

PUBLIC INVESTMENTS

23RD REPORT

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 02 JUL 2020	DAY.
TABLED BY:	
CLERK-AT THE-TABLE:	

VOLUME II

COMMITTEE MINUTES

MINUTES OF THE 22ND SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 25TH JUNE 2020 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:42 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Gladys Nyasuna Wanga, CBS, MP
4. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
5. The Hon. Purity Wangui Ngirici, MP
6. The Hon. Justus Kizito Mugali, MP
7. The Hon. John Muchiri Nyaga, M.P
8. The Hon. Thuku Zachary Kwenya, M.P
9. The Hon. Joash Nyamache Nyamoko, HSC, MP
10. The Hon. James Kamau Githua Wamacukuru, M.P
11. The Hon. Raphael Bitta Sauti Wanjala, MP

ABSENT WITH APOLOGY

1. The Hon. Omar Mohamed Maalim Hassan, MP.
2. The Hon. Mohamed Hire Garane, M.P
3. The Hon. Paul Kahindi Katana, MP
4. The Hon. Mary Wamaua Njoroge, MP
5. The Hon. Rashid Kassim Amin, MP
6. The Hon. Babu Owino Paul Ongili, MP
7. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

Mr. Evans Oanda	-	Senior Clerk Assistant
Mr. Mohamed Buru	-	Second Clerk Assistant

MIN/PIC/2020/120: PRELIMINARIES

The Chairman called the meeting to order at forty two minutes past ten o'clock and prayed.

MIN/PIC/2020/121: COMMUNICATIONS FROM THE CHAIR

There was no communication issued by the Chairman.

MIN/PIC/2020/122: CONFIRMATION OF MINUTES

This agenda item was deferred to a later.

MIN/PIC/2020/123: MATTERS ARISING

No matter arose under this agenda item.

MIN/PIC/2020/124: CONSIDERATION OF THE PIC'S 23RD DRAFT REPORT

The Committee went through the draft report on the accounts of the following state corporations and adopted the contents therein:

1. Kenya Ports Authority for the Financial Years 2014/15 TO 2016/17
2. National Housing Corporation (NHC) for the Financial Years 2012/13 to 2016/17- considering that the Committee is yet to consider most of the audit reservations on the NHC, the Committee resolved to stand it down such that it should be considered in the next PIC report.
3. National Bank of Kenya
4. Kenya Revenue Authority (KRA) FYs 2014/15
5. The National Social Security Fund (NSSF) FYS 2016/17 and 2017/18
6. The Kenya National Highways Authority (KeNHA) for the Financial Years 2014/2015 And 2015/2016

It was thereafter resolved that the draft report be processed for tabling the week commencing 29th June 2020.

MIN/PIC/2020/125: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2020/126: ADJOURNMENT

The meeting was adjourned at forty six minutes past eleven O'clock. The next meeting will be held on notice.

Signed

Date.....

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

MINUTES OF THE 21ST SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY 24TH JUNE 2020 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 3:10 P.M.

PRESENT

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

ABSENT WITH APOLOGY

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

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

Mr. Evans Oanda - Senior Clerk Assistant
Mr. Mohamed Buru - Second Clerk Assistant

MIN/PIC/2020/113: PRELIMINARIES

The Chairman called the meeting to order at ten minutes past three o'clock and prayed.

MIN/PIC/2020/114: COMMUNICATIONS FROM THE CHAIR

There was no communication issued by the Chairman.

MIN/PIC/2020/115: CONFIRMATION OF MINUTES

Minutes of the previous meeting were confirmed as follows:

1. Minutes of the 18th sitting held on 17th June 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Justus Kizito, MP and seconded by the Hon. Prof. Mohamud Sheikh, MP;
2. Minutes of the 19th sitting held on 17th June 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Raphael Wanjala, MP and seconded by the Hon. Prof. Mohamud Sheikh, MP;
3. Minutes of the 20th sitting held on 18th June 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Prof. Mohamud Sheikh, MP and seconded by the Hon. Justus Kizito, MP;

MIN/PIC/2020/116: MATTERS ARISING

No matter arose under this agenda item.

