reverses payments from employers when their cheques bounce, prompting immediate pursuit of the unpaid amount for that specific month. NHIF collection banks, KCB and Co-operative banks, now only accept their own drawn cheques, which are verified for account status before acceptance, further reducing instances of "Refer to Drawer" cheques.

Additional information

299. Management has also written to the Registrar of companies to confirm the operational status of the companies to further guide the course of action.

Committee Observations

The Committee observed that –

i) There are 168 companies with uncollectable RD cheques amounting to Kshs.5,332,807.00 having closed business/ operation implying lost contributions. Also, the Fund is unable to trace 67 employers with outstanding amount totaling to Kshs. 2,252,806 through their respective addresses as per the NHIF Data Base. The Fund intends to seek the Board approval for consideration for write off.

ii) It had taken over six months for NHIF to act on uncollectable RD cheques amounting to Kshs.19,061,721 which is a sign of laxity on the part of the Fund management to ensure compliance by employers.

Committee Recommendations

The Committee recommends that –

The Committee recommends that within three months upon adoption of this report, the accounting officer NHIF/SHA should submit a comprehensive report to the Committee on all the outstanding amounts/dues from the employers' accounts that have been dormant and the intended actions / strategies for recovery.

6.0 Staff Costs

6.1 Unsupported Expenditure

300. The Committee heard that, staff costs expenditure of Kshs. 4,865,435,027 reflected in the statement of comprehensive income and expenditure includes an amount of Kshs. 6,680,160 paid to twelve (12) officers employed during the year. However, documents supporting the recruitment including advertisements of the vacancies, short listing, interviewing and recruitment reports were not availed for audit verification.

301. Consequently, the propriety of the expenditure totaling Kshs. 6,680,160 included under staff cost for the year ended 30 June, 2019 could not be confirmed.

Management response

302.The management informed the Committee that, through letter Ref: MOH/COMS/14/2 dated 6th April 2018 the Ministry of Health indicated its commitment to the implementation of the Universal Health Care agenda for Kenya. The agenda called for implementation of interventions targeting increasing access to essential services; improving coverage of services and intervention targeting financial risk mitigation. These interventions needed to target improvement in all aspects of the Health care system in the country.

303.In this regard, the Fund was requested to prepare a Rapid Results Initiative (RRI) and provide the activities that have been implemented towards Universal Health Care. Consequently, the need for preparedness was thought out and a memo dated 6th April, 2018 was sent to all Directorates on their respective preparedness for the implementation of Universal Health Care.

304.The Directorate of Human Resource and Administration on their part forwarded their issues in regard to its preparedness for the Universal Health Care; one of the key and critical gaps identified was the staffing levels in the designated pilot counties (i.e. Nyeri, Machakos, Isiolo and Kisumu)

305.The Board in its meeting of 23rd May, 2018 approved amongst others the upgrading of Satellites to fully fledged Branches and opening of eight new Satellites offices since there was an urgent need to enhance accessibility and visibility of the Fund.

306.In view of the above, and given the nature of the program and urgency, for the UHC agenda to be carried out, authority for recruitment of new staff was submitted in cognizance of the Human Resource Procedures Manual Section 1 sub section 5 on Delegation and Section 2 sub section 2.1 on the role of the Board of Management in making staff Appointments.

307.The ten (10) drivers were recruited from a pool of previous applicants, where their applications had been forwarded to Automobile Association of Kenya (AAK) for competency assessment

Current status

308.The query was addressed and has since been expunged from the Fund's subsequent audit reports by the office of the Auditor-General.

Committee Observations

The Committee observed that –

i) The statement that the query was addressed and has since been expunged from the Fund's subsequent audit reports by the office of the Auditor General is misleading since the committee deals with an issue on a case by case basis and non-recurrence does not mean it was resolved by the auditors as they do not have such a mandate.

ii) The fact that the ten (10) drivers were recruited from a pool of previous applicants, implies that no advertisements for the vacancies, short listing, and interviewing was done and thus the recruitment process was skewed and biased in favour of a few beneficiaries.

Committee Recommendations

The committee reprimands the then accounting officer for;

i) failing to ensure fairness in the recruitments process.

ii) misleading statement that the query was addressed and has since been expunged from the Fund's subsequent audit reports by the office of the Auditor General, since the committee deals with an issue on a case by case basis and non-recurrence does not mean it was resolved by the auditors as they do not have such a mandate.

6.2 Staff Welfare

309.The Committee heard that,as disclosed in Note 18 to the financial statements, included under the staff costs of Kshs. 4,865,435,027 is an expenditure amount of Kshs. 50,408,079 relating to staff welfare. The latter balance includes an amount of Kshs. 1,762,000 paid to staff as Christmas gift and appreciation token to retirees during the year under review. Management did not provide justification or the basis for this payment.

310.Consequently, the propriety of the expenditure totaling to Kshs. 21,762,000 paid as Christmas gift and included under staff welfare could not be confirmed.

Management response

311.The management informed the Committee, in line with Policy No. **NHIFPD/DCS/DCS7/2017 Section 5.5 Rewards and Sanctions** "the Fund shall put in place an effective monetary and non-monetary reward system and there shall be proportionate rewards for employees rated as 'outstanding 'and 'above average'. Reward/sanctions shall be determined by the overall rating achieved on the performance dialogue/evaluation as per this policy" as captured in the NHIF employee reward and recognition manual NO. NHIF/HR/PCY/2015 Section 6 which narrates the types of awards to be granted to staff where it states "These awards shall generally be in the form of monetary and non-monetary"

312.The same was supported by the Approved budget of the financial year 2018/2019 which had a provision of Kes 51,230,000 towards Staff welfare.

313.However, management is in the process of reviewing the policies in order to indicate the specific monetary rewards to be awarded.

Current status

314.The query was addressed and has since been expunged from the Fund's subsequent audit reports by the office of the Auditor General.

Committee observations

The Committee observed that –

i) The statement that the query was addressed and has since been expunged from the Fund's subsequent audit reports by the office of the Auditor General is misleading since the committee deals with an issue on a case by case basis and non-recurrence does not mean it was resolved by the auditors as they do not have such a mandate.

ii) The payment of Christmas gift and appreciation token to retirees could not be justified since the condition in the existing NHIF policy to the effect that the Fund did not provide documentary prove that it had put in place an effective monetary and non-monetary reward system with proportionate rewards for employees rated as 'outstanding 'and 'above average'. The payments are therefore irregular.

iii) The payment was not approved by the SRC as required under the law.

Committee Recommendations

The Committee recommends that –

i) The Committee reprimands the accounting officer for misleading statement that the query was addressed and has since been expunged from the Fund's subsequent audit reports by the office of the Auditor General, since the Committee deals with an issue on a case-by-case basis and non-recurrence does not mean it was resolved by the auditors as they do not have such a mandate.
ii) Within three months upon adoption of this report, the accounting officer – NHIF/SHA and the Director General inspectorate of state corporations should recover the amount of Kshs. 21,762,000 so paid from the then accounting officer, the BOD and any other staff involved in the irregular payment.

7.0 Board Expenses

315.The Committee heard that, the statement of comprehensive income and expenditure reflects an expenditure of Kshs.32,081,129 under Board expenses which, as disclosed in Note 19 to the financial statements, includes an amount of Kshs.12,450,000 relating to sitting allowances which were not supported with signed minutes. Further the Board did not adhere to approved board calendar as detailed below:

Boards	Planned Meetings	Actual Meetings
Full Board	5	35
Audit Committee	4	7

316.Under the circumstances, the propriety of board expenses of Kshs. 32,081,129 for the year ended 30 June 2019 could not be confirmed.

Management response

317.The management informed the Committee that, the Board Minutes during this period were prepared and presented to the Board however, they were not signed noting that the previous CEO was charged and subsequently suspended. It should be noted that the Chief Executive Officer is the secretary to the Board as provided in the National Hospital Insurance Act 10(1A). As the secretary to the Board, the CEO must also sign the Board Minutes

318.Therefore, NHIF has sought guidance from the Inspector State Corporations on how to handle the unsigned minutes. Attached is a copy of the letter.

319.The Fund during this period encountered sudden and unforeseen Challenges that necessitated these meetings. These includes DCI investigations, the dismissal of Senior Staff following these Investigations and the preparation report of the Health Finance Reforms Expert Panel for the Transformation and Reposition of National Hospital Insurance Fund that was being prepared during this period as well.

320.Below are a sample of the Board Notices for some of the meeting that were held as a result of the unexpected

Board Minutes	Agenda
22nd August 2018	Management Report on Benefit Package and Budget Rationalization for financial year 2018/19
26th November 2018	DCI Investigations
27th November 2018	DCI Investigations
29th November 2018	DCI Investigations
5th December 2018	DCI Investigations
11th December 2018	DCI Investigations
17th December 2018	Investigations with DCI Report on HR Gaps in wake of DCI Investigations
12th February 2019	Ongoing DCI investigations (Web tribe Status) Special Schemes (KARO, FOPA)
13th February 2019	Interviews
14th February 2019	Interviews

15th February 2019	DCI Investigations NHIF Reforms Special Schemes

Current status

321.The query was responded to and has since been expunged from the Fund's subsequent audit reports by the office of the Auditor General.

Committee Observations

The Committee observed that –

i) The amount of Kshs.12,450,000 relating to sitting allowances were not supported with signed minutes and thus irregular.
ii) The Board did not adhere to approved board calendar while making the above payments and thus the meetings were not justifiable.
iii) The Accounting officer's submission that the Board Minutes were not signed because the previous CEO was charged and subsequently suspended is misplaced since previous minutes are signed upon confirmation in the subsequent meeting.
iv) The Accounting officer's submission that the Fund during the period encountered sudden and unforeseen challenges that necessitated these meetings is not a justification of holding 3 Audit Committee meetings and 30 full board meetings over and above the allowed meetings since the Board was not being investigated per se by the DCI as alleged.

Committee Recommendations

The Committee recommends that –

Within three months upon adoption of this report, the Accounting officer and the Director General Inspectorate of State Corporations should recover the amount of Kshs.12,450,000 so paid from the then accounting officer, the BOD and any other staff involved in the irregular payment.

Other Matter

1.0 Budgetary Performance

322.The Committee heard that, during the year under review, the Fund's actual revenue amounted to Kshs. 55,412,319,242 against budgeted revenue of Kshs. 66,858,395,349 resulting in a revenue shortfall of Kshs. 11,446,076,107. Further, actual expenditure for the year amounted to Kshs. 61,132,941,242 against budgeted expenditure of Kshs. 58,098,379,876 resulting in an overall over absorption of Kshs. 3,034,561,366. Therefore, there is need for the Fund to review its budget making process with a view to coming up with a vibrant budget implementation follow up mechanism and feedback process with a view to ensuring that all projects and activities are implemented as planned for the Fund to meet its mission and objectives for the benefits of the Citizens.

Management response

323.The management informed the Committee that, the Fund plays a central role in financing health care in Kenya with key objective of making health services more effective, accessible and affordable and to deliver the ideals of Vision 2030. It has an elaborate budget process that ensures the plan is aligned with objectives, goal and vision.

324.The budget is prepared considering envisioned activities as per the work plans of the various cost centres and compared with the resources available. A budget committee with representation from all Departments ensures the work plans are aligned to the strategic plan.This ensures expenditures made are in line with the business strategy and objectives. A Budget implementation committee (BIC) oversees the implementation of the approved budget for effective use of financial resources in business operations. The budget process allows for monthly reviews to verify the actual expenditures are in conformity to estimated amounts and take necessary steps to reduce variances between the estimated and actual costs. A management report which compares the financial performance vis-a-vis the budget is presented and reviewed by the Board of Management every quarter period. The Management has always ensured the budget and the process are compliant to the relevant Acts of Parliament, regulations and circulars issued by the Government.

Revenue

325.Revenue forecasts are arrived at using the number of members estimated to be registered taking into consideration the average rate for the formal sector and the applicable rate for informal sector. Secondly, a desired compliance rate for existing membership is set for both informal and formal sector. Emphasis is given to activities that will promote the achievement of the compliance targets. The sponsored programs and negotiated schemes revenues are estimated based on the anticipated insured population as provided for by the sponsor. An estimation of the number of scheme to be brought on board is also forecasted to cater for new enhanced schemes entrants. Whilst the Fund is committed to creating realistic and successful budgets, it is prone to external factors that threatens its performance.

326.In the year under review, numerous factors resulted in the under-achievement of revenue targets. These are as follows;

i) The revenue target for 2018/19 was based on the fact that implementation of the universal health coverage (UHC) was to be rolled out through NHIF on an insurance model where the Government was to pay the premiums to NHIF to register beneficiaries in a similar manner to other Government programs e.g HISP and OPSD program. However, the government changed this framework in November 2018 when the performance contract had already been signed. This change of approach therefore negatively affected the projected member registration and revenue collection.
ii) Impact of UHC Pilot project on registration of new members and on retention of existing informal sector in the four pilot counties. The average new registration growth in the pilot

counties dropped to 2.85% compared to 18.39% in other Counties. This reduced the expected revenues from the pilot counties thereby affected the overall performance.

iii) The Fund performance is directly affected by economy fluctuations hence the economy slowdown in the period under review led to low retention levels in the informal sector and lower growth in the formal sector. This is as a result of layoffs, reduced income and lack of jobs.

Expenditure

327.The main expenditure of the Fund is the benefits. NHIF as a Social Health Insurer endeavor to offer more benefits to members and at the same time enhance efficiency to reduce administrative costs. This is in a bid to cushion Kenyans from catastrophic health expenditures and to ensure that they are adequately protected. a. Benefits.

328.In the year under review, the Fund's aim was to pay out a desired rate of 85% of contributions received as benefits. This is in line with international best practices. The benefit projections of 85% of premiums/contributions are based on industry best practice where the loss ratio for medical insurance in Kenya according to AKI report of 2018 and IRA industry report quarter 1 of 2019 stood at an average of 75%. NHIF adopted 85% since it does not pay commission of 10% like the private insurers for acquiring nonlife business. This has enabled the Fund to offer a wide range of benefits and exclusions from pre-testing.

329.NHIF experienced an escalation in claims in 2018/19 year under review that was unprecedented and unforeseen. The reason for the escalation is attributed to increased benefit packages, public awareness, access points and increased medical costs. Various measures were implemented within the year to mitigate including tightening of gaps in the system, increased automation and enforcement of healthcare provider contracts. The impact of the measures was not immediately felt within the financial year leading to a higher utilization than expected and over-absorption. It is difficult to accurately predict medical claims arising from hospitalization and while utilization is tracked regularly and over-utilization responded to, the desired outcomes of remedial measures may take more than a financial year to have full impact. That is the reason medical insurance business maintains reserves to cushion against seasonal shifts. Other cost containment measures as recommended by the Actuary were implemented but halted by the President due to public interest and are undergoing public participation and engagement.

Administrative Costs

340.Due to the prevailing circumstances where revenue targets were not fully achieved and the claims expenditure went up, the Management resulted to cost saving on administrative expenses. Expenses that are not fixed costs such as salaries, rent and insurances were controlled and spending minimized to essential items and services. This led to a favorable utilization of Kshs. 7.72 billion vis-à-vis the budgeted Kshs. 8.45 billion.

Committee Observations

The Committee observed that –

The Fund collected a revenue of Kshs. 55,412,319,242 against the budgeted revenue of Kshs. 66,858,395,349 resulting in a revenue shortfall of Kshs. 11,446,076,107. Further, the Fund incurred actual expenditure for the year amounting to Kshs. 61,132,941,242 against budgeted expenditure of Kshs. 58,098,379,876 resulting in an overall over absorption of Kshs. 3,034,561,366. Arising from the two statements, the Fund spent Kshs. 5,720,622,000 from the retained earnings without the BOD and National Treasury approval.

Committee Recommendations

The Committee recommends that –

i) The Committee reprimands the then Accounting Officer for spending Kshs. 5,720,622,000 from the retained earnings without the BOD and National Treasury approval.
ii) The Accounting Officer must at all times ensure that the budgets are realistic, achievable and always adhere to annual work plans, procurement plans and revenue collection schedules in compliance with Regulation 44(2) of the PFM (National Government) Regulations, 2015.

Report on lawfulness and effectiveness in use of public resources

1.0 Cash and Bank Balances

330.The Committee heard that, the statement of financial position reflects the cash and bank balances of Kshs. 2,640,702,789 which is net of a negative bank balance of Kshs. 8,350 in the Kenya Commercial Bank (KCB) settlement account. Management has not provided an explanation for overdrawing the bank account contrary to Section 28 (4) of the Public Finance Management (National Government) Regulations, 2015 which states that an Accounting Officer of a national government entity shall not cause a bank account of the entity to be overdrawn.

331.The management was therefore in breach of the law.

Management response

332.The management informed the Committee that, it is true that account No. 1167180416 held with The Kenya Commercial Bank carried a negative balance of Kshs. 8,349.99 as at 30th June 2019 as shown on the certificate of balance. Funds from all NHIF settlement accounts (In this case KCB Account No. 1167180416) are, as a procedure, normally transferred to the main collection account of the same bank (KCB Account No. 1107111226). On 30th June, 2019 funds were transferred on the basis of NHIF instruction to the bank; letter HF/FIN/23/5/Vol. III /26. The bank balance at the point of transfer was positive and could have accommodated the transfer. However, the bank, due to an error on their part, made a transfer which was more than the available balance as at 30th June 2019 giving rise to the negative balance as pointed out by the auditor. We also wish to clarify that the negative balance did not arise as a result of expenditure/ payment but that it relates to a transfer between two collection accounts whose net balance as at 30th June, 2019 was a positive balance of Kshs. 286,925,212.

Current Status

333.The query having been responded to has since been expunged from the Fund's subsequent audit reports by the Office of the Auditor General. Further Management continues to have frequent review of controls with banks such as call backs to ensure such a scenario does not recur again.

Committee Observations

The Committee observed that–

The Committee observed that the overdrawn bank balance was due to an error on the part, of the bank that made a transfer which was more than the available balance as at 30th June, 2019 giving rise to the negative balance as pointed out by the auditor.

Committee Recommendations

334.The Committee recommends that the accounting officer should always review the bank balances before transfer.

2.0 Other Operating Expenses

335.The Committee heard that, the statement of comprehensive income and expenditure reflects an expenditure of Kshs. 2,493,573,826 under other operating expenses which, as disclosed in Note 20 to the financial statements, includes an amount of Kshs. 156,424,194 paid as legal expenses to private legal firms. However, approval and issuance of no objection from the Attorney General's office on engagement of the private legal firms was not given as required by the Attorney General's Circular reference AG/CON/6/D/144/VOL.II dated 16th April, 2014.

336.In the circumstances, the propriety of legal expenses totaling to Kshs 156,424,194 could not be confirmed.

Management response

337.The management informed the Committee that, the external advocates were engaged to handle matters that are complex in nature, and this include cases such as the Karen land matter i.e. National Hospital Insurance Fund Board of Management –vs.- Crown line Freighters Limited Case no 691 of 2011 and NHIF Board of Management vs. Euro bank and Others Case no HCCC no 505 of 2003.

338.Also, the advocates were also engaged where the case was considered high risk because the external advocates have professional indemnity cover that will shield the Fund to an extent to cover against the financial errors arising from lawsuit. The in-house advocates do not have this professional cover. This includes cases such as Civil Suit No 345 Of 2013 Meridian Medical Centre Vs. National Hospital Insurance Fund And Case No 35 Of 2018 Clinix Health Care Limited Vs. National Hospital Insurance Fund

339.The department shared with the Attorney the list of advocates that it had pre-qualified for the period of 2017 to 2019, attached is a copy of the letter.

340.Further during the period, Management also consulted with the Attorney General on matters pertaining to fee notes.

i. Current status

341.The query was responded to and has since been expunged from the Fund's subsequent audit reports by the Office of the Auditor General.

Committee Observations

The Committee observed that –

i) The Attorney General's Circular reference AG/CON/6/D/144/VOL.II dated 16th April, 2014 does not give exemptions on when approval and issuance of no objection from the Attorney General's office on engagement of the private legal firms cannot be sought.
ii) Complexity in nature of the cases does not warrant NHIF to bypass the requirements of Attorney General's Circular reference AG/CON/6/D/144/VOL.II dated 16th April, 2014 as put by the Accounting officer.
iii) There was no justification on the Accounting officer's submission that the advocates were engaged where the cases were considered high risk because the external advocates had professional indemnity cover to shield the Fund to an extent to cover against the financial errors arising from lawsuit where the in-house advocates do not have the professional cover.

Committee Recommendations

The Committee reprimands the then Accounting Officer, for failing to adhere to the requirements of Attorney General's Circular reference AG/CON/6/D/144/VOL.II dated 16th April, 2014

3.0 Procurement of Integrated Revenue Management System

342.The Committee heard that, as previously reported, on 4th June, 2018, the Fund entered into a contract with an IT Solutions firm for provision of Integrated Revenue Management System at a contract sum of Kshs. 495,205,588. Further information indicates that the procurement of the system was single sourced as no evidence of competitive bidding was availed for audit verification. This is contrary to Section 96 of the Public Procurement and Assets Disposal Act, 2015 which requires the Accounting Officer to take such steps as are reasonable to bring the invitation to tender to the attention of all those who may wish to submit tenders. Further, although the direct procurement method was used, no evidence was provided to support that the underlying circumstances met the conditions set for direct procurement as laid down in Section 91 of the Act.

343. Under the circumstances, the Fund was in breach of the law and may not have obtained value for money on the procurement of the system.

Management response

344. The management informed the Committee that, it's true that NHIF initiated procurement of the Integrated Revenue Management System through a single source selection method. It's also true that Open tender as a procurement method wasn't used as per section 96 of Public Procurement and Assets Disposal Act 2015. NHIF relied on section 124 (12 a & b) of Public Procurement and Assets Disposal Act 2015 for use of single source as a selection method as this was the most appropriate method due to the following cases:

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

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

iii) The Fund further followed the conditions laid down in Section 91 (2) of Public Procurement and Assets Disposal Act 2015 which states "The Procuring entity may use an alternative procurement procedure only if that procedure is allowed and satisfies the conditions under this Act for use of that method" (Single Source Selection Method Section 124 (12 a & b) of Public Procurement and Assets Disposal Act 2015.)

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

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

a) placing the intention to single source in the company's website as per the attached evidence dated 25th April 2018

b) submitted justification report to the Public Procurement and Regulatory Authority for approval as per the attached evidence.

Committee Observations

The Committee observed that –

i) The justifications advanced for direct procurement were not satisfactory. The fact that the service provider had exclusive rights for the system used for Revenue Collection and Management which is a highly customized and proprietary to the Fund with source code availability limited to the software provider is misleading since the revenue management system is an ERP that could be sourced from other providers and customed to NHIF user requirements. No consultant had the monopoly for developing ERPs.

ii) The Accounting officer submitted that the task was a continuation of the previous tasks carried out by the same service provider since the Infrastructure was already setup in all NHIF branch/Satellite offices, 180 Health Care Providers and Contracted Banking Institutions thus eliminating disruption to service provision and compatibility related problems. Arising from the aforestated, the statement is misleading and could point to a breach of the section **54.** (1) of the Public Procurement and Disposal Act which states that no procuring entity may structure procurement as two or more procurements for the purpose of avoiding the use of a procurement procedure except where prescribed.

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

iv) From the available information, the committee observed that;

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

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

c) NHIF stopped paying the supplier-webtribe ltd after having already paid KSh. 179 million. Upon arrest of the NHIF officials.

d) The tender to buy the software was only posted on the NHIF website without even advertising in the dailies and the tender had been awarded to Webtribe ltd.

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

Committee Recommendations

The Committee recommends that –

Within three months upon adoption of report, the EACC should investigate how the procurement process was done with a view to establishing whether, there was any fraud, corruption or other financial improprieties in the procurement process and whether there was any breach of the law or wastage of public funds. If any officer is found culpable, he/she should be held personally liable for the financial loss, DPP should initiate a legal process to recover the amount so lost with interest from the concerned officer(s) at the prevailing CBK rates.

4.0 Temporary Imprest

347.The Committee heard that, the trade and other receivables balance of Kshs. 6,730,698,196 reflected in the statement of financial position as at 30 June, 2019 includes temporary imprest of Kshs. 20,384,020 out of which an amount of Kshs. 1,057,280 has been outstanding for many years and whose recoverability is doubtful. This is contrary to Section 93 (5) of the Public Finance Management (National Government) Regulations, 2015 which states that a holder of a temporary imprest shall account or surrender the imprest within seven (7) working days after returning to duty station. Section 93 (6) further provides that in the event of the imprest holder failing to account for or surrender the imprest on the due date, the Accounting Officer shall take immediate action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank Rate. Consequently, the recoverability of the imprest amount of Kshs. 1,057,280 is doubtful.

Management response

348.The management informed the Committee that, it is true there was an outstanding amount of Kshs.1,057,280 for prior years. However, Kshs. 948,080 has been recovered leaving a balance of Kshs.109,200.00, which relate to staff members who have since left employment.

Committee Observations

The Committee observed that–

i) Available information from the 24 PIC Report, indicated that the long outstanding imprests were thereafter written off by the Board of Management in a meeting held on 27th September 2017 alongside staff receivables of KSh. 2,104,123. It was not clear how then the amount of Kshs. 948,080 was then recovered noting that most of them date back to late 1990s from the Ministry

ii) In the particular instance, the Treasury authority to write off debt was not sought hence it was irregular for the NHIF to write off without such an approval, the abrupt change of tune from write-off to recovery is doubtful.

Committee Recommendations

The Committee recommends that –

349.Within three months upon adoption of report, the Inspector General of State Corporations should investigate whether and how the imprest was recovered with a view to establishing whether, there financial improprieties in the surrender and recovery process and whether there was any breach of the law or wastage of public funds. If any officer is found culpable, he/she should be held personally liable for the financial loss, Inspector General should initiate a recovery process of the amount so outstanding with interest at the prevailing CBK rates from the concerned officer(s).

5.0 Excessive Deductions

350. The Committee heard that, analytical review performed on the payroll for twelve (12) months from July 2018 to June 2019 revealed a total of 2,458 instances where staff were paid net salaries that were less than one third (1/3) of their basic salaries. This is contrary to Section 6.1.4 of the Fund's Human Resource Policy that stipulate that any advance will be granted subject to the employee remaining with at least a third of the basic salary. The Fund is therefore in breach of its own policy.

Management response

351. The management informed the Committee that, adherence of the third basic rule has been a challenge, however, much as there is need to fully conform, time and again, there have been several factors such as:

(i) Affected staff on suspension and interdictions dating back from December 2018.
(ii) The need to recover outstanding staff debtors in which case the Fund's interest is noted on priority basis
(iii) Court orders on salary deductions

352. However, by and large, the Fund made every effort to progressively ensure that every staff complies with the expectation of one third basic salary as net take home. To date, the Directorate has ensured all staff, with the exception of staff who are affected by the above cases, effective 1st April, 2020 have adhered to the third basic rule.

Current Status

353. Management remains committed to adhering to the Public Service Commission - Human Resource Policies and Procedures Manual and the Employment Act, 2007. Ensuring that employees' net salaries comply with the one-third rule is a priority, and necessary measures are being implemented to rectify any discrepancies and prevent future breaches.

Committee Observations

The Committee observed that –

i. The then Accounting Officer was in breach of the Public Service Commission-Human Resource Policies and Procedures Manual and section 19(3) of the Employment Act, 2007 in respect of ensuring that the employees' net salaries comply with the one-third rule.
ii. The submission by the Accounting Officer, that the directorate had ensured that all staff, with the exception of the staff in questions, had adhered to the one third basic rule effective 1st April, 2020 was misleading since the auditors had raised similar queries in their later report.

Committee Recommendations

The Committee recommends that –

i. The Committee reprimands the then Accounting officer for failing to ensure compliance with the Public Service Commission-Human Resource Policies and Procedures Manual (2016) and section 19(3) of the Employment Act, 2007.
ii. The Committee reprimands the Accounting officer for misleading the committee that the directorate had at 1st April 2020 ensured that all staff, with the exception of the staff in questions, had adhered to the one -third basic rule.

6.0 National Health Schemes Benefits Expenses

354.The Committee heard that, the statement of comprehensive income and expenditure reflects an expenditure of Kshs. 37,716,058,407 under National Health Scheme (NHS) Benefits expenses which includes legal fees of Kshs. 336,339,000 paid to a law firm in respect of drawing 6,700 contracts with health providers at a negotiated total instruction fee of Kshs. 432,800,000. The Law firm was to further charge an amount of Kshs. 43,260,000 being cost for company search, printing, binding, travels costs and stamp duty and distribution of the contracts. On 5th November, 2018, the firm reviewed the terms of engagement and added 309 contracts for drafting, with an additional cost of Kshs. 26,749,302 as legal fees. There was no consent from NHIF for this variation.

355.Further, the legal service was not in the approved procurement plan for 2018/2019 financial year which is contrary to Section 45(3)(a) of the Public Procurement and Assets Disposal Act, 2015 which states that all procurement process shall be within the approved budget of the procuring entity and shall be planned by the procuring entity concerned through the Annual Procurement Plan.

356.In addition, the law firm was not in the prequalified list of suppliers in contravention of Section 93(1) of the Public Procurement and Assets Disposal Act, 2015 that states that an Accounting Officer of a procuring entity, where applicable may conduct a prequalification procedure as a basic procedure prior to adopting an alternative procurement method other than open tender for the purpose of identifying the best few qualified firms for the subject procurement.

357.Under the circumstances, the Fund was in breach of the law and the propriety of legal fee of Kshs. 336,339,000 paid to the law firm could not be confirmed.

Management response

358.The management informed the Committee that, the Contracts that the Fund had with the facilities had terminated because the period of the contracts ended, therefore there was need to enter into new contracts with these facilities. Further, some of the facilities were new and did not have an existing contract with the Fund.

359.The Legal department needed to contract all our Health Care Providers within a limited time to ensure these Hospitals are offering services with Contracts in Place. The activity therefore was urgent. Further NHIF internal Audit had pointed out gaps in the just lapsed contracts which therefore necessitated the Fund to subcontract the drafting-to drafting experts who would ensure the contracts are airtight and safeguard the Fund against loss. The contracts were also expected to incorporate best practice from other countries to make NHIF contractual engagements with healthcare providers competitive.

360.In addition, NHIF anticipated uptake of UHC, and this required that all hospitals in its network should have up to date contracts with strict terms embodied in a contract that would also be registered in the government registry as is required of government contracts. It must be noted that the commitment in the legal instrument means there is a risk and thus since the in-house legal officers do not have professional indemnity then it was only right to transfer the risk.

361.At the time, the department had only six advocates (including the Acting Corporate Secretary) whose duties included management of external advocates who were representing the Fund in litigation matters thus it meant perusal of files and step by step guidance of the advocates on record, drafting of goods and services contracts for all suppliers which is an ongoing process as contracts lapse at different times of the year, at an estimate of minimum 300 contracts, both for head office and branch offices, attendance of Board meetings and minute drafting by the Corporation Secretary, all time advisories to departments on issues that come up in the day to day running of the organization, attendance of meetings called by internal and external stakeholders, management of disputes and prosecution maters in the branch offices among other duties that entail the existence of a legal department in a big organization .The Fund had a prequalified Law Firms.

Committee observations

The Committee observed that –

i. The engaged law firm reviewed the terms of engagement and added 309 contracts for drafting, with an additional cost of Kshs. 26,749,302 as legal fees without the consent from NHIF for this variation and therefore did not abide with the terms and conditions of the contract.
ii. Further, despite the NHIF management being aware of their requirements in the subsequent year, the legal service was not in the approved procurement plan for 2018/2019 financial year and thus in breach of Section 45(3)(a) of the Public Procurement and Assets Disposal Act, 2015 which states that all procurement process shall be within the approved budget of the procuring entity and shall be planned by the procuring entity concerned through the Annual Procurement Plan.
iii. In addition, the engaged law firm was not in the prequalified list of suppliers and thus in breach of Section 93(1) of the Public Procurement and Assets Disposal Act, 2015 that states that an Accounting Officer of a procuring entity, where applicable may conduct a prequalification procedure as a basic procedure prior to adopting an alternative procurement method other than open tender for the purpose of identifying the best few qualified firms for the subject procurement.

Committee Recommendations

The Committee recommends that –

i. The Committee reprimands the Accounting Officer for breach of Section 45(3)(a) and Section 93(1) of the Public Procurement and Assets Disposal Act, 2015.
ii. Within three months upon adoption of report, the EACC should investigate how the law firm was engaged and how it reviewed the terms of engagement and added 309 contracts for drafting, with an additional cost of Kshs.26,749,302 as legal fees without the consent from NHIF with

a view to establishing whether, there was any fraud, corruption or other financial improprieties in the procurement process and whether there was any breach of the law or wastage of public funds. If any officer is found culpable, he/she should be held personally liable for the financial loss, DPP should initiate a legal process against the culpable officer(s).

iii. Within three months upon adoption of report, the Inspector General of State Corporations should investigate whether and how the circumstances under which Kshs.26,749,302 was paid to the law firm without a valid contract . If the then accounting Officer is found culpable, he/she should be held personally liable for the financial loss, Inspector General should initiate a recovery process of the amount so paid with interest at the prevailing CBK rates.

FINANCIAL YEAR 2019/2020

1.0 Financial Performance

362.The Committee heard that during the year under review, the Fund reported a deficit of Kshs. 1,156,934,012 (2018/2019-deficit Kshs.3,671,996,374) resulting in reduction in retained earnings from Kshs.19,395,102,251 as at 30 June 2019 to Kshs.18,237,948,239 as at 30 June 2020. The Fund's performance is on a downward trend and if strategies are not put in place to reverse the trend, the Fund is likely to experience financial difficulties in the future.

Management Response

363.The management informed the Committee that, the Fund plays a central role in financing health care in Kenya with key objective of making health services more effective, accessible and affordable and to deliver the ideals of Vision 2030. 98% of the Fund revenue comes from member contributions (formal and informal) and premiums which is dependent on the number of actively paying members. In the financial year 2019/2020, the Fund set to focus on membership growth and improved retention rate to increase revenue collection and at the same time to put a check on escalation of claims in order to improve the financial base. These strategies led to:

i. 5% (2.73 bn) increase in revenue compared to 2018/19 whilst the benefits increased by a modest 2% (938 mn).
ii. Operating costs were also reduced by 8% (626 mn) successfully reducing the admin ratio from 14% in 2018/19 to 12% reported in 2019/20.
iii. Reduced payout ratio from 95% to 91% in FY2018/19 and FY2019/20 respectively.

364.The strategies steered by the Board, which includes; aggressive employer compliance, member communication, reduction of benefit expenditures by reducing instances of fraud and sealing of gaps in the system; led to an improved performance compared to FY2018/19. However, due to Covid-19 which was first confirmed in Kenya on 12th March 2020, NHIF operations and collection of revenue were greatly affected in the fourth quarter of the financial year.

365.Going forward, the Fund has deliberately put in place strategies aimed at enhanced service delivery, enriched customer experience, managing benefit expenditures within the prescribed loss ratio and improved financial performance. These strategies are on course on improving the financial base and sustainability of NHIF and on mitigating the adverse effect of Covid-19 pandemic on its performance. They include:

a) Upgraded Customer Experience Centre; The Management has strengthened the call centre by modernizing and deploying additional staff members from registration and compliance bringing the total to 90. This has increased the received calls from 200 per day in June 2018 to over 1,800 calls per day. It has also enabled compliance activities affected by movement restrictions to be pursued and enforced electronically.
b) Member & Employers Self-Care Platforms; In a bid to enhance the customer experience, NHIF has developed Self-Care platforms namely; My NHIF App, USSD Code: *155#, Website: www.nhif.or.ke in order to digitize registration with NHIF and selection of outpatient healthcare providers. Through these self-care platforms, members are carrying out self-registration including selection of the preferred outpatient healthcare providers conveniently.
c) Outpatient Capitation Data Clean-up; Due to identified risks in the outpatient hospital selection process, NHIF embarked on a capitation data clean-up exercise which empowers members through a Self-care platform to choose outpatient facilities afresh. Out of this, capitation payments reduced from Kes 1.98 billion in quarter one of 2019/20 to Kes 753 million in the period under review. The members and dependants covered reduced from 6.62 million in quarter one of 2019/20 to 2.30 million in the same period of 2020/21.
d) Benefits Pre-authorization; the management has increased efficiency and enhanced controls of the pre-authorization platform that was established in 2017. To augment the controls and efficiency, the function was centralized using a Care-Center Model based at the NHIF Headquarters. Currently, the waiting period has been drastically reduced and has greatly assisted the management and control of claims by reducing exposure of fraud and
e) Enhancement of Electronic Claims Processing; NHIF had implemented an e-claim platform for management of medical claims in 2017. The e-claims system has now been greatly enhanced making it more efficient, has improved internal controls to reduce on fraud and user friendly.
f) Mobilizing resources to expand coverage and to cushion from rising health-care costs. NHIF has been steadfast in engaging and lobbying County governments, National Government Constituencies Development Fund (NG-CDF) and other stakeholders in support for indigents. These sponsored programs are on course and have contributed to member growth and increased awareness of NHIF product offerings.
g) The Management also continues to improve communication in order to achieve better business productivity and outcomes. With these initiatives, NHIF has been well geared towards quality, improved services and improved retention rate. Specifically, NHIF has increased the number of bulk SMS's to members mainly to remind informal sector members to make contributions that are due and to notify members when their cards have been used to access care. This is to reduce instances of impersonations and other fraudulent activities.
h) Biometric identification and registration. NHIF has scaled-up the roll-out of registration and identification of beneficiaries using biometrics to all members and the roll-out of electronic claims management system to complete the digital transformation set-up. This has helped the organization reduce fraud and eliminate cases of identity theft. Biometric identification and registration will also go a long way in simplifying identification, improving authentication and accuracy. Linking the identification to e-claim will reduce the administrative burden and

expense generally associated with manual claims processing and submission and ensure quick processing of claims.

366.These strategies eventually reversed the performance trends witnessed in the two financial periods prior to the year under review. The financial performance of the subsequent financial periods also showed improvements with the Fund posting surpluses of Kshs. 3.2 billion and 2.7 billion for the financial years 2020/21 and 2021/22 respectively.

Committee Observations

The Committee observed that –

(i) The Fund, in the subsequent year ending 30th June, 2021, reported a revenue shortfall amounting to Kshs. 22,790,080,000 wherein the actual receipts were Kshs. 57,918,358,000 against budgeted receipts of Kshs. 80,708,438,000 whereas the actual expenditure for the year amounted to Kshs. 75,198,084,000 pointing to a dismal performance in the year and therefore the strategies envisaged to improve performance did not work or there were undisclosed revenue leakages.
(ii) The Fund (NHIF) has transitioned to Social Health Authority (SHA) and it would be important to track the performance through Assets and Liabilities handed over to SHA.

Committee Recommendations

The Committee recommended that –

Within three months upon adoption of this report, the Accounting Officer to submit to the Auditor-General for Audit, a comprehensive and well-documented handing over report detailing all the assets including investments and properties in dispute and liabilities as prepared by the outgoing NHIF management to the incoming Social Health Authority Management. The Auditor-General shall audit and submit the report to the Committee.

2.0 Property, Plant and Equipment

2.1 Land Situated at Karen – 10 Hectares

367.The Committee heard that, as previously reported, included in the property, plant and equipment balance of Kshs. 13,228,073,616 in the statement of financial position as at 30 June 2020 is an amount of Kshs. 298,589,665 in respect of land. The latter balance includes an amount of Kshs. 93,712,675 for land Ref. No.LR 24968/2 measuring 10 hectares situated at Karen.

368.However, the ownership of the parcel of land is in dispute and the matter is in court.

369.Further, information available indicate that the Directorate of Criminal Investigations (DCI) has commenced investigation to establish whether there was fraud in the transfer of ownership of the land and prosecute any person who may have been identified as having breached the law as per the Public Investment Committee (PIC) recommendations on the 21 and 22 report. Progress made on the investigation has not been disclosed in these financial statements.

Management response

370. The management informed the Committee that, NHIF invested in the acquisition of Land, Survey and Designs of a Medical Centre of Excellence and Institute. This was part of the Fund's efforts to respond to challenges related to health and quality healthcare. The proposed medical centre would consist of a referral centre, medical education centre, medical research centre and support facilities.

371. The purchase of the property commenced in 2001 after identification of a property in Karen, which was deemed suitable for development of the proposed medical centre. The Fund thereafter undertook the requisite due diligence on the ownership of the land and this commenced with a search on the property and valuation of the property, by appointment of Tysons Limited and subsequently a report from Ministry of Lands and Settlement Ref No. VAL. 852/V/8 dated 24th January 2002. The letter ascertained the value of the property as at that period to be Kenya Shillings One Hundred Million Five Sixty-Nine Thousand Seven Hundred only (Kshs 100,569,700/=)

372. The property; Land Reference. No 24968/2 – Karen herein after referred to as the property. The property is approximately 9.250 hectares (22.86 acres) held on leasehold interest for a term of 99 years. The property is situated in the Karen Plains Road off Karen Road approximately 12 kilometers west of the city centre.

373. The Fund further appointed a law firm Kipkenda Lilan & Co Advocates who oversaw the entire purchase process. This was through review and guidance on the execution of a sale agreement, the purchase price was determined at Kshs 93,712,675 for the entire property.

374. The Fund is pursuing the matter and has already taken the necessary steps to ensure the matter is determined in its favor. The Fund is relying on the evidence from the Commissioner of Lands confirming that the land is registered under the Fund's Board of Management. The Commissioner of Lands in his letter referenced **186267/T.C/17** dated **22nd August 2007** addressed to the Attorney General stated categorically that the suit property **L.R. NO. 209/24968/2/R 87345** is registered in favor of the NHIF board of management.

375. The Permanent Secretary Ministry of Medical Services on **6th March 2009** wrote to the Attorney General asking the A.G to put up a defense in line with the Commissioner of Lands instructions. The Attorney General's office in their letter referenced **AG/MLS/292/04** dated **9th November 2009** confirmed receipt of the instructions from the Commissioner of Lands and put up a defense of the land.

376. The matter was moved to the Environment and Land Division and assigned a new number **HCCC.ELC NO. 691 of 2011**. This was in a bid to ensure the matter is expedited.

377. NHIF filed an application seeking an inhibition (caveat) on the tittle of the land so as to bar any subsequent registration of a right/interest over the said parcel of land until the matter is fully heard and determined. The court allowed the application on **27th July 2016** and issued orders that NHIF can put up a fence around the entire property and an order inhibiting registration of any dealing with the parcel of land.

i) **Inquiry by the National Land Commission**

378. Following the recommendations by PIC that the National Land Commission conducts further investigations on the issue of the land within six months after adoption of the Report, The National Land Commission indeed notified NHIF of the inquiry as mandated under Section 6 of the National Land Commission Act. NHIF attended the inquiry on **15th June, 2017** and made its submissions before the Commission.

379. The Commission pronounced itself and observed that the issue of ownership of the said parcel of Land was in Court.

380. The supporting documents attached herein include;

i. The Commissioner of Lands letter **ref. 186267/T.C/17** dated **22nd August 2007**
ii. The Attorney General's letter referenced **AG/MLS/292/04** confirming receipt
iii. Court order allowing NHIF to fence Land
iv. Valuation report from Ministry of Lands – 24th January 2002
v. Valuation report prepared by Tysons Limited on L. R NO. 24968/2 dated 20th February 2002.
vi. Application for copy – dates 6th March 2002
vii. Duly executed sale agreement between Kaskazi Traders Ltd and NHIF– dated 28th March 2002
viii. Duly executed and registered transfer - L. R 87345/2 dated 20th December 2002
ix. Copy of title registered L. R 87345/1
x. Legal fees paid to the legal firms in respect to Karen Land

Current status

381. In the 21st Public Investment Committee Report on the Audited Financial statements of State Corporations the above issue was discussed, and as per recommendations given by Public Investment Committee, the Directorate of Criminal Investigations commenced the inquiry/ investigations on the land and its acquisition in the year 2018. The DCI convened a meeting between the Chief Land Registrar from Ministry of Lands, the Land Surveyor from Survey of Kenya, Chief Valuer from Nairobi City County Government and all parties who hold titles to the land. Upon deliberations parties were informed that the DCI would be calling for the surrender of all original titles for purposes of investigation. This was done. The Fund wrote a reminder to DCI on 20th May 2022 requesting an update on the same. Further, follow up has revealed that the investigations have now been completed and the file has been forwarded to ODPP for comment.

Committee Visit to the disputed land

382. The committee visited the said property on 20th February 2024 on a fact-finding mission.

Committee Observations

The Committee observed that it had deliberated on the Karen land matter in its report for financial year 2018/2019 and would want to maintain the observations and recommendations therein as detailed below;

(i) The matter had been discussed in the previous PIC reports and despite the Committee making various observations and recommendations, no action or progress has been made to implement the envisaged project or resolve the various litigations arising from the contractual engagements or the land on which the project will be situated.

(ii) The Fund had made payments of Kshs.1,444,687,484 for drawings and designs for the proposed Resource Centre.By the time the Fund changed the project from a proposed Resource Center to a Medical Center of Excellence, the land was already in dispute.This exposed the Fund to further litigation arising from the Medical Center project. The management committed the Fund to incur further nugatory expenditure without a justified cause.

(iii)The Accounting officer and the staff involved in the procurement process engaged the same Architects and Consultants for the Medical Center project without subjecting the contract to competitive bidding despite the fact that the scope and specification of the project was different to the proposed Resource Center.

(iv)The land was undeveloped when the Committee visited the site on 20th February 2024 and had another private developer had claimed ownership in addition to the earlier ones.

Committee Recommendations

(i) Within three months upon adoption of this report, the Accounting Officer NHIF/ SHA in consultation with the Attorney-General and the National Land Commission should pursue the expeditious prosecution and conclusion of the cases in addition to the arbitration pertaining to the consultancies to their logical conclusion with a view to safeguarding the ownership interest in the land and settling the disputes.

(ii) Within three months upon adoption of this report, the EACC should undertake an investigation into how the consultants were engaged, whether there was fraud, corruption or other financial improprieties in the construction of the proposed resource centre and whether there was any breach of the law in the engagement process or wastage of public funds. If any officer is found culpable, he/she should be held personally liable for the financial loss, DPP should initiate a legal process to recover the amount so lost with interest from the concerned officer(s) at the prevailing CBK rates.

2.2 Proposed Resource Centre at Karen Land

383.The Committee heard that, as previously reported, included in the property, plant and equipment balance of Kshs. 13,228,073,616 as at 30 June 2020 is work in progress balance of Kshs.1,444,687,484 being payments for drawings and designs for the proposed Resource Centre. Construction of the Resource Center has not commenced although the land was acquired sixteen years (16) ago. As noted in the previous year, the management has explained that construction of the Resource Centre has not yet commenced because of lack of approval from parent Ministry and the land ownership dispute in court.

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

Management response

385.The management informed the Committee that, it is true that as at 30th June, 2020 there was work in progress of **Kshs. 1,444,687,484** in respect of payments for the proposed Resource Centre on the Karen Land whose construction has not yet commenced to date and whose amount remains in our books. The amount comprises arbitration award to Architects and further payments to other consultants and professionals that had been engaged. They include quantity surveys, business plans and financial analysis consultancy, legal fees, architectural design services fees and feasibility study.

386.In the year 2001/2002 the Fund planned to build a Resource Centre on the land acquired in Karen at a cost of **Kshs. 93,712,675.00**. The establishment and implementation of a Resource Centre on the land was approved by the board in 2002.

387.The then Chief Executive commissioned consultants in accordance with the Architects and Quantity Surveyors Act Cap 525 of the Laws of Kenya to carry out a feasibility study on the development of a recreational facility.

Arbitration by Architects and Quantity Surveyors on the Proposed Resource Centre

388.The Architects and Quantity Surveyors did the work as commissioned and submitted their report together with their fee notes for **Kshs. 734,524,029.25**. The fee notes were not however honored because the management had not received prior approval for the works from the parent Ministry. This resulted in a dispute that was taken to arbitration. The Architects and Quantity Surveyors then commenced Arbitration proceedings against the Fund for the demand for their fees. The Arbitrator after reviewing the matter reduced the claim from **Kshs. 734,524,029.25** and awarded the Architects and Quantity Surveyors **Kshs. 352,131,345.15**. Following the decision of the Arbitrator and claimants' filing of documents to enforce the Award, the Funds Lawyers gave their opinion that the Award be challenged at the High Court. The Fund disputed the award and proceeded to the high court to seek redress.