MIN/PIC/2020/117: CONSIDERATION OF THE PIC'S 23RD DRAFT REPORT

The Committee went through the draft report on the accounts of the following state corporations and adopted the contents therein:

1. KENYA MARITIME AUTHORITY FYS 2015/16 TO 2016/17 - starting from Plant, Property and Equipment in 2016/17.

The Committee resolved to step down all the queries relating to the construction of the KMA headquarter so as to hear from the contractor first. The Committee had written to the contractor requesting for representation but has not received any response on the information requested so far. This query will be addressed in the next PIC report.

2. NATIONAL HOSPITAL INSURANCE FUND (NHIF) (FY 2017/18)- the committee resolved to stand down this corporation since the NHIF management had not appeared and made a representation on a majority of the queries.
3. TANA AND ATHI RIVERS DEVELOPMENT AUTHORITY (TARDA) (FYS 2014/15 TO 2017/18)

MIN/PIC/2020/118: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2020/119: ADJOURNMENT

The meeting was adjourned at five O'clock. The next meeting will be held on Thursday 25th June 2020 at 10:00am to proceed with consideration of the 23rd PIC report.

Signed

Date.....

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

MINUTES OF THE 20TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 18TH JUNE 2020 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:30 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Babu Owino Paul Ongili, MP
4. The Hon. Joash Nyamache Nyamoko, HSC, MP
5. The Hon. Mohamed Hire Garane, M.P.
6. The Hon. Gladys Nyasuna Wanga, CBS, MP
7. The Hon. Paul Kahindi Katana, MP
8. The Hon. Mary Wamaua Njoroge, MP
9. The Hon. Rashid Kassim Amin, MP
10. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
11. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
12. The Hon. Purity Wangui Ngirici, MP
13. The Hon. Justus Kizito Mugali, MP

ABSENT WITH APOLOGY

1. The Hon. John Muchiri Nyaga, M.P
2. The Hon. Thuku Zachary Kwenya, M.P
3. The Hon. James Kamau Githua Wamacukuru, M.P
4. The Hon. Omar Mohamed Maalim Hassan, MP.
5. The Hon. Raphael Bitta Sauti Wanjala, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

Mr. Evans Oanda - Senior Clerk Assistant

MIN/PIC/2020/107: PRELIMINARIES

The Chairman called the meeting to order at thirty minutes past ten o'clock and prayed.

MIN/PIC/2020/108: COMMUNICATIONS FROM THE CHAIR

There was no communication issued by the Chairman.

MIN/PIC/2020/109: CONFIRMATION OF MINUTES

This agenda item was deferred.

MIN/PIC/2020/110: CONSIDERATION OF THE PIC'S 23RD DRAFT REPORT

The Committee went through the draft report on the accounts of the following state corporations and adopted the contents therein:

1. Kenya National Assurance FYs 2014/15 to 2017/2018
2. Kenya Institute of Curriculum Development 2013/14 to 2016/18
3. Engineers Board of Kenya FYs 2014/15 to 2016/18
4. Kenya Universities and Colleges Central Placement Services FYs 2014/15 to 2016/17
5. Commission for University Education 2016/17
6. Kenya Medical Training College FYs 2012/2013 to 2016/17
7. National Campaign Against Drug Abuse for the FYs 2015/16 to 2016/18
8. National Transport and Safety Authority FYs 2015/16 to 2016/18
9. Export Promotion Council FYs 2010/11 to 2017/2018
10. KEPHIS FYs 2011/12 to 2016/17
11. Ewaso Nyiro South Development Authority FYs 2012/3 to 2016/17
12. Kenya National Commission for UNESCO FYs 2014/15 to 2017/18
13. Kenya Literature Bureau FYs 2014/15/15 to 2017/18
14. Coast Development Authority FYs 2012/13 to 2017/18
15. Coast Water Services Board FYS 2015/16 2016/17
16. Kenya Maritime Authority FYs 2015/16 to 2016/17- the committee stopped at Plant. Property and Equipment in 2016/17

MIN/PIC/2020/111: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2020/112: ADJOURNMENT

The meeting was adjourned at twenty three minutes past twelve O'clock. The next meeting will be held on Wednesday 24th June 2020 at 10:00am to proceed with consideration of the 23rd PIC report.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date..... 24/06/2020

MINUTES OF THE 19TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY 17TH JUNE 2020 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 3:30 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Babu Owino Paul Ongili, MP
4. The Hon. Joash Nyamache Nyamoko, HSC, MP
5. The Hon. Justus Kizito Mugali, MP
6. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
7. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
8. The Hon. Raphael Bitta Sauti Wanjala, MP
9. The Hon. Mohamed Hire Garane, M.P.

ABSENT WITH APOLOGY

1. The Hon. Paul Kahindi Katana, MP
2. The Hon. Mary Wamaua Njoroge, MP
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. John Muchiri Nyaga, M.P
5. The Hon. Gladys Nyasuna Wanga, CBS, MP
6. The Hon. Purity Wangui Ngirici, MP
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. James Kamau Githua Wamacukuru, M.P
9. The Hon. Omar Mohamed Maalim Hassan, MP.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

Mr. Evans Oanda - Senior Clerk Assistant

MIN/PIC/2020/101: PRELIMINARIES

The Chairman called the meeting to order at thirty minutes past three o'clock and prayed.

MIN/PIC/2020/102: COMMUNICATIONS FROM THE CHAIR

There was no communication issued by the Chairman.

MIN/PIC/2020/103: CONFIRMATION OF MINUTES

This agenda item was deferred.

MIN/PIC/2020/104: CONSIDERATION OF THE PIC'S 23RD DRAFT REPORT

The Committee went through the draft report on the accounts of the following state corporations and adopted the contents therein:

1. The Kenya ferry services FYs 2015/15 to 2017/18
2. Kenya National Assurance FYs 2014/15 to 2017/2018

MIN/PIC/2020/105: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2020/106: ADJOURNMENT

The meeting was adjourned at thirty minutes past twelve O'clock. The next meeting will be held on Thursday 18th June 2020 at 10:00am to proceed with consideration of the 23rd PIC report.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date..... 24/06/2020

MINUTES OF THE 18TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY 17TH JUNE 2020 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:30 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Babu Owino Paul Ongili, MP
4. The Hon. Joash Nyamache Nyamoko, HSC, MP
5. The Hon. Justus Kizito Mugali, MP
6. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
7. The Hon. Omar Mohamed Maalim Hassan, MP.
8. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP

ABSENT WITH APOLOGY

1. The Hon. Paul Kahindi Katana, MP
2. The Hon. Mary Wamaua Njoroge, MP
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. Mohamed Hire Garane, M.P.
5. The Hon. Raphael Bitta Sauti Wanjala, MP
6. The Hon. John Muchiri Nyaga, M.P
7. The Hon. Gladys Nyasuna Wanga, CBS, MP
8. The Hon. Purity Wangui Ngirici, MP
9. The Hon. Thuku Zachary Kwenya, M.P
10. The Hon. James Kamau Githua Wamacukuru, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

Mr. Evans Oanda - Senior Clerk Assistant
Mr. Mohamed Boru - Second Clerk Assistant

MIN/PIC/2020/094: PRELIMINARIES

The Chairman called the meeting to order at thirty minutes past ten o'clock and prayed.

MIN/PIC/2020/095: COMMUNICATIONS FROM THE CHAIR

There was no communication issued by the Chairman.

MIN/PIC/2020/096: CONFIRMATION OF MINUTES

Minutes of the previous meetings were confirmed and signed as follows:

1. Minutes of the 10th sitting held on 23rd March 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Joash Nyamoko, MP and seconded by the Hon. Omar Maalim, MP;
2. Minutes of the 11th sitting held on 23rd April 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Prof. Mohamud Sheikh, MP and seconded by the Hon. Joash Nyamoko, MP;
3. Minutes of the 12th sitting held on 3rd June 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Babu Owino, MP and seconded by the Hon. Abdullswamad Nassir, MP;
4. Minutes of the 13th sitting held on 3rd June 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Prof. Mohamud Sheikh, MP and seconded by the Hon. Babu Owino, MP;
5. Minutes of the 14th sitting held on 4th June 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Babu Owino, MP and seconded by the Hon. Justus Kizito, MP;
6. Minutes of the 15th sitting held on 10th June 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Joash Nyamoko, MP and seconded by the Hon. Babu Owino, MP;
7. Minutes of the 16th sitting held on 10th June 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Babu Owino, MP and seconded by the Hon. Abdullswamad Nassir, MP;
8. Minutes of the 17th sitting held on 11th June 2020 were confirmed as a true record of the proceedings after being proposed by the Hon. Babu Owino, MP and seconded by the Hon. Joash Nyamoko, MP;

MIN/PIC/2020/097: MATTERS ARISING

No matter arose under this agenda item.