389.Upon further consultation with the parent ministry and the Attorney General, NHIF Board and the Architects and Quantity Surveyors recorded a consent order in the High Court and the matter was settled. The Architects and Quantity Surveyors were paid a sum of Kshs. 407,107,645.00. Claims lodged by engineers and other consultants totaling Kshs. 333,846,784 were arrived at after settlement deeds were entered into on 24th June 2011. The claims were fully paid.

The Karen Medical Centre of Excellence

390.The Original Project was revised to a Medical Center of Excellence and a Vision 2030 flagship project for the Ministry of Health following approval of a cabinet memorandum on the NHIF medical resource centre as communicated to NHIF CEO by the Minister of Health in a letter ref. **MMS/ADM/1/16/1** dated **4th December 2008** ***(APPENDIX-B).*** The Karen Medical center of excellence project led to litigations from the consultants.

Litigation Arising from the Dispute on the Karen Medical Centre of Excellence

391.The following are the litigations commenced by the Consultants in respect to the Karen Medical Centre of Excellence.

i. High Court Civil Suit No. 504 of 2016: National Hospital Insurance Fund Vs. Baseline Architects Ltd.
ii. Rebman Ambalo Malala T/A Ujenzi Consultants Vs NHIF HCCC NO. 25 OF 2016
iii. Comm Case No. 255 Of 2016 - NHIF Vs. Eng. Peter Scott And Manga And Associates
iv. Civil Suit No. 176 Of 2017 – Professional Consultants Ltd –Vs- NHIF

21st Report of PIC – Committee Recommendations

392.This matter was presented to the committee in its last sitting where it recommended that: -

i. The Fund fast tracks the hearing and determination of case HCCC.ELC NO.691 of 2011; and
ii. The Fund secures the disputed parcel of land through fencing and hire a competent security firm to guard the property until the case is fully determined.

393.This issue was cited in prior year audit queries since it had been presented to the Public Investment committee and appeared in the Reports for the years 2009/2010, 2010/2011, 2011/2012, 2012/2013, 2013/2014 and 2014/2015. In the 21st Public Investment Committee Report on the Audited Financial Statements of State Corporations the above issue was discussed and recommendations made as cited on page 9 and 10 of the 21st PIC Report.

394.The committee recommended that issues that have been satisfactorily resolved or comprehensively addressed by the committee should be excluded from the subsequent Reports of the Auditor General, provided that the management has sufficiently disclosed these unresolved matters in the notes to their respective financial statements as required by the International Accounting Standards.

Current Status

395.Although the case has not come to its logical conclusion, the Fund has pursued the case regarding ownership of the land in Karen through the DCI.

396.Reference is made to the pending matters in court and communications showing the status of the cases. The dispute of ownership and the dispute with the quantity surveyors is still unresolved, except for the matter of Baseline Architects, the Court of Appeal upheld the decision of the High Court and ruled in favour of the Fund.

397.NHIF Vs Crownline Freighters and others Nairobi ELC No. 691 of 2011 (as Consolidated with ELC 152 of 2018) was mentioned before the court on 9th May 2022 and the court gave the parties more time to file relevant documents. The Fund filed its defense on 25th October 2022 and is currently awaiting directions from the courts. The Court case has not progressed since the DCI is still carrying out forensic investigations so as to determine the true proprietor of the suit property.

398.In the Matter of Arbitration between Manga & Associates vs NHIF. The matter came up before the Arbitrator however a query was raised on instructions noting the Attorney General's Office in regard to engagement of external counsel. Fund has already sought guidance from the Attorney General noting that this was an existing matter. Attorney general responded and approved use of Ogetto Otachi Advocates to represent the Fund on the Karen land matters and the cases related to the same.

399.HCCC No. 25 of 2016 Rebman Ambalo t/a Ujenzi Consultant vs NHIF (Consolidated with HCCC No. 176 of 297 Professional Consultant Limited vs NHIF). The Fund introduced the then Chief Executive Officer as a witness and an expert witness, in procurement matters to support the Fund's defense. The matter came up for mention on 6th February 2023, however, the matter did not proceed to hearing by reason that the learned judge was away on his annual leave. Consequently, the matter was rescheduled for mention on 24th March 2023. However, the matters were reallocated to be placed and seized by the Learned Justice Sifuna. In this regard, the presiding judge scheduled mention of this matter, before the judge seize of it, for the 28th April, 2023, to obtain directions on hearing.

Committee Observations

The Committee observed that it had deliberated on the Proposed Resource Centre at Karen Land matter in its report for financial year 2018/2019 and would want to maintain the observations and recommendations therein as detailed below;

i. The matter had been discussed in the previous PIC reports and despite the Committee making various observations and recommendations, no action or progress has been made to implement the envisaged project or resolve the various litigations arising from the contractual engagements or the land on which the project will be situated.
ii. The Fund had made payments of Kshs.1,444,687,484 for drawings and designs for the proposed Resource Centre.
iii. By the time the Fund changed the project from a proposed Resource Center to a Medical Center of Excellence, the land was already in dispute.This exposed the Fund to further litigation arising from the Medical Center project. The management committed the Fund to incur further nugatory expenditure without a justified cause.
iv. The Accounting officer and the staff involved in the procurement process engaged the same Architects and Consultants for the Medical Center project without subjecting the contract to competitive bidding despite the fact that the scope and specification of the project was different to the proposed Resource Center.
v. The land was undeveloped when the Committee visited the site on 20th February 2024 and had another private developer had claimed ownership in addition to the earlier ones.

Committee Recommendations

i. Within three months upon adoption of this report, the Accounting Officer NHIF/ SHA in consultation with the Attorney-General and the National Land Commission should pursue the expeditious prosecution and conclusion of the cases in addition to the arbitration pertaining to the consultancies to their logical conclusion with a view to safeguarding the ownership interest in the land and settling the disputes.

ii. Within three months upon adoption of this report, the EACC should undertake an investigation into how the consultants were engaged, whether there was fraud, corruption or other financial improprieties in the construction of the proposed resource centre and whether there was any breach of the law in the engagement process or wastage of public funds. If any officer is found culpable, he/she should be held personally liable for the financial loss, DPP should initiate a legal process to recover the amount so lost with interest from the concerned officer(s) at the prevailing CBK rates.

2.3 Construction of Multi Storey Car Park

400. The Committee heard that, as previously reported, National Hospital Insurance Fund entered into an agreement with local construction firm for construction and completion of a multi storey car park at a contract sum of Kshs. 909,709,305. According to information available, the project commenced in May 2002 and was scheduled for completion in August 2003. Records available, however, indicate that the contract sum was later revised upwards to Kshs. 1,179,611,756 representing approximately 30% above the original contract sum of Kshs. 909,709,305.

401. Although records available indicate that the car park was completed in July 2008 at a total cost of Kshs. 3,342,120,239, a further amount of Kshs.626,635,998 and Kshs.4,706,521 was incurred in 2009/2010 and 2010/2011 respectively on the car park increasing its total expenditure to Kshs.3,973,462,758 as at 30 June 2011 or resulting to an increase of approximately 337% over and above the original contract sum of Kshs.909,709,305. Further and as similarly observed in the prior years' reports, the escalation of costs of the car park by 337% over and above the original cost has not been justified.

402. Although the issue has been discussed by the Public Investment Committee, no action has been taken on the Committee recommendations as per the 19th and 21st reports which recommended that the Director of Ethics and Anti-Corruption Commission should institute and fast track investigation on the project with a view to preferring charges against all those who would be found culpable. As at the time of this audit no progress report has been received from the Commission.

403. In the circumstances, it has not been possible to ascertain whether the property, plant and equipment balance of Kshs.13,225,241,616 as at 30 June 2020 is fairly stated.

Management response

404. The management informed the Committee that, the Car Park is a seven Storey Building with basement floors, which is designed to accommodate 780 cars. The project commenced in **May**

2002 and was scheduled for completion in **August 2003**. The original cost of the project was **Kshs 909,709,305.40** over a contract period of 65 weeks.

405.The completion period was revised from **August 2003** due to suspensions of all projects by the Government vide **Treasury circular no. 10** dated **22nd May 2003** as well as the Fund giving preference to core strategic activities resulting to reduced cash flow.

406.The Management as per the contract provisions introduced vehicular lifts that were not part of the tendered designs and bills of quantities. The cost could not be retained at the original cost of **Kshs. 909,709,305.40** since the Contractor had already increased the service area of the project. This led to Design changes to the structure and foundation works. An additional basement floor was created to cater for the displaced area arising because of vehicular lifts, ramps and design overhaul. This led to an increase in service area and an additional cost of **Kshs. 673, 465,787.10** making the total cost to be **Kshs. 1,583,175,092.50**. The vehicular lifts were later found not to be viable leading to downward variation to **Kshs. 1,179,611,756.00** as observed in audit report.

407.The variation from **Kshs. 1,179,611,756.00** to **Kshs. 3,342,120,239.00** was due to price escalations as per contract provisions. These were contractual claims which were as per contract provisions and mostly occasioned by delays in completion period and upward increase in cost of materials.

408.As noted in the audit report the Multi Storey Car Park was completed in **July 2008.** The Fund wrote to the Chief Quantity Surveyor under Ministry of Public Works vide letter Ref **HF/C/958VOL.X/114** requesting for a technical report on the completed Multi Storey Car Park. The chief quantity surveyor replied vide letter Ref. No. **QD15/GEN/1369** on the draft final account recommending release of the retention money after the issue of **certificate of making Good Defects** and payment of 60% of the projected Final Account. On 30th of March 2010 the Fund received Final Account from the chief quantity surveyor instructing payment of the final dues to the contractor Ref. No. **QD15/GEN/1613**. Payments totaling to **Kshs. 626,635,998.00** incurred in **2009/10** and **Kshs. 4,706,521** incurred in **2010/11** are related to pending claims which were payable to the contractor after completion of the Multi Storey Car Park. All the mentioned correspondences are hereby attached.
The Fund appeared before the PIC Committee on 15th of March 2018 and this matter was discussed thereafter the committee visited the Carpark Building.

21ST REPORT OF PIC – COMMITTEE RECOMMENDATIONS

409.This matter was presented to the 21st PIC committee, where it recommended that Ethics and Anti-Corruption Commission should fast track investigations into the procurement process of the Multi-Storage Car Park, with a view of preferring charges against all those found culpable of defrauding the Fund.

410.This issue appeared in the Reports for the years 2009/2010, 2010/2011, 2011/2012, 2012/2013, 2013/2014 and 2014/2015. In the 21st Public Investment Committee Report on the Audited Financial Statements of State Corporations the above issue was discussed and recommendations made as cited on page 9 and 10 of the 21st PIC Report. The committee recommended that the issues that had been satisfactorily resolved or comprehensively addressed by the committee should be excluded from the subsequent Reports of the Auditor General, provided that the management has sufficiently disclosed these unresolved matters in the notes to their respective financial statements as required by the International Accounting Standard no. 37.

CURRENT STATUS

411. Some of the organizations that are currently occupying the building are government institutions such as Ministry of environment, Kenya Fishery Services, NACADA, Cabinet affairs office, National Land Commission, Kenya Corporyrights Board, Water services Regulatory Board, Cabinet Secretariat, Kenya Roads Board, Kenya Water Towers Agency and other small private firms as well as NHIF's Nairobi branch office.

412. Matter was therefore referred to EACC as directed by Public Investment Committee and EACC commenced investigations by requesting for original documentation. In September 2022 the Fund's CEO was invited to record a statement on status of the documents. EACC guided that they would give way forward.

Committee visit to the Project

413. The Committee visited the project on 20th February 2024 with a view to establish the completion status of the project, its occupancy as submitted by the Accounting officer and the car park utilization capacity.

Committee Observations

The Committee observed that it had deliberated on the Construction of Multi Storey Car Park matter in its report for financial year 2018/2019 and would want to maintain the observations and recommendations therein as detailed below;

i. During the project visit the Committee observed that although the Accounting officer indicated that some organizations were currently occupying the building including Ministry of environment, Kenya Fishery Services, NACADA, Cabinet affairs office, National Land Commission, Kenya Copyrights Board, Water services Regulatory Board, Cabinet Secretariat, Kenya Roads Board, Kenya Water Towers Agency and other small private firms as well as NHIF's Nairobi branch office, only Judiciary had stored its documents in one of the Floors and the other tenants had vacated the premises. The reason for such mass vacation was not clear. Further, the parking was seriously under-utilized with huge idle capacity and therefore the project was a waste of public resources, poorly thought-out and planned despite the huge resources sunk into it.
ii. This matter had been dealt with in the previous PIC reports, that is the 13^{th} 16^{th} 19^{th} and 21st, wherein the Committee observed the unprofessional manner in which the project was executed.

iii. The previous PICs recommended that the EACC investigates the procurement process of the project and comes up with appropriate recommendations regarding any breach of law.

Committee Recommendations

The Committee recommends that –

Within three months upon adoption of this report, the EACC should fast-rack the investigation on how the project was initiated, feasibility done, construction works procured, how the contract price was varied by approximately 337% over and above the original contract sum of Kshs.909,709,305 in breach of the law and eventually how the vehicular lift was introduced midway into the project and finally found unimplementable. The investigation should also establish whether there was fraud, corruption or other financial improprieties in the construction of the car park and whether there was any breach of the law in the engagement process or wastage of public funds. If any officer is found culpable, he/she should be held personally liable for the financial loss, DPP should initiate a legal process to recover the amount so lost with interest from the concerned officer(s) at the prevailing CBK rates.

3.0 Unquoted Investments

414. The Committee heard that, as previously reported and as disclosed at note 28 to the financial statements, unquoted investment balance of Kshs. 368,392,699 as at 30 June 2020 includes a balance of Kshs. 314,192,699 in respect of a loan advanced by the Fund to Moi Teaching and Referral Hospital (MTRH) at an interest rate of 3% per annum. However, though the loan was not supported with a signed loan agreement between the Fund and MTRH, MTRH has already disputed the advocates/legal costs amounting to Kshs. 40,883,040 charged to its loan account. As at the time of the audit, there was no signed Memorandum of understanding (MoU) between NHIF, MTRH and IAEA. Further, to date there is no signed financing agreement between NHIF and MTRH which defines the terms of the Loan, purpose and the repayment methods.

415. Although the management has acknowledged the omission, it was not explained how the anomaly will be resolved and the fall back plan in case of default by the Hospital.

416. The unquoted investment balance of Kshs. 368, 392,699 also includes consolidated bank shares of Kshs. 54,200,000 which are not traded and for which no dividend has been paid in the past. Under the circumstances, the investment in consolidated bank shares is impaired. Consequently, the validity of unquoted investment balance of Kshs. 368, 392,699 as at 30 June 2020 could not be confirmed.

Management response

417. The management informed the Committee that, MTRH, wrote to NHIF vide a letter Ref NO. ELD/MTRH/ADMIN/1/VOL.IV/2015 dated 12th July 2017 forwarding a proposal requesting financing for the purchase of the Radiation Oncology equipment.

418. A Board Paper was prepared and presented to the Finance and Investment Committee on the proposal to offer loan facility to MTRH. The board approved a loan facility of Kshs Kshs.312,669,869.20

419. NHIF wrote to MMA advocates on 12th July 2018, Ref No. HF/HOSP/3/1 VOL.1/8 requesting them to prepare a finance contract between NHIF and MTRH for approved amount of Kshs.312,669,869.20 The instructions included the total amount advanced and legal fees which would be recovered over a period of 10 years at an interest rate of 3% per annum.

420. On 5th December 2019 Draft Head of Terms, draft financing agreements and memorandum of understanding between NHIF and MTRH were finalised and were shared with MTRH for their review and discussions thereafter commenced on the terms and conditions. One of the main concerns raised by MTRH was concerning on the loan amortization Schedule.

Current Status

421. The Board approved the execution of the contract upon review of loan amortization form to include the correct legal fees. This communication has since been shared with MTRH for their comments and response received. Loan amortization form is being prepared and contract amended for execution. The loan agreement is now ready for execution by both parties.

422. At the moment the Fund continues to recover the loan from MTRH's claim payment at the rate of Kshs. 3,178,918 per month towards the repayment of the loan and MTRH have acknowledged this recovery as the two entities finalize the execution of the contract. The balance currently stands at Kshs. 237,601,306 (as at 24th April 2023).

Committee Observations

The Committee observed that it had deliberated on the Unquoted Investments matter in its report for financial year 2018/2019 and would want to maintain the observations and recommendations therein as detailed below;

i) The Loan amount of Kshs. 340,454,576 advanced by the Fund to Moi Teaching and Referral Hospital (MTRH) at an interest rate of 3% per annum was not initially supported with a signed loan agreement between the Fund and MTRH. However the two institutions signed an agreement on 23rd October, 2023 and not 23rd October, 2024 as indicated in the management submission.
ii) The loan amount as per the loan agreement is Kshs. 312,669,869.2 with an additional charge of Kshs.7,236,298.08. the legal charges could have been avoided if the two institutions used their internal legal departments and therefore it was nugatory expenditure.
iii) There was an unexplained extra charge of Kshs. 20,548,385.72 arising from the difference between the loan amount reflected as Khs. 340,454,576 and the agreement amount of Kshs. 312,669,869.2 with an additional legal charges of Kshs.7,236,298.08.

iv) The Accounting Officer was in breach of the fiduciary duties assigned to him by advancing the Fund money to MTRH without valid signed loan Agreement which is not one of the core mandate of the Fund.
v) The management acknowledged the omission, and formalized the process where the contract between NHIF And MTRH was signed on 23rd Oct,2024.
vi) The Fund continues to recover the loan from MTRH's claim payment at the rate of Kshs. 3,019,164 per month towards the repayment of the loan and the outstanding balance as at 30th June, 2024 stood at Kshs 120,637,811.

Committee Recommendations

The Committee recommends that –

The committee reprimands the then Accounting officer for failing to ensure that a valid Loan agreement was in place before advancing the funds.

3.1 Shares in Consolidated Bank – KES 54,200,000

423.The Committee heard that, the shares held at Consolidated Bank Ltd comprised 590,000 ordinary shares valued at KES. 11,800,000 and 2,120,000 preference shares valued at Kshs.. 42,400,000 totaling to Kshs.. 54,200,000.

Current Status

424.On the Ordinary shares held at Consolidated Bank Ltd, it is true that the Fund included the total value at cost of Kshs. 54,200,000 in its financial statements. The Fund had no reason, as at the close of the financial year, to believe that the investment in Consolidated Bank Ltd was impaired considering that the Bank remained a going concern and the Fund could claim full ownership of the investment.

425.However, management intends to assess the recoverability of the investment in consolidated Bank Ltd in the current period to determine an appropriate treatment in the financial statements in light of the audit recommendations.

Committee Observations

The Committee observed that it had deliberated on the Shares in Consolidated Bank matter in its report for financial year 2018/2019 and would want to maintain the observations and recommendations therein as detailed below;

i) The investment comprising of 590,000 ordinary shares valued at Kshs. 11,800,000 and 2,120,000 preference shares valued at Kshs. 42,400,000 totaling to Kshs. 54,200,000 had been deemed impaired and its recoverability doubtful, although the bank still continues to operate.
ii) The NHIF Management, having explored all recovery options provided for in its policies have declared the deposits impaired and its recoverability doubtful, without disclosing the steps taken to dispose off the shares.

iii) The Consolidated bank Shares have not been publicly traded at NSE and therefore, it was not clear how NHIF made the decision to invest in the share.

iv) NHIF has not been earning dividend for the amount invested in the bank despite the consolidated making profits. This was not a prudent financial investment when holding capital that was not earning any dividends and increase in value.

Committee Recommendations

The Committee recommends that –

Within three months upon adoption of this report, the Accounting officer should provide a comprehensive report on status of the investments as to whether they exist and their economic value with a view to recover the amount so lost with interest at the prevailing CBK rates from the concerned Accounting officer.

4.0 Short Term Investments

426.The Committee heard that, as previously reported, included in the statement of financial position as at 30 June 2020 is short term investments balance of Kshs. 12,381,650,000 which is net of provision for impaired investments of Kshs. 1,304,410,609. The provision includes an amount of Kshs. 49,500,000 which had been deposited by the Fund on 26th June, 2001 at the consolidated Bank Ltd in Nairobi. The entire deposit of Kshs. 49,500,000 was off-set by the Bank against a guarantee executed by the former Fund Chief Executive Officer on behalf of Euro Bank Ltd. It is not clear and the management has not explained the circumstances under which the Fund's deposit was used as a guarantee by the then Chief Executive Officer.

427.Although the Public Investment Committee recommended in the 21st report that;

(i) The then CEO of NHIF be held accountable for any losses incurred in the irregular investment of the surplus funds in Consolidated Bank and therefore be surcharged for Kshs. 40,065,205, being the value of the un-deposited cheque No.022477 of 23 September 2002 from Euro Bank;

(ii) The then Consolidated Bank's CEO and Finance Manager should be held accountable for colluding with NHIF to mismanage the invested funds;

(iii) In view of the fact that the Fund had no capacity to provide guarantee for a loan to a private bank, Consolidated Bank should pay the amount of Kshs.49.5 million owed to the Fund;

(iv) The then Senior Management of Consolidated Bank including the then Managing Director, and Finance Manager should also be held accountable for colluding with NHIF to mismanage the invested funds.

(v) The former Managing Director of Consolidated Bank should be surcharged for the funds that were advanced to Euro Bank in overnight lending. He should further be held accountable for the Kshs.49.5 million which the Bank could not recover from Euro Bank and consequently offset the same against the fixed deposits of NHIF.

(vi) NHIF should relentlessly pursue Consolidated Bank for recovery of Kshs. 49.5 million;

(vii) NHIF CEO must ensure that all financial investments by the Fund are done in accordance with Treasury Circular No.10 of 1992 and section 28(1) of the Public Finance Management Act.

428.No action appears to have been taken to recover the Kshs. 49,500,000 the Fund lost. In the circumstance, it has not been possible to confirm whether the short-term investment balance of Kshs. 12,381,650,000 is fairly stated.

Management response

429.The management informed the Committee that, In June 2001 NHIF placed a fixed deposit with consolidated bank of Kshs 600 million. In August 2001 the then Chief Executive of NHIF made a guarantee on behalf of Euro Bank to enable Consolidated Bank to use the Fixed Deposit as security. When Euro Bank defaulted payment, Consolidated bank was unable to recover payment and therefore offset **Kshs. 49.5 million** from the total amount of **Kshs. 600 million.**

430.This matter was handled by the Inspectorate of State Corporations, which was of the view that the Fund had no capacity to provide a guarantee for a loan to a private bank. The Inspectorate of State Corporation further noted that consolidated bank should pay back the amount of **Kshs. 49.5 million.**

21ST REPORT OF PIC – COMMITTEE RECOMMENDATIONS

431.This matter was presented to the PIC Committee where it recommended in its 21st Report that the query should be excluded from subsequent Reports of the Auditor General, provided that the management makes full disclosure of this unresolved matter in its financial statements as required by the International Accounting Standards no. 37.

Committee Observations

The Committee observed that it had deliberated on the Short Term Investments matter in its report for the financial year 2018/2019 and would want to maintain the observations and recommendations therein as detailed below;

i. This matter (HCCC NO. 505 OF 2003) is actively in court

ii. The matter was handled by the Inspectorate of State Corporations, which was of the view that the Fund had no capacity to provide a guarantee for a loan to a private bank and therefore Consolidated Bank should pay the amount of Kshs.49.5 million owed to the Fund.

Committee Recommendations

The Committee recommends that –

i. NHIF should relentlessly pursue Consolidated Bank for recovery of Kshs.49.5 million.

ii. The Accounting Officer, NHIF should at all times ensure that all financial investments by the Fund are done in accordance with the National Treasury guidelines.

5.0 Trade and Other Receivables

5.1 Long outstanding Return to Drawer (R.D) Cheques

432.The Committee heard that, the statement of financial position reflects a balance Kshs.7,781,204,639 under trade and other receivables which, as disclosed in Note 29 to the financial statements, includes R.D. Cheques of Kshs.18,061,171 which have been outstanding for more than six (6) months and are therefore stale.

433.Consequently, the recoverability of return to drawer cheques balance of Kshs.18,061,171 as at 30 June 2020 could not be confirmed.

Management response

434.The management informed the Committee that,the RD cheques totaling Kshs 18,061,170, are associated with companies that have closed, and the debts exceed six years, rendering them outside the scope of the Action Act on debt collection. Consequently, a provision for doubtful debt has been established in the financial statements. As per debt management clause 4.3.4.1, 50% of outstanding contributions aged between 12 and 24 months shall be included in the provision, except in cases where adhered-to payment plans are in place.

435.Clause 4.3.4.2 specifies that debts older than 24 months require 100% of the overdue amount to be included in the provision, unless adhered-to payment plans are in place. Furthermore, clause 4.3.5 on bad debts states that debts exceeding five years shall be classified as bad debts, subject to potential write-off by the board of management. The Fund intends to pursue board approval for the write-off, as the debt is deemed uncollectable.

436.In addition, management has implemented a system module that automatically reverses payments from employers when their cheques bounce, prompting immediate pursuit of the unpaid amount for that specific month. Consequently, the issue of "Refer to Drawer" cheques has been eliminated. NHIF collection banks, KCB and Co-operative banks, now only accept their own drawn cheques, which are verified for account status before acceptance, further reducing instances of "Refer to Drawer" cheques.

437.Moreover, the CEO established a task force on June 22, 2022, tasked with reviewing debt and providing management with recommendations for appropriate actions concerning each debt category within the organization. The task force anticipates completing its work in May 2023, at which point it will present a report to management for review, discussion, and subsequent approval on appointment of the committee.

Committee Observations

The Committee observed that it had deliberated on the Long outstanding Return to Drawer (R.D) Cheques matter in its report for financial year 2018/2019 and would want to maintain the observations and recommendations therein as detailed below;

i. There are 168 companies with uncollectable RD cheques amounting to Kshs.5,332,807.00 having closed business/ operation implying lost contributions. Also, the Fund is unable to trace 67 employers with outstanding amount totaling to Kshs. 2,252,806 through their respective addresses as per the NHIF Data Base. The Fund intends to seek the Board approval for consideration for write off.

ii. It had taken over six months for NHIF to act on uncollectable RD cheques amounting to Kshs.19,061,721 which is a sign of laxity on the part of the Fund management to ensure compliance by employers.

Committee Recommendations

The Committee recommends that –

Within three months upon adoption of this report, the accounting officer NHIF/SHA should submit a comprehensive report to the Committee on all the outstanding amounts/dues from the employers accounts that have been dormant and the intended actions / strategies for recovery.

5.2 Sundry Debtors

438.The Committee heard that, included in trade and other receivables balance of Kshs. 7,781,204,639 as at 30 June 2020 are sundry debtors' figure of Kshs. 5,018,843 which include Kshs. 4,414,750 relating to an insurance claim for motor vehicle registration No KCK 509U which was involved in an accident 27 April 2018. As at the time of this audit in April 2021, the claim had not been paid.

439.Consequently, the recoverability of sundry debtors' balance of Kshs. 5,018,843 as at 30 June 2020 could not be confirmed.

Management response

440.The management informed the Committee that, motor Vehicle KCK 509U was involved in an accident on 27th April 2018 which was reported to our then Insurer AMACO. The accident was assessed, and the vehicle was declared a write-off. Evaluation was done and a discharge voucher of Kshs. 4,414,750 was issued by AMACO. The discharge was signed and returned on 12th June 2019.

441.This claim has however not been settled by the insurer, despite numerous engagements via emails and letters. The most recent communication to the client was done on 10th December 2021.

442.Channel Insurance brokers who were providing Insurance brokerage services at the time of the accident tried to engage the Insurer on various occasions including engaging the regulator as indicated to us via an email dated 10th March 2021.

Current Status

443.The Fund, having received a discharge voucher from AMACO insurance company signaling amount to be received from the insurer in regard to compensation of motor vehicle KCK 509U, signed, stamped and returned the discharge voucher on 12th June 2019 for the payment to be processed and wired. The insurance company has since not made payment despite numerous follow-ups. Due to this, The Fund has made further engagements with the regulator (IRA) in pursuit of the debt to ensure that it is fully recovered. Fund has shared policy details with IRA and waits for further action.

444.Meanwhile, to avoid recurrence of the above scenario, management has caused for all policy documents to include timelines to guide claims and compensation processes in case of incidences of motor accidents.

Committee Observations

The Committee observed that –

The vehicle was declared a write-off, evaluation was done and a discharge voucher of Kshs. 4,414,750 was issued by AMACO. However, the discharge signed by NHIF and returned on 12th June 2019 bore the name of Payee as KEBS. It was therefore not clear what relationship NHIF and KEBs had with regard to the accident vehicle. The claim had not yet been settled as at the time of interrogation in 2023.

Committee Recommendations

The Committee recommends that –

Within three months upon adoption of this report, the Accounting Officer, NHIF/SHA should provide prove of settlement to the Committee of the claim by AMACO in form of certified bank statements.

6.0 Benefits Expenses

6.1 National Health Scheme Benefit Expenses (overpayment above specified limits)

445.The Committee heard that, the statement of Comprehensive income reflects an expenditure of Kshs. 29,971,058,098 under National Health Scheme Benefits expenses. However, the expenditure includes cumulative overpayments amounting to Kshs. 828,729,148 paid contrary to the limits specified by the Board for C-Section, Normal delivery, Minor surgery, Major Surgery, MRI, Rehabilitation, CT-Scan, Chemotherapy, Radiology, Kidney transplant and special surgery and overseas treatment as tabulated below.

Benefit	Overpayment above the specified limit (Kshs)
C-Section	2,401,919.00
Normal delivery	23,774,751.50
Minor surgery	38,823,606.40
Major Surgery	374,476,120.49
MRI	17,290,772.00
Rehabilitation	8,690,649.00
CT-Scan	101,357,766.00
Chemotherapy -Basic	100,177,883.27
Radiology	156,214,613.00
Kidney transplant	260,000.00
Special surgery	4,073,026.35
Overseas treatment	1,188,042.25
Total	**828,729,148.96**

446.No explanation has been provided for authorizing and approving payment above the limits specified in the benefits package.

Management response

447.The management informed the Committee that, from analysis of the excel sheets provided on suspected cases of overpayment, the following applies;

i. The benefit design for NHIF allows beneficiaries to access multiple benefits at the same time as necessitated by the treatment plan. When a member is admitted at a facility and accesses multiple benefits in addition to inpatient care e.g. dialysis sessions, CT scans, Ultrasound, MRI, Chemotherapy, radiotherapy, the rebate amount will also be payable in addition to the additional benefits approved. This claim may be launched as one single claim for that specific admission. The onus is on NHIF to investigate the invoice and discharge summary to justify the claim amount. Some beneficiaries require more than one surgery during an admission stay, either on same site or different sites depending on the condition of the patient. Such are approved according to policy based on medical necessity and are usually claimed within the same invoice.

ii. The Notification system was not tied to the pre-authorization system, which allowed the hospital to use one single case code for claiming multiple approved benefits. The claims onus has been on the claims officers to check manually if all multiple benefits had been approved. This has been improved in the e-claim system where all claims are tied to the pre-auth.

iii. Some services e.g. Dialysis, radiotherapy and deliveries can be given several times in a short period, e.g. one week/ one month. Facilities can launch one claim for all the sessions done as approved within the week/month.

iv. Some benefits e.g. deliveries, surgeries, chemotherapy, radiotherapy and dialysis may end up with medical complications outside the scope of the approved package. Such compilations necessitate medical management beyond the package thus rebate or fee for service (depending on scheme) will apply.

v. It is possible for some patients to receive some benefits during admission, such benefits include dialysis, chemotherapy, radiotherapy, Ct Scan or MRI. Several claims for the member may be launched with one invoice for the whole treatment period.

vi. Also, you can have a major and a minor surgery at the same time. In addition to this, in most RTA injuries, a member may require multiple major surgeries that will be done during one theatre session. These will be approved as a specialized surgery.

vii. All radiotherapy treatment requires CT scan or MRI simulation hence approvals will be done for both radiotherapy and the imaging required.

viii. For the current HCP contract, all surgical procedures were costed as per level of care and capacity of the Hospital hence all surgeries are approved as per the contract price list specific to individual HCPs. Depending on the complexity and inputs that go towards a surgery, some rates for major surgeries were lowered to as low as Kshs. 50,000 with a few surgeries (that require implants) going up to Kshs. 250,000. For Minor surgeries, the rates are as low as Kshs. 10,000 with some eye surgeries going up to Kshs. 50,000.

ix. For chemotherapy services, the Board approved upper limits to what is payable tying these limits to the line of treatment. Some 1st line treatment drugs can be as cheap as Kshs. 900 per cycle and some 3rd line treatment drugs can be as low as Kshs. 17,000 per cycle. Hence the variancies in the payments

448. There were many instances of using the wrong case code to launch a claim, but this does not affect the payment decision, as onus is on NHIF to thoroughly peruse through the claim's documents, invoices and discharge summaries and pay within the approved Board limits. Management recognized this as a major hinderance to accurate reporting and wrote a letter to the branch offices so that they can re-sensitize the HCPs under their jurisdiction on the proper use of case codes.

449. After evaluating the list provided, the following is a sample description of access to benefits across different packages:

Doc. no	**Idno.**	**Package accessed**	**Perceived overpayment in KSh.**	**Explanation**
11425376	9836251	CT-scan	2000	The client accessed 2 CT scans at Ksh.5000 each, thus total payments is Ksh.10000
11548818	4550658	Ct scan	2000	The case was miscoded by hospital, member accessed minor surgery in the eye

9841786	0499716	CT scan	3000	The member accessed Ct scan and an ultrasound which is packages at Ksh.3000
11041359	27013133	Major surgery	321	The package amount for this operation is Ksh. 150000, procedure reimbursed within contract limits
9441962	24442430	Major surgery	3000	The package amount for this operation is Ksh. 130000, and the patient also had an u/s whose board approved rate is Ksh 3000
10100214	0994897	Major surgery	6300	KARO member entitled to full coverage of bill
9447308	27944347	Dialysis	4000	Patient accessed dialysis at Ksh. 9500 and bed rebate at Ksh. 4000
10871783	823-15C03327	Dialysis	2500	This was a case of Miscoding, the payment was the rebate for 3 days admission.
11624249	3602993	dialysis	3650	Ap. Doc no. not found on client's utilization data
11004166	25238560	MRI	7000	Enhanced scheme beneficiary
9533292	5699966	MRI	8000	Patient had both MRI and CT scan (AP Doc No. is wrong)
10652195	14527236	MRI	9000	Wrong case code, this was a 12 day admission on a rebate of Ksh 200 per day
11492509	9883778	Rehab	10750	Enhanced scheme beneficiary, claim paid invoice amount
11274922	9738426	Rehab	241000	Wrong case code used, this was a 87 days admission @3500 per day. This
Doc. no	**Idno.**	**Package accessed**	**Perceived overpayment in KSh.**	**Explanation**
				could have been occasioned by the fact that being a spinal injury hospital, services offered there are physical rehabilitation

11889993	35832083	Rehab	323840	Wrong case code used, this was a 91 days admission @3500 per day. This could have been occasioned by the fact that being a spinal injury hospital, services offered there are physical rehabilitation
9806244	34276801	C/S	3000	Patient accessed C/S and U/S at 3000
9739226	0618546	c/s	3600	Wrong case code, this was a 21 days @ rebate of 1600 each

450.In conclusion, NHIF continues to negotiate for cost effective benefits for services including surgeries and treatment for National and Managed schemes thus reducing the fees for service to affordable packages. Management developed a case code matrix to cure miscoding benefits.

Committee Observations

The Committee observed that –

i. The Accounting officer's submission and admission was that there were many instances where wrong case code were used to launch claims. Although this does not affect the payment decision, as onus is on NHIF to thoroughly peruse through the claim's documents, invoices and discharge summaries and pay within the approved Board limits, it is a pointer to control weaknesses in the claims and payment process as raised by the auditors.

ii. The Committee noted with concern that arising from the Accounting Officer's submissions and admission, the following also affirm the audit observation of irregular overpayment of claims and weaknesses in the controls;

iii. The benefit design for NHIF allows beneficiaries to access multiple benefits at the same time as necessitated by the treatment plan. This implies t that the system structure is not fool proof and the vulnerability is exploited by those with ability to do so.

iv. The Notification system was not tied to the pre-authorization system, which allowed the hospital to use one single case code for claiming multiple approved benefits. This is abused by the facilities to their advantage.

v. Some services e.g. Dialysis, radiotherapy and deliveries can be given several times in a short period, e.g. one week/ one month where the Facilities can launch one claim for all the sessions done as approved within the week/month. The issue of launching one claim for all the sessions is aimed at concealing fictitious claims.

vi. While some benefits e.g. deliveries, surgeries, chemotherapy, radiotherapy and dialysis may end up with medical complications outside the scope of the approved package, there should be a functionality to seek approval upon such eventualities which does not happen.

vii. While some patients receive several benefits during admission, including dialysis, chemotherapy, radiotherapy, Ct scan or MRI which are then launched with one invoice for the whole treatment period, it cannot result to the observed overpayment in the audit report and thus not a justified reason for over payment.

viii. While in most RTA injuries, a member may require multiple major surgeries that will be done during one theatre session and approved as a specialized surgery, it cannot result to the observed overpayment in the audit report and thus not a justified reason for over payment.

Committee Recommendations

The Committee recommends that –

Within three upon adoption of this report, the EACC should investigate the defunct Fund systems, on how the overpayments were done using wrong or single codes with a view to establish whether there was fraud, corruption or other financial improprieties in the claims processing and whether there was any breach of the law in the process or wastage of public funds. If any officer is found culpable, he/she should be held personally liable for the financial loss, DPP should initiate a legal process against culpable persons.

6.2 Civil Servants Medical Scheme Expenses

451. The Committee heard that, the statement of Comprehensive Income reflects an expenditure of Kshs. 6,650,824,817 in respect of Civil Servants' Scheme Benefits expenses. During the year under review, the Fund entered into a contract with the Government of Kenya to insure 122,052 civil servants for a comprehensive medical cover at a premium of Kshs. 4,000,012,000.
452. However, the scheme reported a deficit of Kshs. 511,998,054. Further analysis of data for all civil servants availed for audit review revealed that there were claims amounting to Kshs. 388,443,273 from members who are not civil servants.
453. In the circumstances, the accuracy and validity of civil servants medical scheme figure of Kshs. 6,650,824,817 for the year ended 30th June 2020 could not be confirmed.

Management response

Deficit

454. The management informed the Committee that, member contributions and remittance is the bedrock and premise upon which contributors access benefit. These contributions can either be paid individually by members or through an employer or sponsor. In the case of the subject matter here, remittances are made by the Government as an Employer to afford cover to her employees, the Civil Servants.
455. While pooling of resources is the ultimate goal that allows equity in financing for social health, it does not preclude provision of access to differentiated products subject to contributions such as is the case of the negotiated scheme the government has purchased here.
456. Enhanced Schemes serves to increase the limits and scope of benefits for the beneficiaries. It is noteworthy that the Fund has put in place prudent mechanism to establish that valid civil servants access the benefit accorded them through contribution made for them by the Government as their employer. While pooling resources for a social health scheme is accepted practice, social health insurance does not preclude availing special clauses that allow premium

access as long as all members receive proper medical care. It is this arrangement that the Government of Kenya has utilized for her employees.

457.The Fund has put in place mechanism to ensure that the contribution made by GOK in this negotiated scheme are prudently utilized. This mechanism involves the provision of service to members via data that is strictly submitted to the Fund by the State Department for Public Service for every contract cycle which runs within a government financial year.

Access by non-members

458.Clause 5.3 of the Civil servants cover contract states as that; ''Where a principal member retires within the contract period, he and his dependants shall continue to access the benefits under medical insurance cover until the lapse of the period of insurance subject to payment of statutory contributions.''

459.Most of the sampled claims emanated from the previous contract period where the said members or their beneficiaries have been part of the scheme in 2018/19, but in 2019/20 they had exited the service. The members accessed benefits up to the end of their contract period which was 30th June 2020. Claims emanating from this contract period can spill over to the next financial year since members can utilize services till the last day of the contract period and hospitals have a 90-day allowance to submit claims from the date of discharge. Such claims are processed when received though the bill will be charged to the premium of the contract period that the service was rendered. Such amounts are catered for through the Incurred But Not Reported (IBNR) provision in the performance report for Civil Servants scheme that is prepared at the end of the contract period. Below is a sampled screenshot from the above list that shows this scenario.

460.Owing to the realities that within the year there are new entrants and exits within the service, the Fund receives additional members mid-way. These receipts or removal of members are considered as change and are effected by the same process mentioned. It involves submission, receipt , approval then subsequent upload of data to the NHIF platform.

461.This notwithstanding, the concerns raised in this audit are valid and draw attention to matters beneficial and important to the Fund and below is a positive response with the intent to explain what was raised:

i. Member 1020967: Kangutu, Jacob Nzumula and resultant seven (7) claims at Neema H:

ii. His last remittance through 6/30/2019 the Civil / Disciplined scheme and thus demonstrating that the member was a civil servant.

iii. The audit findings while pursuant of valid concern to establish whether benefits are paid to valid members have illuminated the next contract period, a time by when the subject has retired but the reimbursement is to be done. The resultant finding is that the member has by then become self-employed in the 2019/20.

iv. The claim is paid retrospectively whereby the Fund is still within the 90 day window period to re-imburse albeit may take longer should there arise further delays such as quality concerns or litigation

v. Member number 0043325; Enock Kibichii Matetai was previously a civil servant working with The DPM as backed up by remittances. He further moved to the Kenya school of Government which too has Enhanced cover with the Fund. Further findings shall be sought from the State Department as regards retention on data

vi. Member 1313138; Joseph Kinoti Ndiira - As per the data submitted to NHIF by the client he has been in the Civil Servants Scheme since 2015/2016 to 2018/2019. The claim in question i.e. Claim Doc. No. 10962019 was incurred in 25th June 2019 when he was still under the Civil Servants scheme.

vii. Member 0147153 and claims in respect of Adhan Naima at Star Hospital worked for the Minstry of Agriculture and was devolved to the County Government of Isiolo where his last contribution through the Isiolo county was paid in June 2018. His circumstance is such as that of member 1020967;Kangutu Jacob Nzamula above answered

viii. Member no. 6704054; Lenora Hadar relate to a HISP beneficiary who may have benefited from the Civil Servants Scheme. The Fund has already initiated controls setups through the ICT department to ensure this does not recur.

ix. Member no. 792051 Dickson D.M Wangai treated at Karen Hospital was a civil servant up till December 2018. This means that just like Member 1020967 and 6704054, he too was a civil servant.

x. This member moved into the Kenya Association for Retired Officers seamlessly and made remmitance starting January 2016

xi. Member no. 1449806 Philip Kello Harsama remmittances are up to date through the Ministry of Agriculture. Payments in respect to him were last made in March 2021

xii. Member no.1317353; Joseph Maina Kabui is deemed current with remittances through the DPM(Department of Personnel Management) being current as at March 2021

xiii. Members 1104847,4125259,0888885, 3683308,3681733,1887201, 3675451,3665370, 4193051, abd,3690953 are similar to member explained above.

462.This means that:

i. They are either current Civil Servants whose remmittances are still coming and are up to date

ii. Are Civil Servants seconded to County up to date as per their remmittances .

463.It is noteworthy that County governments have within their service Civil Servants seconded thereof.

Committee Observations

The Committee observed that –

i. The scheme reported a deficit of Kshs.511,998,054 in the year under review, implying that the benefits expenditure exceeded the contract price negotiated by the government.

ii. There were claims amounting to Kshs. 388,443,273 from members who are not civil servants. Although the Accounting officer explained that where the principal member retires within the contract period, he/she and his/her dependants shall continue to access the benefits under medical insurance cover until the lapse of the period of insurance subject to payment of statutory contributions; There was no documentary prove of the actual membership since time period quoted like December 2018 is not within the questioned period.

Committee Recommendation

The Committee recommends that –

Within six months upon adoption of this report, the Auditor-General should carry out a special audit on the transition process with a view to confirming that the Assets and Liabilities including balances outstanding from delayed remittances by members/employers, overpaid contributions, claims outstanding and due to facilities, revenues/receipts in the various bank accounts, the properties and investments of the Fund and stock of unsettled claims to and from other parties, penalties and interest thereon and all that pertains the transition including staff and member/beneficiaries crossed over to SHA. This is in addition to audit and submission of Audit reports for the defunct NHIF upto the point of transition in October 2024. The Auditor-General shall audit and submit the report to the Committee.

Other Matter

1.0 Budgetary Control and Performance

464.The Committee heard that, during the year under review, the Fund's actual receipts amounted to Kshs. 60,817,588,815 against budgeted receipts of Kshs.73,198,751 resulting in a revenue shortfall of Kshs. 12,381,382,526. Further, actual expenditure for the year amounted to Kshs. 61,974,522,827 against budgeted expenditure of Kshs.68,084,784,544 resulting in an overall under absorption of Kshs. 6,110,261,717.

465.There is need for the Fund to review its budget making process with a view to developing a vibrant budget implementation follow up mechanism and feedback process to ensure that all projects and activities are implemented as planned for the Fund to meet its mission and objectives for the benefits of the citizens of Kenya.

Management response

Changes in budget formulation techniques

466.The management informed the Committee that, for reliable and a fair degree of accuracy, the Management departed from the previous approach when formulating the subsequent financial year 2020/21 revenue estimates. For 2020/2021 estimates, the Fund used the active members as at 30th June 2019 of 4,601,763 plus estimated new registrations for 2020/21 of 313,676 to project revenues from members. This change led to a more reliable and accurate projection for FY2020/21.

467.This is a departure from the previous approach of using the historical member data and applying a desired compliance/retention rate to arrive at the Fund's revenue targets. Consequently, out of the 8.7 million members in the database by 31st December 2019, only 4.2 million (3.14 formal and 1.12 informal) were active by paying contributions.

Revenue shortfall

468.It is true NHIF experienced a revenue shortfall of more than 12 billion in the financial year 2019/2020. 98% of the Fund revenue comes from member contributions and premiums which is dependent on the number of actively paying members. To ensure accurate and reliable revenue projections, the Fund uses two approaches in formulating the targets. The first criteria involve projecting the number of new members targeted to be enrolled from both the informal and formal sector.The population is then subjected to the applicable contributions rate i.e. Kes 6,000 p.a. for informal sector and an average rate of Kes 9,600 p.a. for formal sector. The second criteria used is to estimate the population expected to be up to date with their contribution i.e. the retention rate.

469.The budgeting and forecasting for the financial year 2019/2020 revenues, NHIF targeted to enroll 1,436,894 new members. It also estimated to increase the retention ratio to 85% in the formal sector and 59% in the informal sector. This is from the actuals of 72% and 28% respectively in the FY2017/18. These targets were to be fostered by strategizing on retention of existing membership, intensive employer compliance and UHC by scaling up population coverage by the Government through NHIF to achieve UHC by the year 2022.

Reasons for revenue shortfall

470.The Fund suffered the revenue shortfall due to low new enrollment and retention rate. It managed to register only 542,065 new members and achieved a retention rate of 57% in the formal sector and 19% in the informal sector. The targets, which, the management believe were realistic and achievable by the time of their formulation were however not achieved because the actual performance of FY2019/20 was affected by several factors that were beyond the control of NHIF. These factors that affected revenue collection are: -

a) A depressed economy in the period under review leading to reduced purchasing power for households who then prioritized on basic needs. This affected mostly the informal sector although the formal sector was also adversely impacted. This reduced the number of members willing and capable of paying contributions (retention) and new members joining.
b) The Covid-19 containment measures in the fourth quarter which led to mass layoffs and reduced income adversely affected both the formal and informal sector. Loss of income opportunities made households prioritize on basic needs such as food and rent compared to purchase of medical cover. This affected both sectors.
c) The UHC pilot project: This was launched by the Government on 13th December, 2018 and piloted in four Counties namely; Machakos, Kisumu, Isiolo and Nyeri. The pilot program accorded free healthcare to households in the four Counties and therefore impacted negatively on NHIF enrollment and retention of members. The above listed factors led to reduced enrollment vis-à-vis the target and also adversely impacted on member retention. These were beyond the control of the Management despite doing all it could to achieve the targets.

Expenditure (Under-absorption)

471.Out of the budgeted expenditure of Kes 68,084,784,544 for the period under review, Kes 59,815,403,888 (i.e. 88%) was for benefits. With an actual expenditure of Kes 54.36 billion, there was an under-utilization of more than 5.45 billion in benefits. This is because the benefits had been budgeted based on a percentage of premiums/ contributions that are further depended on number of active membership/ population covered. With less active membership achieved as explained above, this would also affect the morbidity rate because of a smaller population covered. This therefore means that the under-absorption does not directly relate to services that was budgeted for but not delivered.

472.The other operating/ administrative expenses which was budgeted at Kes 8,269,380,656 reported a slight under-absorption of more than Kes 600 million. This under-absorption on recurrent administrative expenses was due to the following reasons:

a) **Impact of Covid-19 Pandemic:** Activities involving transport, travelling, accommodation, training, staff welfare, venue and conferencing were adversely affected in the fourth quarter of the financial year due to Covid-19. The restrictions of movement and other interventions imposed by the National Government for the containment of the corona virus reduced expenditures on travel, field and conferencing related activities. NHIF however leveraged on its diverse ICT infrastructure to achieve some the planned services/ activities.
b) **Rationalization on procurement of goods & services;** through procurement plan by the Board further limited expenditures to the approved procurement value. This rationalization affected advertising, publicity, training, staff welfare, printing and stationery.
c) **Change in pricing regulations on insurance covers** led to reduced premiums for insurance & licenses covers. Premiums costed 17.2 million compared to 54.3 million that was budgeted saving the Fund more than 37 million.
d) **The National Government issued a moratorium** on 23rd July 2019 which required all State Corporations to place in abeyance all capital expenditures and to limit recurrent expenditures to only priority expenses which should be within one quarter of the previous year approved budget. This exercise delayed the implementation of various activities. With the approval of the rationalized budget being received in October 2019 (2nd quarter of the financial year), some of the projects and planned activities which had been held in abeyance were delayed in execution.

473.The under-absorption as explained above was not caused by lack of funding or poor budgeting and planning processes. In addition, this did not necessary result to undelivered critical services to the Citizens of Kenya since some intervention measures such as virtual meetings/ trainings, digitalization of call centre and pre-authorization was carried out. Nevertheless, NHIF is constantly reviewing its budgeting processes to continuously improve and ensure its objectives is met within available resources.

Committee Observations

The Committee observed that –

The Fund's actual receipts amounted to Kshs. 60,817,588,815 while the actual expenditure for the year amounted to Kshs. 61,974,522,827 implying that the Fund spent Kshs. 1,156,934,012 from the retained earnings without the BOD and National Treasury approval.

Committee Recommendations

The Committee recommends –

i. The committee reprimands the then Accounting Officer for spending Kshs. 1,156,934,012 from the retained earnings without the BOD and National Treasury approval.
ii. The Accounting Officer must at all times ensure that the budgets are realistic, achievable and always adhere to annual work plans, procurement plans and revenue collection schedules in compliance with Regulation 44(2) of the PFM (National Government) Regulations, 2015.

Report on Lawfulness and Effectiveness in Use of Public Resources

1.0 Procurement of Integrated Revenue Management System

474. The Committee heard that4, as previously reported, on 4 June 2018, the Fund entered into a contract with an IT Solutions firm on June, 2018 for provision of Integrated Revenue Management System at a contract price of Kshs. 495,205,588. Further information indicate that the procurement of the system was single sourced as no evidence of competitive bidding was provided for audit verification. This is contrary to Section 96 of the Public Procurement and Assets Disposal Act, 2015 which require the accounting officer to take such steps as are reasonable to bring the invitation to tender to the attention of all those who may wish to submit tenders. Further, although direct procurement method was used, no evidence was availed to the effect that the underlying circumstances met the conditions set for direct procurement as laid down in Section 91 of the Act.
475. In the circumstances, the Fund was in breach of the law and may not have obtained value for money on the procurement of the system.

Management response

476. The management informed the Committee that, NHIF relied on section 124 (12 a & b) of Public Procurement and Assets Disposal Act 2015 for use of single source as a selection method as this was the most appropriate method due to the following cases:
a) The service provider had exclusive rights for the system used for Revenue Collection and Management. The Integrated Revenue Management System is a highly customized and proprietary to the Fund with source code availability limited to the software provider.
b) The task was a continuation of the previous tasks carried out by the same service provider.the continuation was technologically appropriate since Infrastructure was already setup in all NHIF branch/Satellite offices, 180 Health Care Providers and Contracted Banking Institutions thus eliminating disruption to service provision and compatibility related problems. This is in line with PPADA 2015 section;

i. 103 (2a) which says the goods, works or services are available only from a particular supplier or contractor, or a particular supplier or contractor has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists;

ii. 103 (2d) the procuring entity, having procured goods, equipment, technology or services from a supplier or contractor, determines that additional supplies shall be procured from that supplier or contractor for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procuring entity, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods or services in question;

477. The Fund further followed the conditions laid down in Section 91 (2) of Public Procurement and Assets Disposal Act 2015 which states "The Procuring entity may use an alternative procurement procedure only if that procedure is allowed and satisfies the conditions under this Act for use of that method" (Single Source Selection Method Section 124 (12 a & b) of Public Procurement and Assets Disposal Act 2015.)

478. Section 124 (14 - 15) of Public Procurement and Assets Disposal Act 2015 states that "Single Source Selection Shall require a placement of advertisement of the intention to single source and invite anyone who wishes to bid and in the event that there's a response to the advert then all interested suppliers shall be invited to submit proposals. Where alternative methods are selected a report shall be prepared and submitted to the Authority for approval". In view of the above NHIF complied with these two requirements by:

i. placing the intention to single source in the company's website as per the attached evidence dated 25th April 2018

ii. submitted justification report to the Public Procurement and Regulatory Authority for approval as per the attached evidence

Evidences

(i) Authority to advertise Tender for Purchase of Revenue Collection Management System on NHIF Website

(ii) Communication from Procurement to ICT to place the advert on the website

(iii) Evidence of Advert placed on the website

(iv) Tender Notice

(v) Request to PPRA

(vi) Approval from PPRA

(vii) PPADA 2015 extract (Section 103)

479. Meanwhile, management awaits for the conclusion and determination of court case filed in 2018,

Committee Observations

The Committee observed that it had deliberated on the Procurement of Integrated Revenue Management System matter in its report for financial year 2018/2019 and would want to maintain the observations and recommendations therein as detailed below;

i. The justifications advanced for direct procurement were not satisfactory. The fact that the service provider had exclusive rights for the system used for Revenue Collection and

Management which is a highly customized and proprietary to the Fund with source code availability limited to the software provider is misleading since the revenue management system is an ERP that could be sourced from other providers and customed to NHIF user requirements. No consultant had the monopoly for developing ERPs.

ii. The Accounting officer submitted that the task was a continuation of the previous tasks carried out by the same service provider since the Infrastructure was already setup in all NHIF branch/Satellite offices, 180 Health Care Providers and Contracted Banking Institutions thus eliminating disruption to service provision and compatibility related problems. Arising from the aforestated, the statement is misleading and could point to a breach of the section **54.** (1) of the Public Procurement and Disposal Act which states that no procuring entity may structure procurement as two or more procurements for the purpose of avoiding the use of a procurement procedure except where prescribed.

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

iv. From the available information, the committee observed that;

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

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

c) NHIF stopped paying the supplier-webtribe ltd after having already paid KSh. 179 million. Upon arrest of the NHIF officials.

d) The tender to buy the software was only posted on the NHIF website without even advertising in the dailies and the tender had been awarded to Webtribe ltd.

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

Committee Recommendations

The Committee recommends that –

Within three months upon adoption of report, the EACC should investigate how the procurement process was done with a view to establishing whether, there was any fraud, corruption or other financial improprieties in the procurement process and whether there was any breach of the law or wastage of public funds. If any officer is found culpable, he/she should be held personally liable for the financial loss, DPP should initiate a legal process to recover the amount so lost with interest from the concerned officer(s) at the prevailing CBK rates.

2.0 Temporary Imprest

480. The Committee heard that, trade and other receivables balance of Kshs. 7,781,204,639 as at 30 June 2020 include temporary imprest of Kshs. 8,899,538, out of which an amount of Kshs. 6,962,003 has been outstanding for over four months and whose recoverability is doubtful.

This is contrary to Section 93 (5) of the Public Finance Management (National Government) Regulations, 2015 which states that a holder of a temporary imprest shall account or surrender the imprest within seven (7) working days after returning to duty station. Section 93 (6) further provides that in the event of the imprest holder failing to account for or surrender the imprest on the due date, the Accounting Officer shall take immediate action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank Rate.

481.Further list of outstanding temporary imprest availed for do not indicate when the imprest was issued and due date. Consequently, the full recoverability of the imprest amount of Kshs. 6,962,003 is doubtful.

Management response

482.The management informed the Committee that, the audit findings regarding the outstanding imprest amount of Kshs. 8,899,538 as of June 30, 2020. The outstanding balance was due to imprest issued to officers for various activities, which had not been surrendered by June 30, 2020, as a result of the government-imposed cessation of movement to contain the spread of Covid19. Subsequently, after the lifting of restrictions, the activities were carried out, and imprest totaling Kshs. 8,560,971 was surrendered. Currently, an outstanding balance of Kshs. 338,567 remains from the initial Kshs. 8,899,538 reported.

483.Out of the balance, the following officer is currently being deducted through payroll as detailed below.

484.Ruth S. Makallah (Warrant No. 207706, Code E5911) has an ongoing court case, with an outstanding balance of Kshs. 229,367.

485.The recovery of Kshs. 109,200 from three staff members has proven challenging due to the following reasons:

i. Peter Bigoro (Warrant No. 155230, Code E10005) passed away, leaving an outstanding balance of Kshs. 25,200.
ii. Wilfred Amasakha (Warrant No. 92353, Code E00492) exited, with an outstanding balance of Kshs. 84,000.

486.To address these issues, the CEO appointed a task force on June 22, 2022, to review debt and advise management on appropriate actions for each debt class within the organization. The task force is expected to complete its work by end of May 2023 and submit a report to management for review, discussion, and subsequent approval.

487.The task force's recommendations will encompass improved debt coordination and measures to ensure timely debt recovery, ultimately strengthening our organization's financial management practices.

Committee Observations

The Committee observed that –

i. Although, impress totaling Kshs.8,560,971 had been reportedly surrendered there was no documentary evidence of surrender and the expenditure had not been audited by the Auditor-General.

ii. Based on the outstanding balance of Kshs. 338,567 the CEO appointed a task force on June 22, 2022, to review debt and advise management on appropriate actions for each debt class within the organization. Since the reasons for non-surrender was explicit, there was no need for forming a task force since this will be a waste of public funds and time.

Committee Recommendations

The committee recommends that –

Within three months upon adoption of report, the Accounting should submit the surrendered imprest payment vouchers and the Accompanying supporting documents to the Auditor General for audit and reporting in the subsequent audit cycle.

FINANCIAL YEAR 2020/2021

1.0 Property, Plant and Equipment

1.1. Disputed Ownership of Land

488.The Committee heard that, as previously reported, included in the property, plant and equipment balance of Kshs.13,044,666,460 in the statement of financial position as at 30 June, 2021 is land valued at Kshs.298,589,665 which includes an amount of Kshs.93,712,675 for land Ref. No.LR 24968/2 measuring 10 hectares situated in Karen. However, the ownership of this particular parcel of land is in dispute and the matter is in court. Information available indicate that the Directorate of Criminal Investigations (DCI) has commenced investigation to establish whether there was fraud in the transfer of ownership of the land. Progress made on the investigations has not been disclosed in these financial statements.

489.In the circumstances, the ownership of land valued at Kshs. 298,589,665 as at 30 June 2021 could not be confirmed.

Management response

490.The management informed the Committee that, NHIF invested in the acquisition of Land, Survey and Designs of a Medical Centre of Excellence and Institute. This was part of the Fund's efforts to respond to challenges related to health and quality healthcare. The proposed medical centre would consist of a referral centre, medical education centre, medical research centre and support facilities.

491.The purchase of the property commenced in 2001 after identification of a property in Karen, which was deemed suitable for development of the proposed medical centre. The Fund thereafter undertook the requisite due diligence on the ownership of the land and this commenced with a search on the property and valuation of the property, by appointment of Tysons Limited and subsequently a report from Ministry of Lands and Settlement Ref No. VAL. 852/V/8 dated 24th January 2002. The letter ascertained the value of the property as at that period to be Kenya Shillings One Hundred Million Five Sixty-Nine Thousand Seven Hundred only (Kshs 100,569,700/=)

492.The property; Land Reference. No 24968/2 – Karen herein after referred to as the property. The property is approximately 9.250 hectares (22.86 acres) held on leasehold interest for a term of 99 years. The property is situated in the Karen Plains Road off Karen Road approximately 12 kilometers west of the city centre.

493.The Fund further appointed a law firm Kipkenda Lilan & Co Advocates who oversaw the entire purchase process. This was through review and guidance on the execution of a sale agreement, the purchase price was determined at Kshs 93,712,675 for the entire property.

494.The Fund is pursuing the matter and has already taken the necessary steps to ensure the matter is determined in its favor. The Fund is relying on the evidence from the

495.Commissioner of Lands confirming that the land is registered under the Fund's Board of Management. The Commissioner of Lands in his letter referenced **186267/T.C/17** dated **22nd August 2007** addressed to the Attorney General stated categorically that the suit property **L.R. NO. 209/24968/2/R 87345** is registered in favor of the NHIF board of management.

496.The Permanent Secretary Ministry of Medical Services on **6th March 2009** wrote to the

497.Attorney General asking the A.G to put up a defense in line with the Commissioner of

498.Lands instructions. The Attorney General's office in their letter referenced **AG/MLS/292/04** dated **9th November 2009** confirmed receipt of the instructions from the Commissioner of Lands and put up a defense of the land.

499.The matter was moved to the Environment and Land Division and assigned a new number **HCCC.ELC NO. 691 of 2011**. This was in a bid to ensure the matter is expedited.

500.NHIF filed an application seeking an inhibition (caveat) on the tittle of the land so as to bar any subsequent registration of a right/interest over the said parcel of land until the matter is fully heard and determined. The court allowed the application on **27th July 2016** and issued orders that NHIF can put up a fence around the entire property and an order inhibiting registration of any dealing with the parcel of land.

Inquiry by the National Land Commission

501.Following the recommendations by PIC that the National Land Commission conducts further investigations on the issue of the land within six months after adoption of the

502.Report, The National Land Commission indeed notified NHIF of the inquiry as mandated under Section 6 of the National Land Commission Act. NHIF attended the inquiry on **15th June, 2017** and made its submissions before the Commission.

503.The Commission pronounced itself and observed that the issue of ownership of the said parcel of Land was in Court.

504.The supporting documents attached herein include;

(i) The Commissioner of Lands letter **ref. 186267/T.C/17** dated **22nd August 2007**
(ii) The Attorney General's letter referenced **AG/MLS/292/04** confirming receipt
(iii) Court order allowing NHIF to fence Land
(iv) Valuation report from Ministry of Lands – 24th January 2002
(v) Valuation report prepared by Tysons Limited on L. R NO. 24968/2 dated 20th February 2002.
(vi) Application for copy – dates 6th March 2002
(vii) Duly executed sale agreement between Kaskazi Traders Ltd and NHIF– dated 28th March 2002
(viii) Duly executed and registered transfer - L. R 87345/2 dated 20th December 2002
(ix) Copy of title registered L. R 87345/1

(x) Legal fees paid to the legal firms in respect to Karen Land

Current Status

In the 21st Public Investment Committee Report on the Audited Financial statements of State Corporations the above issue was discussed, and as per recommendations given by Public Investment Committee, the Directorate of Criminal Investigations commenced the inquiry/ investigations on the land and its acquisition in the year 2018. The DCI convened a meeting between the Chief Land Registrar from Ministry of Lands, the Land Surveyor from Survey of Kenya, Chief Valuer from Nairobi City County Government and all parties who hold titles to the land. Upon deliberations parties were informed that the DCI would be calling for the surrender of all original titles for purposes of investigation. This was done. The Fund wrote a reminder to DCI on 20th May 2022 requesting an update on the same. Further Follow up has revealed that the investigations have now been completed and the file has been forwarded to ODPP for comment.

Committee Visit to the disputed land

505.The committee visited the said property on 20th February 2024 on a fact-finding mission.

Committee Observations

The committee observed that it had deliberated the matter On Karen land its report for financial year 2018/2019 and would want to maintain the observations and recommendations therein as detailed below;

i. During the visit to the said property on 20th February, 2024 the committee observed that there was a new encroachment by another private developer who had already supplied building materials to the site and a group of locals was on site to protect their interests led by a Mr. David Leparakwo who claimed to be in possession of original title deed and had been paying land rates to the County Government of Nairobi over the years. This by implication meant that NHIF may have not done due diligence when acquiring the land from the alleged rightful owner.(Kaskazi Traders)
ii. The matter had been discussed by the Public Investment Committee in their past reports and it had been observed that;
iii. The National Land Commission could not confirm the ownership of impugned land as the matter was in court;
iv. The Fund had obtained a court order to fence the land but had been unable to do so due to interference from squatters;
v. The Fund had tried to secure the land by placing security guards at the site but were arrested;
vi. A Mr. David Leparakwo had appeared before the Committee and produced a title deed for the land issued on 29th October, 2013. The title is held in trust for the rest of the Emowuo Olarro Self Help Group. The group acquired the land in the form of a grant from the immediate former owner, Mr. A.J Faulkner in 1982.
vii. Apart from Mr. Leparakwo's group, the land is claimed by eight other parties: National Hospital Insurance Fund (NHIF), Crownline Freighters, Kaskazi Traders Ltd., Nectel Kenya

Ltd., Gifted Community Initiative Programme, Cirtex Ltd., Kenpark Holdings Ltd. and Page Investments. Ltd and now a ninth claimant is on site.

viii. The Nairobi Deputy County Commissioner, in a letter to the National Lands Commission dated 26th August, 2016 indicated that the allotment letter and title deed used by Kaskazi Traders was unlawful and invalid and also indicated that the IR No. used (No. 87345) was also obtained unlawfully since the IR's location was not in Karen. The Attorney General's office further stated the title which Kaskazi Traders Limited used to sell the land to the National Hospital Insurance Fund (NHIF) was unlawful, invalid and should be cancelled. This puts in doubt the claim to the land by NHIF.

ix. The committee had in its 21st report had recommended that the Chief Justice fast tracks the hearing and determination of case no. HCCC.ELC NO. 691 of 2011; and the Fund secures the disputed parcel of land through fencing and hire a competent security firm to guard the property until the case is fully determined. None of these recommendations had been implemented.

x. Despite a pending appeal and all the encroachments, claims and counter claims, there was a subsisting court order confirming ownership status of the ownership of the land in favour of NHIF.

xi. Some of the payments were effected before the transfer agreement had been signed.

xii. Upon physical inspection and verification of the land, the Committee observed that, the size of the land looked smaller than the reported 25 acres.

Committee Recommendations

The Committee recommends that –

(i) The committee on Implementation should follow on implementation of past PICs recommendations.

(ii) Within three months upon adoption of this report, the accounting officer NHIF (SHA) should in consultation with the Attorney-General and the National Land Commission pursue legal remedies to bring the matter on Karen Land to its logical conclusion.

(iii) The EACC and DCI should undertake an investigation with a view to establishing whether there was any fraud with respect to the acquisition and transfer of ownership of the land. If any officer is found culpable, he/she should be prosecuted for breaching the law.

(iv) Within three months upon adoption of this report, the Accounting Officer in consultation with Government Surveyor to survey, beacon and demarcate the land and issue abeacon certificate for the NHIF Karen land.

1.2. Doubtful Work-In-Progress at Karen Land

506. The Committee heard that, as previously reported, included in the property, plant and equipment balance of Kshs.13,044,660,460 as at 30 June, 2021 is capital work in progress balance of Kshs.1,444,687,484 being payments for drawings and designs for the proposed Resource Centre and whose construction has not yet commenced since the land was acquired seventeen years (17) ago. As noted in the previous year, the management has however explained that construction of the Resource Centre has not yet commenced because of lack of approval from parent Ministry and the land ownership dispute in court.

507. Although the issue had been discussed by the Public Investment Committee (PIC), no action appears to have been taken on the PIC recommendations that the Fund should expeditiously pursue the prosecution and conclusion of the case to its logical conclusion.

508. In the circumstances, the validity and existence of capital work in progress balance of Kshs. 1,444,687,484 as at 30 June, 2021 could not be confirmed.

Management response

509. The management informed the Committee that, It is true that as at 30th June, 2020 there was work in progress of **Kshs. 1,444,687,484** in respect of payments for the proposed Resource Centre on the Karen Land whose construction has not yet commenced to date and whose amount remains in our books. The amount comprises arbitration award to Architects and further payments to other consultants and professionals that had been engaged. They include quantity surveys, business plans and financial analysis consultancy, legal fees, architectural design services fees and feasibility study.

510. In the year 2001/2002 the Fund planned to build a Resource Centre on the land acquired in Karen at a cost of **Kshs. 93,712,675.00**. The establishment and implementation of a Resource Centre on the land was approved by the board in 2002.

511. The then Chief Executive commissioned consultants in accordance with the Architects and Quantity Surveyors Act Cap 525 of the Laws of Kenya to carry out a feasibility study on the development of a recreational facility.

Arbitration by Architects and Quantity Surveyors on the Proposed Resource Centre

512. The Architects and Quantity Surveyors did the work as commissioned and submitted their report together with their fee notes for **Kshs. 734,524,029.25**. The fee notes were not however honored because the management had not received prior approval for the works from the parent Ministry. This resulted in a dispute that was taken to arbitration. The Architects and Quantity Surveyors then commenced Arbitration proceedings against the Fund for the demand for their fees. The Arbitrator after reviewing the matter reduced the claim from **Kshs. 734,524,029.25** and awarded the Architects and Quantity Surveyors **Kshs. 352,131,345.15**. Following the decision of the Arbitrator and claimants' filing of documents to enforce the Award, the Funds Lawyers gave their opinion that the Award be challenged at the High Court. The Fund disputed the award and proceeded to the high court to seek redress.

513. Upon further consultation with the parent ministry and the Attorney General, NHIF Board and the Architects and Quantity Surveyors recorded a consent order in the High Court and the matter was settled. The Architects and Quantity Surveyors were paid a sum of Kshs. 407,107,645.00. Claims lodged by engineers and other consultants totaling Kshs. 333,846,784 were arrived at after settlement deeds were entered into on 24th June 2011. The claims were fully paid.

The Karen Medical Centre of Excellence

514. The Original Project was revised to a Medical Center of Excellence and a Vision 2030 flagship project for the Ministry of Health following approval of a cabinet memorandum on the NHIF medical resource centre as communicated to NHIF CEO by the Minister of Health

in a letter ref. **MMS/ADM/1/16/1** dated **4th December 2008** ***(APPENDIX-B)***. The Karen Medical center of excellence project led to litigations from the consultants.

Litigation Arising from the Dispute on the Karen Medical Centre of Excellence

515.The following are the litigations commenced by the Consultants in respect to the Karen Medical Centre of Excellence.

i. High Court Civil Suit No. 504 of 2016: National Hospital Insurance Fund Vs. Baseline Architects Ltd.
ii. Rebman Ambalo Malala T/A Ujenzi Consultants Vs NHIF HCCC NO. 25 OF 2016
iii. Comm Case No. 255 Of 2016 - NHIF Vs. Eng. Peter Scott And Manga And Associates
iv. Civil Suit No. 176 Of 2017 – Professional Consultants Ltd –Vs- NHIF

21ST REPORT OF PIC – COMMITTEE RECOMMENDATIONS

516.This matter was presented to the committee in its last sitting where it recommended that: -

i. The Fund fast tracks the hearing and determination of case HCCC.ELC NO.691 of 2011; and
ii. The Fund secures the disputed parcel of land through fencing and hire a competent security firm to guard the property until the case is fully determined.

517.This issue was cited in prior year audit queries since it had been presented to the Public Investment committee and appeared in the Reports for the years 2009/2010, 2010/2011, 2011/2012, 2012/2013, 2013/2014 and 2014/2015. In the 21st Public Investment Committee Report on the Audited Financial Statements of State Corporations the above issue was discussed and recommendations made as cited on page 9 and 10 of the 21st PIC Report.

518.The committee recommended that issues that have been satisfactorily resolved or comprehensively addressed by the committee should be excluded from the subsequent Reports of the Auditor General, provided that the management has sufficiently disclosed these unresolved matters in the notes to their respective financial statements as required by the International Accounting Standard no. 37.

CURRENT STATUS

519.Although the case has not come to its logical conclusion, the Fund has pursued the case regarding ownership of the land in Karen through the DCI.

520.Reference is made to the pending matters in court and communications showing the status of the cases. The dispute of ownership and the dispute with the quantity surveyors is still unresolved, except for the matter of Baseline Architects, the Court of Appeal upheld the decision of the High Court and ruled in favour of the Find, attached is a copy of the Judgment:

i. NHIF Vs Crownline Freighters and others Nairobi ELC No. 691 of 2011 (as Consolidated with ELC 152 of 2018) was mentioned before the court on 9th May 2022 and the court gave the parties more time to file relevant documents. The Fund filed its defense on 25th October 2022 and is currently awaiting directions from the courts. The Court case has not progressed since the DCI is still carrying out forensic investigations so as to determine the true proprietor of the suit property.
ii. In the Matter of Arbitration between Manga & Associates vs NHIF. The matter came up before the Arbitrator however a query was raised on instructions noting the Attorney

General's Office in regard to engagement of external counsel. Fund has already sought guidance from the Attorney General noting that this was an existing matter. Attorney general responded and approved use of Ogetto Otachi Advocates to represent the Fund on the Karen land matters and the cases related to the same.

iii. HCCC No. 25 of 2016 Rebman Ambalo t/a Ujenzi Consultant vs NHIF (Consolidated with HCCC No. 176 of 297 Professional Consultant Limited vs NHIF). The Fund introduced the then Chief Executive Officer as a witness and an expert witness, in procurement matters to support the Fund's defense. The matter came up for mention on 6th February 2023, however, the matter did not proceed to hearing by reason that the learned judge was away on his annual leave. Consequently, the matter was rescheduled for mention on 24th March 2023. However, the matters were reallocated to be placed and seized by the Learned Justice Sifuna. In this regard, the presiding judge scheduled mention of this matter, before the judge seize of it, for the 28^{th} of April, 2023, to obtain directions on hearing.

Committee Observations

The committee observed that it had deliberated the matter on Doubtful Work-In-Progress at Karen Land in its report for financial year 2018/2019 and would want to maintain the observations and recommendations therein as detailed below;

i. The matter had been discussed in the previous PIC reports and despite the Committee making various observations and recommendations, no action or progress has been made to implement the envisaged project or resolve the various litigations arising from the contractual engagements or the land on which the project will be situated.
ii. The Fund had made payments of Kshs.1,444,687,484 for drawings and designs for the proposed Resource Centre.
iii. By the time the Fund changed the project from a proposed Resource Center to a Medical Center of Excellence, the land was already in dispute.This exposed the Fund to further litigation arising from the Medical Center project. The management committed the Fund to incur further nugatory expenditure without a justified cause.
iv. The Accounting officer and the staff involved in the procurement process engaged the same Architects and Consultants for the Medical Center project without subjecting the contract to competitive bidding despite the fact that the scope and specification of the project was different to the proposed Resource Center.
v. The land was undeveloped when the Committee visited the site on 20th February 2024 and had another private developer had claimed ownership in addition to the earlier ones.

Committee Recommendations

i. Within three months upon adoption of this report, the Accounting Officer NHIF/ SHA in consultation with the Attorney-General and the National Land Commission should pursue the expeditious prosecution and conclusion of the cases in addition to the arbitration pertaining to the consultancies to their logical conclusion with a view to safeguarding the ownership interest in the land and settling the disputes.
ii. Within three months upon adoption of this report, the EACC should undertake an investigation into how the consultants were engaged, whether there was fraud, corruption or

other financial improprieties in the construction of the proposed resource centre and whether there was any breach of the law in the engagement process or wastage of public funds. If any officer is found culpable, he/she should be held personally liable for the financial loss, DPP should initiate a legal process to recover the amount so lost with interest from the concerned officer(s) at the prevailing CBK rates.

2.0 Construction of Multi Storey Car Park

521.The Committee heard that, as previously reported, National Hospital Insurance Fund entered into an agreement with local construction firm for construction and completion of a multi storey car park at a contract sum of Kshs.909,709,305. According to information available, the project commenced in May 2002 and was scheduled for completion in August 2003. Records available, however, indicate that the contract sum was later revised upwards to Kshs.1,179,611,756 representing approximately 30% above the original contract sum of Kshs.909,709,305.

522.Although records available indicate that the car park was completed in July 2008 at a total cost of Kshs.3,342,120,239, a further amount of Kshs.626,635,998 and Kshs.4,706,521 was incurred in 2009/2010 and 2010/2011 respectively on the car park increasing its total expenditure to Kshs.3,973,462,758 as at 30 June, 2011 or resulting to an increase of approximately 337% over and above the original contract sum of Kshs.909,709,305. Further and as similarly observed in prior years' reports, the escalation of costs of the car park by 337% over and above the original cost has not been justified.

523.Although the issue has been discussed by the Public Investment Committee, no action has been taken on the Committee recommendations as per the 19th and 21st reports which recommended that the Director of Ethics and Anti-Corruption Commission should institute and fast track investigation on the project with a view to preferring charges against all those who would be found culpable. As at the time of this audit no progress report has been received from the Commission.

524.In the circumstances, it has not been possible to ascertain whether the property, plant and equipment balance of Kshs.13,044,666,460 as at 30 June, 2021 is fairly stated.

525.The management informed the Committee that. the Car Park is a seven Storey Building with basement floors, which is designed to accommodate 780 cars. The project commenced in **May 2002** and was scheduled for completion in **August 2003**. The original cost of the project was **Kshs 909,709,305.40** over a contract period of 65 weeks.The completion period was revised from **August 2003** due to suspensions of all projects by the Government vide **Treasury circular no. 10** dated **22nd May 2003** as well as the Fund giving preference to core strategic activities resulting to reduced cash flow.

526.The Management as per the contract provisions introduced vehicular lifts that were not part of the tendered designs and bills of quantities. The cost could not be retained at the original cost of **Kshs. 909,709,305.40** since the Contractor had already increased the service area of the project. This led to Design changes to the structure and foundation works. An additional basement floor was created to cater for the displaced area arising because of vehicular lifts, ramps and design overhaul. This led to an increase in service area and an additional cost of **Kshs. 673, 465,787.10** making the total cost to be **Kshs. 1,583,175,092.50**. The vehicular lifts were later found not to be viable leading to downward variation to **Kshs. 1,179,611,756.00** as observed in audit report.

527.The variation from **Kshs. 1,179,611,756.00** to **Kshs. 3,342,120,239.00** was due to price escalations as per contract provisions. These were contractual claims which were as per contract provisions and mostly occasioned by delays in completion period and upward increase in cost of materials.

528.As noted in the audit report the Multi Storey Car Park was completed in **July 2008.** The

529.Fund wrote to the Chief Quantity Surveyor under Ministry of Public Works vide letter Ref

530.**HF/C/958VOL.X/114** requesting for a technical report on the completed Multi Storey Car Park. The chief quantity surveyor replied vide letter Ref. No. **QD15/GEN/1369** on the draft final account recommending release of the retention money after the issue of **certificate of making Good Defects** and payment of 60% of the projected Final Account. On 30th of March 2010 the Fund received Final Account from the chief quantity surveyor instructing payment of the final dues to the contractor Ref. No. **QD15/GEN/1613**. Payments totaling to **Kshs. 626,635,998.00** incurred in **2009/10** and **Kshs. 4,706,521** incurred in **2010/11** are related to pending claims which were payable to the contractor after completion of the Multi Storey Car Park. All the mentioned correspondences are hereby attached ***(APPENDIX-C).***

531.The Fund appeared before the PIC Committee on 15th of March 2018 and this matter was discussed thereafter the committee visited the Carpark Building.

532.The final certificate for the project is hereby attached ***(APPENDIX-C).***

21ST REPORT OF PIC – COMMITTEE RECOMMENDATIONS

533.This matter was presented to the 21st PIC committee, where it recommended that Ethics and Anti-Corruption Commission should fast track investigations into the procurement process of the Multi-Storage Car Park, with a view of preferring charges against all those found culpable of defrauding the Fund.

534.This issue appeared in the Reports for the years 2009/2010, 2010/2011, 2011/2012, 2012/2013, 2013/2014 and 2014/2015. In the 21st Public Investment Committee Report on the Audited Financial Statements of State Corporations the above issue was discussed and recommendations made as cited on page 9 and 10 of the 21st PIC Report. The committee recommended that the issues that had been satisfactorily resolved or comprehensively addressed by the committee should be excluded from the subsequent Reports of the Auditor General, provided that the management has sufficiently disclosed these unresolved matters in the notes to their respective financial statements as required by the International Accounting Standard no. 37.

CURRENT STATUS

535.Some of the organizations that are currently occupying the building are government institutions such as Ministry of environment, Kenya Fishery Services, NACADA, Cabinet affairs office, National Land Commission, Kenya Copyright Board, Water services

536.Regulatory Board, Cabinet Secretariat, Kenya Roads Board, Kenya Water Towers Agency and other small private firms as well as NHIF's Nairobi branch office.

537.The matter was therefore referred to EACC as directed by Public Investment Committee and EACC commenced investigations by requesting for original documentation. In September

2022 the Fund's CEO was invited to record a statement on status of the documents. EACC guided that they would give way forward.

Committee visit to the Project

538.The Committee visited the project on 20th February 2024 with a view to establish the completion status of the project, its occupancy as submitted by the Accounting officer and the car park utilization capacity.

Committee Observations

The committee observed that it had deliberated the matter on Construction of Multi Storey Car Park in its report for financial year 2018/2019 and would want to maintain the observations and recommendations therein as detailed below;

Committee Observations

i. During the project visit the Committee observed that although the Accounting officer indicated that some organizations were currently occupying the building including Ministry of environment, Kenya Fishery Services, NACADA, Cabinet affairs office, National Land Commission, Kenya Copyrights Board, Water services Regulatory Board, Cabinet Secretariat, Kenya Roads Board, Kenya Water Towers Agency and other small private firms as well as NHIF's Nairobi branch office, only Judiciary had stored its documents in one of the Floors and the other tenants had vacated the premises. The reason for such mass vacation was not clear. Further, the parking was seriously under-utilized with huge idle capacity and therefore the project was a waste of public resources, poorly thought-out and planned despite the huge resources sunk into it.

ii. This matter had been dealt with in the previous PIC reports, that is the 13th 16th 19th and 21st, wherein the Committee observed the unprofessional manner in which the project was executed.

iii. The previous PICs recommended that the EACC investigates the procurement process of the project and comes up with appropriate recommendations regarding any breach of law.

Committee Recommendations

Within three months upon adoption of this report, the EACC should fast-rack the investigation on how the project was initiated, feasibility done, construction works procured, how the contract price was varied by approximately 337% over and above the original contract sum of Kshs.909,709,305 in breach of the law and eventually how the vehicular lift was introduced midway into the project and finally found unimplementable.The investigation should also establish whether there was fraud, corruption or other financial improprieties in the construction of the car park and whether there was any breach of the law in the engagement process or wastage of public funds. If any officer is found culpable, he/she should be held personally liable for the financial loss, DPP should initiate a legal process to recover the amount so lost with interest from the concerned officer(s) at the prevailing CBK rates.

3. Unquoted Investments

539.The Committee heard that, as previously reported and as disclosed at Note 29 to the financial statements, unquoted investment balance of Kshs.340,934,558 as at 30 June, 2021 includes a balance of Kshs.286,734,558 in respect of a loan advanced by the Fund to Moi Teaching and Referral Hospital (MTRH) at an interest rate of 3% per annum. However, though the loan was not supported with a signed loan agreement between the Fund and MTRH, MTRH has already disputed the advocates/legal costs amounting to Kshs.40,883,040 charged to its loan account. As at the time of the audit, there was no signed Memorandum of understanding (MoU) between NHIF, MTRH and International Atomic Energy Agency (IAEA) Further, to date there is no signed financing agreement between NHIF and MTRH which defines the terms of the Loan, purpose and the repayment methods.

540.Although the Management has acknowledged the omission, it was not explained how the anomaly will be resolved and the fallback plan in case of default by the Hospital. The unquoted investment balance of Kshs.340,934,558 also includes consolidated bank shares of Kshs.54,200,000 which are not traded and for which no dividend has been paid in the past. Under the circumstances, the investment in consolidated bank shares is impaired.

541.Consequently, the validity of unquoted investment balance of Kshs.340,934,558 as at 30 June, 2021 could not be confirmed.

Management response

542.The management informed the Committee that, MTRH, wrote to NHIF vide a letter Ref NO. ELD/MTRH/ADMIN/1/VOL.IV/2015 dated 12th July 2017 forwarding a proposal requesting financing for the purchase of the Radiation Oncology equipment.

543.A Board Paper was prepared and presented to the Finance and Investment Committee on the proposal to offer loan facility to MTRH. The board approved a loan facility of Kshs Kshs.312,669,869.20

544.NHIF wrote to MMA advocates on 12th July 2018, Ref No. HF/HOSP/3/1 VOL.1/8 requesting them to prepare a finance contract between NHIF and MTRH for approved amount of Kshs.312,669,869.20 The instructions included the total amount advanced and legal fees which would be recovered over a period of 10 years at an interest rate of 3% per annum.

545.On 5th December 2019 Draft Head of Terms, draft financing agreements and memorandum of understanding between NHIF and MTRH were finalised and were shared with MTRH for their review and discussions thereafter commenced on the terms and conditions. One of the main concerns raised by MTRH was concerning on the loan amortization Schedule.

CURRENT STATUS

546.The Board approved the execution of the contract upon review of loan amortization form to include the correct legal fees. This communication has since been shared with MTRH for their comments and response received. Loan amortization form is being prepared and contract amended for execution. The loan agreement is now ready for execution by both parties.

547.At the moment the Fund continues to recover the loan from MTRH's claim payment at the rate of Kshs. 3,178,918 per month towards the repayment of the loan and MTRH have acknowledged this recovery as the two entities finalize the execution of the contract.

548.The balance currently stands at Kshs. 237,601,306 (as at 24th April 2023).

Committee Observations

The committee observed that it had deliberated the matter on Unquoted Investments in its report for financial year 2018/2019 and would want to maintain the observations and recommendations therein as detailed below;

i) The Loan amount of Kshs. 340,454,576 advanced by the Fund to Moi Teaching and Referral Hospital (MTRH) at an interest rate of 3% per annum was not initially supported with a signed loan agreement between the Fund and MTRH. However the two institutions signed an agreement on 23rd October, 2023 and not 23rd October, 2024 as indicated in the management submission.
ii) The loan amount as per the loan agreement is Kshs. 312,669,869.2 with an additional charge of Kshs.7,236,298.08. the legal charges could have been avoided if the two institutions used their internal legal departments and therefore it was nugatory expenditure.
iii) There was an unexplained extra charge of Kshs. 20,548,385.72 arising from the difference between the loan amount reflected as Khs. 340,454,576 and the agreement amount of Kshs. 312,669,869.2 with an additional legal charges of Kshs.7,236,298.08.
iv) The Accounting Officer was in breach of the fiduciary duties assigned to him by advancing the Fund money to MTRH without valid signed loan Agreement which is not one of the core mandate of the Fund.
v) The management acknowledged the omission, and formalized the process where the contract between NHIF And MTRH was signed on 23rd Oct,2024.
vi) The Fund continues to recover the loan from MTRH's claim payment at the rate of Kshs. 3,019,164 per month towards the repayment of the loan and the outstanding balance as at 30th June, 2024 stood at Kshs 120,637,811.

Committee Recommendations

The committee reprimands the then Accounting officer for failing to ensure that a valid Loan agreement was in place before advancing the funds.

3.1 Shares in Consolidated Bank – KES 54,200,000

553.The Committee heard that, the shares held at Consolidated Bank Ltd comprised 590,000 ordinary shares valued at KES. 11,800,000 and 2,120,000 preference shares valued at KES. 42,400,000 totalling to KES. 54,200,000.

CURRENT STATUS

554.On the Ordinary shares held at Consolidated Bank Ltd, it is true that the Fund included the total value at cost of Kshs. 54,200,000 in its financial statements. The Fund had no reason, as at the close of the financial year, to believe that the investment in Consolidated Bank Ltd was impaired considering that the Bank remained a going concern and the Fund could claim full ownership of the investment.

555.However, management intends to assess the recoverability of the investment in consolidated Bank Ltd in the current period to determine an appropriate treatment in the financial statements in light of the audit recommendations.

Committee Observations

The committee observed that it had deliberated the matter on Shares in Consolidated Bank in its report for financial year 2018/2019 and would want to maintain the observations and recommendations therein as detailed below;

i) The investment comprising of 590,000 ordinary shares valued at Kshs. 11,800,000 and 2,120,000 preference shares valued at Kshs. 42,400,000 totaling to Kshs. 54,200,000 had been deemed impaired and its recoverability doubtful, although the bank still continues to operate.
ii) The NHIF Management, having explored all recovery options provided for in its policies have declared the deposits impaired and its recoverability doubtful, without disclosing the steps taken to dispose off the shares.
iii) The Consolidated bank Shares have not been publicly traded at NSE and therefore, it was not clear how NHIF made the decision to invest in the share.
iv) NHIF has not been earning dividend for the amount invested in the bank despite the consolidated making profits. This was not a prudent financial investment when holding capital that was not earning any dividends and increase in value.

Committee Recommendations

Within three months upon adoption of this report, the Accounting officer should provide a comprehensive report on status of the investments as to whether they exist and their economic value with a view to recover the amount so lost with interest at the prevailing CBK rates from the concerned Accounting officer.

4. Short Term Deposits (Investments)

556.The Committee heard that, as previously reported, included in the statement of financial position as at 30 June, 2021 is short term deposits balance of Kshs.15,078,178,771 which is net of provision for impaired investments of Kshs.1,304,410,609. The provision includes an amount of Kshs.49,500,000 which had been deposited by the Fund on 26 June, 2001 at the consolidated Bank Ltd in Nairobi. The entire deposit of Kshs. 49,500,000 was offset by the Bank against a guarantee executed by the former Fund Chief Executive Officer on behalf of Euro Bank Ltd. It is not clear and the management has not explained the circumstances under which the Fund's deposit was used as a guarantee by the then Chief Executive Officer.

557.Although the Public Investment Committee recommended in the 21st report that;

i. The then CEO of NHIF be held accountable for any losses incurred in the irregular investment of the surplus funds in Consolidated Bank and therefore be surcharged for Kshs.40,065,205, being the value of the un-deposited cheque No.022477 of 23 September 2002 from Euro Bank;

ii. The then Consolidated Bank's CEO and Finance Manager should be held accountable for colluding with NHIF to mismanage the invested funds;

iii. In view of the fact that the Fund had no capacity to provide guarantee for a loan to a private bank, Consolidated Bank should pay the amount of Kshs.49.5 million owed to the Fund;

iv. The then Senior Management of Consolidated Bank including the then Managing Director, and Finance Manager should also be held accountable for colluding with NHIF to mismanage the invested funds.

v. The former Managing Director of Consolidated Bank should be surcharged for the funds that were advanced to Euro Bank in overnight lending. He should further be held accountable for the Kshs. 49.5 million which the Bank could not recover from the Fund and consequently offset the same against the fixed deposits of NHIF.

vi. NHIF should relentlessly pursue Consolidated Bank for recovery of Kshs.49.5 million;

vii. NHIF CEO must ensure that all financial investments by the Fund are done in accordance with Treasury Circular No.10 of 1992 and section 28(1) of the Public Finance Management Act, 2012.

558.No action appears to have been taken to recover the Kshs.49,500,000 the Fund lost. In the circumstance, it has not been possible to confirm whether the short-term deposits balance of Kshs.15,078,178,771 is fairly stated as at 30 June, 2021.

Management response

559.The management informed the Committee that, In June 2001 NHIF placed a fixed deposit with consolidated bank of Kshs 600 million. In August 2001 the then Chief Executive of NHIF made a guarantee on behalf of Euro Bank to enable Consolidated Bank to use the Fixed Deposit as security. When Euro Bank defaulted payment, Consolidated bank was unable to recover payment and therefore offset Kshs. 49.5 million from the total amount of Kshs. 600 million.

560.This matter was handled by the Inspectorate of State Corporations, which was of the view that the Fund had no capacity to provide a guarantee for a loan to a private bank. The Inspectorate of State Corporation further noted that consolidated bank should pay back the amount of Kshs. 49.5 million.

21ST REPORT OF PIC – COMMITTEE RECOMMENDATIONS

561.This matter was presented to the PIC Committee where it recommended in its 21st Report that the query should be excluded from subsequent Reports of the Auditor General, provided that the management makes full disclosure of this unresolved matter in its financial statements as required by the International Accounting Standards no. 37.

Committee Observations

The Committee observed that it had deliberated on the Short Term Investments matter in its report for the financial year 2018/2019 and would want to maintain the observations and recommendations therein as detailed below;

i. This matter (HCCC NO. 505 OF 2003) is actively in court

ii. The matter was handled by the Inspectorate of State Corporations, which was of the view that the Fund had no capacity to provide a guarantee for a loan to a private bank and therefore Consolidated Bank should pay the amount of Kshs.49.5 million owed to the Fund.

Committee Recommendations

The Committee recommends that –

i. NHIF should relentlessly pursue Consolidated Bank for recovery of Kshs.49.5 million.

ii. The Accounting Officer, NHIF should ensure at all times that all financial investments by the Fund are done in accordance with the National Treasury guidelines.

5.0 Trade and Other Receivables

562.The Committee heard that, the statement of financial position reflects trade and other receivables balance of Kshs. 11,833,069,086 and as disclosed in Note 30 to the financial statements. However, the following unsatisfactory matters were noted.

5.1. Long Outstanding Return to Drawer (R/D) Cheques

563.The amount includes R/D Cheques of Kshs.14,790,981 from various institutions which have been long outstanding some dating back to year 2013 and which had not been replaced as at 30 June, 2021.

564.Consequently, the accuracy, completeness and recoverability of R/D cheques balance of Kshs.14,790,981 as at 30 June, 2021 could not be confirmed.

Management response

565.The management informed the Committee that, the RD cheques totaling Kshs 18,061,170, these are associated with companies that have closed, and the debts exceed six years, rendering them outside the scope of the Action Act on debt collection. Consequently, a provision for doubtful debt has been established in the financial statements. As per debt management clause 4.3.4.1, 50% of outstanding contributions aged between 12 and 24 months shall be included in the provision, except in cases where adhered-to payment plans are in place.

566.Clause 4.3.4.2 specifies that debts older than 24 months require 100% of the overdue amount to be included in the provision, unless adhered-to payment plans are in place. Furthermore, clause 4.3.5 on bad debts states that debts exceeding five years shall be classified as bad debts, subject to potential write-off by the board of management. The Fund intends to pursue board approval for the write-off, as the debt is deemed uncollectable.

567.In addition, management has implemented a system module that automatically reverses payments from employers when their cheques bounce, prompting immediate pursuit of the unpaid amount for that specific month. Consequently, the issue of "Refer to Drawer" cheques has been eliminated. NHIF collection banks, KCB and Co-operative banks, now only accept their own drawn cheques, which are verified for account status before acceptance, further reducing instances of "Refer to Drawer" cheques.

568.Moreover, the CEO established a task force on June 22, 2022, tasked with reviewing debt and providing management with recommendations for appropriate actions concerning each debt category within the organization. The task force anticipates completing its work in May 2023, at which point it will present a report to management for review, discussion, and subsequent approval.

Committee Observations

The Committee observed that –

The committee observed that it had deliberated the matter on Long Outstanding Return to Drawer (R/D) Cheques in its report for financial year 2018/2019 and would want to maintain the observations and recommendations therein as detailed below;

i) There are 168 companies with uncollectable RD cheques amounting to Kshs.5,332,807.00 having closed business/ operation implying lost contributions. Also, the Fund is unable to trace 67 employers with outstanding amount totaling to Kshs. 2,252,806 through their respective addresses as per the NHIF Data Base. The Fund intends to seek the Board approval for consideration for write off.

ii) It had taken over six months for NHIF to act on uncollectable RD cheques amounting to Kshs.19,061,721 which is a sign of laxity on the part of the Fund management to ensure compliance by employers.