MIN/PIC/2020/098: CONSIDERATION OF THE PIC'S 23RD DRAFT REPORT

The Committee went through the draft report on the following and adopted the contents therein:

1. audit reservations for the remaining paragraphs on the National Irrigation Board starting from paragraph on Irrigation projects (2015/16 FY);
2. the accounts of the Kenya Veterinary Board for the FYs 2014/15 to 2017/18
3. the CBK for the FYs 2012/13 to 207/18;

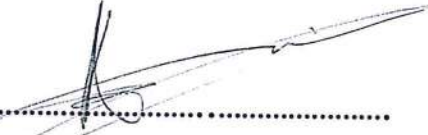
MIN/PIC/2020/099: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2020/100: ADJOURNMENT

The meeting was adjourned at thirty minutes past twelve O'clock. The next meeting will be held on Wednesday 17th June 2020 at 3:00 pm to proceed with consideration of the 23rd PIC report.

Signed


The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....

24/06/2020

MINUTES OF THE 17TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY 11TH JUNE 2020 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 11:00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. John Muchiri Nyaga, M.P
4. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
5. The Hon. Gladys Nyasuna Wanga, CBS, MP
6. The Hon. Babu Owino Paul Ongili, MP
7. The Hon. Purity Wangui Ngirici, MP
8. The Hon. Joash Nyamache Nyamoko, HSC, MP
9. The Hon. Justus Kizito Mugali, MP
10. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
11. The Hon. Omar Mohamed Maalim Hassan, MP.
12. The Hon. Thuku Zachary Kwenya, M.P
13. The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

1. The Hon. Paul Kahindi Katana, MP
2. The Hon. Mary Wamaua Njoroge, MP
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. Mohamed Hire Garane, M.P.
5. The Hon. Raphael Bitta Sauti Wanjala, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

Mr. Evans Oanda	-	Senior Clerk Assistant
Mr. Mohamed Boru	-	Second Clerk Assistant

MIN/PIC/2020/088: PRELIMINARIES

The Chairman called the meeting to order at eleven o'clock and prayed.

MIN/PIC/2020/089: COMMUNICATIONS FROM THE CHAIR

There was no communication issued by the Chairman.

MIN/PIC/2020/090: CONFIRMATION OF MINUTES

This agenda item was deferred

MIN/PIC/2020/091: CONSIDERATION OF THE PIC'S 23RD DRAFT REPORT

The Committee went through the draft report on the audit reservations for National Irrigation Board (FY 2014/15 - FY 2016/17 and made its observations and recommendations on every query up to but excluding 'IRRIGATION PROJECTS (2015/16). It further resolved as follows:

- Have a paragraph in the General Observations and recommendations section that speaks to the persistent failure of the accounting officers to submit audit reports to the auditor general for audit within the required timelines and sanctions therein as per section 62 of the Public Audit Act of 2015.
- Have a paragraph in the General observations and recommendations asking KRA not to charge interest on late payments to KRA occasioned by delay in exchequer releases
- Expunge the audit observations and recommendations from the current report such that it is done in a separate report after meeting/ hearing from all the parties concerned in the matter.
- Meet next week on Wednesday 17th June 2020 the whole day and Thursday 18th June 2020 in the morning to conclude consideration the 23rd PIC report.
- Meet on Wednesday 17th June 2020 to adopt the joint committee report on extension time limit of submission of audit reports and recruitment of the auditor general.

MIN/PIC/2020/092: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2020/093: ADJOURNMENT

The meeting was adjourned at ten minutes past twelve O'clock. The next meeting will be held on Wednesday 17th June 2020 at 10:00am to proceed with consideration of the 23rd PIC report.

Signed

Date.....17/06/2020.....

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

MINUTES OF THE 16TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY 10TH JUNE 2020 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 3:00 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Raphael Bitta Sauti Wanjala, MP
4. The Hon. John Muchiri Nyaga, M.P
5. The Hon. Gladys Nyasuna Wanga, CBS, MP
6. The Hon. Babu Owino Paul Ongili, MP

ABSENT WITH APOLOGY

1. The Hon. Paul Kahindi Katana, MP
2. The Hon. Purity Wangui Ngirici, MP
3. The Hon. James Kamau Githua Wamacukuru, M.P
4. The Hon. Mary Wamaua Njoroge, MP
5. The Hon. Omar Mohamed Maalim Hassan, MP.
6. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
7. The Hon. Justus Kizito Mugali, MP
8. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
9. The Hon. Rashid Kassim Amin, MP
10. The Hon. Joash Nyamache Nyamoko, HSC, MP
11. The Hon. Mohamed Hire Garane, M.P.
12. The Hon. Thuku Zachary Kwenya, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------|---|------------------------|
| Mr. Evans Oanda | - | Senior Clerk Assistant |
| Mr. Mohamed Boru | - | Second Clerk Assistant |

MIN/PIC/2020/082: PRELIMINARIES

The Chairman called the meeting to order at three o'clock and prayed.

MIN/PIC/2020/083: COMMUNICATIONS FROM THE CHAIR

The Chairman informed members that the Secretariat was in receipt of documents from BOMAS of Kenya relating to its commutations with the mother ministry on the custody of bomas od kenya's title deed and the matter relating to compulsory acquisition of bomas land. The Committee used the said documents to update its 23rd report on examination of state corporations.

MIN/PIC/2020/084: CONFIRMATION OF MINUTES

This agenda item was deferred

MIN/PIC/2020/085: CONSIDERATION OF THE PIC'S 23RD DRAFT REPORT

The Committee went through the draft report on all the audit reservations on the following state corporations and made its observations and recommendations on every query:

1. THE COMMUNICATION AUTHORITY OF KENYA FOR THE FINANCIAL YEARS
2. NATIONAL DROUGHT MANAGEMENT AUTHORITY (FY 2013-2017/18)
3. COUNCIL FOR LEGAL EDUCATION (FY 2015/16 -2017/18)
4. NEW KENYA COOPERATIVE CREAMERIES (FY 2011/12 - 2017/18)

The committee resolved to seek the for the following information from the NKCC

- i) For how long was the debt owed by Uchumi and Nakumatt accumulated - please give an itemized breakdown on how the amount accumulated to the current figures;
- ii) what was the payment plan entered between kcc and uchumi/ nakumaat for supply of milk and milk products to nakumatt and uchumi ? At what intervals was KCC supposed to be paid for the said supplies ?
- iii) why did kcc continue supplying milk to Uchumi after default of payment?

5. KENYA INVESTMENT AUTHORITY (FY 2014/15 - 2016/17)

MIN/PIC/2020/086: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2020/087: ADJOURNMENT

The meeting was adjourned at two minutes past four O'clock. The next meeting will be held on Thursday 11th June 2020 at 10:00am to proceed with consideration of the 23rd PIC report.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....17/06/2020

MINUTES OF THE 15TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY 10TH JUNE 2020 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.40 A.M.

PRESENT

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

ABSENT WITH APOLOGY

1. The Hon. Paul Kahindi Katana, MP
2. The Hon. Purity Wangui Ngirici, MP
3. The Hon. James Kamau Githua Wamacukuru, M.P
4. The Hon. Mary Wamaua Njoroge, MP
5. The Hon. Omar Mohamed Maalim Hassan, MP.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

Mr. Evans Oanda - Senior Clerk Assistant

MIN/PIC/2020/076: PRELIMINARIES

The Chairman called the meeting to order at forty minutes past ten o'clock and prayed.

MIN/PIC/2020/077: COMMUNICATIONS FROM THE CHAIR

There was no communication issued.