Committee Recommendations

The Committee recommends that within three months upon adoption of this report, the accounting officer NHIF/SHA should submit a comprehensive report to the Committee on all the outstanding amounts/dues from the employers accounts that have been dormant and the intended actions / strategies for recovery.

5.2 Long Outstanding Insurance Claim

569.The Committee heard that, as previously reported, the trade and other receivables balance at Note 30 to financial statements includes sundry debtors of Kshs.7,246,750 out of which Kshs.4,414,750 is insurance claim from an insurance company for motor vehicle registration No KCK 509U which was involved in an accident 27 April 2018 and the claim has not yet been paid. Consequently, the accuracy and validity of sundry debtors balances of Kshs. 7,246,750 as at 30 June, 2021 could not be confirmed.

Management response

570.The management informed the Committee that, motor Vehicle KCK 509U was involved in an accident on 27th April 2018 which was reported to our then Insurer AMACO. The accident was assessed, and the vehicle was declared a write-off. Evaluation was done and a discharge voucher of Kshs. 4,414,750 was issued by AMACO. The discharge was signed and returned on 12th June 2019.

571.This claim has however not been settled by the insurer, despite numerous engagements via emails and letters. The most recent communication to the client was done on 10th December 2021.

572.Channel Insurance brokers who were providing Insurance brokerage services at the time of the accident tried to engage the Insurer on various occasions including engaging the regulator as indicated to us via an email dated 10th March 2021.

CURRENT STATUS

573.The Fund, having received a discharge voucher from AMACO insurance company signaling amount to be received from the insurer in regard to compensation of motor vehicle KCK 509U, signed, stamped and returned the discharge voucher on 12th June 2019 for the payment to be processed and wired. The insurance company has since not made payment despite numerous follow-ups. Due to this, The Fund has made further engagements with the regulator (IRA) in pursuit of the debt to ensure that it is fully recovered. Fund has shared policy details with IRA and waits for further action.

574.Meanwhile, to avoid recurrence of the above scenario, management has caused for all policy documents to include timelines to guide claims and compensation processes in case of incidences of motor accidents.

Committee Observations

The committee observed that –

The committee observed that it had deliberated the matter on Long Outstanding Insurance Claim in its report for financial year 2019/2020 and would want to maintain the observations and recommendations therein as detailed below;

The vehicle was declared a write-off, evaluation was done and a discharge voucher of Kshs. 4,414,750 was issued by AMACO. However, the discharge signed by NHIF and returned on 12th June 2019 bore the name of Payee as KEBS. It was therefore not clear what relationship NHIF and KEBs had with regard to the accident vehicle. The claim had not yet been settled as at the time of interrogation in 2023.

Committee Recommendations

Within three months upon adoption of this report, the Accounting Officer, NHIF/SHA should provide prove of settlement to the Committee of the claim by AMACO in form of certified bank statements.

6. Benefit Expenses

6.1. Double Payments for Specialized Benefit Packages

575.The Committee heard that, the statement of financial performance reflects national health scheme expenses of Kshs.28,236,045,834 as disclosed in note 18 to the financial statements. The amount includes Kshs. 15,580,660,100 for specialized benefit packages out of which double payments of C-section deliveries of Kshs.2,370,000 was noted among the transactions sampled.

576.In the circumstances, the validity of specialized benefits package totaling Kshs. 15,580,660,100 for the year ended 30th June 2021 could not be confirmed.

Management response

577.The management informed the Committee that, it has been established that some inpatient rebate claims were miscoded as caesarian section claims. Incidents of double entries are also evident.

578.However, the management had already picked this issue and the recovery (surcharge) process initiated.

579.Management in the year 2020 set up a system for recoveries of all payments made out of the contractual terms entered into by the parties. These payments are ordinarily detected through routine claims review and analysis. Therefore, although double payments are exhibited from time to time, management identifies such claims and initiates a hospital surcharge process to recover the overpayments.

Additionally, management has continually strengthened the systems by putting in place controls to ensure that services are not only segregated but also capped within specified limits. This ensures that various services are billed separately for all visits and admissions.

Committee Observations

The Committee observed that –

The national health scheme expenses included Kshs.2,370,000 double payments of C-section deliveries noted among the transactions sampled by the auditors. Although, the NHIF management indicates that some inpatient rebate claims were miscoded as caesarian section claims, also that incidents of double entries are evident and that the management had already picked this issue and the recovery (surcharge) process initiated. This points to a weak claims system that is subject to abuse for the benefit of the facility.

Committee Recommendations

Within three months upon adoption of this report, the EACC should investigate the defunct Fund systems, on how the double claims arose out of miscoding with a view to establish whether there was fraud, corruption or other financial improprieties in the claims processing and whether there was any breach of the law in the process or wastage of public funds. If any officer is found culpable, he/she should be held personally liable for the financial loss, DPP should initiate a legal process against the culpable persons.

6.2 Linda Mama Benefit Expenses

6.2.1 Overpayment Above Specified Limits

580.The Committee heard that, the statement of financial performance reflects Linda Mama Benefit expenses of Kshs.4,948,139,361 (2020 – Kshs.4,041,850,985) as disclosed in note 15 to the financial statements. The amount includes Kshs.3,639,012,381 on caesarian deliveries, normal deliveries, antenatal care and postnatal care whose sampled transactions revealed cumulative overpayments of Kshs.210,355,297 as summarized below: -

Benefit	**Overpayments (Kshs)**
Caesarian Delivery Expenses	82,013,003
Normal delivery Expenses	110,066,624
Antenatal Care Services	4,707,020
Postnatal Care Services	13,568,650
TOTAL	**210,355,297**

581.This is contrary to the limits specified by the board for Caesarian Deliveries, Normal Deliveries, Antenatal Care and Postnatal Care Services.

582.Consequently, the accuracy, propriety and validity of Linda Mama Benefit expenses of Kshs.210,355,297 for the year ended 30June,2021 could not be confirmed.

Management response

583.The management informed the Committee that, the benefits under the program are guided by Linda Mama access and benefits guidelines and hospital contracts rates. Management of complications related to pregnancy is guided by Linda Mama guidelines and is paid under individual health facility's respective rebate. Since newborns delivered under this scheme cannot be declared under NHIF, those born with complications access both medical and surgical benefits through rebate using the mother's details.

584.There are also instances where some hospitals, especially Level 2 and 3 Government facilities, launch a lumpsum claim for all ANC visits done by the client which may be construed as overpayment when this may not be the case.

Committee Observations

The Committee observed that –

The Accounting officer's submit and admit that;

i) Newborns with notable complications after delivery under this scheme cannot be declared under NHIF and their medical and surgical benefits are claimed using the mother's details.
ii) There are instances where some hospitals, especially Level 2 and 3 Government facilities, launch a lumpsum claim for all ANC visits done by the client which may be construed as overpayment when this may not be the case.
Arising from these two admissions, the management ought to have carried out proper user training and coding for newborns to avoid fictitious claims.

Committee Recommendations

585.Within three months upon adoption of this report, the EACC should investigate the defunct Fund systems, on how the overpayments were done with a view to establish whether there was fraud, corruption or other financial improprieties in the claims processing and whether there was any breach of the law in the process or wastage of public funds. If any officer is found culpable, he/she should be held personally liable for the financial loss, DPP should initiate a legal process to against the culpable persons.

6.2.2 Double Payments

586.The Committee heard that, the statement of financial performance reflects Linda Mama Benefit expenses of Kshs.4,948,139,361 (2020 – Kshs.4,041,850,985) as disclosed in note 15 to the financial statements. The amount includes caesarian delivery and normal delivery expenses of Kshs.3,044,194,898 out of which sampled transactions revealed double payments of Kshs.24,773,550 for normal and caesarian deliveries.

587.Consequently, the accuracy and validity of Linda Mama Benefit expenses of Kshs.24,773,550 for the year ended 30June,2021 could not be confirmed.

Management response

588.The management informed the Committee that, as noted above, some cases categorized as double claims were for delivery and inpatient rebates.
589.Management in the year 2020 set up a system for recoveries of all payments made out of the contractual terms entered into by the parties. These payments are ordinarily detected through routine claims review and analysis. Therefore, although double payments are exhibited from

time to time, management identifies such claims and initiates a hospital surcharge process to recover the overpayments.

590. Additionally, management has continually strengthened the systems by putting in place controls to ensure that services are not only segregated but also capped within specified limits. This ensures that various services are billed separately for all visits and admissions.

Committee Observations

The Committee observed that –

The Accounting officer submitted and admitted that;

i) Some cases categorized as double claims were for delivery and inpatient rebates.
ii) The Management set up a system for recoveries in the year 2020 for payments ordinarily detected through routine claims review and analysis.
iii) Double payments are exhibited from time to time and the management identifies such claims and initiates a hospital surcharge process to recover the overpayments.
iv) Arising from these admissions, the management ought to have carried out proper user training and coding to avoid fictitious claims.

Committee Recommendations

Within three months upon adoption of this report, the EACC should investigate the defunct Fund systems, on how the double payments were done with a view to establish whether there was fraud, corruption or other financial improprieties in the claims processing and whether there was any breach of the law in the process or wastage of public funds. If any officer is found culpable, he/she should be held personally liable for the financial loss, DPP should initiate a legal process against culpable persons.

Other Matters

1.0 Budgetary Control and Performance

591. The Committee heard that, during the year under review, the Fund's actual receipts amounted to Kshs. 57,918,358,000 against budgeted receipts of Kshs. 80,708,438,000 resulting in a revenue shortfall of Kshs. 22,790,080,000. Further, actual expenditure for the year amounted to Kshs. 75,198,084,000 resulting in an overall under absorption of Kshs. 13,448,651,000 (or 17%). There is need for the Fund to review its budget making process with a view to develop a vibrant budget implementation follow up mechanism and feedback process to ensure that all projects and activities are implemented as planned for the Fund to meet its mission and objectives for the benefits of the citizens of Kenya.

Revenue Shortfall

Management response

592.The management informed the Committee that, the Fund experienced a shortfall of more than 22 billion in the financial year 2020/2021 when comparing actual receipts of Kes 57.92 billion and the target of Kes 80.81 billion. The Fund revenue comprises of four main sources namely, Statutory/ voluntary contributions from National scheme members, Premiums from enhanced schemes & sponsored programs, Linda mama funds from MOH and returns from investments. 98% of the Fund revenue comes from member contributions and premiums which is dependent on the number of actively paying members. To ensure accurate and reliable revenue projections, the Fund uses two approaches in formulating the targets. The first criteria involve projecting the number of new members targeted to be enrolled from both the informal and formal sector. The population is then subjected to the applicable contributions rate i.e., Kes 6,000 p.a. for the informal sector and an average rate of Kes 9,600 p.a. for formal sector. The second criterion used is to estimate the population expected to be up to date with their contribution i.e. the retention rate.

593.In budgeting and forecasting for the financial year 2020/2021 National Scheme revenues, NHIF used the projected active membership for FY2019/20 of 4,601,763 plus estimated new registrations for 2020/21 of 313,676 new members (275,000 from the formal sector and 38,676 informal). The use of this method was a departure from the previous approach of using the historical member data and applying a desired compliance/retention rate. This method was used to ensure a reliable and a fair degree of accuracy. However, even with this method where active members were used to project revenues, there was a revenue shortfall of Kes 6 billion.

Reasons for revenue shortfall from the National Scheme contributions

594.Although the Fund surpassed the target for new registration by enrolling 821,548 members, the retention rate achieved was only 41%. The targets, which the management believe were realistic and achievable by the time of their formulation were however not achieved because the actual performance was affected by several factors that were beyond the control of NHIF. These factors that affected revenue collection are: -

i. A depressed economy in the period under review leading to reduced purchasing power for households who then prioritized basic needs. This affected mostly the informal sector although the formal sector was also adversely impacted. This reduced the number of members willing and capable of paying contributions (retention) new members joining.

ii. The adverse effects of Covid-19 which led to employers downsizing and reduced income to employees affected both the formal and informal sector. Loss of income opportunities made households prioritize on basic needs such as food and rent compared to purchase of medical cover. This affected both sectors.

595.Reasons for revenue shortfall from the Enhanced Schemes & sponsored programs

a) The actual receipts for FY2020/21 were less than targeted due to the following receipts:

i. Delay in remittance of Linda Mama funds by the Ministry of Health. The funds for the FY2020/21 amounting to Kes 4,098,000,000 were received in July 2021 (after the year-end) despite concerted efforts by NHIF requesting for the remittances.
ii. Delay in roll-out of Universal Health Coverage scale-up leading to delay in remittance of premiums. NHIF had budgeted for Kes 6 billion within the financial year 2020/21 being premiums for UHC Government sponsored indigents. However, the Government sponsored scheme did not kick-off as expected leading to an unmet revenue target.

Measures/ strategies NHIF is employing to ensure enrollment of more members and increase in revenues.

Formal Sector

596.NHIF is engaging with employer's umbrella bodies and other stakeholders to sensitize their members and also enroll the members with NHIF. The Federation of Kenya Employer association was engaged, and they are willing to share all information received from NHIF with their members.

Informal sector

597.NHIF is implementing the following strategies in the Informal Sector.

i. Targeted member education of NHIF benefits
ii. Engagement with University and College Management to consider making NHIF membership mandatory before enrolment of all University & College Students
iii. Registration of UHC members as per MoH action plan for UHC roll out.
iv. Engagement of informal sector umbrella bodies to develop effective strategies to increase membership.
v. Engagement of the Commissioner of Co-operatives on a partnership for registration of cooperatives with NHF.
vi. Short. Messaging (SMS) and/or WhatsApp Messages to all Kenyans tailored to prompt them to register with NHIF.
vii. Partnership with GOG, NG-CDF Board, and other institutions on coverage

Sponsored Programs

i. Development of a Sponsored Programs Strategy on enrolment and retention.
ii. Lobby COG to support provision of a budget for sponsorship of vulnerable persons.
iii. Lobby NG-CDF Board to support provision of a budget for sponsorship of vulnerable persons.
iv. Lobby other institutions to sponsor vulnerable persons.
v. Develop innovative and cost-effective access point.
vi. Lobby National Treasury for timely release of funds

EXPENDITURE (UNDER-ABSORPTION)

598.Out of the budgeted recurrent expenditure of Kes 75.19 billion, Kes 67.92 billion (i.e. 90%) was for claims & benefits. With an actual expenditure of Kes 54.66 billion, there was an under-utilization of more than 13.26 billion in benefits. The under-utilization is as a result of the following: -

i. There was no absorption under the UHC indigents due to the delay in roll-out of the scheme by the National Government. A total of 5 billion budgeted for this scheme was **therefore not utilized.**

ii. The benefits had been budgeted based on a percentage of premiums/ contributions that are further dependent on number of active membership/ populations covered. With less active membership achieved as explained above, this would also affect the morbidity rate because of a smaller population covered.

599.The other operating/ administrative expenses which was budgeted at Kes 7.27 billion reported a slight under-absorption of Kes 187 million (3%). This under-absorption on recurrent administrative expenses was due to the impact of Covid-19 Pandemic on operating activities involving transport and other expenditures. NHIF however leveraged on its diverse ICT infrastructure to achieve some the planned services/ activities.

600.The unmet targets and under-absorption as explained above was not caused by lack of funding or poor budgeting and planning processes. The was caused by the unpredictable environment in the covid-19 era and the fact that a big chunk of NHIF budget is reliant on Government projects whose roll-out is not within the control of NHIF. Nevertheless, NHIF is constantly reviewing its budgeting processes to continuously improve and ensure its objectives is met within available resources.

Committee Observations

The Committee observed that –

The Fund actual receipts amounted to Kshs. 57,918,358,000 while the actual expenditure for the year amounted to Kshs. 75,198,084,000 implying that the Fund spent Kshs. 17,279,726,000 from the retained earnings without the BOD and National Treasury approval.

Committee Recommendations

The Committee recommends that–

i) The committee reprimands the then Accounting Officer for spending Kshs. 17,279,726,000 from the retained earnings without the BOD and National Treasury approval.

ii) The Accounting Officer must at all times ensure that the budgets are realistic, achievable and always adhere to annual work plans, procurement plans and revenue collection schedules in compliance with Regulation 44(2) of the PFM (National Government) Regulations, 2015.

Basis for Conclusion

1.0 Long Outstanding Staff Receivables

601.The Committee heard that, included in staff receivable balance of Kshs. 8,026,605 as reflected in note 30 to the financial statements is salary advance totaling to Kshs. 4,021,884. However, the advances were not recovered from staff within twelve (12) months. This is contrary to section C.6(5) of the Human Resource Policies and Procedure Manual, 2016 for the Public

Service which limits the recovery period for salary advance to a maximum of twelve (12) months.

In the circumstance, management was in breach of the law.

Management response

602.The management informed the Committee that, as correctly pointed out by the auditor, an amount of Kshs. 8,026,605 included in the account receivable figure of Kshs. 11,833,069,086 as at 30th June 2021 had not been recovered. However, an amount of Kshs. 4,004,720.41 has since been recovered through the payroll as at 24th June 2022 leaving a balance of Kshs. 4,021,884.15. The recovery of this amount is ongoing except for the cases of 18 staff amounting to Kshs. 883,544 who have either been interdicted, dismissed, resigned, terminated, or are deceased.

603.Further, in order to fully address the staff debtors' issue, management has appointed a team to evaluate the overall organizational debt and advise the Board of management on the appropriate action See the table below highlighting the recoveries and reasons for the 18 cases not recovered.

		CURRENT STAFF DEBTORS AS AT 30TH JUNE 21				
CURRENT		ASSETS				
CODE	**DATE**	**NAME**	**AMOUNT**	**RECOVERY**	**OUTSTANDING**	**REASON**
110555	30.06.20	SAMUEL MUNIU STAFF DRS	146,658.00	146,658.00	-	Fully recovered
112032	30.06.21	CHRISTINE TIKO MKABANA	202,353.00	72,000.00	130,353.00	under payro deduction
111872	30.06.21	HAZEL SAFARI - STAFF DRS	214,629.00	72,000.00	142,629.00	under payro deduction
111574	30.06.21	LOICE KANDIE STAFF DRS	214,629.00	72,000.00	142,629.00	under payro deduction
112196	30.06.21	DORINE KAWIRA KABURU	158,255.00	72,000.00	86,255.00	under payro deduction
112074	30.06.21	MARY MARNANWAHTO SAHERE	202,676.00	72,000.00	130,676.00	under payro deduction
112097	30.06.21	AURELIA CHEPKOECH NYOLE	147,247.00	72,000.00	75,247.00	under payro deduction
112202	30.06.21	JOSEPH OWUOR	158,255.00	72,000.00	86,255.00	under payro deduction
112204	30.06.21	SIMON MBURU MWANGI	175,988.00	42,000.00	133,988.00	under payro deduction

112213	30.06.21	MARTIN KIPROP MAINA	133,834.00	72,000.00	61,834.00	under payrc deduction
112220	30.06.21	NANCY JEPKEMOI KIPTUI	158,255.00	72,000.00	86,255.00	under payrc deduction
112225	30.06.21	FREDRICK NAKURE	139,684.00	53,429.00	86,255.00	under payrc deduction
112249	30.06.21	FAITH SITOI TONKEI	177,011.00	72,000.00	105,011.00	under payrc deduction
111447	25.08.15	PATRICIA MUDIBO STAFF DRS	229,782.25	47,999.50	181,782.75	under payrc deduction
110601	01.03.18	JOHNSON NGUTHURI STAFF DRS	1,612.90	-	1,612.90	under payrc deduction
111619	03.11.20	SCHOLAR OGONO STAFF DRS	294,432.00	151,890.00	142,542.00	under payrc deduction
111669	10.03.21	TITUS MUSYOKI STAFF DRS	426,754.50	5,000.00	421,754.50	under payrc deduction
111142	10.03.21	WILFRIDAH ABINYA STAFF DRS	664,993.00	161,708.00	503,285.00	under payrc deduction
111529	23.08.18	MICHAEL LANGAT STAFF DRS	28,250.00	28,250.00	-	Fully recovered
110958	15.06.20	SILVIA ULALO STAFF DRS	31,583.50	31,583.50	-	Fully recovered
110361	30.11.17	JANE GICHOHI STAFF DRS	130,964.52	-	130,964.52	under payrc deduction
111327	30.06.20	JONES IVULI STAFF DRS	105,408.00	105,408.00	-	Fully recovered
111047	23.09.20	SAMUEL NGUGI STAFF DRS	127,603.50	60,000.50	67,603.00	under payrc deduction
110724	23.09.20	JOHN MBOYA STAFF DRS	165,047.00	84,000.00	81,047.00	under payrc deduction
111397	23.09.20	DANIEL KIBITI STAFF DRS	82,819.50	35,000.50	47,819.00	under payrc deduction

		CURRENT STAFF DEBTORS AS AT 30TH JUNE 21				
CURRENT		ASSETS				

CODE	DATE	NAME	AMOUNT	RECOVERY	OUTSTANDING	REASON
111206	06.01.17	NAMAN KAMOYO STAFF DRS	237,024.75	237,024.75	-	Fully recovered
110730	23.09.20	JAIRUS ASIBIKO STAFF DRS	137,454.00	84,000.00	53,454.00	under payro deduction
111337	07.10.20	ROBERT MAKACHIA STAFF DRS	88,557.00	59,757.00	28,800.00	under payro deduction
111542	13.11.20	OLIVER SITIMA STAFF DRS	231,811.65	92,725.65	139,086.00	under payro deduction
112203	02.06.20	CHEBII PAUL KIPROB	31,950.45	-	31,950.45	under payro deduction
111385	07.10.20	AFRAH HAJI STAFF DRS	346,500.00	346,500.00	-	Fully recovered
110113	20.01.21	JOHN MUTHOKA STAFF DRS	102,152.00	-	102,152.00	under payro deduction
111871	01.11.16	VINCENT OMENGE -STAFF DRS	4,838.75	4,838.75	-	Fully recovered
112165	13.12.16	MARY WANGARI	55,365.01	55,365.01	-	Fully recovered
110716	01.03.18	CYLIDE ESILABA STAFF DRS	30,000.00	30,000.00	-	Fully recovered
111295	30.06.20	MURIITHI MEMEU STAFF DRS	30,000.00	30,000.00	-	Fully recovered
110095	26.02.20	AZENATH AOSA STAFF DRS	17,124.55	17,124.55	-	Fully recovered
111731	26.02.20	REUBEN MUTUURA STAFF DRS	8,997.45	8,997.45	-	Fully recovered
111738	26.02.20	JAMES NDUNGU STAFF DRS	30,252.70	30,252.70	-	Fully recovered
110217	20.03.20	PATRICK BARASA STAFF DRS	14,982.30	14,982.30	-	Fully recovered
112568	01.05.20	MIRIAM CHELANGAT KOECH	600	600.00	-	Fully recovered

111558	30.06.20	ANDREW ROTICH STAFF DRS	46,404.70	46,404.70	-	Fully recovered
111431	11.08.20	CHRISTOPHER NJERU STAFF DRS	405,000.00	405,000.00	-	Fully recovered
110228	04.11.20	CHRISTINE SHIROKO STAFF DRS	19,000.00	19,000.00	-	Fully recovered
110962	04.11.20	BENEDICT KITHEKA STAFF DRS	36,000.00	36,000.00	-	Fully recovered
111655	13.11.20	HENRY NYANTIKA STAFF DRS	5,266.40	5,266.40	-	Fully recovered
111822	06.01.21	JACQUELINE KOKI WAMBUA	55,000.00	55,000.00	-	Fully recovered
112136	20.01.21	ABDIRASHID ADAN ALI STAFF DRS	63,000.00	63,000.00		Fully recovered
112184	20.01.21	DAVID K.KINARA STAFF DRS	9,000.00	9,000.00	-	Fully recovered
110583	10.03.21	HELLEN NYAMWANGE STAFF DRS	10,737.90	10,737.90	-	Fully recovered
110826	10.03.21	JAMES KENGITI STAFF DRS	68,127.30	68,127.30	-	Fully recovered
110875	10.03.21	REBECCA NGUI STAFF DRS	9,333.20	9,333.20	-	Fully recovered
		CURRENT STAFF DEBTORS AS AT 30TH JUNE 21				
CURRENT		ASSETS				
CODE	**DATE**	**NAME**	**AMOUNT**	**RECOVERY**	**OUTSTANDING**	**REASON**
110955	10.03.21	JANE CHEGE STAFF DRS	53,333.70	53,333.70	-	Fully recovered
111245	10.03.21	JAMES ONYANGO STAFF DRS	109,876.75	109,876.75	-	Fully recovered

112066	09.04.21	VICTOR HANSON RADING	20,279.00	20,279.00	-	Fully recovered
112140	09.04.21	GRACE KANGETHE STAFF DRS	106,163.50	106,163.50	-	Fully recovered
111274	30.06.21	GILBERT OSORO STAFF DRS	49,528.30	49,528.30	-	Fully recovered
112218	30.06.21	JOHN LEMARKECH LEKILINYO	158,255.00	158,255.00	-	Fully recovered
112492	02.06.21	LILIAN CHEBORON TUWEI	32,419.50	32,419.50	-	Fully recovered
110008	29.08.06	SILAS BOIT STAFF DRS	3,083.15	-	3,083.15	Terminated
110105	18.03.19	FLORENCE NYANGUKA STAFF DRS	38,735.00	-	38,735.00	Dismissed
110923	19.06.07	ISAAC NDIRANGU STAFF DRS	6,008.00	-	6,008.00	Interdicted
111467	10.05.08	ABDISALAN BILLOW STAFF DRS	8,166.50	-	8,166.50	Resigned
110980	21.01.09	BERNARD KOSKEY STAFF DRS	63,356.80	-	63,356.80	Resigned
110116	21.01.09	ABDIKADIR HUSSEIN STAFF DRS	1,618.00	-	1,618.00	Resigned
111908	10.07.09	NIMO IBRAHIM-STAFF DRS	57,900.00	57,900.00	-	Resigned
110082	16.11.10	CHARLES KIPRONO STAFF DRS	11,287.00	-	11,287.00	Resigned
111936	17.02.11	KEITH MBITHI-STAFF DRS	2,000.00	-	2,000.00	Dismissed
111015	17.02.11	PAUL NYORO STAFF DRS	7,781.00	-	7,781.00	Dismissed
111593	15.02.13	IBRAHIM SHAMASDIN STAFF DRS	8,953.00	-	8,953.00	Resigned

111656	18.03.14	GEORGE MIDIWO STAFF DRS	82,397.52	-	82,397.52	Resigned
111693	07.06.17	NICHOLAS KIAMBATI STAFF DRS	207,370.50	-	207,370.50	Deceased
110052	30.06.17	SIMON MUNGA STAFF DRS	83,871.05	-	83,871.05	Resigned
110727	19.02.18	SYPROSE ORICHO STAFF DRS	9,450.00	-	9,450.00	Deceased
111576	02.10.18	WILLIAM MURIUKI STAFF DRS	10,000.01		10,000.01	Interdicted
111198	23.09.20	ELIZABETH MAKANYENGO STAFF DRS	127,594.50	5,000.00	122,594.50	Interdicted
111621	23.09.20	ADRINE WANJIRU STAFF DRS	153,972.00	-	153,972.00	Dismissed
		TOTALS	**8,026,604.56**	**4,004,720.41**	**4,021,884.15**	

Committee Observations

The Committee observed that –

i) The amount ought to have been recovered in twelve months, however, the management did not provide a justifiable reason for the breach of section C6 (5) of the Human Resource Policies and Procedure Manual, 2016 for the Public Service which limits the recovery period for salary advance to a maximum of twelve (12) months.

ii) There is no documentary evidence of how the recoveries were made in the payroll.

iii) The response does not address the query at hand on recovery of the balance of Kshs. 4,021,884.15 but the management responds to a different amount of Kshs. 4,004,720.41 being recovered through the payroll as at 24th June, 2022 leaving the same balance questioned of Kshs. 4,021,884.15.

Committee Recommendations

i. The Committee reprimands the then Accounting Officer for breach of section C.6(5) of the Human Resource Policies and Procedure Manual, 2016 for the Public Service which limits the recovery period for salary advance to a maximum of twelve (12) months.

ii. Within three months upon adoption of this report, the Accounting Officer NHIF/SHA should submit documentary evidence of recovery. The Inspector General, state corporations should surcharge the then Accounting officer(s) any amount not recovered during exit of any staff during his/her tenure.

2.0 Delayed Surrender of Temporary Imprest

604. The Committee heard that, trade and other receivables balance of Kshs.11,833,069,086 as at 30 June 2021 include temporary imprest of Kshs. 7,156,061. Included in the temporary imprest is Kshs. 359,400 which has been outstanding for over four (4) months. This is contrary to Section 93(5) of the Public Finance Management (National Government) Regulations, 2015 which states that a holder of a temporary imprest shall account or surrender the imprest within seven (7) working days after returning to duty station. Section 93(6) further provides that in the event of the imprest holder failing to account for or surrender the imprest on the due date, the Accounting Officer shall take immediate action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank Rate.

605. This is a breach of the law on public funds management and may imply that full recoverability of Kshs. 359,400 is doubtful.

Management response

606. The management informed the Committee that, the audit findings regarding the outstanding imprest amount of Kshs. 7,156,061 as of June 30, 2021. The outstanding balance was due to imprest issued to officers for various activities, which had not been surrendered by June 30, 2021, as a result of the government-imposed cessation of movement to contain the spread of Covid19. Subsequently, after the lifting of restrictions, the activities were carried out, and imprest totaling Kshs. 6,817,494 was surrendered. Currently, an outstanding balance of Kshs. 338,567 remains from the initial Kshs. 7,156,061 reported.

607. Out of the balance, the following officer is currently being deducted through payroll as detailed below:

i. Ruth S. Makallah (Warrant No. 207706, Code E5911) has an ongoing court case, with an outstanding balance of Kshs. 229,367.

ii. The recovery of Kshs. 109,200 from three staff members has proven challenging due to the following reasons:

iii. Peter Bigoro (Warrant No. 155230, Code E10005) passed away, leaving an outstanding balance of Kshs. 25,200.

iv. Wilfred Amasakha (Warrant No. 92353, Code E00492) exited, with an outstanding balance of Kshs. 84,000.

608. To address these issues, the CEO appointed a task force on June 22, 2022, to review debt and advise management on appropriate actions for each debt class within the organization. The task force is expected to complete its work by end of May 2023 and submit a report to management for review, discussion, and subsequent approval.

609. The task force's recommendations will encompass improved debt coordination and measures to ensure timely debt recovery, ultimately strengthening our organization's financial management practices.

Committee Observations

The Committee observed that–

i. Although, imprest totaling Kshs. 6,817,494 had been reportedly surrendered there were no documentary evidence of surrender and the expenditure had not been audited by the Auditor-General.
ii. Based on the outstanding balance of Kshs. 338,567 the CEO appointed a task force on 22nd June,2022, to review debt and advise management on appropriate actions for each debt class within the organization. Since the reasons for non-surrender as explicit, there was no need for forming a task force since this will be a waste of public funds and time.

Committee Recommendations

The Committee recommends that –

i. Within three months upon adoption of report, the Inspector General of State Corporations should investigate whether and how the imprest was recovered with a view to establishing whether, there financial improprieties in the surrender and recovery process and whether there was any breach of the law or wastage of public funds. If any officer is found culpable, he/she should be held personally liable for the financial loss, Inspector General should initiate a recovery process of the amount so outstanding with interest at the prevailing CBK rates from the concerned officer(s).

ii. The Committee reprimands the then Accounting Officer for breach of Regulation 93 of the PFM (National Government) Regulations 2015.

3.0 Irregular Payments of Acting Allowance

610. The Committee heard that, the statement of financial performance reflects staff costs of Kshs.5,298,841,170 (2020 – Kshs.5,001,301,138) as disclosed in note 19 to the financial statements. Included in staff costs is acting allowance of Kshs.12,479,934 out of which Kshs. 5,506,395 was paid to employees who have been acting for more than six months. This is contrary to NHIF Human Resource Policies and procedure manual 2020 section C.14(1) which states that acting allowance will not be payable to an officer more than six (6) months.

611. To this extent, the Fund management is in breach of the human resource policies and procedures.

Management response

612. The management informed the Committee that, the Health Financing Reforms Expert Panel for the Transformation and Repositioning of NHIF in their submission of the final report recommended that the functional structure of NHIF be re-organized to meet its expanded role as a strategic purchaser for UHC, reflecting the core functions the NHIF should undertake.

613.This to a large extent affected the overall structure of the Fund, which has a direct bearing in the Human Resource Management Instruments.

614.In August 2020, the State Corporations Advisory Committee (SCAC) approved the Human Resource Management Instruments for implementation.

615.The Human Resource Policy and Procedures Manual (August 2020) Section 4 Sub Section 4.5, part 4.5.5 states "Appointment on acting basis is a temporary measure pending the substantive filling of the vacant post by either recruitment of resumption of duty by the substantive holder of the post. The appointment shall normally be limited to a continuous period of 6 months or until the vacant post is filled whichever is the earlier but may be extended by the Board or Chief Executive Officer if the post remains vacant."

616.To correct the situation, Management has proposed to constitute an Ad Hoc Heads of Directorates/Departments to undertake a review of all acting positions and recommend suitability for confirmations, this will be in line with the current approved Human Resource Management Instruments. Thereafter the committee report be submitted to the Board of Management for consideration.

Committee Observations

The Committee observed that–

The amount of Kshs. 5,506,395 as acting allowances were irregularly paid to employees who have been acting for more than six months and thus the NHIF management was in breach of its Human Resource Policies and procedure manual 2020 section C.14(1) which states that acting allowance will not be payable to an officer more than six (6) months.

Committee Recommendations

The Committee recommends that –

Within three months upon adoption of this report, the Inspector General, state corporations should surcharge the then Accounting officer(s) and the then BOD the amount of Kshs.5,506,395 irregularly paid as acting allowances during his/her tenure.

4.0 Failure to Settle Legal Expenses

617.The Committee heard that, the statement of financial performance reflects other operating expenses of Kshs.1,562,542,165 (2020 – Kshs.1,705,268,767) as disclosed in note 21 to the financial statements. Include in other operating expenses is legal expenses of Kshs.40,609,210 out of which Kshs.19,709,232.15 was paid to a firm representing the Fund in High Court Civil Suit No. 345 of 2013. The Fund had been sued for terminating two (2) contracts of Kshs.77,678,000 without issuing three (3) months' notice as required. The Fund lost the case and ordered to pay Kshs. 130,587,018 plus interest at court rates and costs of the suit issued. The total calculated costs excluding legal costs are in excess of Kshs. 280 million.

618.In view of the breach of contractual agreement, the Fund was exposed to unnecessary costs.

Management response

619.The management informed the Committee that, the Board during the special Executive meeting held on 6th June 2012 resolved to adopt the legal opinion from Amollo & Gachoka Advocates who guided the Board to adopt Clause 17.1.3 which allowed the Fund to cancel the contract where the healthcare provider made a misrepresentation and clause 18.1 limited the liability of any claim by a health care provider arising on termination. The Advocates recommended that the contracts be terminated forthwith, and this was effected as guided and no notice was issued considering public interest and the services to be offered to the members of the scheme.

Committee Observations

The Committee observed that –

620.The NHIF management instead of seeking advice from the Attorney General and a no-objection from the same; acted on the profession advice of Amollo & Gachoka Advocates who guided the Board to adopt Clause 17.1.3 which allowed the Fund to cancel the contract where the healthcare provider made a misrepresentation and clause 18.1 limited the liability of any claim by a health care provider arising on termination.

621.The advice led to The Fund losing the case and being ordered to pay Kshs. 130,587,018 plus interest at court rates and costs of the suit issued. The total calculated costs excluding legal costs were in excess of Kshs. 280 million. This is a nugatory expenditure and public funds were lost in the process.

Committee Recommendations

The Committee recommends that –

Within three months upon adoption of this report, the EACC should undertake an investigation into how the law firms were engaged, whether there was fraud, corruption or other financial improprieties with regard to the terminations of the health care provider's contracts and whether there was any breach of the law in the process or wastage of public funds. If any officer is found culpable, he/she should be held personally liable for the financial loss, DPP should initiate a legal process against the culpable persons.

5.0 Unsupported expenditure – Linda Mama

622.The Committee heard that, the statement of financial performance reflects Linda Mama Benefits expenses of Kshs. 4,948,139,361 (2020 – Kshs. 4,041,850,985) as disclosed in note 15 to the financial statements. However, the signed Memorandum of Understanding between the Ministry of Health and the National Hospital Insurance Fund was not provided for audit verification.

623.In the circumstances the terms and conditions of engagement could not be confirmed.

Management response

624.The management informed the Committee that, the signed Memorandum of Understanding between the Ministry of Health and National Hospital Insurance Fund has since been provided for audit verification.

Committee Observations

The Committee observed that –

The then Accounting Officer was in breach of section 62 (1)(c) of Public Audit Act, 2015 which requires that a person shall not without justification fail to provide information within reasonable time that is required under the Act.

Committee Recommendations

The Committee recommends that –

The Committee reprimands the then Accounting Officer for contravening section 62 (1)(c) of Public Audit Act, CAP 412B.

EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL ON THE AUDITED ACCOUNTS OF THE KENYA BROADCASTING CORPORATION FOR THE FINANCIAL YEAR 2013/2014 - 2018/2019

FINANCIAL YEAR 2013/2014

1.0 Going Concern

628. The Committee head that, as in the previous year, the corporation recorded a deficit of Kshs.4,210,424,547 (2012-deficit of Kshs.3,417,224,974 raising the cumulative losses to Kshs.31,253,766,173. Further, the statement of financial position reflects a negative working capital of Kshs.34,850,934,791 and a negative net worth of Kshs.28,595,586,706. In addition, and as similarly reported in 2011/2012, the Corporation was unable during the year to service a Government of Kenya loan of Kshs.9,291,634,284 which has accrued interest of Kshs.23,052,726,705 as at 30 June 2013. Although management has explained that there are on-going negotiations with the Government to convert Government of Kenya Loan into equity, is not certain when the process will be completed.

629. The Corporation is therefore technically insolvent and its continued existence as a going concern is dependent upon the financial support of the Government and creditors.

Management response

630. The management informed the Committee that; the cumulative losses of Kshs.5,628,207,000 negative working capital of Kshs.39,843,327,000 and a negative net-

worth of Kshs.34,223,796,000 are as a result the Japanese loan that was provided in 1987 to KBC for the procurement of medium wave radio transmitters. The medium wave radio transmitters that were purchased with the loan funds are now obsolete.

631. The cash flows of KBC were affected negatively by competition following the liberalization of the media industry in Kenya in the 1990's. At the same time the Government revoked the television licensing permits in 2003 that were being issued by KBC at a fee. These factors rendered this corporation incapacitated to repay the loan. Since the Government had guaranteed the loan, it then took over repayment of the loan.The Government has been repaying both repaying both the principal and interest of the said loan.

632. However, the Government records the repayment amount as loan to KBC at market interest rates. This has greatly affected the Corporation's financial position. We have written to Treasury though our parent ministry requesting the Government to write-off the Government loan over the outstanding balance of the Japanese loan. To this effect, a Cabinet Paper was prepared on KBC balance sheet restructuring (cleaning the balance sheet) and submitted to our parent ministry as evidenced by the attached letter. Once the Government writes-off the loan, then the financial status of this Corporation would really improve moving from deficit to a surplus

Committee observations

The committee observed that the issue on going concern was deliberated in its third PIC-SSAA Report and upholds the observations and recommendations therein as follows:

i. The Committee observed that, the corporation's corporate governance is considerably weak thereby exposing the corporation to potential losses in addition reputational and operational risks.
ii. The Corporation is technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors
iii. The Kenya Broadcasting Corporation took a loan from the Overseas Economic Co-operation Fund (OECF) Japan in 1989. The National Treasury has over the years serviced on behalf of the corporation.
iv. The OECF Japan loan was received in the form equipment's which were rendered obsolete because of the liberalization of the electronic industry in Kenya in the 1990s and the migration to FM radio transmission leading to the loss of value for money on the investment. Arising from the foregoing, it meant that the Management of KBC did not carry-out a proper Feasibility study or there was laxity on those charged with governance having approved the loan without due diligence.

Committee recommendations

The Committee recommends that –

i. Within three months after the adoption of the Report the Ethics and Anti-Corruption to investigate whether there are any financial leakages/ financial impropriety Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the financial leakages/ financial impropriety.
ii. The Committee recommends that the KBC diversifies its revenue base to reduce over reliance on Government support.

2.0 Property, Plant and Equipment

633. The Committee heard that, In July 2000, and as previously reported in 2011/2012, the Corporation made an arrangement with Kenya Electricity Generating Company Ltd (Ken Gen) whereby the Corporation loaned Ken Gen five (5) generators which were subsequently installed at Jomo Kenyatta University and University of Nairobi under an Emergency power supply project. The generators which had an estimated value of Kshs.29 million are part of the Corporation's portfolio of assets. However, and as observed in the previous year (2011/2012), no compensation for use of generators to have been paid to the Corporation during the year under review and no explanation has been provided for the anomaly

Management response

634. The five generators borrowed by the Kenya Electricity Generation Company Limited (Ken Gen) from KBC in the year 2000 were valued at Kshs.29 million. During this year there was national disaster resulting to power shortage due to lack of rainfall in the country.
635. To address the crisis, the Government directed KENGEN to borrow generators from government institutions and lend the same to higher learning institutions specifically public universities. It is in this context that KBC was identified and requested to lend the FIVE generators KENGEN.
636. Thereafter when the crisis was over, KBC management made every effort to secure back the generators but did not succeed. Considering that the generators were only existing in the financial records without physically being in the KBC nor was there any economic benefit that KBC was deriving from them, we sought board approval for write-off of the same from our records.
637. The board of Directors in its sitting on 28th August, 2013 granted a write-off of the same from our books of accounts (copy of write-off approval attached). According to KBC'S depreciation policy, generators are classified under assets whose depreciation rate is 6.5% p.a. We continued depreciating these generators and as at the end of the year 2011/2012 they were completely depreciated to nil balance.

Committee observations

The committee observed that the issue loaned generators was deliberated in its third PIC-SSAA Report and upholds the observations and recommendations therein as follows

The Corporation at the direction of the Government loaned its five power generators valued at Kshs.29,000,000 to KENGEN to alleviate the power crisis during 2000/2001. However, the generators had not been returned to the Corporation, despite several reminders and demands by the Corporation to KENGEN. The Corporation had not done enough to follow on the return of the generators and there was loss incurred in respect to the loaned generators valued at Kshs.29,000,000.

Committee recommendations

The Committee Recommends that –

Within three months after the adoption of this report, EACC to initiate investigations into how the loaned generators to KENGEN were procured, whether there was any malpractices in the initial procurement and that the generators were idle at the time of loaning and submit its findings to DPP for a possible prosecution of those found culpable.

FINANCIAL YEAR 2014/2015

1.0 Property plant and equipment

1.1 Generators

638. The Committee heard that In July 2000, and as previously reported in 2013/2014, the Corporation made an arrangement with Kenya Electricity Generating Company Ltd (KenGen) whereby the Corporation loaned KenGen five (5) generators which were subsequently installed at Jomo Kenyatta University and University of Nairobi under an Emergency power supply project. The generators which had an estimated value of Kshs.29 million are part of the Corporation's portfolio of assets. However, and as observed in the previous years, no compensation for use of generators appears to have been paid to the Corporation during the year under review and no explanation has been provided for the anomaly.

Management response

639. The management informed the Committee that, Kenya Electricity Generating Company Limited (KenGen) borrowed five generators from KBC in 2000, totaling 29 million. Due to the nation's lack of rainfall, there was a national calamity this year that led to electricity shortages. The government ordered KenGen to borrow generators from government institutions and lend them to institutions of higher education, notably public universities, in order to address the situation. This situation led to the identification of KBC and the request that they lend KenGen 5 generators. Following the crisis, KBC management tried their best to acquire the generators back but was unsuccessful. We requested board authority to write off the generators from our records because they were just present in financial records and did not actually belong to KBC, nor was KBC receiving any financial benefit from them.

640. In its meeting on August 28, 2013, the board of directors approved a write-off of the item from our books of accounts.

Committee observations

The committee observed that the issue of loaned generators was deliberated in its third PIC-SSAA Report and upholds the observations and recommendations therein as follows

The Committee observed that –

The Corporation at the direction of the Government loaned its five power generators valued at Kshs.29,000,000 to KENGEN to alleviate the power crisis during 2000/2001. However, the generators had not been returned to the Corporation, despite several reminders and demands by the Corporation to KENGEN. The Corporation had not done enough to follow on the return of the generators and there was loss incurred in respect to the loaned generators valued at Kshs.29,000,000.

Committee recommendations

The Committee Recommends that –

Within three months after the adoption of this report, EACC to initiate investigations into how the loaned generators to KENGEN were procured, whether there was any malpractices in the initial procurement and that the generators were idle at the time of loaning and submit its findings to DPP for a possible prosecution of those found culpable.

1.2 Land and building

641. The Committee heard that, included in the property, plant and equipment balance of Kshs.16,293, 768,000 as at 30th June, 2015 is land and buildings balance of Kshs.12,857,87 4,000 and Kshs.909,693,000 respectively totalling Kshs.13,767,567,000. The balance of Kshs.13,767,567,000 also includes land and building valued at Kshs.5,712,992,000 with letters of allotment and Kshs.903,767,000 in respect of un-surveyed and un-adjudicated land all totalling Kshs.6,616,759,000 whose ownership documents were not availed for audit review.

642. The balance also excludes the unvalued land LR No 75893/111/66A situated at Voi township measuring 3.7 acres which the valuer could not locate during the time of valuation of assets in November 2014. In addition, the Corporation's land LR. No. 75893/111/64A measuring 0.7413 acres located at Voi Township and valued at Kshs.1,600,000.00 had been taken over by the Ministry of Mining and on which a building was being erected. Further, a parcel of land No LR.No.11773 - Ngong TX station located at Kajiado County differed in size as the letter of allotment indicates that the land is 33.419 acres (13.53 hectares) while information available indicates that the actual size on the ground is 124.79055 acres valued at Kshs.2,700,000,000.

643. Further, the Corporation's Jamhuri Park land LR. No 15090 measuring 100 acres was allegedly grabbed, out of which 60 acres was recovered by Kenya Anti-Corruption Commission and was allocated/reverted to Kenya Forest service while the Corporation was reallocated 29 acres leaving Land measuring 11 acres which has not been accounted for as at the date of this report. It is not clear and management has not explained why part of the recovered land was given to Kenya Forest Service. Available information also reveals that the Corporation's Sauti house in Mombasa which houses Mombasa office, has a pending court case and part of its land was grabbed by Housing Finance Company of Kenya (HFCK) while, the Corporation land in Nyali TX LR.No 1476/'1 measuring approximately 22.8 hectares was encroached into by squatters. It Was further noted that most of the Corporation's land had unresolved cases pending in court. Although indications are that the Corporations has made attempts at the Ministry of land, Housing and Urban Development to have the outstanding issues resolved, no meaningful progress appears to have been achieved as at the date of this report.

644. In the circumstances, it has not been possible to confirm that the property plant and equi1ment balance of Kshs.13,767,567,000 as at 30 June 2015 is fairly stated.

Management response

645. The management informed the Committee that, the corporation hired a law firm to register all the land parcels, but the effort was unsuccessful.

646. The corporation is now collaborating with the Ministry of Land, Housing, Public Works, and Urban Development to survey and get title deeds for all of the land parcels in the nation.

Committee observations

Committee observed that –

i. The Corporation does not posses ownership documents for land and buildings valued at Kshs. 6,616,759, 000.
ii. The Corporation parcel of land LR No 75893/111/66A situated at Voi township measuring 3.7 acres could not be located by the valuer at the time of valuation of assets in November 2014.
iii. The Corporation's parcel of land LR. No. 75893/111/64A measuring 0.7413 acres located at Voi Township and valued at Kshs.1,600,000.00 had been taken over by the Ministry of Mining
iv. The Corporations parcel of land No LR.No.11773 - Ngong TX station located at Kajiado County differed in size as the letter of allotment indicates that the land is 33.419 acres (13.53 hectares) while information available indicates that the actual size on the ground is 124.79055 acres valued at Kshs.2,700,000,000.

v. KBC Jamhuri Park land LR. No 15090 measuring 100 acres was allegedly grabbed, out of which 60 acres was recovered by Kenya Anti-Corruption Commission and was allocated/reverted to Kenya Forest service while the Corporation was reallocated 29 acres leaving Land measuring 11 acres which has not been accounted for as at the date of this report. management has not explained why part of the recovered land was given to Kenya Forest Service.

vi. Kenya Broadcasting Corporation Sauti house which houses Mombasa office, has a pending court case and part of its land was grabbed by Housing Finance Company of Kenya (HFCK)

vii. KBC land in Nyali TX LR.No 1476/'1 measuring approximately 22.8 hectares was encroached into by squatters.

Committee recommendations

The Committee Recommends that –

i. Within three months upon adoption of this report, the Accounting Officer-KBC in collaboration with the National Land commission should expedite the processing of the Corporation's title deeds for all the parcels of land owned by KBC.

ii. Within three Months upon adoption of this report, the Accounting Officer –KBC should present to the National Assembly a comprehensive report on the status of all its land parcels with regard to acquisition of ownership documents.

iii. Within three Months upon adoption of this report, the Accounting Officer – KBC should present to the National Assembly a comprehensive report on the status of the land LR No 75893/111/66A located at Voi township measuring 3.7 acres which could not be located by the valuer at the time of valuation of assets, the parcel of land LR. No. 75893/111/64A measuring 0.7413 acres located at Voi Township valued at Kshs.1,600,000.00 that had been taken over by the Ministry of Mining, the parcel of land No LR.No.11773 - Ngong TX station located at Kajiado County which differed in sizes, the Jamhuri Park land LR. No 15090 measuring 100 acres that was allegedly grabbed and the parcel of land in Nyali TX LR.No 1476/'1 measuring approximately 22.8 hectares that was encroached into by squatters.

2.0 Trade and other payables

647. The Committee heard that, included in the trade and other payables balance of Kshs.1,480,332,000 is an amount of Kshs.788,288,000 in respect to statutory and other deductions which had not been remitted to their respective institutions as detailed below.

Particulars	Amount KSHS
VAT	368,693,000.00
Statutory deductions	18,108,000.00
Pension	212,135,000.00
SAYE	14,000
Insurance	1,879,000.000

Cooperative deductions	3,159,000.00
Medical fund	176,102,000.00
Other deductions	8,198,000.00
TOTAL	**788,288,000.00**

648. It is not clear and management has not explained if and when the amount of Kshs 788,288,000 will be remitted to the respective authorities. The Corporation is therefore in breach of the law and the unremitted amounts may attract fines and penalties. The Corporation has also not made provisions for possible penalties in the financial statements.

Management response

649. The management informed the Committee that, the Corporation's inability to pay its deductions has resulted in the accrued deductions. This was due to intense rivalry that developed over time after Kenya's media industry was liberalized in the 1990s. The government also cancelled the fee-based television licenses that KBC had awarded in 2003. These elements made this Corporation unable to pay back its deductions.

Committee Observations

The Committee observed that –

i. The Corporation breached Section 19 (4) of the employment Act, 2007 which states that an employer who deducts an amount from an employee's remuneration in accordance with subsection (1)(a),(f),(g) and (h) shall pay the amount so deducted in accordance with the time period and other requirements specified in the law.
ii. The Accounting officer failed to submit documentary evidence of having settled statutory deductions amounting to Kshs 788,288,000.

Committee recommendations

The Committee recommends that –

i. The Committee reprimands the then Accounting Officer for violating Section 19 (4) of the employment Act, 2007 which requires that an employer who deducts an amount from an employee's remuneration in accordance with subsection (1)(a),(f),(g) and (h) shall pay the amount so deducted in accordance with the time period and other requirements specified in the law.
ii. Within three months upon the adoption of this report, the Accounting Officer should submit to the National Assembly and to the Auditor-General for audit verification and reporting in the subsequent audit cycle the evidence of settlement of statutory and other deductions amounting to Kshs.788,288,000.00.

3.0 Japanese Loan

650. The Committee heard that, the Corporation's statement of financial position as at 30th June, 2015 reflects a loan from Overseas Economic Cooperation Fund (OECF) of Japan as disclosed in note 19(a) and 19(b) of the financial statement. The OECF loan which was guaranteed by the Government in 1989 funded the Corporation's modernization programme, a project mooted out of a study by the government in February 1988. The Corporation contracted a Japanese firm to undertake the modernization project at a sum of Japanese Yen.11,904,566,500 with a Kenya Currency portion of Kshs.98,507,000. The loan was interest bearing and as at 30th June, 2015 the loan balance was Kshs.10,690,577,000 and interest there of Kshs.34,514,726,000.

651. Although, the Parliamentary Investment Committee discussed the issue concerning the loan when the Corporation appeared before the committee, no definite resolution was reached and the Corporation has continued to carry the loan and interest balance in their financial statements. Although management has explained that there are on-going negotiations with the Government to convert the Government of Kenya Loan into equity, it is not certain when the process will be completed . The management has not been servicing the loan which had been guaranteed by National Treasury and has accumulated to the tune of Kshs.45,205,303,000 as at 30th June, 2015.

Management response

652. The management informed that, KBC transformation CAB MEMO that was created by KBC and the Parent Ministry aims to handle historical debts among other transformation measures. The CAB MEMO specifically requests that the government write off the debt associated with the Japanese loan.

Committee observations

The committee observed that the issue on Japanese Loan was deliberated in its third PIC-SSAA Report and upholds the observations and recommendations therein as follows;

i. The OECF loan had been guaranteed by the Government in 1989 funded the Kenya Broadcasting Corporation's modernization programme, a project mooted out of a study by the Government in February 1988. However, arising from the status of the project, the study might have been misleading.
ii. Some of the equipment supplied were never used though installed, and in some instances, only an insignificant capacity of the installations was being used. Therefore, the targeted radio coverage to facilitate dissemination of government policies as envisaged in the study was not achieved.

iii. Some of the superfluous equipment supplied were said to be standby equipment. However, the explanation is untenable considering that some of these have never been used for over 10 years since their installation and with time, have been rendered obsolete and thus irrelevant due to rapid changes in radio communication technology.

Committee Recommendations

The Committee recommends –

i. Within three months upon adoption of this report, the EACC should investigate the officers involved in acquiring and approving the loan and those involved in the pre-requisite study by the Government in February 1988 with a view to establishing any economical crimes in relation to providing misleading economic information for the officer's own benefit or that of a third party that led to the loss of the initial loan of Yen 15.441 billion, equivalent to Ksh 8,287,588,398. Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the financial leakages/ financial impropriety.

ii. Within three months upon adoption of this report, the Accounting officer-KBC should provide a comprehensive report to the National Assembly and the Auditor-General on the status of the equipment, including their location and current economical value. The Auditor-General shall review the report and report the findings in the subsequent audit cycle.

4.0 Going Concern

653. The Committee heard that, as in the previous year, the Corporation recorded a loss of Kshs.5,34 7,434,000 (2014 - loss Kshs.5,500,806,000) thereby raising the cumulative losses to Kshs.41,735,114,000 as at 30 June 2015. Further, the statement of financial position reflects current liabilities balance of Kshs.46,735,779,000 which exceeds the current assets balance of Kshs.1,000,162,000 resulting to a negative working capital of Kshs.45,735,217,000 and a negative net worth of Kshs.29,190,452,000. The Corporation is therefore technically insolvent and its continued existence as a going concern is dependent upon the financial support of the Government and its creditors.

Management response

654. The management informed the Committee that, in regards to the historical Japanese loan that was obtained in 1987, there have been significant cumulative net losses that have been recorded as well as negative working capital balances in the financial accounts.

655. The loan was guaranteed by the Kenyan government, and when KBC was unable to pay it back, the government began to pay it back. However, it reports the repayments as loans given to KBC at commercial bank interest lending rates. Financial documents show that government interest rates have accrued.

656. A KBC transformation CAB MEMO that was created by KBC and the Parent Ministry aims to handle historical debts among other transformation measures. The CAB MEMO

specifically requests that the government write off the debt associated with the Japanese loan.

Committee observations

The committee observed that the issue on Going concern was deliberated in its third PIC-SSAA Report and upholds the observations and recommendations therein as follows;

i. The corporation's corporate governance is considerably weak thereby exposing the corporation to potential losses in addition reputational and operational risks.

ii. The Corporation is technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors.
iii. The Kenya Broadcasting Corporation took a loan from the Overseas Economic Co-operation Fund (OECF) Japan in 1989. The National Treasury has over the years serviced on behalf of the corporation.
iv. The OECF Japan loan was received in the form equipment's which were rendered obsolete because of the liberalization of the electronic industry in Kenya in the 1990s and the migration to FM radio transmission leading to the loss of value for money on the investment. Arising from the foregoing, it meant that the Management of KBC did not carry-out a proper Feasibility study or there was laxity on those charged with governance having approved the loan without due diligence.

Committee recommendations

The Committee recommends that –

i. Within three months after the adoption of the Report the Ethics and Anti-Corruption to investigate whether there are any financial leakages/ financial impropriety Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the financial leakages/ financial impropriety.
ii. The Committee recommends that the KBC diversifies its revenue base to reduce over reliance on Government support.

FINANCIAL YEAR 2015/2016

1.0 Property, Plant and Equipment

1.1 Unsupported Valuation of Assets

657. The Committee heard that the statement of changes in equity for the year ended 30th June, 2016 reflects a revaluation reserve figure of Kshs.11,616,174,000 whose supporting valuation report/analysis was not availed for audit review.

658. In addition, note 8 to the financial statements reflects additions figure of Kshs.184,992,954 under plant and machinery whose supporting schedules/analysis was not availed for audit review. In the circumstances, it has not been possible to confirm that the existence, accuracy and validity of property, plant and equipment balance of Kshs.16,915,900,000 as at 30th June, 2016.

Management response

659. The management informed the Committee that, the valuation of all KBC assets was done in the financial year 2013/2014 by Ark Consultants. The valuations report both in soft and hard copies were submitted from the consultant and a copy provided.

Committee observations

The Committee observed that;

The Accounting Officer failed to avail for audit review valuation report/analysis and schedules to support revaluation reserve figure of Kshs.11,616,174,000 and additions figure of Kshs.184,992,954 as reflected in the financial statements.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting Officer for failing to submit to the Auditor-General the valuation report for its assets as prescribed by the National Treasury and the International Pubic Sector Accounting Standards and schedules to support additions to plant and machinery.

1.2 Generators

660. The Committee heard that, in July 2000, and as reported in the previous years, the Corporation made an arrangement with Kenya Electricity Generating Company Ltd (KenGen) whereby the Corporation loaned KenGen five (5) generators which were subsequently installed at Jomo Kenyatta University and University of Nairobi under an Emergency power supply project. The generators which had an estimated value of Kshs.29 million are part of the Corporation's portfolio of assets. However, as observedin the previous years, no compensation for use of generators appears to have been paid to the Corporation as at the date of this report and no explanation has been provided for the anomaly.

Management response

661. The management informed the Committee that, the five generators borrowed by the Kenya Electricity Generating Company Limited from KBC in the year 2000 were valued at Kshs 29million. The government directed KENGEN to borrow generators from Government

institutions and lend the same to higher learning institutions specifically public universities. It is in this context that KBC was identified and requested to lend the five generators to KENGEN.

662. Thereafter when the crisis was over, KBC management made every effort to secure back the generators but did not succeed. Considering that the generators were only existing in financial records without physically being in KBC nor was there any economic benefit that KBC was deriving from them, we sought board approval for write =-off of the same from our records. The Board of directors in its sitting on 28th August, 2013 granted a write-off of the same from our books of accounts. According to KBC depreciation policy, generators are classified under assets whose depreciation rate is 6.5% P.A. We continued depreciating these generators and as at the end of the year 2011/2012 they were completely depreciated to nil balance.

Committee observations

The committee observed that the issue loaned generators was deliberated in its third PIC-SSAA Report and upholds the observations and recommendations therein as follows;

The Corporation at the direction of the Government loaned its five power generators valued at Kshs.29,000,000 to KENGEN to alleviate the power crisis during 2000/2001. However, the generators had not been returned to the Corporation, despite several reminders and demands by the Corporation to KENGEN. The Corporation had not done enough to follow on the return of the generators and there was loss incurred in respect to the loaned generators valued at Kshs.29,000,000.

Committee recommendations

The Committee Recommends that –

Within three months after the adoption of this report, EACC to initiate investigations into how the loaned generators to KENGEN were procured, whether there was any malpractices in the initial procurement and that the generators were idle at the time of loaning and submit its findings to DPP for a possible prosecution of those found culpable.

1.3 Unclear transfer of Corporation land

663. The Committee heard that, the property, plant and equipment balance of Kshs.16,915,900,000 as at 30th June 2016 includes land LR No.209/10370 designated as Norfolk Car Park measuring 2.19 acres valued at Kshs.1,431,000,000 which was transferred to Kenya Cultural Centre vide letter Ref: No. KBC/MD/14/6/C VOL.VII dated 11th October, 2016. It is not clear and management has not explained the circumstances under which the Corporation's land was transferred to Kenya Cultural Centre contrary to the requirements of Chapter five, Article 62 Section 4 of the Constitution which states that

public land shall not be disposed of or otherwise used except in terms of an Act of Parliament specifying the nature and terms of that disposal or use.

664. Further, the said Parcel of Land has two allotment letters reflecting different sizes as follows; allotment letter dated 12th August 1994 indicates the size of the land as 0.8861 hectares while allotment letter dated 8 March 2004 indicate 0.8737 hectares. In addition the survey plan indicates the size of the same parcel of land as 0.21 hectares which differs with the acreage indicated in the two (2) allotment letters.

665. Consequently, it has not been possible to confirm the size and ownership status of the parcel of land and that the property, plant and equipment balance of Kshs.16,915,900,000 as at 30th June, 2016 is fairly stated.

Management response

666. The management informed the Committee that, **the L.R. NO. 209/10370 Norfolk Car Park-Reclaiming of the land from Kenya Cultural Centre and obtaining a title deed.**

667. Before the Corporation surrendered the deed plan to the Ministry of ICT, KBC had written to our parent Ministry elaborately stating how KBC was given land by the Government. However, the land was taken away from KBC under a presidential directive.

668. When the Commissioners of lands allotted the land (LR No. 209/10370) to KBC, a borehole belonging to the Nairobi University was found to be in this land. The KBC Board granted that the portion be excised from our plot vide letter of MD 21/9/2000. This is what reduced the earlier 0.8861Ha. to0.8737Ha.

669. Secondly, the allotment letter Ref. No. 114075/166 dated 8/3/2004 superseded 114075/114 dated 14/05/1993 the acreages is clearly indicated on each respective allotment letter

Committee observations

The Committee observed that –

i. The Corporation land LR No.209/10370 measuring 2.19 acres valued at Kshs.1,431,000,000 was transferred under unclear circumstances to Kenya Cultural Centre vide letter Ref: No. KBC/MD/14/6/C VOL.VII dated 11th October 2016.

ii. The KBC Board granted that the portion of land in which a borehole belonging to the Nairobi University be excised from its plot vide letter of MD 21/9/2000 thus reducing the earlier 0.8861Ha. to 0.8737Ha.

iii. The Presidential directive on which KBC alleges to act on was addressed to a private developer and not KBC therefore it was not clear the basis upon which the directive was executed.

Committee recommendations

The Committee recommends that –

Within three months upon the adoption of this Report, EACC to investigate the circumstances surrounding the transfer of the Corporation land LR. No.209/10370 measuring 2.19 acres valued at Kshs.1,431,000,000 to Kenya Cultural Centre Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the illegal transfer of the Corporation land.

1.4 Land and Building

670. The Committee heard that, as previously reported, the property, plant and equipment balance of Kshs.16,915,900,000 as at 30th June, 2016 includes land and buildings balance of Kshs.12,857,874,001 and Kshs.906,930,251 respectively totalling Kshs.13,767,804,252. The balance of Kshs.13,767,804,252 also includes land and building valued at Kshs.5,712,992,000 with letters of allotment and Kshs.903,767,000 in respect of un- surveyed and un-adjudicated land all totaling Kshs.6,616, 759,000 whose ownership documents were not availed for audit review.

671. The balance also excludes the unvalued land LR No 75893/111/66A situated at Voi Township measuring 3.7 acres which the valuer could not locate during the time of valuation of assets in November 2014. In addition, the Corporation's land LR No75893/111/64A measuring 0.7413 acres located at Voi Township and valued at Kshs.1,600,000 had been taken over by the Ministry of Mining and a building was being erected on it.

672. Further, a parcel of land No LR.No. 11773 -Ngong TX station located at Kajiado County differed in size as the letter of allotment indicates that the land is measuring 33.419 acres (13.53 hectares) while information available indicates that the actual size on the ground is 124.79055 acres valued at Kshs.2, 700,000,000.

673. Further, the Corporation's Jamhuri Park land LR. No 15090 measuring 100 acres was allegedly grabbed, out of which 60 acres was recovered by Kenya Anti-Corruption Commission and was allocated/reverted to Kenya Forest service while the Corporation was reallocated 29 acres leaving land measuring 11 acres which has not been accounted for as at the date of this report. It is not clear and management has not explained why part of the recovered land was given to Kenya Forest Service.

674. The available information also reveals that the Corporation's Sauti house in Mombasa which houses the Mombasa office, has a pending court case and part of its land was grabbed by Housing Finance Company of Kenya (HFCK) while, the Corporation land in Nyali TX L.R.No 1476/1 measuring approximately 22.8 hectares was encroached into by squatters and a stone fence erected at a cost of Kshs.3,512,700 was demolished. It was further noted that most of the Corporation's land had unresolved cases pending in court. Although indications are that the Corporations has made attempts at the Ministry of Lands,

Housing and Urban Development to have outstanding issues resolved, no meaningful progress appears to have been achieved as at the date of this report.

675. In the circumstances, it has not been possible to confirm that the property, plant and equipment balance of Kshs.16,915,900,000 as at 30 June 2016 is fairly stated

Management response

676. The management informed that Committee that, revaluation of all KBC assets was done in the financial year 2013/2014 by Ark Consultants. The Valuation reports both in soft and hard copies were submitted from the consultants and a copy is hereby attached. Currently the Corporation is working with the director of survey, housing, public works and urban development for surveying and acquiring title deeds for all the parcels of land across the country. The exercise has commenced in Nairobi and will be rolled out to other stations across the country.

Committee observations

The Committee observed that the issue on land and building was deliberated in its Report for the financial year ending 30th June, 2015 and upholds the observations and recommendations therein as follows;

i. The Corporation does not posses ownership documents for land and buildings valued at Kshs. 6,616,759, 000.
ii. The Corporation parcel of land LR No 75893/111/66A situated at Voi township measuring 3.7 acres could not be located by the valuer at the time of valuation of assets in November 2014.
iii. The Corporation's parcel of land LR. No. 75893/111/64A measuring 0.7413 acres located at Voi Township and valued at Kshs.1,600,000.00 had been taken over by the Ministry of Mining
iv. The Corporations parcel of land No LR.No.11773 - Ngong TX station located at Kajiado County differed in size as the letter of allotment indicates that the land is 33.419 acres (13.53 hectares) while information available indicates that the actual size on the ground is 124.79055 acres valued at Kshs.2,700,000,000.
v. KBC Jamhuri Park land LR. No 15090 measuring 100 acres was allegedly grabbed, out of which 60 acres was recovered by Kenya Anti-Corruption Commission and was allocated/reverted to Kenya Forest service while the Corporation was reallocated 29 acres leaving Land measuring 11 acres which has not been accounted for as at the date of this report. management has not explained why part of the recovered land was given to Kenya Forest Service.
vi. Kenya Broadcasting Corporation Sauti house which houses Mombasa office, has a pending court case and part of its land was grabbed by Housing Finance Company of Kenya (HFCK)
vii. KBC land in Nyali TX LR.No 1476/'1 measuring approximately 22.8 hectares was encroached into by squatters.

Committee recommendations

The Committee recommends that –

i. Within three months upon adoption of this report, the Accounting Officer-KBC in collaboration with the National Land commission should expedite the processing of the Corporation's title deeds for all the parcels of land owned by KBC.
ii. Within three Months upon adoption of this report, the Accounting Officer –KBC should present to the National Assembly a comprehensive report on the status of all its land parcels with regard to acquisition of ownership documents.
iii. Within three Months upon adoption of this report, the Accounting Officer – KBC should present to the National Assembly a comprehensive report on the status of the land LR No 75893/111/66A located at Voi township measuring 3.7 acres which could not be located by the valuer at the time of valuation of assets, the parcel of land LR. No. 75893/111/64A measuring 0.7413 acres located at Voi Township valued at Kshs.1,600,000.00 that had been taken over by the Ministry of Mining, the parcel of land No LR.No.11773 - Ngong TX station located at Kajiado County which differed in sizes, the Jamhuri Park land LR. No 15090 measuring 100 acres that was allegedly grabbed and the parcel of land in Nyali TX LR.No 1476/'1 measuring approximately 22.8 hectares that was encroached into by squatters.

1.5 Land without Title Deeds

677. The Committee heard that, the Corporation owns twenty five (25) parcels of land valued at Kshs.6, 102,849,000 that are un-surveyed, un-adjudicated and whose ownership documents such as title deeds and certificates of lease were not availed for audit review. Although, the management is aware of the above anomaly, no evidence of any action being taken by the management to obtain ownership documents of these parcels of land was availed for audit verification. In addition, and as previously reported in 2014/2015 report, the balance of land excludes unvalued land LR.No.75893/111/66A situated at Voi Township measuring 3.7 acres which the valuer could not locate during the time of valuation of assets in November 2014. The management has not provided satisfactory explanations for the above anomalies.

Management response

678. The management informed the Committee that, the corporation had engaged a law firm to get all the parcels of land registered but did not bear any fruit. Currently the corporation is working with ministry of lands housing public works and urban development to survey and acquire title deeds for all parcels of land across the country.

Committee observations

Committee observed that –

i. The Corporation does not posses ownership documents for twenty five (25) parcels of land valued at Kshs.6, 102,849,000. In addition the pieces of land are un-surveyed, un-adjudicated
ii. The Corporation parcel of land LR No. 75893/111/66A situated at Voi township measuring 3.7 acres could not be located by the valuer at the time of valuation of assets in November 2014.
iii. The corporation had engaged a law firm to get all the parcels of land registered but did not bear any fruit. This implies that corporation did not get value for its money.

Committee recommendations

The Committee recommends that –

i. Within three months upon adoption of this report, the Accounting Officer-KBC in collaboration with the National Land commission should expedite the processing of the Corporation's title deeds for the twenty (25) parcels of land.
ii. Within three Months upon adoption of this report, the Accounting Officer – KBC should present to the National Assembly a comprehensive report on the status of the land LR No.75893/111/66A located at Voi township measuring 3.7 acres which could not be located by the valuer at the time of valuation of assets.

1.6 Land with disputes

679. Further, the Committee heard that, available information at the Corporation indicates that the following (10) parcels of land measuring 211.58785 acres and valued at Kshs.7,597,582,000 are under disputes that has been on for a long period of time.

680. Consequently, it has not been possible to confirm the existence and ownership status of the ten (10) parcels of land valued Kshs.7, 597,582,000 as at 30 June 2016.

Management response

681. The management informed the Committee that, the court cases are ongoing up to date.

Committee observations

Committee observed that –

The Corporation's ten 10) parcels of land measuring 211.58785 acres valued at Kshs.7,597,582,000 located across the Country has been under ownership dispute for a long period of time.

Committee recommendations

The Committee recommends that –

i. Within three months upon adoption of this report, the inspector-General, inspectorate of State Corporations should carry out a review of all KBC land with pending Court cases, prepare a comprehensive status report and submit it to the National Assembly with a copy to the Attorney General who will initiate the process of fast-tracking the conclusion of the cases within reasonable time.

ii. The Accounting Officers should strive to embrace Alternative Dispute resolution Mechanisms in the resolution of disputes.

1.7 Unclear Transfer of KBC land to Staff Pension Fund.

682. The Committee heard that, the Corporation transferred four (4) parcels of land valued at Kshs.2,036,250,000 to Kenya Broadcasting Corporation staff pension Fund for unremitted outstanding arrears totalling Kshs.225, 111,000 as at 30th June,2016, contrary to chapter five (5), Article 62, Section 4 of the Constitution of Kenya which may lead to loss of Corporation land as detailed below:

i. LR.No.1/9218 Donya Sabuk/Komarock 1,234.26 acres (with tittle deed) valued at kshs.1, 820,000,000.
ii. LR. No. Ntirimiti settlement scheme/153, Marania Meru District 238.45 acres (with tittle deed) valued at Kshs.130, 000,000.
iii. LR. No.1932/4 Kitale Municipality 200 acres tittle deed) valued at Kshs.56,000,000 and;
iv. Nyamninia, Siaya District 107.98 acres (Without ownership documents) valued at
v. Kshs.30,250,000.
vi. It is not clear and the management has not explained why land worth Kshs.2,036,250,000 is being exchanged with a pension debt of Kshs.225, 111,000 resulting to a possible loss of Corporation land valued at Kshs.1,811, 139,000. In the circumstances, it has not been possible to confirm that the above transfer of four (4) Corporation parcels of land valued at Kshs.2,036,250,000 to the KBC Pension Fund is in the best interest of the stakeholders.

Committee observations

Committee observed that –

The Corporation transfered four (4) parcels of land valued at Kshs.2,036,250,000 in an exchange to settle KBC pension debt amounting to Kshs.225, 111,000. Which exposes the organization to a loss of Kshs. Kshs.1,811, 139,000 being the value of assets lost through irregular transfer.

Committee recommendations

The Committee Recommends that –

Within three months upon the adoption of this report, EACC to initiate investigations into the matter surrounding the illegal transfer of four (4) parcels of land valued at Kshs.2,036,250,000 in an exchange to settle KBC pension debt amounting to Kshs.225, 111,000. Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the illegal transfer of the Corporation land.

2.0 Trade and other Payables

683. The Committee heard that, the statement of financial position as at 30th June, 2016 reflects trade and other payables balance of Kshs. 1,445,479,000 which includes Kshs. 933,753,000 inrespect of statutory and other deductions which had not been remitted to respective institutions as detailed below;

The statement of financial position As at 30th June, 2016	**Amount(Kshs)** 225,111,000
StatutoryDeduction	21,968,000
MedicalFund	197,512,000
co-operativeDeductions	31,354,000
Insurance	3,269,000
SAYE	14,000
OtherDeductions	8,370,000
ValueaddedTax{VAT)	446,155,000
Total	**933,753,000**

684. It is not clear and management has not explained if and when the amount of Kshs.933,753,000 will be remitted to the respective Institutions. The Corporation is therefore in breach of the law and the unremitted amounts may attract fines and penalties. The Corporation has also not made provision for possible penalties in the financial statements. In the circumstances, it has not been possible to confirm the accuracy, validity and completeness of trade and other payable balance of Kshs.1,445,479,000 as at 30th June, 2016.

Management response

685. The Corporation is in arrears in remitting some of the employees benefits deducted from their salaries due to cash flow constraints. However, management has worked hard to correct the anomaly by making the following remittances: Pension (29/09/2016-19/01/2017) 28,078,884.90 Cooperative Societies (April 2017) 21,348,170, 40 PAYE (23/1/2017-20/4/2017) 50,000,000.00 and VAT (2/2/2017) 4,000,000,00. Regarding the other deductions like NHIF, the Corporation has paid all the arrears and therefore up-to-date as at 30th July, 2017.

Committee Observations

The committee observed that the issue on trade and other payables was deliberated in its Report for the financial year ending 30th June, 2015 and upholds the observations and recommendations therein as follows;

The Committee observed that;

The Corporation breached Section 19 (4) of the employment Act, 2007 which states that an employer who deducts an amount from an employee's remuneration in accordance with subsection (1)(a),(f),(g) and (h) shall pay the amount so deducted in accordance with the time period and other requirements specified in the law.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting Officer for violating Section 19 (4) of the employment Act, 2007 which requires that an employer who deducts an amount from an employee's remuneration in accordance with subsection (1)(a),(f),(g) and (h) shall pay the amount so deducted in accordance with the time period and other requirements specified in the law.

3.0 Japanese loan

686. The Committee heard that, as previously reported, the Corporation's statement of financial position as at 30th June, 2016 reflects a loan from Overseas Economic Cooperation Fund (OECF) of Japan as disclosed in note 16(a) and 16(b) of the financial statements. The OECF loan which was guaranteed by the Government in 1989 funded the Corporation's modernization programme, a project mooted out of a study by the government in February 1988.

687. The Corporation contracted a Japanese firm to undertake the modernisation project at a sum of Japanese Yen.11,904,566,500 with a Kenya Currency portion of Kshs.98,507,000. The loan was interest bearing and as at 30th June, 2016 the loan balance was Kshs.11,444,040,000 and interest thereof Kshs.42,742,091,000. Although, the Parliamentary Investment Committee discussed the issue concerning the loan when the Corporation appeared before the committee, no definite resolution was reached and the Corporation has continued to reflect the loan and interest balance in its financial Statements. Although management has explained that there are on-going negotiations with the Government to convert Government of Kenya Loan into equity, it is not certain when the process will be completed. The management has not been servicing the loan which had been guaranteed by the National Treasury and had accumulated to Kshs.54,186,131,000 as at 30 June 2016.

Management response

688. The management informed the Committee that, the Board of Directors have discussed the accrued liability and held consultative meetings with the National treasury and planning through the Ministry of information, Communications and Technology requesting to write off to enable KBC to restructure its balance sheet to attract Public private partnership (PPP) to help KBC utilize its huge asset base. Also the information has been captured in the Cabinet Memo to be presented before the cabinet for consideration for request to be written off.

Committee observations

The committee observed that the issue on Japanese Loan was deliberated in its third PIC-SSAA Report and upholds the observations and recommendations therein as follows:

i. The OECF loan had been guaranteed by the Government in 1989 funded the Kenya Broadcasting Corporation's modernization programme, a project mooted out of a study by the Government in February 1988. However, arising from the status of the project, the study might have been misleading.
ii. Some of the equipment supplied were never used though installed, and in some instances, only an insignificant capacity of the installations was being used. Therefore, the targeted radio coverage to facilitate dissemination of government policies as envisaged in the study was not achieved.
iii. Some of the superfluous equipment supplied were said to be standby equipment. However, the explanation is untenable considering that some of these have never been used for over 10 years since their installation and with time, have been rendered obsolete and thus irrelevant due to rapid changes in radio communication technology.

Committee Recommendations

The Committee recommends –

i. Within three months upon adoption of this report, the EACC should investigate the officers involved in acquiring and approving the loan and those involved in the pre-requisite study by the Government in February 1988 with a view to establishing any economical crimes in relation to providing misleading economic information for the officer's own benefit or that of a third party that led to the loss of the initial loan of Yen 15.441 billion, equivalent to Ksh 8,287,588,398. Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the financial leakages/ financial impropriety.
ii. Within three months upon adoption of this report, the Accounting officer-KBC should provide a comprehensive report to the National Assembly and the Auditor-General on the status of the equipment, including their location and current economical value. The Auditor-General shall review the report and report the findings in the subsequent audit cycle.

4.0 Going Concern

689. The Committee heard that, as in the previous years, the Corporation recorded a loss of Kshs.8,404, 156,000 (2015- loss Kshs.5,347,434,000) thereby increasing the cumulative losses to Kshs.50, 139,270,000 as at 30 June 2016.Further, the statement of financial position reflects current liabilities balance of Kshs.55,645,254,000 which exceeds current assets balance of Kshs.1,138,346,000 resulting to a negative working capital of Kshs.54,506,908,000.

690. The Corporation is therefore technically insolvent and its continued existence as a going concern is dependent upon the financial support of the Government and its creditors.

Management response

691. The management informed the Committee that, cumulative losses are as result of the Japanese loan that was provided in 1987 to KBC for the procurement of medium wave radio transmitters. The medium wave radio transmitters that were purchased with the Loan funds are now obsolete.

692. The cash flows of KBC were affected negatively by competition following the liberation of the Media industry in Kenya in the 1990s. At the same time the government revoked the Television licensing permits in 2003 that were being issued by KBC at a fee. These factors rendered this corporation incapacitated to repay the loan. Since the government had guaranteed the loan, it then took over the repayment of the loan.

693. The government has been repaying both the principal and the interest of the said loan. However the government records the repayment amount as loan to KBC at Market interest rates. This has greatly affected the corporation's financial position. We have written to the treasury through our parent ministry requesting the government to write off the government loan and take over the outstanding balance of the Japanese loan. To this effect, a cabinet paper was prepared on KBC balance sheet restructuring (Cleaning the Balance sheet) and submitted to our parent ministry. Once the government writes off the loan, then the financial status of this corporation will really improve from a deficit to surplus.

Committee observations

The Committee observed that the issue on Japanese Loan was deliberated in its third PIC-SSAA Report and upholds the observations and recommendations therein as follows;

i. The Committee observed that, the corporation's corporate governance is considerably weak thereby exposing the corporation to potential losses in addition reputational and operational risks.
ii. The Corporation is technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors.

iii. The Kenya Broadcasting Corporation took a loan from the Overseas Economic Co-operation Fund (OECF) Japan in 1989. The National Treasury has over the years serviced on behalf of the corporation.
iv. The OECF Japan loan was received in the form equipment's which were rendered obsolete because of the liberalization of the electronic industry in Kenya in the 1990s and the migration to FM radio transmission leading to the loss of value for money on the investment. Arising from the foregoing, it meant that the Management of KBC did not carry-out a proper Feasibility study or there was laxity on those charged with governance having approved the loan without due diligence.

Committee recommendations

The committee recommends that –

i. Within three months after the adoption of the Report the Ethics and Anti-Corruption to investigate whether there are any financial leakages/ financial impropriety Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the financial leakages/ financial impropriety.

ii. The Committee recommends that the KBC diversifies its revenue base to reduce over reliance on Government support.

5.0 Administration Costs

694. The Committee heard that, included in the administration costs amount of Kshs.10, 107,970,000 is an amount of Kshs.14,473,372 in respect of subsistence allowance paid to various officers who were involved in primary infrastructure on the Digital Terrestrial Television coverage roll out DVB-T2 platform project which was not budgeted for. The amount of Kshs.14,473,372 as also disclosed, is shown as a deficit in the project's financial statements for the year ended 30th June, 2016. The Corporation was therefore in breach of the law. Consequently, it has not been possible to confirm the propriety of expenditure totalling 14,473,372 for the year ended 30th June, 2016.

Management response

695. The management informed the Committee that, the anomaly was noted and the management has resolved not to repeat it.

Committee observations

The Committee observed that –

The expenditure of Kshs.14,473,372 in respect of subsistence allowance paid to various officers was incurred without budget contrary to Section 12 of the State Corporations Act, 2015 which provides that no corporation shall without the prior approval in writing of the

Minister and the Treasury incur any expenditure for which provision has not been made in annual estimates.

Committee Recommendations

The Committee recommends that –

The Committee reprimands the then Accounting Office for failing to adhere to the provisions of section 12 of the State Corporations Act Corporations Act, 2015. which requires the Accounting Officer to seek prior approval in writing of the Minister and the National Treasury in incurring any expenditure for which provision has not been made in annual estimates.

FINANCIAL YEAR 2016/2017

1.0 Property, Plant and Equipment

1.1 Unsupported Valuation of Assets

696. The Committee heard that, as previously reported, the statement of changes in equity for the year ended 30th June, 2017 reflects a revaluation reserve balance of Kshs.11,616,174,000 whose supporting valuation report/analysis was not availed for audit review. In addition, and as previously reported, the financial statements also reflects addition figure of Kshs.180,992,954 under plant and machinery for APD Project whose supporting schedules/analysis was not availed for audit review. In the circumstances, it has not been possible to confirm the existence, accuracy and validity of property, plant and equipment balance of Kshs.16,741,594,137 as at 30 June 2017.

Management response

697. The management informed the Committee that, the valuation of all KBC assets was done in the financial year 2013/2014 by Ark Consultants. The valuation report both in soft and hard copies were submitted from the consultant and a copy.

Committee observations

The Committee observed that the issue on Unsupported Valuation of Assets was deliberated in its Report for the financial year ending 30th June, 2016 and upholds the observations and recommendations therein as follows;

The Accounting Officer failed to avail for audit review valuation report/analysis and schedules to support revaluation reserve figure of Kshs.11,616,174,000 and additions figure of Kshs. 180,992,954 as reflected in the financial statements.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting Officer for failing to submit to the Auditor-General the valuation report for its assets as prescribed by the National Treasury and the International Pubic Sector Accounting Standards and schedules to support additions to plant and machinery.

1.2 Generators

698. The Committee heard that, in July 2000, and as reported in the previous years, the Corporation made an arrangement with Kenya Electricity Generating Company Ltd (KenGen) whereby the Corporation loaned KenGen five (5) generators which were subsequently installed at Jomo Kenyatta University and University of Nairobi under an Emergency power supply project. The generators which had an estimated value of Kshs.29 million are part of the Corporation's portfolio of assets. However, as observedin the previous years, no compensation for use of generators appears to have been paid to the Corporation as at the date of this report and no explanation has been provided for the anomaly.

Management response

699. The management informed the Committee that, the five generators borrowed by the Kenya Electricity Generating Company Limited from KBC in the year 2000 were valued at Kshs 29million. The government directed KENGEN to borrow generators from Government institutions and lend the same to higher learning institutions specifically public universities. It is in this context that KBC was identified and requested to lend the five generators to KENGEN.

700. Thereafter when the crisis was over, KBC management made every effort to secure back the generators but did not succeed. Considering that the generators were only existing in financial records without physically being in KBC nor was there any economic benefit that KBC was deriving from them, we sought board approval for write =-off of the same from our records. The Board of directors in its sitting on 28th August, 2013 granted a write-off of the same from our books of accounts. According to KBC depreciation policy, generators are classified under assets whose depreciation rate is 6.5% P.A. We continued depreciating these generators and as at the end of the year 2011/2012 they were completely depreciated to nil balance.

Committee observations

The committee observed that the issue loaned generators was deliberated in its third PIC-SSAA Report and upholds the observations and recommendations therein as follows;

The Corporation at the direction of the Government loaned its five power generators valued at Kshs.29,000,000 to KENGEN to alleviate the power crisis during 2000/2001. However, the generators had not been returned to the Corporation, despite several reminders and demands by the Corporation to KENGEN. The Corporation had not done enough to follow on the return of the generators and there was loss incurred in respect to the loaned generators valued at Kshs.29,000,000.

Committee recommendations

The Committee recommends –

Within three months after the adoption of this report, EACC to initiate investigations into how the loaned generators to KENGEN were procured, whether there was any malpractices in the initial procurement and that the generators were idle at the time of loaning and submit its findings to DPP for a possible prosecution of those found culpable.

1.3 Unclear Transfer of Corporation Land

701. The Committee heard that, as previously reported, the property, plant and equipment balance of Kshs.16,741,594,137 as at 30 June 2017 includes land LR No.209/10370 designated as Norfolk Car Park measuring 2.19 acres valued at Kshs.1,431,000,000 which was transferred to Kenya Cultural Centre vide letter Ref: No. KBC/MD/14/6/C VOL.VII dated 11 October 2016. It is not clear and management has not explained the circumstances under which the Corporation's land was transferred to Kenya Cultural Centre contrary to the requirements of Chapter five, Article 62 Section 4 of the Constitution which states that public land shall not be disposed of or otherwise used except in terms of an Act of Parliament specifying the nature and terms of that disposal or use.

702. Further, the said Parcel of Land has two allotment letters reflecting different sizes as follows; allotment letter dated 12th August, 1994 indicates the size of the land as 0.8861 hectares while allotment letter dated 8 March 2004 indicate 0.8737 hectares. In addition the survey plan indicates the size of the same parcel of land as 0.21 hectares which differs with the acreage indicated in the two (2) allotment letters. Consequently, it has not been possible to confirm the size and ownership status of the parcel of land and that the property, plant and equipment balance of Kshs.16,741,594,137 as at 30 June 2017 is fairly stated.

Management response

703. The management informed the Committee that, the parcel of land was transferred through a presidential directive, in a letter ref no. MOLHUD/ADM1/43 and KBC had limited powers to disobey the directive.

Committee observations

The Committee observed that the issue on Unclear Transfer of Corporation Land was deliberated in its Report for the financial year ending 30th June, 2016 and upholds the observations and recommendations therein as follows;

i. The Corporation land LR No.209/10370 measuring 2.19 acres valued at Kshs.1,431,000,000 was transferred under unclear circumstances to Kenya Cultural Centre vide letter Ref: No. KBC/MD/14/6/C VOL.VII dated 11th October 2016.
ii. The KBC Board granted that the portion of land in which a borehole belonging to the Nairobi University be excised from its plot vide letter of MD 21/9/2000 thus reducing the earlier 0.8861Ha. to 0.8737Ha.
iii. The Presidential directive on which KBC alleges to act on was addressed to a private developer and not KBC therefore it was not clear the basis upon which the directive was executed.

Committee recommendations

The Committee recommends that –

Within three months upon the adoption of this Report, EACC to investigate the circumstances surrounding the transfer of the Corporation land LR. No.209/10370 measuring 2.19 acres valued at Kshs.1,431,000,000 to Kenya Cultural Centre Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the illegal transfer of the Corporation land.

1.4 Land and Building

704. The Committee heard that, as previously reported, the property, plant and equipment balance of Kshs.16,741,594,137 as at 30th June, 2017 includes land and buildings balance of Kshs.12,857,874,001 and Kshs.892,234,092 respectively totalling Kshs.13,750,108,093.

705. The balance of Kshs.13,750,108,093 also includes land and building valued at Kshs.5,712,992,000 with letters of allotment and Kshs.903,767,000 in respect of surveyed and un-adjudicated land all totalling Kshs.6,616,759,000 whose ownership documents were not availed for audit review.

706. The balance also excludes the unvalued land LR No 75893/111/66A situated at Voi Township measuring 3.7 acres which the valuer could not locate during the time of valuation of assets in November 2014. In addition, the Corporation's land LR No75893/111/64A measuring 0.7413 acres located at Voi Township and valued at Kshs.1,600,000 had been taken over by the Ministry of Mining and on which a newly erected building stands. Further, a parcel of land No LR.No.11773 - Ngong TX station located at Kajiado County differed in size as the letter of allotment indicates that the land is measuring 33.419 acres (13.53

Management response

707. The management unformed the Committee that, the corporation had engaged a Law Firm to get all the parcels of land registered but did not bear any fruits. Currently, the corporation is working with the Ministry of Land, Housing, Public Works and Urban Development to survey and acquire title deeds for all the parcels of land across the country.

Committee observations

The Committee observed that the issue on Land and Building was deliberated in its Report for the financial year ending 30th June, 2016 and upholds the observations and recommendations therein as follows;

i. The Corporation does not posses ownership documents for land and buildings valued at Kshs. 6,616,759, 000.
ii. The Corporation parcel of land LR No 75893/111/66A situated at Voi township measuring 3.7 acres could not be located by the valuer at the time of valuation of assets in November 2014.
iii. The Corporation's parcel of land LR. No. 75893/111/64A measuring 0.7413 acres located at Voi Township and valued at Kshs.1,600,000.00 had been taken over by the Ministry of Mining
iv. The Corporations parcel of land No LR.No.11773 - Ngong TX station located at Kajiado County differed in size as the letter of allotment indicates that the land is 33.419 acres (13.53 hectares) while information available indicates that the actual size on the ground is 124.79055 acres valued at Kshs.2,700,000,000.
v. KBC Jamhuri Park land LR. No 15090 measuring 100 acres was allegedly grabbed, out of which 60 acres was recovered by Kenya Anti-Corruption Commission and was allocated/reverted to Kenya Forest service while the Corporation was reallocated 29 acres leaving Land measuring 11 acres which has not been accounted for as at the date of this report. management has not explained why part of the recovered land was given to Kenya Forest Service.
vi. Kenya Broadcasting Corporation Sauti house which houses Mombasa office, has a pending court case and part of its land was grabbed by Housing Finance Company of Kenya (HFCK)
vii. KBC land in Nyali TX LR.No 1476/'1 measuring approximately 22.8 hectares was encroached into by squatters.

Committee recommendations

The Committee Recommends that –

i. Within three months upon adoption of this report, the Accounting Officer-KBC in collaboration with the National Land commission should expedite the processing of the Corporation's title deeds for all the parcels of land owned by KBC.

ii. Within three Months upon adoption of this report, the Accounting Officer –KBC should present to the National Assembly a comprehensive report on the status of all its land parcels with regard to acquisition of ownership documents.
iii. Within three Months upon adoption of this report, the Accounting Officer – KBC should present to the National Assembly a comprehensive report on the status of the land LR No 75893/111/66A located at Voi township measuring 3.7 acres which could not be located by the valuer at the time of valuation of assets, the parcel of land LR. No. 75893/111/64A measuring 0.7413 acres located at Voi Township valued at Kshs.1,600,000.00 that had been taken over by the Ministry of Mining, the parcel of land No LR.No.11773 - Ngong TX station located at Kajiado County which differed in sizes, the Jamhuri Park land LR. No 15090 measuring 100 acres that was allegedly grabbed and the parcel of land in Nyali TX LR.No 1476/'1 measuring approximately 22.8 hectares that was encroached into by squatters.

1.5 Land without Title Deeds

708. The Committee heard that, as previously reported, available information indicates that the Corporation owns twenty five (25) parcels of land valued at Kshs.6, 102,849,000 that are un-surveyed, un-adjudicated and whose ownership documents such as title deeds and certificates of lease were not availed for audit review. Although, the management is aware of the above anomaly, although, the management is aware of the above anomaly, no evidence of any action being taken by the management to obtain ownership documents of these parcels of land was availed for audit verification as at the time of audit in February 2018.

709. In addition, and as previously reported, the balance of land excludes unvalued land LR.No.75893/111/66A situated at Voi Township measuring 3.7 acres which the valuer could not locate during the time of valuation of assets in November 2014. The management has not provided satisfactory explanations for the above anomalies.

List of land without title deeds:

NO.	Description	Ownership Document	Location	Purchase Date	Book Value
1	L.R. NO: 209/10370-Norfolk Car Park	Letter of allotment	Nairobi	30th November 2014	1,431,000,000
2	216/KLF/2/97-Mambrui, Malindi	Letter of allotment	Malindi	30th November 2014	482,000
3	Kisumu/Mun/Block 10/97-Kisumu	Letter of allotment	Kisumu	30th November 2014	204,460,000
4	L.R. NO: L96/16, Karen	Letter of allotment	Nairobi	30th November 2014	13,000,000

5	LR.NO.12679 Jamhuri HQ	Letter of allotment	Nairobi	30th November 2014	1,300,000,000
6	LR.No: 11773 Ngong TX Station	Letter of allotment	Kajiado	30th November 2014	2,700,000,000
7	L.R. NO: 191,Marsabit	No documents	Marsabit	30th November 2014	5,600,000
8	55/KLF/2/89-Malindi	No documents	Malindi	30th November 2014	4,400,000
9	Garissa town Block I I I /13	No documents	Garissa	30th November 2014	9,400,000
10	Garissa TX Station	No documents	Garissa	30th November 2014	9,500,000
11	MI /XXI /522-Sauti House, Mombasa Island	No documents	Mombasa	30th November 2014	313,250,000
12	Samburu/Lodekejek/37, Maralal ,Samburu District	No documents	Samburu	30th November 2014	5,600,000
13	L.R. NO: 6073/1-Kapsimotwa , Nandi District	No documents	Nandi	30th November 2014	7,265,000
14	L.R. NO: 11283-Limuru	No documents	Kiambu	30th November 2014	15,372,000
15	Mazeras , Kwale District	No documents	Kwale	30th November 2014	3,600,000
16	L.R. NO: 451/12262-Nakuru, Menegai Hill	No documents	Nakuru	30th November 2014	33,000,000
17	Nyamninia, Siaya District	No documents	Siaya	30th November 2014	30,250,000
18	Unsurveyed Plot, Nyeri District	No documents	Nyeri	30th November 2014	4,100,000
19	Unsurveyed Plot, Timboroa, Koibatek District	No documents	Uasin Gishu	30th November 2014	1,120,000
20	Unsurveyed Land, Wajir TX Station	No documents	Wajir	30th November 2014	1,700,000
21	Unuadjudicated Land, Voi TX Station	No documents	Taita Taveta	30th November 2014	4,200,000
22	Voi Township, Plan NO: 75893/III/64A	No documents	Taita Taveta	30th November 2014	1,600,000
23	Voi Township, Plan NO: 75893/III/65A	No documents	Taita Taveta	30th November 2014	2,800,000

24	Unsurveyed Plot, Nyambene Hills, Meru	No documents	Meru	30th November 2014	850,000
25	Lamu Unsurveyed	No documents	Lamu	30th November 2014	300,000
	TOTAL				6,102,849,000.00

710. Consequently, it has not been possible to confirm ownership status and existence of the twenty five (25) parcels of land valued Kshs.6,102,849,000 as at 30th June, 2017.