MIN/PIC/2020/078: CONFIRMATION OF MINUTES

This agenda item was deferred

MIN/PIC/2020/079: CONSIDERATION OF THE PIC'S 23RD DRAFT REPORT

The Committee went through the draft report on all the audit reservations on the following state corporations and made its observations and recommendations on every query:

1. THE COMMUNICATION AUTHORITY OF KENYA FOR THE FINANCIAL YEARS 2013/14 TO 2016/17- from audit reservations on bad debts to the end.
2. BOMAS OF KENYA (FY 2013/14 - FY 2016/17)
3. KENYA NUCLEAR POWER AND ENERGY AGENCY (FY 2013/14 – 2015/16)
4. KENYATTA NATIONAL HOSPITAL (2013/14 TO 2016/17)- the committee resolved to exclude it from the audit report considering that there were many audit reservations the committee had not interrogated in the formal meeting with the management of KNH

MIN/PIC/2020/080: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2020/081: ADJOURNMENT

The meeting was adjourned at twenty-five minutes past twelve O'clock. The next meeting will be held on Wednesday 10th June 2020 at 2:00pm to proceed with consideration of the 23rd PIC report.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....17/06/2020

MINUTES OF THE 14TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 4TH JUNE 2020 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.27 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Justus Kizito Mugali, MP
5. The Hon. Gladys Nyasuna Wanga, CBS, MP
6. The Hon. John Muchiri Nyaga, M.P
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. Omar Mohamed Maalim Hassan, MP.
9. The Hon. Babu Owino Paul Ongili, MP
10. The Hon. Mary Wamaua Njoroge, MP
11. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
12. The Hon. Purity Wangui Ngirici, MP
13. The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

1. The Hon. Rashid Kassim Amin, MP
2. The Hon. Paul Kahindi Katana, MP
3. The Hon. Joash Nyamache Nyamoko, HSC, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Mohamed Hire Garane, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

Mr. Evans Oanda - Senior Clerk Assistant

MIN/PIC/2020/070: PRELIMINARIES

The Chairman called the meeting to order at twenty seven minutes past ten o'clock and prayed.

MIN/PIC/2020/071: COMMUNICATIONS FROM THE CHAIR

There was no communication issued.

MIN/PIC/2020/072: CONFIRMATION OF MINUTES

This agenda item was deferred

MIN/PIC/2020/073: CONSIDERATION OF THE PIC'S 23RD DRAFT REPORT

The Committee went through the draft report on all the audit reservations on the following state corporations and made its observations and recommendations on every query:

1. KENYA MEDICAL PRACTITIONERS AND DENTISTS BOARD FOR THE FINANCIAL YEARS 2013/14 TO 2016/17
2. KENYA ACCOUNTANTS AND SECRETARIES NATIONAL EXAMINATION BOARD (KASNEB) FOR THE FINANCIAL YEARS 2015/16 AND 2016/17
3. LAPSET CORRIDOR DEVELOPMENT AUTHORITY FOR FY 2013/14 TO 2015/16
4. NATIONAL COMMUNICATION SECRETARIAT FOR THE FY 2008/09 TO 2016/17
5. KENYA URBAN ROADS AUTHORITY (KURA) FOR FY 2014/15 TO FY 2016/17
6. KENYA NATIONAL EXAMINATIONS COUNCIL FOR FY 2015/16 AND 2016/17
7. PUBLIC PROCUREMENT REGULATORY AUTHORITY FOR FY 2014/15 TO 2016/17
8. KENYA WILDLIFE SERVICE FOR FY 2014/15 TO 2016/17
9. SACCOS SOCIETIES REGULATORY AUTHORITY (SASRA) FOR THE FINANCIAL YEARS 2014/15 TO 2016/17

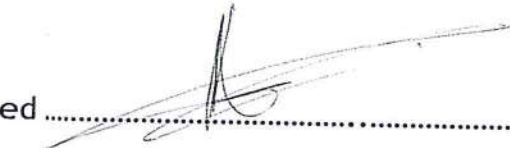
10. THE SOUTH EASTERN KENYA UNIVERSITY FOR THE FINANCIAL YEARS 2012/13 TO 2016/17
11. PEST CONTROL PRODUCT BOARD FOR THE FINANCIAL YEARS 2013/14 TO 2016/17
12. STATE CORPORATIONS APPEALS TRIBUNAL FOR THE FINANCIAL YEARS 2013/14 TO 2016/17
13. THE COMMUNICATION AUTHORITY OF KENYA FOR THE FINANCIAL YEARS 2013/14 TO 2016/17 - did up to and including unsupported board expenses (paragraph 75).