Management response

711. The management informed the Committee that, all the parcels of land registered but did not bear any fruits. Currently, the corporation is working with the Ministry of Land, Housing, Public Works and Urban Development to survey and acquire title deeds for all the parcels of land across the country.

Committee observations

The Committee observed that the issue on Land without Title Deeds was deliberated in its Report for the financial year ending 30th June, 2016 and upholds the observations and recommendations therein as follows;

i. The Corporation does not posses ownership documents for twenty five (25) parcels of land valued at Kshs.6, 102,849,000. In addition the pieces of land are un-surveyed, un-adjudicated
ii. The Corporation parcel of land LR No. 75893/111/66A situated at Voi township measuring 3.7 acres could not be located by the valuer at the time of valuation of assets in November 2014.
iii. The corporation had engaged a law firm to get all the parcels of land registered but did not bear any fruit. This implies that corporation did not get value for its money.

Committee recommendations

The Committee Recommends that –

i. Within three months upon adoption of this report, the Accounting Officer-KBC in collaboration with the National Land commission should expedite the processing of the Corporation's title deeds for the twenty (25) parcels of land.
ii. Within three Months upon adoption of this report, the Accounting Officer – KBC should present to the National Assembly a comprehensive report on the status of the land LR No.75893/111/66A located at Voi township measuring 3.7 acres which could not be located by the valuer at the time of valuation of assets.

1.6 Land with Disputes

712. The Committee heard that, the Corporation ten (10) parcels of land measuring 211.58785 acres and valued at Kshs.7,597,582,000 are under disputes that has been on for a long period of time. A review of the matter in March 2018 revealed unchanged position.

Land with Disputes

No.	LR No.	Location	Size inAcre	Value	Ownership
1	LR No. 1/9218	Donyo Sabuk Komarock	1.234	1,820,000,000	With title
2	M1/XX/5 22	Sauti House Mombasa Island	1.253	313,250,000	No title
3	No LR No	Lamu - Unsurveyed	0.018	130,000	No title
4	LR No 26326	Langata	19.365	461,000,000	With title
5	16/KLF/2 /97	Mambrui Malindi	7.17	482,000	With letter of allotment
6	No. LR No	Timboroa Koibatek	4.8	1,120,000	No ownership document
7	LR No 75893/11 1/64A	Voi Township	0.7413	1,600,000	No ownership document
8	LR No 11773	Ngong Station Kajiado	124.79055	2,700,000,000	With letter of allotment
9	LR No 12676	Jamhuri Headquarters	29	1,300,000,000	With letter of allotment
10	LR No 1476/1	Nyali	22.85	1,000,000,000	With title deed
			211.22185	7,597,582,000	

Consequently, it has not been possible to confirm the existence and ownership status of the ten (10) parcels of land valued Kshs.7,597,582,000 as at 30th June, 2017.

Management response

713. The management informed the Committee that, the court cases are ongoing up to date.

Committee observations

The Committee observed that the issue on Land with Disputes was deliberated in its Report for the financial year ending 30th June, 2016 and upholds the observations and recommendations therein as follows;

Committee observed that;

The Corporation's ten 10) parcels of land measuring 211.58785 acres valued at Kshs.7,597,582,000 located across the Country has been under ownership dispute for a long period of time.

Committee recommendations

The Committee Recommends that –

i. Within three months upon adoption of this report, the inspector-General, inspectorate of State Corporations should carry out a review of all KBC land with pending Court cases, prepare a comprehensive status report and submit it to the National Assembly with a copy to the Attorney General who will initiate the process of fast-tracking the conclusion of the cases within reasonable time.
ii. The Accounting Officers should strive to embrace Alternative Dispute resolution Mechanisms in the resolution of disputes.

1.7 Unclear Transfer of KBC land to Staff Pension Fund

714. The Committee heard that, as previously reported, the Corporation transferred four (4) parcels of land valued at Kshs.1,126,250,000 to Kenya Broadcasting Corporation staff pension Fund for unremitted outstanding pension arrears totalling Kshs.208,774,000 as at 30 June 2017, contrary to chapter five (5), Article 62, Section 4 of the Constitution of Kenya which may lead to loss of Corporation land as detailed below :-

i. LR.No.1/9218 Donyo Sabuk/Komarock half of 1,234.26 (617.13) acres (with tittle deed) valued at Kshs.910,000,000.
ii. LR. No. Ntirimiti settlement scheme/153, Marania Meru District 238.45 acres (with tittle deed) valued at Kshs.130,000,000.

715. LR. No.1932/4 Kitale Municipality 200 acres (With title deed) valued at Kshs.56,000,000 and Nyamninia, Siaya District 107.98 acres (Without ownership documents) valued at Kshs.30,250,000. It is not clear and the management has not explained why land with net book value of Kshs.1,126,250,000 is being exchanged with a pension debt of Kshs.208,774,000 resulting in a possible loss of Corporation land valued at

Kshs.917,476,000. In addition the cost of the transferred land has not been removed from the total cost of land owned by the Corporation as at30 June 2017.

716. Further, physical verification of land LR No1/9218 Donyo Sabuk/Komorock measuring 1,234.26 acres indicated that more 2/3 of the land has been encroached by squatters and there are physical structure within the land. In the circumstances, it has not been possible to confirm if the transfer of four (4) Corporation parcels of land valued Kshs.1,126,250,000 to the KBC Pension Fund is in the best interest of the stakeholders and whether, the extension of the swap of the liabilities with the parcels of land will be achieved. The Corporation was therefore in breach of chapter five (5), Article 62, Section 4 of the Constitution of Kenya and the propriety of land worth Kshs.917,476,000 as at 30 June 2017 could not be confirmed.

Management response

717. The management informed the Committee that, the Board noted that the transfer of the parcels of land would not adequately clear the outstanding deficit but requested management to negotiate with the Retirement Benefits Authority on a plan to pay the remaining amounts and particularly on how some of the funds to be generated from the PPP joint venture could be utilized to meet outstanding and future Pension Scheme obligations.

718. The Board instructed management to ensure it obtained necessary approvals from the Parent Ministry before implementing the transfer of the plots of land to the pension scheme and undertaking PPP project on the remaining Komorock land. The Board further instructed management to ensure it conducted fresh valuations on the parcels of land before any transactions are undertaken.

Committee observations

The committee observed that the issue on Unclear Transfer of KBC land to Staff Pension Fund was deliberated in its Report for the financial year ending 30th June, 2016 and upholds the observations and recommendations therein as follows;

The Corporation transferred four (4) parcels of land valued at Kshs.2,036,250,000 in an exchange to settle KBC pension debt amounting to Kshs.225, 111,000. Which exposes the organization to a loss of Kshs. Kshs.1,811, 139,000 being the value of assets lost through irregular transfer.

Committee recommendations

The Committee Recommends that –

719. Within three months upon the adoption of this report, EACC to initiate investigations into the matter surrounding the illegal transfer of four (4) parcels of land valued at Kshs.2,036,250,000 in an exchange to settle KBC pension debt amounting to Kshs.225, 111,000. Should any person/officer be found culpable, the DPP should initiate legal action

with a view to holding the responsible persons accountable for the illegal transfer of the Corporation land.

2.0 Trade and other Payables

720. The Committee heard that, the statement of financial position as at 30th June, 2017 reflects trade and other payables balance of Kshs. 746,744,000 which includes Kshs. 545,049,000 in respect of statutory and other deductions which had not been remitted to respective institutions as at 30th June, 2017 as detailed below;

Particulars	**Amount (kshs)**
Pension	208,744,000
Statutory Deduction	24, 869,000
Medical Fund	127,723,000
Co-operative Deduction	13,339,000
Insurance	2,371,000
SAYE	42,000
Other deduction	8,827,000
Value added Tax	145,797,000
NHIF	4,510,000
Total	**545,049,000**

721. In addition the balance of Kshs. 746,744,000 includes trade creditors totaling Kshs. 168,478,000 whose supporting documents were not availed for audit review. It is not clear and management has not explained if and when the amount of Kshs. 545,049,000 will be remitted to the respective Institutions. The Corporation is therefore in breach of the law and the unremitted amounts may attract fines and penalties in future. The Corporation has also not made provision for possible penalties in the financial statements. In the circumstances, it has not been possible to confirm the accuracy, validity and completeness of trade and other payable balance of Kshs.746,744,000 as at 30th June, 2017.

Management response

722. The Corporation is in arrears in remitting some of the employees benefits deducted from their salaries due to cash flow constraints. However, management has worked hard to correct the anomaly by making the following remittances: Pension (29/09/2016-19/01/2017) 28,078,884.90 Cooperative Societies (April 2017) 21,348,170, 40 PAYE (23/1/2017-20/4/2017) 50,000,000.00 and VAT (2/2/2017) 4,000,000,00. Regarding the other deductions like NHIF, the Corporation has paid all the arrears and therefore up-to-date as at 30th July, 2017.

Committee Observations

The Committee observed that the issue on trade and other payables was deliberated in its Report for the financial year ending 30th June, 2015 and upholds the observations and recommendations therein as follows;

The Committee observed that;

The Corporation breached Section 19 (4) of the employment Act, 2007 which states that an employer who deducts an amount from an employee's remuneration in accordance with subsection (1)(a),(f),(g) and (h) shall pay the amount so deducted in accordance with the time period and other requirements specified in the law

Committee recommendations

The Committee reprimands the then Accounting Officer for violating Section 19 (4) of the employment Act, 2007 which requires that an employer who deducts an amount from an employee's remuneration in accordance with subsection (1)(a),(f),(g) and (h) shall pay the amount so deducted in accordance with the time period and other requirements specified in the law.

3.0 Japanese loan

723. The Committee heard that, as previously reported, the Corporation's statement of financial position as at 30 June 2017 reflects a loan from Overseas Economic Cooperation Fund (OECF) of Japan as disclosed in note 16(a) and 16(b) of the financial statement. The OECF loan which was guaranteed by the Government in 1989 funded the Corporation's modernization programme, a project mooted out of a study by the government in February 1988.The Corporation contracted a Japanese firm to undertake the modernization project at a sum of Japanese Yen.11,904,566,500 with a Kenya Currency portion of Kshs.98,507,000.

724. The loan was interest bearing and as at 30 June 2017 the loan balance was Kshs.12,191,472,000 and interest thereof Kshs.50,116,823,000. Although, the Parliamentary Investment Committee discussed the issue concerning the loan when the Corporation appeared before the committee in 2016, and the Corporation has continuedto reflect the loan and interest balance in its financial statements. Although and as previously reported, the management has explained that there are on-going negotiationswith the Government to convert Government of Kenya Loan into equity, it is not certain when the process will be completed.

725. The management has not been servicing the loan which had been guaranteed by the National Treasury and has accumulated to Kshs.62,308,295,000 as at 30 June 2017.

Management response

726. The management informed the Committee that, KBC together with the Parent Ministry have developed a KBC transformation CAB MEMO that seeks to address the historical debts among other transformation strategies. The CAB MEMO contains a specific request for the Government to write-off the Japanese loan related debt.

Committee observations

The committee observed that the issue on Japanese Loan was deliberated in its third PIC-SSAA Report and upholds the observations and recommendations therein as follows;

i. The Committee observed that, the corporation's corporate governance is considerably weak thereby exposing the corporation to potential losses in addition reputational and operational risks.
ii. The Corporation is technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors.
iii. The Kenya Broadcasting Corporation took a loan from the Overseas Economic Co-operation Fund (OECF) Japan in 1989. The National Treasury has over the years serviced on behalf of the corporation.
iv. The OECF Japan loan was received in the form of equipment's which were rendered obsolete because of the liberalization of the electronic industry in Kenya in the 1990s and the migration to FM radio transmission.

Committee recommendations

The committee recommends that –

i. Within three months after the adoption of the Report the Ethics and Anti-Corruption to investigate whether there are any financial leakages/ financial impropriety Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the financial leakages/ financial impropriety.
ii. The Committee recommends that the KBC diversifies its revenue base to reduce over reliance on Government support.

3.0 Legal Fees

3.1 Case between the Corporation and Mombasa Governor

727. The Committee heard that, included in the administration cost balance of Kshs.9,298,885,000 under Note 4(a) to the financial statements is an amount of Kshs.1,119,033,000 in respect to staff cost. The amount of Kshs.1,119,033,000 also includes an amount Kshs.2,514,431 paid to a law firm for the preparation of an application under certificate of urgency for contempt of court proceedings instituted against the Mombasa Governor and other officials of Mombasa county who were involved in the illegal and irregular demolition of Nyali plot fence erected on the Corporation land reference LR. No 1476 or original LR.No 464/60 on 30th September 2016 at a cost of Kshs.3,512,700.

Management response

728. The management informed the Committee that, payment vouchers in support of all the expenses are readily available for your review. Part of them were given to external auditors who were on the ground for audit, have attached a sample of them for review. The payment vouchers were taken by the Director of Criminal Investigation and the signed list for all the vouchers that were taken.

Committee observations

The Committee observed that–

The inclusion of legal fees amounting to Kshs.2,514,431 under staff costs was contrary to the provisions of Regulation 221(2)(a) of the PFM (National Government) Regulations, 2015 which requires that annual financial statements shall be prepared in compliance with the International Financial Reporting as prescribed by the Public Sector Accounting Standard Board.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting officer for failing to adhere to the requirements of International Public Sector Accounting Standards as prescribed in the PFM Act, Cap 412A and Regulation 221 of the PFM (National Government) regulations,2015.

3.2 Case between the Corporation and Komorock Housing and Co-operative Society

729. The Committee heard that, on 20th April, 2017 the Corporation paid an additional amount of Kshs.5,800,000 to another law firm in respect of Machokos H.C case Petition No.15 of 2015 between Komarock housing & Co-operative Society VS KBC & 18 others. Whereas the legal counsel for Kenya Broadcasting Corporation is the Attorney General of the Republic of Kenya, no documentary evidence was provided to show that the two law firms were cleared to represent the Corporation in the two legal cases by the Attorney General.

730. No supporting documents indicating how the two law firms were identified and awarded the contracts was availed for audit review contrary to Section 91 (1) and 135 (2) of the Public Procurement and assets Disposal Act 2015 which states that open tendering shall be the preferred procurement method for procurement of goods, works and services. Further, Section 135(2) states that, an accounting officer of a procuring entity shall enter into a written contract with the person submitting the successful tender based on the tender documents and any clarifications that emanate from the procurement proceedings. A review of the matter in April 2018 revealed that the two (2) cases are still pending in a court of law while the Komarock ranch Land has been encroached and subdivided by squatters who have erected permanent structures. Although the management is aware of

the above analysis no evidence of any positive steps being taken to safeguard the public resource was seen or availed for audit review. In the circumstances, it has not been possible to confirm the propriety of legal expenditure totalling Kshs.8,314,431, ownership status and that the Corporation received value for money. The Corporation is also in breach of procurement laws.

Management response

731. The management informed the Committee that, in June 2013, some people trespassed into the suit land LR NO. DONYO SABUK/KOMAROCK BLOCK 1/92181 which is in occupation by the Corporation. The matter was extremely urgent and in order to safeguard and secure the land, we had to instruct our advocate to file suit seeking for injunctive orders against the trespassers. Already we had prequalified a number of advocates who were in our panel. We therefore instructed M/S KINYUA MURIITHI & CO. Advocates which had been prequalified and was in our panel. Therefore the provisions of Section 91(1) and 135(2) of the Public Procurement and Assets Disposal Act 2015 did not apply as already this firm of advocates was in our panel to render legal services. The said firm of advocates took up the matter and has diligently acted in the cases now pending and our advocates have kept us informed

Committee observations

The Committee observed that –

The Corporation paid Kshs.5,800,000 to a law firm as legal fees. However, the management did not provide supporting documents such as the basis for charging the legal fee, approval and a no-objection from the Attorney General to engage the services of the law firm.
The Corporation was in breach of Section 91 (1) and 135 (2) of the Public Procurement and assets Disposal Act 2015 which states that open tendering shall be the preferred procurement method for procurement of goods, works and services

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting Officer for breach of Article 227 of the Constitution and section 91 (1) and 135 (2) of the Public Procurement and assets Disposal Act 2015.

3.3 Pending Legal Cases – Channel 2 Group Corporation

732. The Committee heard that, as disclosed in Note 4(a) to the financial statements included in administration cost figure of Kshs.9,298,885,000 is an amount Kshs.56,349,000 in respect of legal fees.The figure of Kshs.56,349,000 also includes an amount of Kshs.40,242,181 paid to a law firm being legal and consultancy fees for a case filed against the Corporation on 10th May 2006 for breach of contract where Kenya Broadcasting Corporation (KBC)

entered into a JointVenture agreement with Channel 2 Group Corporation. Available information indicates that Channel 2 had the right to operate and create broadcasting movies and other programs on KBC's stations formerly known as Metro Television.

733. On 16th March, 2009 Corporation terminated the Joint Venture agreement and Channel 2 Group initiated a court process by filing a suit HCCC.NO.60 OF 2010 for appointment of an arbitrator. Channel 2 group thereafter lodged a claim of approximately USD.2.4 Billion equivalent toKshs.206 billion against the Corporation for losses and damages they incurred from the termination of the contract.

734. On 24th September, 2010 the court directed that the issues of losses and damages could be heard before an arbitrator in London as per the terminated agreement between Channel 2 Group and the Corporation. The Corporation has been represented in the arbitration case by the London Law firms and a local firm who had been paid a total amount of Kshs.1,290,976,849 as at the time of this audit.

735. No documentsto show how the Law firms were identified and awarded the services and signed contracts between the two parties was not availed for audit review. This is contrary to Section 91(1) ofthe Public Procurement and Assets Disposal Act 2015 which requires that open tenderingshall be the preferred procurement method for procurement of goods, works and services.Further, section 135(2) requires that, an accounting officer of a procuring entity shall enterinto a written contract with the person submitting the successful tender based on the tender documents and any clarifications that emanate from the procurement proceedings. No evidence to show that the management sought advice from the Attorney General for use of both law firms to represent the Corporation in the case was availed for audit review.

736. In addition, the Corporation procured the services of three other firms to provide consultancy services on transmission matters at a cost of Kshs.9,500,000, provide consultancy services on accounting issues at Kshs.8,432,040 and consultancy services on marketing issues at a cost of Kshs.15,785,000 all totalling Kshs.33,717,040. It was notclear and management has not explained the reason for engaging the three firms considering that the arbitration process had failed. Further, the hiring of the three firms increased the total cost on the arbitration process to a total of Kshs.1,324,693,889 as at 30 June 2017. No satisfactory explanations have been provided for these anomalies.

737. In the circumstances, the propriety of expenditure of Kshs.1,324,693,889 incurred over the years on the legal process could not be confirmed and the Corporation was in breachof the law.

Management response

738. Kenya Broadcasting Corporation (KBC) is the Respondent in an arbitration claim started against it by Channel 2 Group Corporation (Channel 2). Channel 2's claim relates to a joint venture agreement between it and KBC dated 10 May 2006 (the JV Agreement) and a Memorandum of Understanding between it and KBC dated 23 April 2008. Channel 2 alleges that KBC wrongfully terminated the JV Agreement and/or the MOU by a letter dated 16 March 2009. It initially claimed damages of US$2.4 billion for this. In general terms, under the JV Agreement:

i. Channel 2 agreed for 10 years (from March 2007 to March 2017) to operate and provide films and other programmes to be broadcast on a free-to-air analogue television channel owned by KBC (then called Metro TV) which was rebranded and called KBC2;KBC agreed to provide equipment and infrastructure necessary to broadcast KBC2.

ii. KBC agreed to provide equipment and infrastructure necessary to broadcast KBC2
iii. After initial investments by Channel 2, the concept was that KBC2 would be funded through advertising revenues.
iv. As regards the MOU, Channel 2 alleges (but KBC denies) that this extended the joint venture to include the exploitation of digital broadcasting opportunities (DTT) in Kenya for 10 years from 2008. Channel 2 prepared a feasibility study for this extended joint venture in August 2008 (the Feasibility Study). Again, the extended joint venture was intended to be funded primarily through advertising revenues, but also with some subscription and sponsorship revenues.
v. Channel 2 ran KBC2 under the terms of the JV Agreement until March 2009. It was not a success and, on 16th March 2009, KBC terminated the JV Agreement.
vi. KBC did not proceed with any extended joint venture with Channel 2 to exploit digital broadcasting opportunities in Kenya envisaged by the MOU.

Committee observations

The Committee observed that –

i. Kenya Broadcasting Corporation entered in to a JointVenture agreement with Channel 2 Group. The agreement allowed Channel 2 Group the right to operate and create broadcasting movies and other programs on KBC's stations formerly known as Metro Television.
ii. KBC agreed to provide equipment and infrastructure necessary to broadcast KBC Channel 2 and that KBC Channel 2 would be funded through advertising revenues.
iii. Channel 2 group lodged a claim of approximately USD.2.4 Billion equivalent to Kshs.206 billion against the Corporation for losses and damages they incurred from the termination of the contract.
iv. The National broadcaster procured the services of three firms to provide consultancy services on transmission matters at a cost of Kshs.9,500,000, consultancy services on accounting issues at a cost of Kshs.8,432,040 and consultancy services on marketing issues at a cost of Kshs.15,785,000 all totalling Kshs.33,717,040. However the management failed to provide explanation on the reasons for engaging the three firms considering that the arbitration process had failed.
v. The total cost arising out of the arbitration process amounted to Kshs.1,324,693,889 as at 30th June, 2017.
vi. The Accounting Officer was in breach of Article 227 of the Constitution and section 91(1) ofthe Public Procurement and Assets Disposal Act 2015 which requires that open tenderingshall be the preferred procurement method for procurement of goods, works and services when selecting the law firms that represented them in the arbitration process in London.

Committee recommendations

The Committee recommends that –

i. The Committee reprimands the then Accounting Officer for failure to adhere to Article 227 of the Constitution and section 91(1) ofthe Public Procurement and Assets Disposal Act 2015.
ii. The Accounting Officer – KBC should embrace Alternative dispute resolution mechanisms to bring the case to its logical conclusion.
iii. The Committee reprimands the then Accounting officer for failing to undertake proper feasibility study before the signing the Joint Venture Agreement with Channel 2 Group.
iv. The Committee recommends to conduct an inquiry on the circumstances surrounding the Joint Venture Agreement between KBC and Channel 2 Group Corporation.

4.0 Trade Receivables

739. The Committee heard that, as disclosed in Note 11 to the financial statements trade and other receivables net figure of Kshs.997,867,000 includes trade receivables of Kshs.1,146,932,140 which has been outstanding for a long period of time some of which dates back to 1989. These debts forms 80% of the total outstanding debts. The recoverability of these debts is doubtful due to lack of supporting documents. No evidence of any positive measures being taken to recover the outstanding debts was availed for audit review.

740. In addition, the balance of Kshs.997,867,000 incudes staff debtors and other receivables figure of Kshs.26,997,000 which includes outstanding temporary Imprest totalling Kshs.2,748,401 some of which date back to year 2012 and had not been surrendered as at 30 June 2017. This is contrary to Section 92 (5) of the Public Finance Management regulations 2015 which provides that a holder of temporary imprest shall account or surrendered the imprest within 7 working days after returning to duty station or performing duty which was assigned.

741. Further, available information revealed that the Corporation used cash imprest totalling Kshs.2,199,800 during the year under review to purchase capital items and renovations contrary to Section 63(1) of the Public Procurement and Disposal regulation 2006 which states that for the purposes of section 90 (2) of the Act, a procuring entity may use a low value procurement procedure only if the estimated cost of the goods, works or services being procured per item is less than or equal to the prescribed maximum value as set out in the regulation.
742. In the circumstances, it has not been possible to confirm the accuracy, validity and completeness of the trade and other receivables balance of Kshs.997,867,000 as at 30 June 2017 and the Corporation was in breach of the law.

Management response

743. The management informed the Committee that, there has been effort to offset the long outstanding debt since it is historical which was carried forward from the manual system to the automated system. Still waiting for the board's approval to write them off. The Corporation made demand letters; switch off memos, letters of hand over to external debts collectors, request for legal actions and responds from courts as evidence of efficiency in collection. Every year provision for bad debts is done and reflected in the financial statements as is mentioned in our accounting policy under item k. Trade and Other Receivables that are, an estimate, is made of doubtful receivables based on a review of all outstanding amounts at the year end.

Committee observations

The Committee observed that –

i. The recoverability of the long outstanding receivables of Kshs.997,867,00 is doubtful due to lack of supporting documents availed for audit review.
ii. The Corporation did not justify the need for the write off, in line with the provisions of Regulation 157 (1)(a) PFM (National Government) Regulations 2015 which provides that an Accounting Officer may only write off losses if all reasonable steps have been taken to recover the debts and the loss is irrecoverable.
iii. The then Accounting Officer failed to enforce the provision of the Regulation 93(5) of the PFM (National Government) Regulations, 2015 that prescribes that imprest surrender be made within 7 days.
iv. The Corporation used cash imprest totalling Kshs.2,199,800 to purchase capital items and renovations contrary to Section 63(1) of the Public Procurement and Disposal regulation 2006 which states that for the purposes of section 90 (2) of the Act, a procuring entity may use a low value procurement procedure only if the estimated cost of the goods, works or services being procured per item is less than or equal to the prescribed maximum value as set out in the regulation.

Committee recommendations

The Committee recommends that –

i. Within three months upon adoption of this report, the Accounting Officer should provide a comprehensive report to the Auditor-General for verification and reporting in the subsequent audit cycle on the reasonable steps that have been taken to recover the long outstanding receivables debts before initiating the write off process on account of being irrecoverable.
ii. The Committee reprimands the then Accounting Officer for contravening The Corporation did not justify the need for the write off, in line with the provisions of Regulation 93 (5) of the PFM (National Government) Regulations 2015 and Section 63(1) of the Public Procurement and Disposal regulation 2006.

5.0 Inventory

744. The Committee heard that, as disclosed in Note 10 to the financial statements, the inventory figure of Kshs.70,164,000 includes obsolete engineering stores worth Kshs.57,718,890 in form of bolts and spares for the analogue transmitters. The stocks are shown at cost instead of lower of cost or net realizable value as required by the International Accounting Standard (IAS2). Physical verification of the inventory at the Karen/Langata TX station indicate that the bulk of the inventory in the stores were for the analogue system which was discarded in 2014 and other items which were delivered for the shortwave radio transmission. The management has not made a provision for obsolete stock in these financial statements. In the circumstances, it has not been possible to confirm validity, accuracy and completeness of the inventory balance of Kshs.70,164,000 as at 30th June 2017.

Management response

745. The Management informed the Committee the anomaly was noted and the difference reconciled.

Committee observations

The Committee observed that –

i. The Accounting officer did not respond to the audit issue raised on failure to provide for obsolete inventory but alluded to having reconciled the difference which was not part of the query.
ii. The inclusion of the obsolete inventory amounting to to Kshs.57,497,000 overstates the corporations current assets in the statement of financial position thus misleading the users.
iii. The Accounting officer failed to make provisions for obsolete Engineering stock amounting to Kshs.57,497,000 in form of bolts and spares for the analogue transmitters contrary to the provisions of Regulation 221(2)(a) of the PFM (National Government) Regulations, 2015which requires that annual financial and non-statements shall be prepared in compliance with the International Financial Reporting as prescribed by the Public Sector Accounting Standard Board.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting officer for contravening Regulation 221(2)(a) of the PFM (National Government) Regulations, 2015 which requires that annual financial and non-statements shall be prepared in compliance with the International Financial Reporting as prescribed by the Public Sector Accounting Standard Board. In this respect the Committee recommends that the Corporation reviews its inventory with a view to identify any obsolete stocks and dispose them in accordance with the Public Procurement and Asset, Disposal Act CAP 412C otherwise for the continuous improper disclosure the accounting officer in place during the breach is reprimanded.

6.0 Unexplained Decrease of Dividends

746. The Committee heard that, as disclosed in Note 3 to the financial statements, other income figure of Kshs.82,534,000 includes dividend income of Kshs.64,000,000 (2016:- Kshs.220,000,0000) from investment in Multichoice Kenya Ltd where the Corporation owns 40% of the Holding Company against the approved budget figure of Kshs.240,000,000. However, examination of the audited financial statement of Multichoice Kenya Ltd for the year ended 31 March 2017 reflects net income of Kshs.295,602,000 of which 40% transacts into Kshs.118,240,000. The management has not explained the decrease in dividend of Kshs.54,240,000 for the year ended 30 June 2017. In the circumstances, it has not been possible to confirm if the Corporation obtained value of its money from Investment in Multichoice Kenya Limited.

Management response

747. The management informed the Committee that, the electronic media advertising business of DSTV that is owned and operated by Multichoice (K) ltd has been underperforming due to competition from online digital platforms just the same way other electronic media houses in Kenya have been affected.

748. Therefore, Multichoice (K) ltd did not make profits in the year, to enable it declare dividends and pay KBC 40% share of the same.

INQUIRY BY THE COMMITTEE IN TO THE OPERATIONS OF MULTICHOICE KENYA LIMITED, MULTICHOICE GROUP, MULTICHOICE AFRICA HOLDINGS, GoTV, DSTV AND MR. STEPHEN ISABOKE

749. Due to the foregoing, the Committee conducted an inquiry in to the above mentioned institutions and persons with a view to get further evidence on the investment in GoTV and DSTV

Further submissions by MultiChoice Kenya

750. The Committee after meeting the management of Kenya Broadcasting Corporation resolved to invite the Ag. General of Multichoice Kenya Limited to apprise it on the following;

   a) The Shareholding and ownership of Multi-Choice Kenya Limited.
   b) The Joint Venture Agreement between Kenya Broadcasting Corporation and Multi-Choice Africa Limited.
   c) The dividends earned by Multi-Choice Africa Limited from the inception of the Joint Venture Agreement.

d) The dividends earned by the Kenya Broadcasting Corporation from the inception of Joint Venture agreement.
e) The sum of the initial funding and network infrastructure provided by Multi-Choice Africa Limited.
f) The number of requisite frequencies that was provided by Kenya Broadcasting Corporation as per the Joint venture.
g) The Directors of Multi-Choice Kenya Limited (provide a copy of the CR 12).

The Ag. General Manager informed the Committee that;

i. MultiChoice Kenya is a joint venture between the KBC and MultiChoice Africa which was established in 1994 for the purposes of providing subscriber management and related support services for Pay TV service in Kenya.
ii. The joint venture was based on the agreement that MultiChoice Africa would authorize KBC to receive and distribute the programme- carrying signals transmitting the International Service on its behalf, to subscribers in Kenya.. KBC on the other hand was to provide broadcast infrastructure and equipment through KBC Channel 2. MultiChoice Africa launched the DStv service in South Africa in October 1995 and carried more than 24 channels at the time. The launch of DStv was the first digital satellite service in Africa and the second of its kind in the world, only after the United States.
iii. In 1996, the DStv service was launched in the rest of sub-Saharan Africa. MultiChoice Africa established a network of partnerships in the form of Joint Ventures, Franchises and Agents in a bid to provide quality after sales service and support to its subscribers across the continent.
iv. Due to the increasing costs of operating an analogue terrestrial Pay TV service with a limited number of channels, Multichoice Africa suspended its service with KBC Channel 2. This was further compounded by the decline in subscriber numbers following the launch in 2000 by MultiChoice Africa of the DStv Satellite service, which was a more cost effective and efficient alternative to the terrestrial broadcasting service.Multichoice Kenya continued to operate as a Subscription Management Services provider.
v. Kenya Broadcasting Corporation ("KBC") and Multichoice Africa Limited (MCA) through a subsidiary company "Interco" entered into a JV Agreement on 15th December 1994.The key terms of the Agreement provided that a company, "Interco" was to acquire 60% shareholding in Multichoice Kenya while KBC would hold 40%.

The Agreement was amended on 1st November 1996 to:

a) Recognize the changes in the broadcasting environment;
b) Going forward MCA was to provide digital Pay TV services through satellite instead of KBC Channel 2;

i. Provide that MCA would hold the 60% shareholding in Multichoice Kenya through MultiChoice Kenya Holdings (MKHL) (in place of "Interco") . KBC would retain 40% shareholding in MultiChoice Kenya;

ii. In 2014, MKHL transferred its shares directly to MultiChoice Africa Limited and eventually wound up.
iii. Presently Kenya Broadcasting Corporation owns 40% of MultiChoice Kenya while MultiChoice Africa Holdings BV owns 60% of MultiChoice Kenya.
iv. Multichoice has employed 121 permanent Kenyan employees (53% male, 47% female) 342 contract Kenyan employees 93general outsourced; 96 outsourced inbound; 153 outsourced outbound
v. The Parties agreed: Multichoice Africa Holdings would contribute USD 1,176,000; and KBC to contribute USD 784,000.
vi. The working capital to finance the business was to be met by borrowings from banks and similar financial institutions. In case lending was not practical then parties were to lend to the company pro rata to their shareholding in the company such amounts as may be required.
vii. On Network, KBC to rebroadcast MCA's international signals on the KBC Channel 2 platform. MultiChoice Kenya to assist KBC in financing the acquisition of satellite equipment to receive broadcast of quality signal and terrestrial transmitters to distribute the international signals to international service subscribers KBC was required to install distribution network by KBC at its cost with assistance of MCA and maintain the equipment. Quality of transmission to be satisfactory to MCA.

751. On frequencies KBC acquired suitable VHF and/or UHF frequencies on an exclusive basis to facilitate distribution of the service throughout Kenya.

752. Due to the increasing costs of operating an analogue terrestrial pay TV service with a limited number of channels, this service was suspended in 2003. further compounded by the decline in subscriber numbers following the launch in 2000 by MultiChoice Africa of the DStv service, which was more cost effective and efficient alternative to the terrestrial broadcasting service.Given the suspension of the service the frequencies were then recalled.

753. Due to increased inflation and a reduction in the consumer purchasing power, we have seen a reduction in the pay tv subscriptions and a shift of customers to cheaper entertainment options, hence reduced revenues. Inflation has also resulted to increased cost of operations.
754. The reduction in revenues and increased cost of operations above, have had an impact on the profit margins of the company over time.

755. The Kenyan currency has depreciated by 53% over the last 5 years. Multichoice Kenya imports hardware and an increase in the exchange rate results to increased cost of business, further reducing the profit margins.

Committee observations

The Committee observed that –

Multichoice Africa (in place of "Interco" that was the predecessor shareholder) held 60% shareholding in Multichoice Kenya Limited while KBC would hold 40% shareholding in

MultiChoice Kenya. This would entail KBC receiving 40% of the declared dividends. However, the Committee observed that, in the financial years 1995/1996 to 2000/2001 and 2003/2004 KBC received nil dividends in addition some other years where it received below its entitled share of 40% for instance in the financial year under review KBC received only Kshs.64,000,000 instead of its rightful share of Kshs.118,240,000.

Further submissions by GoTV Kenya

756. The Committee after meeting the management of Kenya Broadcasting Corporation resolved to invite the Ag. General of Multichoice Kenya Limited to apprise it on the following;

i. The Circumstances surrounding the acquisition of KBC TV frequencies by GOtv Kenya Limited.
ii. The Joint Venture agreement between Kenya Broadcasting Corporation and MultiChoice Africa Limited on the use KBC Sites, infrastructure and frequencies.

757. The management of GoTV informed the committee that;

758. At inception of the GOtv services in 2012, it was MultiChoice Africa's intention to partner with KBC in GOtv Kenya.

759. The shareholding offer to KBC was for them to come in as a local shareholder for the whole 40% in GOtv Kenya. The funding for the shareholding would be structured as: 30% to be funded by KBC and 10% in consideration of collocation and assistance in applying for frequencies.

760. The parties were engaged in negotiations and discussions for close to a decade (between 2012 – 2021) with the intention to enter into a shareholding partnership in respect of GOtv.
761. Eventually, KBC communicated its decision not to take up the offered 40% shares. Reasons advanced for this decision included the regulatory restriction on operators being shareholders in more than one Broadcasting Signal Distributor given KBC's shareholding in Signet and lack of funds.
762. Further the uptake of the shareholding in GOtv by KBC required the ICT Ministry's consent which was never granted.

Committee observations

The Committee observed that –

i. The shareholding offer to KBC as a local shareholder was 40% but was unable to take its shareholding of 40% in DSTV because of the regulatory restriction on operators being shareholders in more than one Broadcasting Signal Distributor given KBC shareholding in Signet and also due to lack of funds.

ii. The funding for the shareholding was structured as: 30% to be funded by KBC and 10% in consideration of collocation and assistance in applying for frequencies. However, although at this point KBC had already done its part on collocation and assistance in applying for frequencies which automatically entitled it (KBC) to 10% shareholding it did not take up either the 10% or the 30% to be funded by KBC. According to GOtv submissions, the shares that KBC declined to take up were later allocated to Mr. Stephen Isaboke as a "loan".

iii. The total worth of share being ksh 14.2 billion nominal value for the shares and thus KBC's 10% stake in GOtv which they forfeited amounts Kshs 1.42 billion.due and payable by Multi choice Africa in liue of the 10% shareholding.

Committee recommendations

The Committee recommends that –

i. Within three months upon adoption of this report, the Accounting Officer -KBC in collaboration with the Attorney General to review the terms and conditions of the Joint Venture Agreement between KBC and Multichoice Africa in Multichoice Kenya with a view to establishing how the dividends of the Joint Venture were to be shared, right of access to audited financial statements and information by the management of KBC in determining their dividends entitlement and their representation in the management of Multichoice Kenya Limited.

ii. Within three months upon adoption of this report, the Accounting Officer -KBC in collaboration with the Attorney General to come up with modalities of formulating a new agreement that describes the nominal value of shares assigned to each party.

7.0 Contingent Liability

763. The Committee heard that, as disclosed in note 19 to the financial statements, the corporation has contingent liability totaling Kshs.252, 756, 349, 383, against 24 cases pending in court for or against the cooperation, some dating back to 2006. However, if the cases are determined against the corporation, there is a likelihood that the corporation will suffer financial losses to the tune of Kshs.252, 756, 349, 383.

Management response

764. There was no response on the audit query.

Committee observations

The Committee observed that –

i. The management failed to respond to the audit query.

ii. The cases have taken long period of time to be finalized and therefore hampering the financial position of the Corporation.

Committee recommendations

The Committee recommends that –

Within three months upon adoption of this report, the Accounting Officer – KBC should in consultation with the Attorney General embark on the legal strategies on how to fast-track the hearing of the pending cases by the judiciary or embrace and seek for alternative dispute resolution mechanisms to bring the outstanding court cases to its logical conclusion.

FINANCIAL YEAR 2017/2018

1.0 Late submission of financial statements

765. The Committee heard that, Public Finance Management Act, 2012 section 68 (2) provides that within three months after the end of each financial year, the accounting officer for an entity shall submit the entity's financial statements to the Auditor-General on or before 30th September of each year. However, the financial statement for Kenya Broadcasting Corporation was submitted on 5th October 2018 to the office of Auditor-General. No explanation was given as to why the financial statements were not submitted on time. Consequently, the Corporation was in breach of the Law.

Management response

766. The management informed the Committee that, the anomaly was noted and it will comply going forward.

Committee observations

The Committee observed that –

The Corporation was in breach Section 68(2) of the PFM Act 2012 which requires that the financial and accounting records are presented within three (3) months after the close of the financial year.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then accounting officer for failing to adhere to the provisions of section 68(2) of the PFM Act, CAP 412A.

2.0 Accuracy of the Financial Statements

767. The Committee heard that, the statement of financial position reflects a receivables balance of Kshs.1,830,558,000 as at 30th June, 2018 and a comparative figure of Kshs.997,867,000. However, the supporting note 11 of the financial statement has the comparative figure casting to Kshs.1,745,299,000.

768. The resulting difference of Kshs747,432,000 has not been explained. Further, the financial statement submitted on 5th October,2018 were amended and revised on 7th February 2019. However, the movement between some of the accounts in the first set and the revised set of the financial statements have not been supported by any journals or explained in any way.

Accounts Name	Balances as at 30th June 2018 financial statement presented on 5 October 2018 Kshs.000	Balances as at30th June 2018 financial statement presented on 7 February 2019 Kshs.000	UnexplainedVarianceKshs.000
Sales	1,128,263.00	1,129,332.00	(1,069.00)
Other Income	4,900.00	3,832.00	1,068.00
Property, Plants andEquipment	16,470,833.00	16,501,858.00	(31,025.00)
Cash and Bank Balances	61,133.00	67,288.00	(6,155.00)
Ordinary Share Capital	928,488.00	928,448.00	40.00
Trade and Payables	1,002,606.00	1,039,787.00	(37,181.00)

Management response

The management informed the Committee that;

i. The difference in Sales of Kshs (1,069,000) was corrected.
ii. The difference in Other Income of kshs 1,068,000 was corrected.
iii. The difference in Property, Plant and Equipment of kshs (31,025,000) was corrected.
iv. The difference in Cash and Bank Balances of kshs (6,155,000) was corrected.
v. The difference in Ordinary Share Capital of kshs 40,000 was corrected

Committee observations

The Committee observed that –

i. The financial statements comparative figure of Kshs. 997,867,000 differ from the respective notes to the financial statements figure of 1,745,299,000 resulting to unexplained variance of Kshs. 747,432,000. This implies that the financial statements were inaccurate and the alleged corrections by the management were invalid since the audit had already been concluded and financial statements were not reaudited.

ii. The amendments from the first set of financial statements presented for audit and the revised set of the financial statements have not been supported by any journals or explained in any way contrary to regulation 103 (2) of the PFM (National Government) Regulations, 2015.

Committee Recommendations

The Committee recommends that –

i. The Committee reprimands the then Accounting officer for failing to adhere to the provisions regulation 103 (2) of the PFM (National Government) Regulations, 2015.

ii. The Accounting Officer should at all times ensure that the provisions of Regulation 103 (2) of the PFM (National Government) Regulations, 2015 are adhered to.

3.0 Property, Plant and Equipment

3.1 Unsupported Valuation of Assets

769. The Committee heard that, as previously reported, the statement of changes in equity for the year ended 30 June 2018 reflected a revaluation reserve balance of Kshs.11,616,174,000 (2016/2017 Kshs.11,616,174,000) whose supporting valuation report/analysis was not made available for audit review. Further, and as previously reported, the opening balance cost of plant and machinery of Kshs.1,974,532,856 includes a figure of Kshs.180,992,954 in respect of APD Project whose supporting schedules/analysis have never been provided for audit review. In the circumstances, it has not been possible to confirm the existence, accuracy, validity of property, plant and equipment balance of Kshs.16,741,594,137 as at 30 June 2017 and the balance of Kshs.16,501,858,412 as at 30 June 2018.

Management response

770. The management informed the Committee that, valuation of all KBC assets was done in the financial year 2013/2014 by Ark Consultants, from which the revaluation reserve was derived.The valuations report both in soft and hard copies were submitted from the consultant.

Committee observations

The committee observed that the issue on Unsupported Valuation of Assets was deliberated in its Report for the financial year ending 30th June, 2016 and upholds the observations and recommendations therein as follows;

The Accounting Officer failed to avail for audit review valuation report/analysis and schedules to support revaluation reserve figure of Kshs.11,616,174,000 and additions figure of Kshs. 180,992,954 as reflected in the financial statements.

Committee recommendations

The Committee recommends that –
The Committee reprimands the then Accounting Officer for failing to submit to the Auditor-General the valuation report for its assets as prescribed by the National Treasury and the International Pubic Sector Accounting Standards and schedules to support additions to plant and machinery.

3.2 Generators

771. The Committee heard that, as reported in the previous years, the Corporation made an arrangement with Kenya Electricity Generating Company Ltd (KenGen) in July 2000 whereby the Corporation loaned KenGen five (5) generators which were subsequently installed at Jomo Kenyatta University and University of Nairobi under an Emergency power supply Project. The generators which had an estimated value of Kshs.29 million are still part of the Corporation's portfolio of assets. However, and as observed in the previous years, no compensation for use of the generators appears to have been paid to the Corporation and no explanation has been provided for the anomaly.

Management response

772. The management informed the Committee that, in the financial year 1999/2000 when the country experienced serious power shortages due to draught, the Government directed KBC to release five power generators to Kengen to be installed at the University of Nairobi, Kenyatta University and Jomo Kenyatta University. The value of these generators was Kshs. 29,023,200. During the accounting period 2000/2001, the generators had not been returned and they were never returned, despite the managements effort to have them returned. The KBC management made several follow ups holding meetings and writing to the Managing Director KENGEN, the PS Ministry of Information and Communications and Treasury requesting for the return of the generators vide letters: KBC/MD/2/A/Vol. II/95 of 20th March, 2012, KBC/MD/2/2/A/C Vol. III/93 and KBC/MD/2/3/A/ Vol. II, to no avail. We are still in communication with our parent ministry to assist us in this matter.

Committee observations

The Committee observed that the issue loaned generators was deliberated in its third PIC-SSAA Report and upholds the observations and recommendations therein as follows;

The Corporation at the direction of the Government loaned its five power generators valued at Kshs.29,000,000 to KENGEN to alleviate the power crisis during 2000/2001. However, the generators had not been returned to the Corporation, despite several reminders and demands by the Corporation to KENGEN. The Corporation had not done enough to follow on the return of the generators and there was loss incurred in respect to the loaned generators valued at Kshs.29,000,000.

Committee recommendations

The Committee recommends that –

Within three months after the adoption of this report, EACC to initiate investigations into how the loaned generators to KENGEN were procured, whether there was any malpractices in the initial procurement and that the generators were idle at the time of loaning and submit its findings to DPP for a possible prosecution of those found culpable.

3.3 Unclear Transfer of Corporation Land

773. The Committee heard that, as previously reported, the property, plant and equipment balance of Kshs.16,501,858,412 as at 30 June 2018 included land LR No.209/10370 designated as Norfolk Car Park measuring 2.19 acres valued at Kshs.1,431,000,000 which was transferred to Kenya Cultural Report of the Auditor-General on the Financial Statements of Kenya Broadcasting Corporation for the year ended 30 June 2018 3 Centre vide letter Ref: No. KBC/MD/14/6/C VOL.VII dated 11 October 2016. It is not clear and management has not explained the circumstances under which the Corporation's land was transferred to Kenya Cultural Centre contrary to the requirements of Chapter five, Article 62 Section 4 of the Constitution which states that public land shall not be disposed of or otherwise used except in terms of an Act of Parliament specifying the nature and terms of that disposal or use. Further, the said Parcel of Land had two allotment letters reflecting different sizes as follows; allotment letter dated 12 August 1994 indicated the size of the land as 0.8861 hectares while allotment letter dated 8 March 2004 indicated the size as 0.8737 hectares. In addition the survey plan indicated the size of the same parcel of land as 0.21 hectares which differs with the acreage indicated in the two (2) allotment letters. Consequently, it has not been possible to confirm the size and ownership status of the parcel of land and that the property, plant and equipment balance of Kshs.16,501,858,412 as at 30 June 2018 is fairly stated.

Management Response

774. The management informed the Committee that, the parcel of land was transferred through a presidential directive, see attached correspondence ref no. MOLHUD/ADM1/43.

Committee observations

The Committee observed that the issue on Unclear Transfer of Corporation Land was deliberated in its Report for the financial year ending 30th June, 2016 and upholds the observations and recommendations therein as follows;

i. The Corporation land LR No.209/10370 measuring 2.19 acres valued at Kshs.1,431,000,000 was transferred under unclear circumstances to Kenya Cultural Centre vide letter Ref: No. KBC/MD/14/6/C VOL.VII dated 11th October 2016.

ii. The KBC Board granted that the portion of land in which a borehole belonging to the Nairobi University be excised from its plot vide letter of MD 21/9/2000 thus reducing the earlier 0.8861Ha. to 0.8737Ha.

iii. The Presidential directive on which KBC alleges to act on was addressed to a private developer and not KBC therefore it was not clear the basis upon which the directive was executed.

Committee recommendations

The Committee recommends that –

Within three months upon the adoption of this Report, EACC to investigate the circumstances surrounding the transfer of the Corporation land LR. No.209/10370 measuring 2.19 acres valued at Kshs.1,431,000,000 to Kenya Cultural Centre Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the illegal transfer of the Corporation land.

3.4 Land and Buildings

775. The Committee heard that, as previously reported, the property, plant and equipment balance of Kshs.16,501,858,412 as at 30 June 2018 included land and buildings balance of Kshs.12,857,874,001 and Kshs.874,389,410 respectively totalling Kshs.13,732,263,411. The balance of Kshs.13,732,263,411 also included land and building valued at Kshs.5,712,992,000 with letters of allotment and Kshs.903,767,000 in respect of un-surveyed and un-adjudicated land all totaling Kshs.6,616,759,000 whose ownership documents were not availed for audit review.

776. The balance also excluded the unvalued land LR No 75893/111/66A situated at Voi Township measuring 3.7 acres which the valuer could not locate during the time of valuation of assets in November 2014. In addition, the Corporation's land LR No75893/111/64A measuring 0.7413 acres located at Voi Township and valued at Kshs.1,600,000 had been taken over by the Ministry of Mining and on which a newly erected building stands.

777. Further, a parcel of land No LR.No.11773 - Ngong TX station located at Kajiado County differed in size as the letter of allotment indicated that the land is measuring 33.419 acres (13.53 hectares) while information available indicated that the actual size on the ground is 124.79055 acres valued at Kshs.2,700,000,000.

778. Further, the Corporation's Jamhuri Park land LR. No 15090 measuring 100 acres was allegedly grabbed, out of which 60 acres was recovered by Kenya Anti-Corruption

Commission and was allocated/reverted to Kenya Forest service while the Corporation was reallocated 29 acres leaving land measuring 11 acres which has not been accounted for. It is not clear and management has not explained why part of the recovered land was given to Kenya Forest Service.

779. The available information also reveals that the Corporation's Sauti house in Mombasa which houses Mombasa office, has a pending court case and part of its land was grabbed by Housing Finance Company of Kenya (HFCK) while, the Corporation`s land in Nyali TX L.R. No 1476/1 measuring approximately 22.8 hectares was encroached into by squatters and a stone fence erected at a cost of Kshs.3,512,700 was demolished. It was further noted that most of the Corporation's land had unresolved cases pending in court. Although indications are that the Corporations has made attempts at the Ministry of Lands, and Physical Planning to have outstanding issues resolved, no meaningful progress appears to have been achieved as at March 2019.

780. In view of the foregoing, it has not been possible to confirm the ownership status of the Corporation land and that the property plant and equipment balance of Kshs.16,741,594,137 as at 30 June 2017 and the balance of Kshs.16,501,858,412 as at 30 June 2018 is fairly stated.

Management response

781. The management informed the Committee that, the corporation had engaged a Law Firm to get all the parcels of land registered but did not bear any fruits. Currently, the corporation is working with the Ministry of Land, Housing, Public Works and Urban Development to survey and acquire title deeds for all the parcels of land across the country.

Committee observations

The Committee observed that the issue on Land and Building was deliberated in its Report for the financial year ending 30th June, 2016 and upholds the observations and recommendations therein as follows;

i. The Corporation does not posses ownership documents for land and buildings valued at Kshs. 6,616,759, 000.
ii. The Corporation parcel of land LR No 75893/111/66A situated at Voi township measuring 3.7 acres could not be located by the valuer at the time of valuation of assets in November 2014.
iii. The Corporation's parcel of land LR. No. 75893/111/64A measuring 0.7413 acres located at Voi Township and valued at Kshs.1,600,000.00 had been taken over by the Ministry of Mining
iv. The Corporations parcel of land No LR.No.11773 - Ngong TX station located at Kajiado County differed in size as the letter of allotment indicates that the land is 33.419 acres (13.53 hectares) while information available indicates that the actual size on the ground is 124.79055 acres valued at Kshs.2,700,000,000.

v. KBC Jamhuri Park land LR. No 15090 measuring 100 acres was allegedly grabbed, out of which 60 acres was recovered by Kenya Anti-Corruption Commission and was allocated/reverted to Kenya Forest service while the Corporation was reallocated 29 acres leaving Land measuring 11 acres which has not been accounted for as at the date of this report. management has not explained why part of the recovered land was given to Kenya Forest Service.

vi. Kenya Broadcasting Corporation Sauti house which houses Mombasa office, has a pending court case and part of its land was grabbed by Housing Finance Company of Kenya (HFCK)

vii. KBC land in Nyali TX LR.No 1476/'1 measuring approximately 22.8 hectares was encroached into by squatters.

Committee recommendations

The Committee recommends that –

i. Within three months upon adoption of this report, the Accounting Officer-KBC in collaboration with the National Land commission should expedite the processing of the Corporation's title deeds for all the parcels of land owned by KBC.

ii. Within three Months upon adoption of this report, the Accounting Officer –KBC should present to the National Assembly a comprehensive report on the status of all its land parcels with regard to acquisition of ownership documents.

iii. Within three Months upon adoption of this report, the Accounting Officer – KBC should present to the National Assembly a comprehensive report on the status of the land LR No 75893/111/66A located at Voi township measuring 3.7 acres which could not be located by the valuer at the time of valuation of assets, the parcel of land LR. No. 75893/111/64A measuring 0.7413 acres located at Voi Township valued at Kshs.1,600,000.00 that had been taken over by the Ministry of Mining, the parcel of land No LR.No.11773 - Ngong TX station located at Kajiado County which differed in sizes, the Jamhuri Park land LR. No 15090 measuring 100 acres that was allegedly grabbed and the parcel of land in Nyali TX LR.No 1476/'1 measuring approximately 22.8 hectares that was encroached into by squatters.

3.5 Land without Title Deeds

The Committee heard that, as previously reported, available information indicated that the Corporation owned twenty five (25) parcels of land (listed on the table below) valued at Kshs.6,102,849,000 that were unsurveyed, un-adjudicated and whose ownership documents such as title deeds and certificates of lease were not availed for audit review. Although, the management is aware of the above anomaly, no evidence of any action being taken by the management to obtain ownership documents of these parcels of land was availed for audit verification. In addition, and as previously reported, the balance of land of kshs.12,857,874,001 excluded unvalued and unidentified land LR.No.75893/111/66A situated at Voi Township measuring 3.7 acres which the valuer could not locate during the time of valuation of assets in November 2014. The management has not provided satisfactory explanations for the above anomalies. List of land without title deeds.

No.	Description	Ownership Document	Location	Purchase Date	BookValue Kshs.
1	L.R. NO: 209/10370-Norfolk Car Park	Letter of allotment	Nairobi	30th November 2014	1,431,000,000
2	216/KLF/2/97-Mambrui, Malindi	Letter of allotment	Malindi	30th November 2014	482,000
3	Kisumu/ Mun/Block 10/97-Kisumu	Letter of allotment	Kisumu	30th November 2014	204,460,000
4	L.R.NO:L96/ 16,Karen	Letter of allotment	Nairobi	30th November 2014	13,000,000
5	LR.NO.12679 Jamhuri HQ	Letter of allotment	Nairobi	30th November 2014	1,300,000,000
6	LR.No:11773N gongTX Station	Letter of allotment	Kajiado	30th November 2014	2,700,000,000
7	L.R.NO:191, Marsabit	No documents	Marsabit	30th November 2014	5,600,000
8	55/KLF/2/89-Malindi	No documents	Malindi	30th November 2014	4,400,000
9	Garissa town Block I I I /13	No documents	Garissa	30th November 2014	9,400,000
10	Garissa TX Station	No documents	Garissa	30th November 2014	9,500,000
11	MI /XXI /522-Sauti House, Mombasa Island	No documents	Mombasa	30th November 2014	313,250,000
12	Samburu/ Lodekejek/37, Marala 1	No documents	Samburu	30th November 2014	5,600,000

	,Samburu District					
13	L.R. NO: 6073/1-Kapsimotwa , Nandi District	No documents	Nandi	30th November 2014	7,265,000	
14	L.R. NO: 11283-Limuru	No documents	Kiambu	30th November 2014	15,372,000	
15	Mazeras , Kwale District	No documents	Kwale	30th November 2014	3,600,000	
16	L.R. NO: 451/12262-Nakuru, Menegai Hill	No documents	Nakuru	30th November 2014	33,000,000	
17	Nyamninia, Siaya District	No documents	Siaya	30th November 2014	30,250,000	
18	Unsurveyed Plot, Nyeri District	No documents	Nyeri	30th November 2014	4,100,000	
19	Unsurveyed Plot, Timboroa, Koibatek District	No documents	Uasin Gishu	30th November 2014	1,120,000	
20	Unsurveyed Land, Wajir TX Station	No documents	Wajir	30th November 2014	1,700,000	
21	Unuadjudicated Land, Voi TX Station	No documents	Taita Taveta	30th November 2014	4,200,000	
22	Voi Township, Plan NO: 75893/III/64A	No documents	Taita Taveta	30th November 2014	1,600,000	
23	Voi Township, Plan NO: 75893/III/65A	No documents	Taita Taveta	30th November 2014	2,800,000	
24	Unsurveyed Plot, Nyambene Hills, Meru	No documents	Meru	30th November 2014	850,000	
25	Lamu Unsurveyed	No documents	Lamu	30th November 2014	300,000	

	TOTAL				**6,102,849,000**	

Consequently, it has not been possible to confirm ownership status and existence of the twenty five (25) parcels of land valued Kshs.6,102,849,000 as at 30 June 2018.

Management Response

782. The management informed the Committee that, the Corporation had engaged a Law Firm to get all the parcels of land registered but did not bear any fruits. Currently, the corporation is working with the Ministry of Land, Housing, Public Works and Urban Development to survey and acquire title deeds for all the parcels of land across the country.

Committee observations

The Committee observed that the issue on Land without Title Deeds was deliberated in its Report for the financial year ending 30th June, 2016 and upholds the observations and recommendations therein as follows;

i. The Corporation does not posses ownership documents for twenty five (25) parcels of land valued at Kshs.6, 102,849,000. In addition the pieces of land are un-surveyed, un-adjudicated
ii. The Corporation parcel of land LR No. 75893/111/66A situated at Voi township measuring 3.7 acres could not be located by the valuer at the time of valuation of assets in November 2014.
iii. The corporation had engaged a law firm to get all the parcels of land registered but did not bear any fruit. This implies that corporation did not get value for its money.

Committee recommendations

The Committee recommends that –

i. Within three months upon adoption of this report, the Accounting Officer-KBC in collaboration with the National Land commission should expedite the processing of the Corporation's title deeds for the twenty (25) parcels of land.

ii. Within three Months upon adoption of this report, the Accounting Officer – KBC should present to the National Assembly a comprehensive report on the status of the land LR No.75893/111/66A located at Voi township measuring 3.7 acres which could not be located by the valuer at the time of valuation of assets.

3.6 Land with Disputes

783. The Committee heard that, as reported in the previous year available information at the Corporation indicated that the following (10) parcels of land measuring 211.58785 acres and valued at Kshs.7,597,582,000 are under disputes that has been on for a long period of time. A review of the matter in March 2019 revealed an unchanged position.

Land with Disputes

	LR No.	Location	Size in Acres	Value Kshs	Ownership Status
1	LRNo.1/9218	Donyo Sabuk Komarock	1.234	1,820,000,000	With Title
2	M1/XX/522	Sauti House Mombasa Island	1.253	313,250,000	No Title
3	No LR No	Lamu -Unsurveyed	0.018	130,000	No title
4	LRNo.26326	Langata	19.365	461,000,000	With title
5	16/KLF/2/97	Mambrui Malindi	7.17	482,000	With letter of allotment
6	No. LR No	Timboroa Koibatek	4.8	1,120,000	No ownership document
7	LR No75893/111/64A	Voi Township	0.7413	1,600,000	No ownership document
8	LRNo11773	Ngong Station Kajiado	124.7955	2,700,000,000	With letter of allotment
9	LRNo12676	JamhuriHead quarters	29	1,300,000,000	With letter of allotment
10	LRNo1476/1	Nyali	22.85	1,000,000,000	With title deed
	TOTAL		**211.22185**	**7,597,582,000**	

Consequently, it has not been possible to confirm the existence and ownership status of the ten (10) parcels of land valued Kshs.7,597,582,000 as at 30 June 2017

Management response

784. The management informed the Committee that Court case are ongoing up to date.

Committee observations

The Committee observed that the issue on Land with Disputes was deliberated in its Report for the financial year ending 30th June, 2016 and upholds the observations and recommendations therein as follows;

Committee observed that;

The Corporation's ten 10) parcels of land measuring 211.58785 acres valued at Kshs.7,597,582,000 located across the Country has been under ownership dispute for a long period of time.

Committee recommendations

The Committee Recommends that –

Within three months upon adoption of this report, the inspector-General, inspectorate of State Corporations should carry out a review of all KBC land with pending Court cases, prepare a comprehensive status report and submit it to the National Assembly with a copy to the Attorney General who will initiate the process of fast-tracking the conclusion of the cases within reasonable time.

The Accounting Officers should strive to embrace Alternative Dispute resolution Mechanisms in the resolution of disputes.

3.7 Unclear Transfer of KBC land to Staff Pension Fund

785. The Committee heard that, as previously reported, the Corporation transferred four (4) parcels of land valued at Kshs.1,126,250,000 to Kenya Broadcasting Corporation staff pension Fund to cover for unremitted outstanding pension arrears totalling Kshs.208,774,000 as at 30th June 2017. Though the land was presumably transferred, the unremitted pension liability in the corporations books was not extinguished and stands at Kshs. 213,617,000 as at 30th June, 2018. The transfer has been done in contravention of chapter five (5), Article 62, Section 4 of the Constitution of Kenya which may lead to loss of Corporation land as detailed below :-

i. LR.No.1/9218 Donyo Sabuk/Komarock half of 1,234.26 (617.13) acres (with tittle deed) valued at Kshs.910,000,000.
ii. LR. No. Ntirimiti settlement scheme/153, Marania Meru District 238.45 acres (with tittle deed) valued at Kshs.130,000,000.
iii. LR. No.1932/4 Kitale Municipality 200 acres (With title deed) valued at Kshs.56,000,000 and;
iv. Nyamninia, Siaya District 107.98 acres (Without ownership documents) valued at Kshs.30,250,000.

786. It is not clear and the management has not explained why land with net book value of Kshs.1,126,250,000 is being exchanged with a pension debt of Kshs.208,774,000 resulting in a possible loss of Corporation land valued at Kshs.917,476,000. In addition the cost of the transferred land has not been removed from the total cost of land owned by the Corporation as at 30th June, 2018.

787. Further, physical verification of land LR No1/9218 Donyo Sabuk/Komorock measuring 1,234.26 acres indicated that more 2/3 of the land has been encroached by squatters and there are physical structure within the land. In the circumstances, it has not been possible to confirm if the transfer of four (4) Corporation parcels of land valued Kshs.1,126,250,000 to the KBC Pension Fund was in the best interest of the stakeholders and whether, the extension of the swap of the liabilities with the parcels of land will be achieved. The Corporation was therefore in breach of chapter five (5), Article 62, Section 4 of the Constitution of Kenya and the management has deliberately and unjustifiably occasioned the corporation a possible loss of land worth Kshs.917,476,000 as at 30th June, 2018.

788. In the circumstances it has not been possible to confirm the existence, accuracy, completeness, valuation, validity and utilization of property plant and equipment's balance of Kshs. 16,741,594,137 as at 30th June, 2017 and the balance of Kshs. 16,501,858,412 as at 30th June, 2018.

Management response

789. The management informed the Committee that, the Board noted that the transfer of the parcels of land would not adequately clear the outstanding deficit but requested management to negotiate with the Retirement Benefits Authority on a plan to pay the remaining amounts and particularly on how some of the funds to be generated from the PPP joint venture could be utilized to meet outstanding and future Pension Scheme obligations.

790. The Board instructed management to ensure it obtained necessary approvals from the Parent Ministry before implementing the transfer of the plots of land to the pension scheme and undertaking PPP project on the remaining Komorock land. The Board further instructed management to ensure it conducted fresh valuations on the parcels of land before any transactions are undertaken.

Committee observations

The Committee observed that the issue on Unclear Transfer of KBC land to Staff Pension Fund was deliberated in its Report for the financial year ending 30th June, 2016 and upholds the observations and recommendations therein as follows;

The Corporation transfered four (4) parcels of land valued at Kshs.1,126,250,000 in an exchange to settle KBC pension debt amounting to Kshs.208, 774,000. which exposes the organization to a loss of Kshs. Kshs.917,476,000 being the value of assets lost through irregular transfer. It has been noted that the figures for the parcels and the debt has been changing over the years despite the value of land being known to appreciate with time.

Committee recommendations

The Committee Recommends that –

Within three months upon the adoption of this report, EACC to initiate investigations into the matter surrounding the illegal transfer of four (4) parcels of land valued at Kshs.2,036,250,000 in an exchange to settle KBC pension debt amounting to Kshs.225, 111,000. Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the illegal transfer of the Corporation land.

4.0 Trade and Other Receivables

4.1 Long outstanding Trade Receivables

791. The Committee heard that, the statement of financial position reflected a balance of Kshs1,830,558,000 in respect of trade and other receivable as at 30th June, 2018. Included in this figure is cross trade receivables amounting to Kshs.1,563,106,000 as shown at note 11 of the financial statements. Out of the balance of Kshs.1,563,106,000, an amount of Kshs.1,399,465 has been outstanding for over 120 days and the bulk of it having been incurred more than ten (10) years ago. Management did not demonstrate efforts undertaken to collect these debts as no demand letters have been issued to the long overdue debtors and defaulters. No documentation has been provided to show the adequacy of provision of Kshs.504,988,000 that has been made in the financial statements against the trade receivables to recognize the high probability of not recovering the debts.

Management response

792. The management informed the Committee that, there has been effort to offset the long outstanding debt since it is historical which was carried forward from the manual system to the automated system. Still waiting for the board's approval to write them off. The corporation has provided copies of some of the demand letters; switch off memos, letters of hand over to external debts collectors, request for legal actions and responds from courts as evidence of efficiency in collection.

793. Every year provision for bad debts is done and reflected in the financial statements as is mentioned in our accounting policy under item k. Trade and Other Receivables that are, an estimate, is made of doubtful receivables based on a review of all outstanding amounts.

Committee observations

The Committee observed that –

i. The recoverability of the long outstanding receivables of Kshs.1,563,106,000 is doubtful .it is historical which has been carried forward from the manual system to the automated system for a period of over 10 years implying it lacks proper supporting documents.

ii. The Corporation did not justify the need for the write off, in line with the provisions of Regulation 157 (1)(a) PFM (National Government) Regulations 2015 which provides that an Accounting Officer may only write off losses if all reasonable steps have been taken to recover the debts and the loss is irrecoverable.

Committee recommendations

The Committee recommends that –

Within three months of adoption of this report, the Accounting Officer should provide a comprehensive report on the reasonable steps that have been taken to recover the long outstanding receivables before initiating the write off process on account of being irrecoverable.

4.2 Amount paid by the National Treasury on behalf of the Corporation

794. The Committee heard that, included in trade and other receivables of Kshs.1,830,558,000 is Kshs.738,585,000 which was paid by the National Treasury on behalf of the Corporation increasing the G.O.K. loan principal from 12,191,471,996 to Kshs.12,930,056,586. This amount of Kshs.738,585,000 has however been included in the figure of trade and other receivables. In addition, a balance of Kshs.747,432,000 in respect of 2016/2017 has been introduced in the note. Management has not explained why this amount was recognized under receivables.

Management response

795. The management informed the Committee that, the issue has since been rectified.

Committee observations

The Committee observed that –

The National Treasury has been paying OECF Japanese loan on behalf of the Corporation. However, the amount of Kshs.738,585,000 paid in the year under review was recognized as a receivable whilst it's a payable to the National Treasury.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting officer for failing to adhere to the requirements of International Public Sector Accounting Standards as prescribed in the PFM Act, Cap 412A and Regulation 221 of the PFM (National Government) regulations,2015.

4.3 Outstanding Imprest –Staff Receivables

796. The Committee heard that, the outstanding imprest as at 30th June, 2018 was Kshs14,854,930 as indicated under note 11 (a) to the financial statements. It was apparent that there is laxity in surrendering imprest held. Further analysis indicated that some employees were issued with additional imprest while still holding the previous ones and also some of the imprests issued were not adequately supported. Thus it was not possible to establish the purpose of these imprests. Consequently, the propriety of these expenditures could not be confirmed.

Management response

797. The management informed the Committee that, at the close of financial year 2017/18 the officers who had not surrendered their imprests had the same recovered from their salary. For officers holding more than one imprest at the time was necessitated by most of the KBC transmitting stations (TXs) being off the power grid, therefore imprest was being applied to purchase diesel for the standby generators. So far most of the surrendered imprests, including those for the purchase of diesel have been surrendered.

Committee observations

The Committee observed that –

The then Accounting Officer failed to enforce the provision of the Regulation 93(5) of the PFM (National Government) Regulations, 2015 that prescribes that imprest surrender be made within 7 days.

Committee recommendations

The Committee recommends that –

Within three months upon adoption of this report, the Accounting Officer to provide evidence of the alleged recovery of imprest of Kshs14,854,930 in accordance with Regulation 93(6) of PFM (National Government) Regulations, 2015. The evidence of recovery should be submitted to the National Assembly and the Auditor-General for verification and reporting in the subsequent audit cycle.

4.4 Irregular Use of Imprest to Procure Goods and Services

798. The Committee heard that, during the year under review, imprest totaling Kshs.5,099,180 was issued to officers to procure goods and services such as purchase of TV sets and decoders, hire of conference facilities, purchase of modem and purchase of diesel to satellite stations all of which exceeded the stations cash purchase limit of Kshs.30,000.

812. The loan was interest bearing and as at 30 June 2018 the loan balance was Kshs.12,930,057,000 (2016/2017- Kshs.12,191,472,000) and interest thereof was Kshs.58,372,672,000 (2016/2017-Kshs.50,116,823,000). Although, the Parliamentary Investment Committee discussed the issue concerning the loan when the Corporation appeared before the committee in 2016 and the Corporation has continued to reflect the loan and interest balance in its financial statements. In addition, and as previously reported, the management has indicated that there are on-going negotiations with the Government to convert Government of Kenya Loan into equity, but it is not certain when the process will be completed if at all. The Corporation has not been servicing the loan which had been guaranteed by the National Treasury and had accumulated to Kshs.71,302,729,000 as at 30 June 2018.

Management response

813. The management informed the Committee that, together with the Parent Ministry they have developed a KBC transformation CAB MEMO that seeks to address the historical debts among other transformation strategies. The CAB MEMO contains a specific request for the Government to write-off the Japanese loan related debt.

Committee observations

The Committee observed that the issue on Japanese Loan was deliberated in its third PIC-SSAA Report and upholds the observations and recommendations therein as follows;

i. The Committee observed that, the corporation's corporate governance is considerably weak thereby exposing the corporation to potential losses in addition reputational and operational risks.
ii. The Corporation is technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors.
iii. The Kenya Broadcasting Corporation took a loan from the Overseas Economic Co-operation Fund (OECF) Japan in 1989. The National Treasury has over the years serviced on behalf of the corporation.
iv. The OECF Japan loan was received in the form equipment's which were rendered obsolete because of the liberalization of the electronic industry in Kenya in the 1990s and the migration to FM radio transmission leading to the loss of value for money on the investment. Arising from the foregoing, it meant that the Management of KBC did not carry-out a proper Feasibility study or there was laxity on those charged with governance having approved the loan without due diligence.

Committee recommendations

The Committee recommends that –

i. Within three months after the adoption of the Report the Ethics and Anti-Corruption to investigate whether there are any financial leakages/ financial impropriety Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the financial leakages/ financial impropriety.
ii. The Committee recommends that the KBC diversifies its revenue base to reduce over reliance on Government support.

7.2 Recognition of Principal Loan

814. The Committee heard that, the corporation undertook a radio MW modernization project under the Japanese loan guaranteed by the Government of Kenya amounting to Kshs.15,441,716,710 on 28th June, 1989.

815. The following anomalies were noted: -

i. The loan agreement was not provided for audit review.
ii. The Japanese loan has not been reflected in the statement of financial position to indicate that the Corporation received the funds.
iii. The amount paid as at 30th June, 2018 was Kshs.12,930,057,000. This is the figure reflected in the financial statement as G.O.K. loan (Principal) whereas the payment by National Treasury to JICA includes principal and interest.
iv. The loan reflected on the financial statements relates to the portion that has been repaid by National Treasury on behalf of the Corporation but it is not clear how much of the principal amount and interest the Corporation still owed the Japanese Government or whether the National Treasury has taken over the loan obligations. Notably, in the year under review, Kshs.738,585,000 was paid by the National Treasury on behalf of the Corporation increasing the G.O.K. loan principal from 12,191,471,996 to Kshs.12,930,056,586. The amount of Kshs.738,585,000 has however been included in the figure of trade and other receivables a treatment that appears inappropriate and has not explained.
v. The obligations of the Corporation appear to be increasing while the corresponding benefits that should be accruing cannot be traced or matured on this investment.

Management response

816. The management informed the Committee that, the obligations of the corporation appear to be increasing as the benefits cannot be traced, this is noted and the corporation is in discussion with treasury to write off the Japanese loan from the corporation's books.

Committee observations

The Committee observed that –

i. The OECF loan had been guaranteed by the Government in 1989 funded the Kenya Broadcasting Corporation's modernization programme, a project mooted out of a study by the Government in February 1988. However, arising from the status of the project, the study might have been misleading.

ii. There was no loan agreement between the National Treasury and KBC. The principal amount and interest due from the Corporation in respect of the Japanese loan but owing to National Treasury having taken over the loan obligations could not be confirmed.

iii. The National Treasury has been paying OECF Japanese loan on behalf of the Corporation. However, the amount of Kshs.738,585,000 paid in the year under review was recognized as a receivable whilst it's a payable to the National Treasury.

Committee recommendations

The Committee recommends that –

i. The Committee reprimands the then Accounting officer for failing to adhere to the requirements of International Public Sector Accounting Standards as prescribed in the section 47 (2) of the PFM Act, Cap 412A and Regulation 221 of the PFM (National Government) regulations,2015.

ii. Within three months upon adoption of this report, the EACC should investigate the officers involved in acquiring and approving the loan and those involved in the pre-requisite study by the Government in February 1988 with a view to establishing any economical crimes in relation to providing misleading economic information for the officer's own benefit or that of a third party that led to the loss of the initial loan of Yen 15.441 billion, equivalent to Ksh 8,287,588,398. Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the financial leakages/ financial impropriety.

iii. Within three months upon adoption of this report, the Accounting officer-KBC should provide a comprehensive report to the National Assembly and the Auditor-General on the status of the principal loan amount and interest the Corporation still owed the Japanese Government and the progress made by the government in the repayment of the Japanese Loan.

7.3 Loan Interest

817. The Committee heard, that Note 16(b) to the financial statements shows that the cumulative interest charged amounted to Kshs.58,372,672,000 as at 30th June, 2018. It was however noted that the National Treasury charged the interest at market rates based on the amount of loan repaid on behalf of the Corporation. It is not clear why interest is charged at market rates.

818. During the year under review, Kshs.8,258,565,000 was charged in respect of interest and reflected under administration costs in note 4 (a). This figure forms 80% of the

administration costs total of Kshs.10,229,944,000 to the Corporation and 77% of the total operating expenses of Kshs.10,647,065,000 reflected in the statement of comprehensive income. Further, the total figure of the cumulative interest charged as at 30th June, 2018 of Kshs.58,372,672,215 is more than four times the payment of Kshs.12,930,057,000 made on behalf of the Corporation by the National Treasury.

819. The management has not demonstrated when and how they intend to repay the colossal amount held and be able to stay as a going concern.

820. Under the circumstances, the accuracy and validity of the loan and interest balance of Kshs.12,930,057,000 and Kshs.58,372,672,000 respectively as at 30 June 2018 could not be confirmed.

Management response

821. The management informed the Committee that, the accounting records are maintained in the functional currency of the primary economic environment in which KBC operates Kenya shillings. Foreign currencies during the year/period are translated into the functional currency using the exchange rates prevailing at the dates the transactions. The variance is because of the foreign gains and losses resulting from translation at the year-end exchange rates.

The Committee observed that –

There was no loan agreement between the National Treasury and KBC. The principal amount and interest due from the Corporation in respect of the Japanese loan but owing to National Treasury having taken over the loan obligations could not be confirmed.

Committee recommendations

The Committee recommends that –

Within three months upon adoption of this report, the Accounting officer-KBC should provide a comprehensive report to the National Assembly and the Auditor-General on the status of the principal loan amount and interest the Corporation still owed the Japanese Government and the progress made by the government in the repayment of the Japanese Loan.

8.0 Administration Costs-Unsupported expenditure

8.1 Communication Services and Supplies

822. The Committee heard that, the statement of comprehensive income reflects an expenditure of Kshs.10,229,994,000 in respect of administration cost for the year ended 30th June, 2018. Included in this figure is an expenditure on Communication services and supplies at note 4 (a) amounting to kshs.13,041,000 for which no supporting documents was produced for audit review.

Management response

823. The management informed the Committee that, payment vouchers in support of all the expenses are readily available for your review. Part of them were given to external auditors who were on the ground for audit. The payment vouchers were taken by the director of criminal investigation and the signed list for all the vouchers that were taken are attached for your review.

Committee observations

The Committee observed that –

The explanation provided to the Committee on what occasioned the expenditure on Communication services amounting to Kshs.13,041,000 was not supported by any documentary evidence.
The Accounting Officer was in breach of section 62 of the Public Audit Act, CAP 412B which requires timely submission of required information for audit.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting Officer for section 62 of the Public Audit Act, CAP 412B.

8.2 Transport, travelling and subsistence

824. Transport, travelling and subsistence expenditure at the close of the financial year of Kshs.68,900,000 as indicated at note 4 (a) to the financial statements was not supported with relevant documents such as, LPOs, memos and minutes of authority to pay.

Management response

825. The management informed the Committee that, payment vouchers in support of all the expenses are readily available for your review. Part of them were given to external auditors who were on the ground for audit, have attached a sample of them for review.The payment vouchers were taken by the Director of Criminal Investigation and the signed list for all the vouchers that were taken are attached for your review.

Committee observations

The Committee observed that –

The Accounting Officer was in breach of section 62 of the Public Audit Act, CAP 412B which requires timely submission of required information for audit.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting Officer for section 62 of the Public Audit Act, CAP 412B.

8.3 Rent expenses

826. The Committee heard that, included in the administration expenditure is rent expenses amounting to Kshs.208,000 as indicated at note 4 (a) to the financial statements. However, out of the Kshs.208,000, payment vouchers for rent expenses amounting to Kshs.160,000 for leased property at Kabarnet were not availed for audit verification.

Management response

827. The management informed the Committee that,payment vouchers in support of all the expenses are readily available for review. Part of them were given to external auditors who were on the ground for audit and attached a sample of them for review. The payment vouchers were taken by the Director of Criminal Investigation and the signed list for all the vouchers that were taken are attached for your review.

Committee observations

The Committee observed that –

The Accounting Officer was in breach of section 62 of the Public Audit Act, CAP 412B which requires timely submission of required information for audit.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting Officer for section 62 of the Public Audit Act, CAP 412B

8.4 Program telephone

828. The Committee heard that, the expenditure on program telephone lines as indicated at note 4 (a) to the financial statements was Kshs.189,662,000. However, out of this figure no supporting documents for expenditure amounting to Kshs.131,716,500 were availed for audit verification.

Management response

829. The management informed the Committee that, payment vouchers in support of all the expenses are readily available for your review. Part of them were given to external auditors who were on the ground for audit, attached a sample of them for review.The payment vouchers were taken by the Director of Criminal Investigation and the signed list for all the vouchers.

Committee observations

The Committee observed that –

The Accounting Officer was in breach of section 62 of the Public Audit Act, CAP 412B which requires timely submission of required information for audit.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting Officer for section 62 of the Public Audit Act, CAP 412B.

8.5 Other operating expenses

830. The Committee heard that,other operating expenses as indicated at note 4 (a) amounted to Kshs.9,222,000 out of which only four (4) payment vouchers totalling Kshs.1,082,550 were availed for audit. Hence an amount of Kshs.8,139,906 could not be verified.

Management response

831. The management informed the Committee that, payment vouchers in support of all the expenses are readily available for your review. Part of them were given to external auditors who were on the ground for audit, have attached a sample of them for review.The payment vouchers were taken by the Drector of Criminal Investigation and the signed list for all the vouchers that were taken are attached for your review.

Committee observations

The Committee observed that –

The Accounting Officer was in breach of section 62 of the Public Audit Act, CAP 412B which requires timely submission of required information for audit.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting Officer for section 62 of the Public Audit Act, CAP 412B

8.6 Electricity and Water

832. The Committee heard that, expenditure on electricity and water amounted to Kshs.141,994,000 as indicated at note 4 (a) to the financial statements. All the supporting documents for the expenses in the sample size given in the electricity ledger were not availed for audit.

Management response

833. Payment vouchers in support of all the expenses are readily available for your review. Part of them were given to external auditors who were on the ground for audit, have attached a sample of them for review.The payment vouchers were taken by the Director of Criminal Investigation and the signed list for all the vouchers that were taken are attached for your review.

Committee observations

The Committee observed that –

The Accounting Officer was in breach of section 62 of the Public Audit Act, CAP 412B which requires timely submission of required information for audit.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting Officer for section 62 of the Public Audit Act, CAP 412B

8. 7 Program production expenses

834. The Committee heard that, expenditure on program production was Kshs.41,032,000 as indicated at note 4 (a) to the financial statements. These payments would appear irregular as the payment vouchers produced had no details of expenditure and there were no supporting documents such as; - LPOs, memos and minutes of authority to pay,among others thus making it impossible to ascertain the nature and authenticity of the payments. Under the circumstances, the accuracy, validity and propriety of Administrative expenditure of Kshs.10,299,944,000 could not be ascertained.

835. In view of the foregoing, the accuracy, validity and propriety of the expenditure of Kshs.10,229,994,000 under the administration costs as at 30th June, 2018.

Management responses

836. The management informed the Committee that, program production expenses of Ksh41,032,000 is supported by payment voucher for payment of programs, news correspondents and performing artist payments in this all of these vouchers are ready for your review and can be provided. Entries made in the ledger relating to invoice contains the gross amount, net amount and the Vat amount and all this is recorded in the ledger separately, difference of ksh872,707 is the 16% VAT figure. On the other selling and distribution costs the news correspondent figures for December, January and March are recorded in the cash book as they are paid some of the payments were combined and paid in the same month hence making a single entry in the ledger this means the two months figures were combined together.

Committee observations

The Committee observed that –

The payment vouchers submitted for audit had no details of expenditure and no supporting documents such as; - LPOs, memos and minutes of authority to pay the program production expenses amounting Kshs.41,032,000 were not availed for audit verification.

Committee recommendations

The Committee recommends that –

Within three months upon adoption of this report, the Inspector General, Inspectorate of State Corporations should surcharge (with interest at the prevailing CBK rates) the then accounting officer for the irregular expenditure of Kshs.41,032,000 and provide documentary evidence on the recovery/surcharge to the Committee.

9.0 Revenue

9.1 Differences in the Figures in the Ledger and the Financial Statements

837. The Committee heard that, the statement of comprehensive income reflects gross sales of services amounting to Kshs.1,129,332,000 for the year ended 30th June, 2018. However the ledger availed for audit indicated an amount of Kshs.1,223,012,903 which comprised nets sales of Kshs.1,068,970,621 and tax of Kshs.154,042,282. The difference of Kshs.60,361,379 between the two set of records has not been explained or reconciled. Further it was noted that there were differences in the amount of value added tax values recorded in the ledger for various product items, corresponding entries in the VAT account and the computed expected VAT. The noted difference was Kshs.16,655,901. Further, there were no supporting documents availed for audit verification of these entries.

838. Further analysis of the income general ledger reflects imprest surrendered of Kshs.1,160,500 declared as income and unutilized board balance during the year under

Committee recommendations

The Committee recommends that –

The Committee reprımands the then Accounting Officer for section 62 of the Public Audit Act, CAP 412B.

8.3 Rent expenses

826. The Committee heard that, included in the administration expenditure is rent expenses amounting to Kshs.208,000 as indicated at note 4 (a) to the financial statements. However, out of the Kshs.208,000, payment vouchers for rent expenses amounting to Kshs.160,000 for leased property at Kabarnet were not availed for audit verification.

Management response

827. The management informed the Committee that,payment vouchers in support of all the expenses are readily available for review. Part of them were given to external auditors who were on the ground for audit and attached a sample of them for review. The payment vouchers were taken by the Director of Criminal Investigation and the signed list for all the vouchers that were taken are attached for your review.

Committee observations

The Committee observed that –

The Accounting Officer was in breach of section 62 of the Public Audit Act, CAP 412B which requires timely submission of required information for audit.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting Officer for section 62 of the Public Audit Act, CAP 412B

8.4 Program telephone

828. The Committee heard that, the expenditure on program telephone lines as indicated at note 4 (a) to the financial statements was Kshs.189,662,000. However, out of this figure no supporting documents for expenditure amounting to Kshs.131,716,500 were availed for audit verification.

Management response

829. The management informed the Committee that, payment vouchers in support of all the expenses are readily available for your review. Part of them were given to external auditors who were on the ground for audit, attached a sample of them for review.The payment vouchers were taken by the Director of Criminal Investigation and the signed list for all the vouchers.

Committee observations

The Committee observed that –

The Accounting Officer was in breach of section 62 of the Public Audit Act, CAP 412B which requires timely submission of required information for audit.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting Officer for section 62 of the Public Audit Act, CAP 412B.

8.5 Other operating expenses

830. The Committee heard that,other operating expenses as indicated at note 4 (a) amounted to Kshs.9,222,000 out of which only four (4) payment vouchers totalling Kshs.1,082,550 were availed for audit. Hence an amount of Kshs.8,139,906 could not be verified.

Management response

831. The management informed the Committee that, payment vouchers in support of all the expenses are readily available for your review. Part of them were given to external auditors who were on the ground for audit, have attached a sample of them for review.The payment vouchers were taken by the Drector of Criminal Investigation and the signed list for all the vouchers that were taken are attached for your review.

Committee observations

The Committee observed that –

The Accounting Officer was in breach of section 62 of the Public Audit Act, CAP 412B which requires timely submission of required information for audit.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting Officer for section 62 of the Public Audit Act, CAP 412B

8.6 Electricity and Water

832. The Committee heard that, expenditure on electricity and water amounted to Kshs.141,994,000 as indicated at note 4 (a) to the financial statements. All the supporting documents for the expenses in the sample size given in the electricity ledger were not availed for audit.

Management response

833. Payment vouchers in support of all the expenses are readily available for your review. Part of them were given to external auditors who were on the ground for audit, have attached a sample of them for review.The payment vouchers were taken by the Director of Criminal Investigation and the signed list for all the vouchers that were taken are attached for your review.

Committee observations

The Committee observed that –

The Accounting Officer was in breach of section 62 of the Public Audit Act, CAP 412B which requires timely submission of required information for audit.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting Officer for section 62 of the Public Audit Act, CAP 412B

8. 7 Program production expenses

834. The Committee heard that, expenditure on program production was Kshs.41,032,000 as indicated at note 4 (a) to the financial statements. These payments would appear irregular as the payment vouchers produced had no details of expenditure and there were no supporting documents such as; - LPOs, memos and minutes of authority to pay,among others thus making it impossible to ascertain the nature and authenticity of the payments. Under the circumstances, the accuracy, validity and propriety of Administrative expenditure of Kshs.10,299,944,000 could not be ascertained.

835. In view of the foregoing, the accuracy, validity and propriety of the expenditure of Kshs.10,229,994,000 under the administration costs as at 30th June, 2018.

Management responses

836. The management informed the Committee that, program production expenses of Ksh41,032,000 is supported by payment voucher for payment of programs, news correspondents and performing artist payments in this all of these vouchers are ready for your review and can be provided. Entries made in the ledger relating to invoice contains the gross amount, net amount and the Vat amount and all this is recorded in the ledger separately, difference of ksh872,707 is the 16% VAT figure. On the other selling and distribution costs the news correspondent figures for December, January and March are recorded in the cash book as they are paid some of the payments were combined and paid in the same month hence making a single entry in the ledger this means the two months figures were combined together.

Committee observations

The Committee observed that –

The payment vouchers submitted for audit had no details of expenditure and no supporting documents such as; - LPOs, memos and minutes of authority to pay the program production expenses amounting Kshs.41,032,000 were not availed for audit verification.

Committee recommendations

The Committee recommends that –

Within three months upon adoption of this report, the Inspector General, Inspectorate of State Corporations should surcharge (with interest at the prevailing CBK rates) the then accounting officer for the irregular expenditure of Kshs.41,032,000 and provide documentary evidence on the recovery/surcharge to the Committee.

9.0 Revenue

9.1 Differences in the Figures in the Ledger and the Financial Statements

837. The Committee heard that, the statement of comprehensive income reflects gross sales of services amounting to Kshs.1,129,332,000 for the year ended 30th June, 2018. However the ledger availed for audit indicated an amount of Kshs.1,223,012,903 which comprised nets sales of Kshs.1,068,970,621 and tax of Kshs.154,042,282. The difference of Kshs.60,361,379 between the two set of records has not been explained or reconciled. Further it was noted that there were differences in the amount of value added tax values recorded in the ledger for various product items, corresponding entries in the VAT account and the computed expected VAT. The noted difference was Kshs.16,655,901. Further, there were no supporting documents availed for audit verification of these entries.

838. Further analysis of the income general ledger reflects imprest surrendered of Kshs.1,160,500 declared as income and unutilized board balance during the year under

review of Kshs.636,750 also been declared as income. This contravenes the principles of revenue recognition as per IFRS 15. Consequently, the figure of other income in the statement of comprehensive income is overstated.

Management response

839. The management informed the Committee that, the anomaly was noted and reconciliation was done as per the attached financial statements.

Committee observations

The Committee observed that –

i. The statement of comprehensive income reflects gross sales of services amounting to Kshs.1,129,332,000 while he ledger availed for audit indicated an amount of Kshs.1,223,012,903. The difference of an amount of Kshs.60,361,379 was not explained during audit.

ii. There were differences in the amount of value added tax recorded in the ledger for various product items, corresponding entries in the VAT account and the computed expected VAT.

iii. The declaration of both the imprest surrendered amounting to Kshs.1,160,500 and the unutilized board balance amounting to Kshs.636,750 as income was contrary to the requirements of International Public Sector Accounting Standards as prescribed in the PFM Act, Cap 412A and Regulation 221 of the PFM (National Government) regulations,2015.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting officer for failing to adhere to the requirements of International Public Sector Accounting Standards as prescribed in the PFM Act, Cap 412A and Regulation 221 of the PFM (National Government) regulations,2015.

9.2 Negative Income Balance Mayienga Radio Adverts

840. The Committee heard that, the statement of comprehensive income reflects sales revenue of Kshs.1,129,332,000. However, detailed information provided for audit indicated that one of the revenue streams Mayienga Radio advert resulted in a net debit of Ksh.4,208,470 inclusive of tax. The origin and reasons for the negative income has not been explained.

841. Under the circumstances, the accuracy and validity of total revenue of Ksh.1,975,664,0000 could not be ascertained.,

Management response

842. The management informed the Committee that, the anomaly was noted and the difference was reconciled.

Committee observations

The Committee observed that –

The management response that the anomaly was noted and the difference was reconciled does not explain the reason for negative income for Mayienga Radio Advert thereby misleading.

Committee Recommendations

The Committee recommends that –

The Committee reprimands the then Accounting Officer for section 62 of the Public Audit Act, CAP 412B

10.0 Electricity Expenses and Cut-off procedures

843. The Committee heard that, the Corporation did not observe cut-off procedures during the year 2017/2018. Electricity expenditure records revealed that expenses on electricity for the months of April, May and June 2018 amounting to Kshs.26,885,494 were not included in the ledger for the year under review.

844. Further, electricity expense for the month of June 2017 was included in the ledger for 2018/2019 hence in the wrong cut-off period. Some expenditure amounts on electricity paid to KPLC were recorded at actual cost without VAT while some of the amounts of electricity bills were paid to KPLC with VAT. There was no uniformity in recording of the expense in the ledger. Further it was noted that various expenses amounting to Kshs.271,600 were wrongly classified in the ledger as electricity and therefore misstating the expenditure in the electricity ledger.

Consequently, the accuracy of the expenses on electricity for the year ended 30th June, 2018 could not be confirmed.

Management response

845. The management informed the Committee that, all transactions are supposed to be recorded in the financial year that they take place, the electricity expenses for April, May and June were not included in the ledger. The invoices from the Kenya power comes very late, these invoices are sent in different (14) stations in the country, then they are sent to head office so that they can be compiled and be input in the system, this process take more than three months making it difficult to include them in the financial statements. KPLC has a payment plan with the Corporation to be paying ksh.20 million per month to avoid power disconnection due to delay of the invoices

Committee observations

The Committee observed that –

The expenses on electricity for the months of April, May and June 2018 amounting to Kshs.26,885,494 were not included in the ledger for the year under review. This was in breach of Regulation 221(2)(a) of the PFM (National Government) Regulations, 2015which requires that annual financial statements shall be prepared in compliance with the International Financial Reporting as prescribed by the Public Sector Accounting Standard Board.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting officer and the then officers in the accounting departments involved in preparation and review of financial statements for failing to adhere to the requirements of International Public Sector Accounting Standards as prescribed in the PFM Act, Cap 412A and Regulation 221 of the PFM (National Government) regulations,2015.

11.0 Director's Emoluments

846. The Committee heard that, the statement of comprehensive income reflected Kshs.4,706,000 as Director's emoluments. Examination of this item revealed the following anomalies: -

i. This amount included Kshs.130,000 irregularly paid to staff of the Corporation as allowances for attending board meetings.
ii. The Curriculum vitae of board members was not availed to determine whether the directors had the necessary skills and expertise to be members of the various committees as required by law.
iii. Appointment letters for board members were not availed to determine their terms of engagement.
iv. The board's calendar or work plan was also not availed for audit review.
v. There was no Board Charter which defines the roles, responsibilities and functions of the board in governance of the organization. The Corporation was therefore in breach of the requirements of good Corporate Governance.

Management response

847. The management informed the Committee that, the staff of the Corporation who have been attending Board Meetings have been entitled to payment of Kshs. 2,000/- for each meeting as lunch allowance. This arose from Circulars issued from the Directorate of Personnel Management and the Office of the President which gave provision for the same. Attached is a letter from the Office of the President dated 22nd June, 2005 Reference Number

OP.CAB2/12A and a letter dated 8th June, 2005 Reference Number DPM2A VOLXXVI(97).

848. The Curriculum Vitae of the current Board of Directors are available to ascertain the Directors' skills and expertise. The Corporation is working on the Board Charter.

Committee observations

i. The committee observed that KBC was in breach of Section 12 of the State Corporations Act Cap.446 which states that no state corporation shall, without the prior approval in writing of the Minister and the Treasury, incur any expenditure for which provision has not been made in an annual estimate prepared and approved in accordance with section 11.

ii. There was no Board Charter that defines the roles, responsibilities and functions of the board in governance of the organization. The Corporation was therefore in breach of the requirements of good Corporate Governance under Mwongozo guidelines.

iii. The amount of Kshs.130,000 was irregularly paid to staff of the Corporation as allowances for attending board meetings. This is considered as a normal duty within the prescribed duties and responsibilities of the supporting staff.

iv. The Curriculum vitae of board members was not availed to determine whether the directors had the necessary skills and expertise to be members of the various committees as required by law.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting Officer for the breach of Mwongo Guidelines, prescribed duties and responsibilities of the employees and Section 12 of the State Corporations Act Cap.446 which states that no state corporation shall, without the prior approval in writing of the Minister and the Treasury, incur any expenditure for which provision has not been made in an annual estimate prepared and approved in accordance with section 11.

12.0 Inventories

849. The Committee heard that, the audit revealed that the Corporation held obsolete Engineering stock amounting to Kshs.57,497,000 in form of bolts and spares for the analogue transmitters which were not included as part of assets. These stores are obsolete and can only be sold as scrap since Report of the Auditor-General on the Financial Statements of Kenya Broadcasting Corporation for the year ended 30 June 2018 14 they cannot be used on digital transmitters in the Corporation. The management has not made a provision for obsolete stocks in these financial statements. Further, an inspection of

inventories records revealed that there were variances between the amounts in the system generated report and the amount captured in the physical count. A net off of Kshs.217,382.72 was also not accounted for. No explanation was given for the variances.

850. Consequently, the accuracy of the inventories balance of Kshs.57,497,000 as at 30 June 2018 could not be confirmed.

Management response

851. The management informed the Committee that, the Corporation was in the process of advertising the tender for disposal but there was financial constraint. The Corporation owed the Government Advertising Agency (GAA) payments for tender adverts previously done on the newspapers and thus they declined to place any advert until the debt has been settled.

852. The variance on inventory records was brought about by officers at KBC county stations using the spare parts in their stations to replace the ones which are worn out and not forwarding the details to KBC Headquarters so that they can be captured into the syspro system at KBC headquarters since the syspro system is not interlinked.Operations at the counties are still manual; the Corporation is working at having the syspro system rolled out at the counties.

Committee observations

The Committee observed that the issue on Inventories was deliberated in its Report for the financial year ending 30th June, 2017 and upholds the observations and recommendations therein as follows;

The Committee observed

i. The Accounting officer did not respond to the audit issue raised on failure to provide for obsolete inventory but alluded to having reconciled the difference which was not part of the query.
ii. The inclusion of the obsolete inventory amounting to to Kshs.57,497,000 overstates the corporations current assets in the statement of financial position thus misleading the users.
iii. The Accounting officer failed to make provisions for obsolete Engineering stock amounting to Kshs.57,497,000 in form of bolts and spares for the analogue transmitters contrary to the provisions of Regulation 221(2)(a) of the PFM (National Government) Regulations, 2015which requires that annual financial and non-statements shall be prepared in compliance with the International Financial Reporting as prescribed by the Public Sector Accounting Standard Board.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting officer for contravening Regulation 221(2)(a) of the PFM (National Government) Regulations, 2015 which requires that annual financial and non-statements shall be prepared in compliance with the International Financial Reporting as prescribed by the Public Sector Accounting Standard Board. In this respect the Committee recommends that the Corporation reviews its inventory with a view to identify any obsolete stocks and dispose them in accordance with the Public Procurement and Asset, Disposal Act CAP 412C otherwise for the continuous improper disclosure the accounting officer in place during the breach is reprimanded.

13.0 Budget and Budgetary Controls

853. The Committee heard that, during the year under review, expenditure was not incurred according to the item allocations in the budget. There were several funds reallocated to purposes for which they were not budgeted for while authority to reallocate was not availed for audit review. For instance, budgeted expenditure for communication services and supplies were reallocated and used in payment of casual workers amounting to Kshs.94,348,000 and travelling expenses.

854. Further, budgeted expenditure for transport, travelling and subsistence were reallocated and used in payment of calling cards, staff allowances and imprest facilitation.

855. Consequently, the Corporation did not adhere to the requirements of the Public Finance Management Act Regulation 51(2) which requires that expenditure commitments for goods and services shall be controlled against spending and procurement plans approved by the responsible Accounting Officers based on allocations and allotments from approved budgets.

Management response

856. The management informed the Committee that, all expenses were properly allocated as per their budget only that an amount of ksh .22,480 for casual workers was erroneously posted in communication services. This has been corrected and posted to office and general supplies and services changing its figures to ksh. 14,962,084. The figures for communication services reduces with the same figures making it to be Kshs. 13,041,451 Posted in under transport, travelling and subsistence, an amount of staff allowance and calling cards ksh.697,000 and 3,490,500 with a total of Kshs.4,187,500 was erroneously posted in communication services and supplies and this was reversed as a total of Ksh. 4,187,500.

857. Note that all expenses that are budgeted for a staff's night out are posted under transport travel and subsistence that is why even the calling cards are included as most of the staff are given an allowance of airtime for reporting and coordination purposes.

Committee Observations

The Committee observed that –

i. There were several funds reallocated to purposes for which they were not budgeted for while authority to reallocate was not availed for audit review. The response by the management did not address the query at hand since it does not refer to mis posting but refer to irregular reallocation.

ii. The Committee observed that, the reallocation of funds amounting to Kshs.94,348,000 was contrary to the provisions of Section 43 of the Public Finance Management Act, CAP 412A, and Regulation 48 of the PFM (National Government) Regulations, 2015.

Committee Recommendation

The Committee recommends that –

The Committee reprimands the then Accounting Officer for breach of Section 43 of the Public Finance Management Act, CAP 412A, and Regulation 48 of the PFM (National Government) Regulations, 2015.

14.0 Going Concern

858. The Committee heard that, During the year under review the Corporation recorded a loss of Kshs.8,671,965,000 (2017 Loss Kshs7,611,785,000) and thereby increasing cumulative losses to Kshs.66,423,020,000. Further analysis on the statement of financial position reflects current liabilities of Kshs.72,343,193,000 which exceeded current assets of Kshs.1,962,576,000 resulting in a negative working capital of Kshs.70,380,617,000. The Corporation was therefore technically insolvent and its continued existence as a going concern is dependent upon the financial support of the Government, bankers and its creditors.

Management response

859. The management informed the Committee that, the huge accumulated net losses as well as the negative working capital balances captured in the financial statements are as a result of the historical Japanese loan that was secured in 1987.The Government of Kenya guaranteed the loan and upon KBC's inability to repay the loan, the Government started repaying the loan but records the repayments as loan extended to KBC at commercial bank interest lending rates.

860. The Government interest rates have accumulated to huge billions reflected in financial statements. KBC together with the Parent Ministry have developed a KBC transformation CAB MEMO that seeks to address the historical debts among other transformation

strategies. The CAB MEMO contains a specific request for the Government to write-off the Japanese loan related debt.

861. The corporation has input the following measures to ensure that the revenue is increased and reduce expenses; Head end for signet to host more clients which will increase our clients hence more revenue, The Corporation is doing cross cutting to reduce none routine expenses.

862. The Corporation is in the process of doing public private partnership use of land to increase revenue, The Corporation is in the process of rebranding to improve its image which will increase our rating in the sector hence increased revenue.

Committee observations

The committee observed that the issue on going concern was deliberated in its third PIC-SSAA Report and upholds the observations and recommendations therein as follows;

i. The Committee observed that, the corporation's corporate governance is considerably weak thereby exposing the corporation to potential losses in addition reputational and operational risks.
ii. The Corporation is technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors
iii. The Kenya Broadcasting Corporation took a loan from the Overseas Economic Co-operation Fund (OECF) Japan in 1989. The National Treasury has over the years serviced on behalf of the corporation.
iv. The OECF Japan loan was received in the form equipment's which were rendered obsolete because of the liberalization of the electronic industry in Kenya in the 1990s and the migration to FM radio transmission leading to the loss of value for money on the investment. Arising from the foregoing, it meant that the Management of KBC did not carry-out a proper Feasibility study or there was laxity on those charged with governance having approved the loan without due diligence.

Committee recommendations

The committee recommends that –

i. Within three months after the adoption of the Report the Ethics and Anti-Corruption to investigate whether there are any financial leakages/ financial impropriety Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the financial leakages/ financial impropriety.
ii. The Committee recommends that the KBC diversifies its revenue base to reduce over reliance on Government support.

15.0 Bank Overdraft

863. The Committee heard that, the statement of financial position reflects a bank overdraft of Kshs.676,000. However, no cash book, bank certificates and bank reconciliations were provided in support of these balances.

864. Consequently the validity and accuracy of bank overdraft balance of Kshs.676,000 and the accuracy of transactions processed through the respective accounts forming the balance could not be ascertained. Further, no authority for operation of the overdraft was provided for audit verification.

Management response

865. The management informed the Committee that. KBC does do not have approved overdraft facility but have a working relationship with the bank, where, when paying salaries the bank can pay for us then it's cleared within one week. The Corporation in the process of asking the board to approve the overdraft facility and then write to treasury for approval.

Committee observations

The Committee observed that –

i. The Corporation did not provide cashbook, bank certificates and bank reconciliations to support bank overdraft amounting to Kshs. 676,000.

ii. The admission by the KBC management that the corporation does do not have approved overdraft facility except a working relationship with the bank is a confirmation that the overdraft is irregular and not sanctioned by the BOD.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting officer for the irregular overdraft that was not sanctioned by the BOD.

16.0 Contingent Liabilities

866. The Committee heard that, as disclosed in note 19 to the financial statement, the Corporation had contingent liabilities totalling to Kshs.252,756,349,383.75 against twenty four (24) high value court cases pending in court. The outcome of these could disorient the financial position of the Corporation.

Management response

867. The management that, once matters are filed in Court, litigants do not have control on how long those cases would be heard and determined. The contingent liabilities cover eventualities such as settlement of judgments that would possibly be entered against KBC.

Committee observations

The Committee observed that –

i. The management failed to respond to the audit query.

ii. The cases have taken long period of time to be finalized and therefore hampering the financial position of the Corporation.

Committee recommendations

The Committee recommends that –

i. Within three months upon adoption of this report, the Accounting Officer – KBC should in consultation with the Attorney General embark on the legal strategies on how to fast-track the hearing of the pending cases by the judiciary or embrace and seek for alternative dispute resolution mechanisms to bring the outstanding court cases to its logical conclusion.

ii. The Accounting Officer – KBC should embrace and seek for Alternative dispute resolution mechanisms to bring the outstanding court cases to its logical conclusion.

17.0 Prior Year Audit Issues

18.1 Going Concern

868. The Committee heard that, during the year 2017, the Corporation recorded a loss of Kshs.7,611,785,000 (2016 Loss: Kshs.8,404,156,000) thereby increasing the cumulative losses to Kshs.57,751,055,000 as at 30 June 2017. Further, the statement of financial position reflected current liabilities balance of Kshs.63,056,937,000 which exceeded current assets balance of Kshs.1,108,550,000 resulting in a negative working capital of Kshs.61,948,387,000 as at 30 June 2017. The Corporation was therefore technically insolvent and its continued existence as a going concern is dependent upon the financial support of the Government, bankers and its creditors.

18.2 Legal Fees

18.2.1 Case between the Corporation and Mombasa Governor

869. Included in the administration cost balance of Kshs.9,298,885,000 under Note 4(a) to the financial statements was an amount of Kshs.1,119,033,000 in respect to staff cost. The amount of Kshs.1,119,033,000 also included an amount Kshs.2,514,431 paid to a law firm for the preparation of an application under certificate of urgency for contempt of court proceedings instituted against the Mombasa Governor and other officials of Mombasa county who were involved in the illegal and irregular demolition of Nyali plot fence erected on the Corporation land reference LR. No 1476 or original LR.No 464/60 on 30 September 2016 at a cost of Kshs.3,512,700.

18.2.2 Case Between the Corporation and Komorock Housing & Co-operative Society

870. The Committee heard that, on 20 April 2017 the Corporation paid an additional amount of Kshs.5,800,000 to another law firm in respect of Machokos H.C case Petition No.15 of 2015 between Komarock housing & Co-operative Society VS KBC & 18 others. Whereas the legal counsel for Kenya Broadcasting Corporation was the Attorney General of the Republic of Kenya, no documentary evidence was provided to show that the two law firms were cleared to represent the Corporation in the two legal cases by the Attorney General. No supporting documents indicating how the two law firms were identified and awarded the contracts was availed for audit review contrary to Section 91(1) and 135(2) of the Public Procurement and assets Disposal Act 2015 which states that open tendering shall be the preferred procurement method for procurement of goods, works and services. Further, Section 135(2) states that, an accounting officer of a procuring entity shall enter into a written contract with the person submitting the successful tender based on the tender documents and any clarifications that emanate from the procurement proceedings. A review of the matter in April 2018 revealed that the two (2) cases were still pending in a court of law while the Komarock ranch Land has been encroached and subdivided by squatters who have erected permanent structures. Although the management is aware of the above analysis no evidence of any positive steps being taken to safeguard the public resource was seen or availed for audit review. In the circumstances, it has not been possible to confirm the propriety of legal expenditure totalling Kshs.8,314,431, ownership status and that the Corporation received value for money. The Corporation is also in breach of procurement laws.

18.2.3 Pending Legal Cases – Channel 2 Group Corporation

871. The Committee heard that, as disclosed in Note 4(a) to the financial statements included in administration cost figure of Kshs.9,298,885,000 was an amount Kshs.56,349,000 in respect of legal fees. The figure of Kshs.56,349,000 also included an amount of Kshs.40,242,181 paid to a law firm in respect of legal and consultancy fees for a case filed against the Corporation on 10 May 2006 for breach of contract where Kenya Broadcasting Corporation (KBC) entered into a Joint Venture agreement with Channel 2 Group Corporation. Available information indicated that Channel 2 had the right to operate and create broadcasting movies and other programs on KBC's stations formerly known as Metro Television. On 16 March 2009 the Corporation terminated the Joint Venture agreement and Channel 2 Group initiated a court process by filing a suit HCCC.NO.60 OF 2010 for appointment of an arbitrator.

872. Channel 2 group thereafter lodged a claim of approximately USD.2.4 Billion equivalent to Kshs.206 billion against the Corporation for losses and damages they incurred from the termination of the contract. On 24 September 2010 the court directed that the issues of losses and damages could be heard before an arbitrator in London as per the terminated agreement between Channel 2 Group and the Corporation.

873. The Corporation has been represented in the arbitration case by the London Law firms and a local firm who had been paid a total amount of Kshs.1,290,976,849 as at the time of the audit for 2017. No documents to show how the Law firms were identified and awarded the services and signed contracts between the two parties was availed for audit review. This is contrary to Section 91(1) of the Public Procurement and Assets Disposal Act, 2015 which requires that open tendering shall be the preferred procurement method for procurement of goods, works and services. Further, section 135(2) requires that, an accounting officer of a procuring entity shall enter into a written contract with the person submitting the successful tender based on the tender documents and any clarifications that emanate from the procurement proceedings.

874. There was no evidence to show that the management sought advice from the Attorney General for use of both law firms to represent the Corporation in the case was availed for audit review. In addition, the Corporation procured the services of three other firms to provide consultancy services on transmission matters at a cost of Kshs.9,500,000, provide consultancy services on accounting issues at Kshs.8,432,040 and consultancy services on marketing issues at a cost of Kshs.15,785,000 all totaling Kshs.33,717,040. It was not clear and management has not explained the reason for engaging the three firms considering that the arbitration process had failed. Further, the hiring of the three firms increased the total cost on the arbitration process to a total of Kshs.1,324,693,889 as at 30 June 2017. No satisfactory explanations have been provided for these anomalies. In the circumstances, the propriety of expenditure of Kshs.1,324,693,889 incurred over the years on the legal process could not be confirmed and the Corporation was in breach of the law.

18.3 Trade Receivables

875. The Committee heard that, as disclosed in Note 11 to the financial statements trade and other receivables net figure of Kshs.997,867,000 included trade receivables of Kshs.1,146,932,140 which has been outstanding for a long period of time some of which dates back to 1989. These debts form 80% of the total outstanding debts. The recoverability of these debts is doubtful due to lack of supporting documents. No evidence of any positive measures being taken to recover the outstanding debts was availed for audit review. In addition, the balance of Kshs.997,867,000 included staff debtors and other receivables figure of Kshs.26,997,000 which included outstanding temporary imprest totalling Kshs.2,748,401 some of which date back to year 2012 and had not been surrendered as at 30 June 2017. This is contrary to Section 92 (5) of the Public Finance Management regulations 2015 which provides that a holder of temporary imprest shall account or surrendered the imprest within 7 working days after returning to duty station or performing duty which was assigned. Further, available information revealed that the

Corporation used cash imprest totalling Kshs.2,199,800 during the year 2017 to purchase capital items and renovations contrary to Section 63(1) of the Public Procurement and Disposal regulation 2006 which states that for the purposes of section 90(2) of the Act, a procuring entity may use a low value procurement procedure only if the estimated cost of the goods, works or services being procured per item is less than or equal to the prescribed maximum value as set out in the regulation. In the circumstances, it was not been possible to confirm the accuracy, validity and completeness of the trade and other receivables balance of Kshs.997,867,000 as at 30 June 2017 and the Corporation was in breach of the law.

18.4 Inventory

876. The Committee heard that, as disclosed in Note 10 to the financial statements, the inventory figure of Kshs.70,164,000 included obsolete engineering stores worth Kshs.57,718,890 in form of bolts and spares for the analogue transmitters. The stocks are shown at cost instead of lower of cost or net realizable value as required by the International Accounting Standard (IAS2). Physical verification of the inventory at the Karen/Langata TX station indicated that the bulk of the inventory in the stores were for the analogue system which was discarded in 2014 and other items which were delivered for the shortwave radio transmission. The management has not made a provision for obsolete stock in these financial statements. In the circumstances, it has not been possible to confirm validity, accuracy and completeness of the inventory balance of Kshs.70,164,000 as at 30 June 2017.

18.5 Unexplained Decrease of Dividends

877. The Committee heard that, as disclosed in Note 3 to the financial statements, other income figure of Kshs.82,534,000 includes dividend income of Kshs.64,000,000 (2016: - Kshs.220,000,0000) from investment in MultiChoice Kenya Ltd where the Corporation owns 40% of the Holding Company against the approved budget figure of Kshs.240,000,000. However, examination of the audited financial statement of MultiChoice Kenya Ltd for the year ended 31st March 2017 reflected net income of Kshs.295,602,000 of which 40% transacts into Kshs.118,240,000. The management hasnot corporation explained the decreased dividends of Ksh.54,240,000 for the year ended 30th June 2017. In the circumstances, it was not possible to confirm if the corporation obtained value of its money from investment in MultiChoice Kenya Limited.

Committee observations

The Committee observed that –

Paragraphs 18.1 to 18.5 were not responded to. However the Committee notes that the matters as outlined in the above paragraphs have been deliberated on in the previous years in this report covering financial years 2013/2014 to 2017/2018 and therefore upholds the respective observations and recommendations made thereon.

FINANCIAL YEAR 2018/2019

1.0 Undisclosed Material Uncertainty to Going Concern

878. The Committee heard that, the statement of comprehensive income reflects a loss of Kshs.8,206,036,000 (2018 Loss Kshs.8,671,965,000) thereby increasing the cumulative losses to Kshs.74,629,056,000 as reflected in the statement of changes in equity. Further, the statement of financial position reflects current liabilities balance of Kshs.82,376,391,000 which significantly exceeds current assets balance of Kshs.3,961,202,000 resulting in a negative working capital of Kshs.78,415,189,000.

879. The Corporation is therefore technically insolvent and its continued existence as a going concern is dependent on the financial support of the Government, bankers and its creditors.

Management response

880. The management informed the Committee that, the loss of Kshs. 8,206,036,000 and the increasing cumulative losses are as a result of the Japanese loan that was provided in 1987 to KBC for procurement of medium wave radio transmitters. The medium wave transmitters that were purchased with the loan funds are now obsolete. The cash flows of KBC were affected negatively by competition following the liberalization of the media industry in Kenya in 1990's.

881. The Government revoked the television licensing permits in 2003 that were being issued by KBC at a fee. These factors rendered this corporation incapacitated to repay the loan. Since the Government had guaranteed the loan, it then took over repayment of the loan. The government has been repaying both the principal and the interest of the said loan. However the government records the repayment amount as a loan to KBC at market interest rates. This has greatly affected the corporation's financial position. We have written to treasury through our parent ministry requesting the Government to write off the loan and take over the outstanding balance of the Japanese loan.

882. To this effect, a cabinet memo was prepared on KBC balance sheet restructuring (cleaning the balance sheet) and submitted to our parent ministry. Once the Government writes-off the loan the financial status of this corporation would really improve moving from a deficit to a surplus.

Committee observations

The committee observed that the issue on going concern was deliberated in its third PIC-SSAA Report and upholds the observations and recommendations therein as follows:

i. The Committee observed that, the corporation's corporate governance is considerably weak thereby exposing the corporation to potential losses in addition reputational and operational risks.

ii. The Corporation is technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors.

iii. The Kenya Broadcasting Corporation took a loan from the Overseas Economic Co-operation Fund (OECF) Japan in 1989. The National Treasury has over the years serviced on behalf of the corporation.
iv. The OECF Japan loan was received in the form equipment's which were rendered obsolete because of the liberalization of the electronic industry in Kenya in the 1990s and the migration to FM radio transmission leading to the loss of value for money on the investment. Arising from the foregoing, it meant that the Management of KBC did not carry-out a proper Feasibility study or there was laxity on those charged with governance having approved the loan without due diligence.

Committee recommendations

The Committee recommends that –

i. Within three months after the adoption of the Report the Ethics and Anti-Corruption to investigate whether there are any financial leakages/ financial impropriety Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the financial leakages/ financial impropriety.
ii. The Committee recommends that the KBC diversifies its revenue base to reduce over reliance on Government support.

2.0 Unsupported Administration Costs

883. The Committee heard that, as disclosed under Note 4(a) to the financial statements, the statement of financial performance reflects administration costs balance of Kshs.9,862,514,000.00 The balance includes programme production expenses amounting to Kshs.46,325,630.52 whose payment vouchers were not provided for audit review. The balance also includes insurance costs of Kshs.10, 627,994 paid for renewal of contract for provision of insurance services. The cover of the motor vehicles and motor cycles was renewed at a cost of Kshs.2,813,984 and Kshs.7,814,010 for the fixed assets from 1st January, 2018 to 31st December, 2018. However, Management did not provide, for audit review, the assets' valuation report and the contract documents between the Corporation and the insurance company.

884. Further, the balance includes legal fees amounting to Kshs.41,083,000 whose payment vouchers were not provided, for audit review. Management had indicated that the payment vouchers were taken by officers from an investigative agency but no supporting record such as documents register or letter form the agency was produced to justify the claim.

885. Consequently, the accuracy, completeness and validity of amounting to Kshs.51,710,994 included under the administration costs balance of Kshs.9,862,514,000 in the statement of financial performance could not be confirmed.

Management response

886. The management informed the Committee that, reconciliation was done and Payment vouchers availed for external audit.

Committee observations

The Committee observed that –

i. The Accounting Officer was in breach of section 62 of the Public Audit Act, CAP 412B which requires timely submission of required information for audit.
ii. The management failed to provide payment vouchers to support the payment of legal fees amounting to Kshs.51,710,994.
iii. The Accounting Officer – KBC did not comply with the provisions of International Public Sector Accounting Standards (IPSAS) which prescribe for periodic valuation and disclosure of fair values in the financial statements.

Committee Recommendations

The Committee recommends that –

i. The Committee reprimands the then Accounting Officer for breach of section 62 of the Public Audit Act, CAP 412B.

ii. The Accounting officer- KBC should at all times comply with the provisions of section 62 of the Public Audit Act, CAP 412B.

3.0 Property, Plant and Equipment

887. The Committee heard that, as disclosed in Note 8 to the financial statements, the statement of financial position reflects property, plant and equipment balance of Kshs.16,330,395,000 which includes land valued at Kshs.12,857,874,000. However, a review of the information provided revealed the following unsatisfactory observations: -

3.1 Unsupported Land and Buildings

888. The Committee heard that, the balance includes parcels of land valued at Kshs.5,712,992,000 which are only supported by letters of allotment. There is also un-surveyed and un-adjudicated land valued at Kshs.903,767,000 whose ownership documents were not provided for audit review. A parcel of land located at Voi Township and valued at Kshs.1,600,000 had been taken over by the Ministry of Mining and had already been developed while another parcel of land in Kajiado County differed in size with the letter of allotment indicating that the land measures 33.4 acres (13.53 hectares) while information provided indicated that the actual size on the ground is 124.8 acres valued at Kshs.2,700,000,000

Management response

889. The management informed the Committee that, the revaluation of all KBC assets was done in the financial year 2013/2014 by Ark consultants. The valuation reports both in soft and hard copies were submitted from the consultant. Currently the corporation is working with the director of survey, housing, public works and urban development for surveying and acquiring title deeds for all the parcels of land across the country. The exercise has commenced in Nairobi and will be rolled out to the other stations outside the country.

Committee observations

The Committee observed that the issue on Land and Building was deliberated in its Report for the financial year ending 30th June, 2016 and upholds the observations and recommendations therein as follows;

i. The Corporation's parcel of land LR. No. 75893/111/64A measuring 0.7413 acres located at Voi Township and valued at Kshs.1,600,000.00 had been taken over by the Ministry of Mining.

ii. The Corporations parcel of land No LR.No.11773 - Ngong TX station located at Kajiado County differed in size as the letter of allotment indicates that the land is 33.419 acres (13.53 hectares) while information available indicates that the actual size on the ground is 124.79055 acres valued at Kshs.2,700,000,000.

Committee Recommendations

The Committee recommends that –

i. Within three months upon adoption of this report, the Accounting Officer-KBC in collaboration with the National Land commission should expedite the processing of the Corporation's title deeds for all the parcels of land owned by KBC.

ii. Within three Months upon adoption of this report, the Accounting Officer –KBC should present to the National Assembly a comprehensive report on the status of all its land parcels with regard to acquisition of ownership documents.

iii. Within three Months upon adoption of this report, the Accounting Officer –KBC should present to the National Assembly a comprehensive report on the status the parcel of land LR. No. 75893/111/64A measuring 0.7413 acres located at Voi Township valued at Kshs.1,600,000.00 that had been taken over by the Ministry of Mining, the parcel of land located at Kajiado County which differed in sizes.

3.2 Encroachment of Land by Informal Settlers and Private Developers

890. The Committee heard that, a parcel of land near Jamhuri Park measuring 100 acres was explained to have been occupied by informal settlers. The Ethics and Anti-Corruption

Commission recovered and reallocated 29 acres to the Corporation. Management has not explained the status of the balance of 71 acres. Available information indicates that the Corporation's Sauti House in Mombasa has a pending court case and part of its land was taken over by a commercial bank while another parcel of land in Nyali measuring approximately 22.8 hectares was encroached by informal settlers and a perimeter fence earlier erected at a cost of Kshs.3,512,700 demolished.

891. Although Management has made attempts at the Ministry of Lands and Physical Planning to have outstanding issues resolved, no positive progress was reported by the close of the financial year.

Management response

892. The management informed the Committee that, for Sauti house parcel in Mombasa, the corporation lost but the case was reopened by EACC and is ongoing. Nyali land measuring 22.8 hectares was encroached and subdivided but this was cancelled by a court ruling. Jamhuri land, the corporation is currently pursuing KFS and director of lands to have the land surveyed and ownership documents acquired.

Committee observations

The Committee observed that the issue on Land and Building was deliberated in its Report for the financial year ending 30th June, 2016 and upholds the observations and recommendations therein as follows;

i. KBC Jamhuri Park land LR. No 15090 measuring 100 acres was allegedly grabbed, out of which 29 acres were recovered and reallocated to the Corporation leaving 71 acres which has not been accounted for as at the date of the audit report.

ii. Kenya Broadcasting Corporation Sauti house which houses Mombasa office, has a pending court case and part of it was taken over by a commercial bank. It's not clear whether the land was charged against any loan taken by the corporation or it was grabbed by the Bank.

iii. KBC land in Nyali TX LR.No 1476/'1 measuring approximately 22.8 hectares was encroached into by squatters and a perimeter fence earlier erected at a cost of Kshs.3,512,700 demolished.

Committee recommendations

The Committee Recommends that –

i. Within three months upon adoption of this report, the Accounting Officer-KBC in collaboration with the National Land commission should expedite the processing of the Corporation's title deeds for all the parcels of land owned by KBC.

ii. Within three Months upon adoption of this report, the Accounting Officer –KBC should present to the National Assembly a comprehensive report on the status of all its land parcels with regard to acquisition of ownership documents.

3.3 Land Without Title Deeds

893. The Committee heard that, as previously reported, available information indicated that the Corporation owned twenty-five (25) parcels of land valued at Kshs.6,102,849,000 that were un-surveyed, un-adjudicated and whose ownership documents such as title deeds and certificates of lease were not provided for audit review. No evidence of any action being taken by the Management to obtain ownership documents of these parcels of land was provided for audit review.

894. In addition, the balance of land of Kshs.12,857,874,001 excluded a parcel of land situated at Voi Township measuring 3.7 acres which the valuer could not locate during the time of valuation of assets in November, 2014.

Management response

895. The management informed the Committee that, the corporation had engaged a law firm to get all the parcels of land registered but it did not bear any fruits. Currently the corporation is working with the ministry of land, housing, public works and urban development to survey and acquire title deed for all the parcels of land across the country.

Committee observations

The Committee observed that –

i. The Corporation does not possess ownership documents for twenty five (25) parcels of land valued at Kshs. 6,102,849,000. In addition, the parcels of land are un-surveyed and un-adjudicated.

ii. The Corporation parcel of land LR. No. 75893/111/66a located at Voi Township measuring 3.7 could not located by the valuer during the time of valuation of assets in November 2014.

Committee recommendations

The Committee recommends that –

i. Within three months upon adoption of this report, the Accounting Officer-KBC in collaboration with the National Land commission should expedite the processing of the Corporation's title deeds for the twenty (25) parcels of land.

ii. Within three Months upon adoption of this report, the Accounting Officer – KBC should present to the National Assembly a comprehensive report on the status of the land LR No.75893/111/66A located at Voi Township measuring 3.7 acres which could not be located by the valuer at the time of valuation of assets in November, 2014.

3.4 Land with Disputes

896. The Committee heard that, as reported in the previous year, available information indicated that ten (10) parcels of land measuring 211.59 acres and valued at Kshs.7,597,582,000, have had disputes for a long period of time. The position had not changed during the year under review.

Management response

897. The management informed the Committee that, cases are ongoing up to date.

Committee observations

The Committee observed that the issue on Land with Disputes was deliberated in its Report for the financial year ending 30th June, 2016 and upholds the observations and recommendations therein as follows;

The Corporation's ten 10) parcels of land measuring 211.58785 acres valued at Kshs.7,597,582,000 located across the Country has been under ownership dispute for a long period of time.

Committee Recommendations

The Committee recommends that –

i. Within three months upon adoption of this report, the inspector-General, inspectorate of State Corporations should carry out a review of all KBC land with pending Court cases, prepare a comprehensive status report and submit it to the National Assembly with a copy to the Attorney General who will initiate the process of fast-tracking the conclusion of the cases within reasonable time.

ii. The Accounting Officers should strive to embrace Alternative Dispute resolution Mechanisms in the resolution of disputes.

3.5 Unsupported Transfer of Land

898. The Committee heard that, as previously reported, a parcel of land measuring 2.19 acres valued at Kshs.1,431,000,000 and designated as a car park, was transferred to the Kenya Cultural Centre in October, 2016. However, Management has not explained the circumstances under which the land was transferred. The parcel of land had two (2) allotment letters and a survey plan all reflecting different sizes where the allotment letter dated 12 August, 1994 indicated the size of the land as 0.8861 hectares. The allotment

letter dated 8 March, 2004 indicated the size as 0.8737 hectares while the survey plan indicated the size of the same parcel of land as 0.21 hectares.

899. Further, management transferred four (4) parcels of land valued at Kshs.1,126,250,000 to Corporation staff pension fund in lieu of unremitted outstanding pension arrears totalling Kshs.208,774,000 as at 30th June, 2017. However, Management did not explain the variance of Kshs.917,476,000 between the land value and debt owed and why the land is still reflected in the Corporation records. Management did not also explain why unremitted pension liability still stood at Kshs.864,034,000 as at 30 June, 2019. Further, physical verification of transferred land measuring 1,234.26 acres indicated that more than two thirds of the land had been encroached by informal settlers and physical structures had been erected on the land.

900. In the circumstances, it has not been possible to confirm the existence, accuracy, ownership and validity of the value of land amounting to Kshs.12,857,874,000 in the financial statements.

Management response

901. The management informed the Committee that, a parcel of land designated as a carpark LR 209/14477 was transferred through a Presidential directive. There was a proposal to transfer 4 parcels of land to 15but this was not successful and all the said parcels are intact. The debts for the staff pension fund remains.

Committee observations

The Committee observed that the issue on Unsupported Transfer of Land was deliberated in its Report for the financial year ending 30th June, 2016 and upholds the observations and recommendations therein as follows;

i. The Corporation land LR No.209/10370 measuring 2.19 acres valued at Kshs.1,431,000,000 was transferred under unclear circumstances to Kenya Cultural Centre vide letter Ref: No. KBC/MD/14/6/C VOL.VII dated 11thOctober 2016.
ii. The KBC Board granted that the portion of land in which a borehole belonging to the Nairobi University be excised from its plot vide letter of MD 21/9/2000 thus reducing the earlier 0.8861Ha. to 0.8737Ha.
iii. The Presidential directive on which KBC alleges to act on was addressed to a private developer and not KBC therefore it was not clear the basis upon which the directive was executed.
iv. The Corporation transfered four (4) parcels of land valued at Kshs.1,126,250,000 in an exchange to settle KBC pension debt amounting to Kshs.208, 774,000. which exposes the organization to a loss of Kshs. Kshs.917,476,000 being the value of assets lost through irregular transfer. It has been noted that the figures for the parcels and the

debt has been changing over the years despite the value of land being known to appreciate with time.

Committee recommendations

The Committee Recommendations –

i. Within three months upon the adoption of this Report, EACC to investigate the circumstances surrounding the transfer of the Corporation land LR. No.209/10370 measuring 2.19 acres valued at Kshs.1,431,000,000 to Kenya Cultural Centre Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the illegal transfer of the Corporation land.

ii. Within three months upon the adoption of this report, EACC to initiate investigations into the matter surrounding the illegal transfer of four (4) parcels of land valued at Kshs.2,036,250,000 in an exchange to settle KBC pension debt amounting to Kshs.225, 111,000. Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the illegal transfer of the Corporation land.

4.0 Trade and Other Receivables

902. The Committee heard that, as disclosed in Note 11 to the financial statements, the statement of financial position reflects trade and other receivable of Kshs.3,820,951,000.The following observations were made: -

4.1 Long Outstanding Trade Receivables

903. The balance includes an amount of Kshs.1,572,722,000 that has been outstanding for more than one hundred and twenty (120) days with the bulk of these relating to more than eleven (11) years back. However, Management did not provide the policy document to determine the adequacy of provision of Kshs.543,480,000 made against the receivables to recognize the high probability of not recovering the debts. Management has not also explained the measures in place to collect these debts by way of demand letters, negotiations and legal action.

Management response

904. The management informed the Committee that, efforts have been put in collecting the outstanding debts as per attached letters of demand, memos, letters of hand over to external debts collectors and request for legal actions. Every year provision for bad and doubtful debts is done and reflected in the financial statements as per attached copy for provision 2018/2019 of ksh 38,492,000. Write off for bad debts was done once in 2013 as per attached copy of extract of minutes and approval of the write off of ksh 139,663,884.94

Committee observations

The Committee observed that –

i. The recoverability of the long outstanding receivables of Kshs. 1,572,722,000 is doubtful .it is historical which has been carried forward from the manual system to the automated system for a period of over 11 years implying it lacks proper supporting documents.

ii. The Corporation did not justify the need for the write off, in line with the provisions of Regulation 157 (1)(a) PFM (National Government) Regulations 2015 which provides that an Accounting Officer may only write off losses if all reasonable steps have been taken to recover the debts and the loss is irrecoverable.

Committee recommendations

The Committee recommends that –

Within three months of adoption of this report, the Accounting Officer should provide a comprehensive report on the reasonable steps that have been taken to recover the long outstanding receivables before initiating the write off process on account of being irrecoverable.

4.2 Accuracy of the Trade Receivables

905. The Committee heard that, included in the balance is Kshs.726,859,000 which was paid by the National Treasury on behalf of the Corporation increasing the GOK loan principal from Kshs.12,930,057,000 to Kshs.13,656,916,000. Management did not explain why these amounts were recognized under receivables. Management also introduced an amount of Kshs.1,784,801,000 described as 'Treasury balance to Japanese loan' under the trade and other receivables. The balance has not been explained or supported by any fundamental records such as the ledger or the Trial Balance.

Management response

906. The management informed the Committee that, the anomaly was noted and reconciliation was done to rectify the errors.

Committee observations

The Committee observed that –

The National Treasury has been paying OECF Japanese loan on behalf of the Corporation. However, the amount of Kshs. Kshs.726,859,000 paid in the year under review was recognized as a receivable whilst it's a payable to the National Treasury.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting officer for failing to adhere to the requirements of International Public Sector Accounting Standards as prescribed in the PFM Act, Cap 412A and Regulation 221 of the PFM (National Government) regulations,2015.

4.3 Unsupported Staff Receivables-Imprest

907. The Committee heard that, the balance includes staff receivables - imprest balance of Kshs.12,898,000. However, the supporting schedule amounted to Kshs.8,781,526 resulting to unreconciled variance of Kshs.4,116,473.

908. Under the circumstances, the accuracy, completeness and validity of trade and other receivables balance of Kshs.3,820,951,000 reflected in the statement of financial position as at 30th June, 2019 could not be ascertained.

Management response

909. The management informed the Committee that, the reconciliation was done to rectify the errors.

Committee observations

The Committee observed that –

The management failed to provide supporting documentations for staff imprest amounting to Kshs.4,116,473 which remain unaccounted for contrary Regulation 93 of the PFM (National Government) Regulation, 2015.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting officer for breach of Regulation 93 of the PFM (National Government) Regulation, 2015.

5.0 Unsupported Cash and Bank Balances

910. The Committee heard that, as disclosed in Note 12 to the financial statements, the statement of financial position reflects cash and bank balances totalling Kshs.35, 330,000.The balance includes Kshs.30,344,000 in respect of balances held at a commercial bank. Examination of the bank reconciliation statement revealed payments in bank statement but not recorded in cashbook amounted to Kshs.34,173,836.10, out of which an amount of Kshs.9,952,213.05 related to the period before December, 2018 while payments in

cashbook but not recorded in bank statement amounted to Kshs.6,024,483 out of which an amount of Kshs.1,180,515 was for the period before December, 2018.

911. Further, receipts in bank statement not recorded in cashbook amounted to Kshs.3,899,488 out of which an amount of Kshs.1,778,383 related to the period before December, 2018 while receipts in cashbook but not recorded in bank statement amounted to Kshs.4,839,146 out of which an amount of Kshs.1,788,600 related to the period before December, 2018.

912. The Management has not explained the reasons for failure to update the records to clear the long outstanding issues in the bank reconciliation statement through investigation on the cause of the delays and subsequently reversing the transactions which have been outstanding for over six months.

913. In the circumstances, the accuracy, completeness and validity of cash and bank balance of Kshs.35,329,000 reflected in the statement of financial position as at 30 June, 2019 could not be confirmed.

Management response

914. The management informed the Committee that, the bank balance certificate and reconciliations were issued to support the balances held in the commercial banks of Kshs. 30,344,000 and 35,330,000 respectively. Withdrawals and deposits from bank statements that were outstanding as not posted were updated. All items that were long outstanding being not posted in cash book were posted and the cash book is currently updated.

Committee observations

The Committee observed that –

The then Accounting Officer contravened the provisions of Regulation 90 (3) of the PFM (National Government) Regulations, 2015 which requires that a monthly bank reconciliation to be undertaken and any discrepancies noted should be investigated promptly and appropriate action taken including updating relevant cash books.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting Officer for breach Regulation 90 (3) of the PFM (National Government) Regulations, 2015 and recommends that the Accounting Officer should strictly adhere to the provisions of the regulations in order to curb any incidence of unexplained bank reconciliation variances.

6.0 Unsupported Trade and Other Payables

915. The Committee heard that, as disclosed in Note 15 to the financial statements, the statement of financial position reflects trade and other payables balance of Kshs.2,426,815,000. A

review of the records revealed that the balance constitutes trade creditor balance of Kshs.458,102,000. However, examination of records revealed the following unsatisfactory matters: -

6.1 Pending Payment for Maintenance Services

916. Included in trade creditors are unpaid payment vouchers amounting to Kshs.45,065,051 relating to a firm for provision of support and maintenance of equipment services under one care service level agreement. The contract was signed on 6th March, 2014 effective from 1st April, 2014 to 31st March, 2017 to run from 2014/2015 to 2017/2018. According to the contract documents, the annual service fees were payable in Euros at a rate of 165,455 Euros payable quarterly in advance for a period of three (3) years. The supplier was expected to invoice for the services provided on a quarterly basis. However, Management did not provide supporting documents in support of the invoiced amounts.

Management response

917. The management informed the Committee that, one Care Service Level Agreement was awarded to M/S Professional Digital Systems Limited in 2014/15 financial year for 3 renewable years for servicing head end equipment. After the launch the technical team were sent to Italy, France and China for service training. When the technical team returned, the service level agreement was discontinued in the 2017/2018 financial year and the said payment voucher amounting to Kshs 45,065,051 has not been paid to date. The anomaly of lack of certificates from technical department was noticed when the supplier requested for payments. This payment was stopped and will be removed from the total creditors once the investigations are over. The payment vouchers and the letter to supplier have been provide for verification.

Committee observations

The Committee observed that –

The Corporation signed a maintenance service agreement for servicing of equipment's with Professional Digital Systems Limited on 6th March, 2014 for three (3) renewable years. However in the financial year 2017/2018 the agreement was discontinued and payment to the supplier amounting to Kshs. 45,065,051 has not been paid to date.

Committee recommendations

The Committee recommends that –

Within three months upon adoption of this report, the Auditor-General should audit the pending payables amounting to Kshs. 45,065,051and give a comprehensive report on their status to the National Assembly in the next audit cycle.

6.2 Delayed Wajir Site Solar Power Plant

918. The Committee heard that, the above balance includes a pending voucher dated 6th November, 2017 of Kshs 9,284,285 being 20% advance payment payable to a firm in respect to a contract for design, supply, installation, training and commissioning of solar power plant at Wajir site at a contract sum of Kshs.46,421,425.20. According to the contract signed on 31st July, 2017, the contractor was to execute and complete the works within a period of twenty-eight (28) weeks. However, at the time of audit exercise, the works had not commenced and the contract performance period had already expired. Management did not explain why the contract had not been cancelled or why the amount was being treated as a liability for services that had not been rendered by the contractor.

919. In view of the foregoing, it has not been possible to confirm the accuracy and validity of an amount of Kshs.458,102,000 included in the trade and other payable balance of Kshs.2,426,815,000 in the statement of financial position as at 30 June, 2019.

Management response

920. The management informed the Committee that, the Wajir Solar Project total cost was Kshs. 46,421,425.20 which was a pilot project mooted between KBC and Ministry of Information Communication and Technology (MoICT). The project was approved by the KBC board in financial year 2015/2016 for implementation. The Contract Agreement signed on 31 July 2017 between Kenya Broadcasting Corporation and PowerPoint Systems East Africa Ltd for Kshs 46,421,425.20 out of which 20% down payment on contract was required to be paid on site handing over, Contract had been signed and the site handed over to the Contractor but due to cash flow challenges the implementation was put on hold by Management. The contract expired before its implementation had started and therefore the contract was cancelled. The Kshs 9,284,285 for which a payment voucher was prepared, was reversed and in the system the amount of Kshs46,421,425.20 is not included in the merchants' total of Kshs 458,102,000.

Committee observations

The Committee observed that –

i. The submission by the management that the Kshs 9,284,285 for which a payment voucher was prepared, was reversed was not supported by any documentary evidence. Therefore, the corporation lost the amount paid to the contractor as a down payment.

ii. Further, the claim that the Kshs46,421,425.20 was not included in the merchants' creditors is misleading since during the audit review, the amount was part of the total creditors amounting to KSh 458,102,000.

Committee recommendations

The Committee recommends that –

The Committee reprimands the then Accounting officer and the then officers in the accounting departments involved in preparation and review of financial statements for failing to adhere to the requirements of International Public Sector Accounting Standards as prescribed in the PFM Act, Cap 412A and Regulation 221 of the PFM (National Government) regulations, 2015.

7.0 Unsupported Government of Kenya (GOK) Loan

921. The Committee heard that, as disclosed under Note16(a) and 16(b) to the financial statements, the statement of financial position reflects Government of Kenya loan, principal and interest, of Kshs.13,656,916,000 and Kshs. 66,251,289,00 respectively.

922. As previously reported, the Corporation undertook a radio MW modernization project under the Japanese loan guaranteed by the Government of Kenya amounting to Kshs.15,441,716,710 on 28 June, 1989. During the year under review, Kshs.726,859,000 was paid by the National Treasury on behalf of Corporation increasing the principal from Kshs.12,930,056,586 as at 30 June, 2018 to Kshs.13,656,916,000 as at 30 June, 2019. The financial statements reflect only the principal amount loan but the payment by The National Treasury to JICA includes principal and interest. However, Management has not disclosed the outstanding principal amount and interest owed to the Japanese Government or whether the National Treasury has taken over the loan obligations.

923. Further, during the year under review, Kshs.7,883,875,000 was charged in respect of interest and reflected under administration costs in Note 4(a), resulting to cumulative interest charged of Kshs.66,251,289,000 as at 30 June, 2019 which is more than five (5) times the initial loan of Kshs.15,441,716,710. The National Treasury continue to charge the interest at the market rates based on the amount of loan repaid in complete disregard of 'In duplum rule', which provides, *inter alia,* that interest ceases to accumulate upon any amount of loan owing once the accrued interest equals the amount of loan advanced.

924. Under the circumstances, the accuracy, completeness and validity of the loan and interest balance of Kshs.13,656,916,000 and Kshs.66,251,289,000 respectively reflected in the statement of financial position as at 30 June, 2018 could not be confirmed.

Management response

925. The management informed the Committee that, In 1989, the Government of Kenya guaranteed Modernization loan from Overseas Economic Cooperation Fund (OECF) sum of Japanese Yen. 15,441,716,710 extended to KBC. The Corporation was projected to pay the Principal plus interest through TV and Radio permits which was later scrubbed in the year 2003. Due to cash flow challenges in KBC and inability to pay the loan National Planning and Treasury assumed the responsibility of paying the principal and interest and charge or send invoices to KBC. To date Ministry of National Planning and Treasury has paid Kshs 13,656,916,000 towards the principal and Kshs66,251,289,000 towards accrued interest totalling to Kshs 79,908,205,000 as at 30^{th} June 2019.

926. The management through the Board of Directors have discussed the accrued liability and held consultative meetings with The National Treasury and Planning through the Ministry of Information, Communication and Technology requesting to write-off the loan to help KBC restructure its balance sheet to attract public private partnership (PPP) to help KBC utilize its huge asset base. Also the information has been captured in the Cabinet Memo to be presented before Cabinet for consideration for request to be written off.

Committee observations

The Committee observed that –

i. The OECF loan had been guaranteed by the Government in 1989 funded the Kenya Broadcasting Corporation's modernization programme, a project mooted out of a study by the Government in February 1988. However, arising from the status of the project, the study might have been misleading.

ii. There was no loan agreement between the National Treasury and KBC. The principal amount and interest due from the Corporation in respect of the Japanese loan but owing to National Treasury having taken over the loan obligations could not be confirmed.

iii. The National Treasury has been paying OECF Japanese loan on behalf of the Corporation. However, the National Treasury included interest amount of Kshs. Kshs.66,251,289,000 which is more than five (5) times the initial loan of Kshs.15,441,716,710 contrary to the 'In duplum rule',

Committee recommendations

The Committee recommends that –

Within three months upon adoption of this report, the EACC should investigate the officers involved in acquiring and approving the loan and those involved in the pre-requisite study by the Government in February 1988 with a view to establishing any economical crimes in relation to providing misleading economic information for the officer's own benefit or that of a third party that led to the loss of the initial loan of Yen 15.441 billion, equivalent to Ksh 8,287,588,398. Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the financial leakages/ financial impropriety.

05/08/25

HON. EMMANUEL WANGWE CBS, MP
CHAIRPERSON – PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES, ADMINISTRATION AND AGRICULTURE

REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – (THIRD SESSION 2024)

THE NATIONAL ASSEMBLY

PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES ADMINISTRATION & AGRICULTURE

DIRECTORATE OF AUDIT, APPROPRIATIONS AND GENERAL PURPOSE COMMITTEES

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