MIN/PIC/2020/074: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2020/075: ADJOURNMENT

The meeting was adjourned at thirty six minutes past twelve O'clock. The next meeting will be held on Wednesday 10th June 2020 at 10:00am to proceed with consideration of the 23rd PIC report.

Signed 

Date..... 17/06/2020

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

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MINUTES OF THE 13TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY 3RD JUNE 2020 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 2.30P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Raphael Bitta Sauti Wanjala, MP
4. The Hon. Gladys Nyasuna Wanga, CBS, MP
5. The Hon. John Muchiri Nyaga, M.P
6. The Hon. Thuku Zachary Kwenya, M.P
7. The Hon. Omar Mohamed Maalim Hassan, MP.
8. The Hon. Babu Owino Paul Ongili, MP
9. The Hon. Mary Wamaua Njoroge, MP
10. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
11. The Hon. Mohamed Hire Garane, M.P.

ABSENT WITH APOLOGY

1. The Hon. Justus Kizito Mugali, MP
2. The Hon. Rashid Kassim Amin, MP
3. The Hon. Purity Wangui Ngirici, MP
4. The Hon. Paul Kahindi Katana, MP
5. The Hon. James Kamau Githua Wamacukuru, M.P
6. The Hon. Joash Nyamache Nyamoko, HSC, MP
7. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

Mr. Evans Oanda - Senior Clerk Assistant

MIN/PIC/2020/064: PRELIMINARIES

The Chairman called the meeting to order at eleven minutes past three o'clock and prayed.

MIN/PIC/2020/065: COMMUNICATIONS FROM THE CHAIR

There was no communication issued.

MIN/PIC/2020/066: CONFIRMATION OF MINUTES

This agenda item was deferred

MIN/PIC/2020/067: CONSIDERATION OF THE PIC'S 23RD DRAFT REPORT

The Committee went through the draft report on the remaining audit reservations for KAA; and the entire KPC and made its observations and recommendations on every query.

MIN/PIC/2020/068: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2020/069: ADJOURNMENT

The meeting was adjourned at fifty minutes past five O'clock. The next meeting will be held on 4th June 2020 at 10:00am to proceed with consideration of the 23rd PIC report.

Signed

Date..... 17/06/2020

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

MINUTES OF THE 12TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY 3RD JUNE 2020 IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.40A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Gladys Nyasuna Wanga, CBS, MP
6. The Hon. John Muchiri Nyaga, M.P
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. Omar Mohamed Maalim Hassan, MP.
9. The Hon. Babu Owino Paul Ongili, MP
10. The Hon. Mary Wamaua Njoroge, MP

ABSENT WITH APOLOGY

1. The Hon. Justus Kizito Mugali, MP
2. The Hon. Rashid Kassim Amin, MP
3. The Hon. Purity Wangui Ngirici, MP
4. The Hon. Mohamed Hire Garane, M.P.
5. The Hon. Paul Kahindi Katana, MP
6. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
7. The Hon. James Kamau Githua Wamacukuru, M.P
8. The Hon. Joash Nyamache Nyamoko, HSC, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

Mr. Evans Oanda - Senior Clerk Assistant

MIN/PIC/2020/058: PRELIMINARIES

The Chairman called the meeting to order at forty minutes past ten o'clock and prayed.

MIN/PIC/2020/059: COMMUNICATIONS FROM THE CHAIR

There was no communication issued.

MIN/PIC/2020/060: CONFIRMATION OF MINUTES

This agenda item was deferred

MIN/PIC/2020/061: CONSIDERATION OF THE PIC'S 23RD DRAFT REPORT

The Committee went through the draft report on the audit reservations for KAA up to para 13 on the Proposed rehabilitation of runway, apron and car park at Nanyuki Airstrip (FY 2015/2016) and made its observations and recommendations on every query.

MIN/PIC/2020/062: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/2020/063: ADJOURNMENT

The meeting was adjourned at twenty three minutes past eleven O'clock. The next meeting will be held on 3rd June 2020 at 2:30pm to proceed with consideration of the 23rd PIC draft report.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date..... 17/06/2020

MINUTES OF THE 87TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 26TH NOVEMBER 2019 IN THE COMMITTEE ROOM, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Joash Nyamache Nyamoko, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Omar Mohamed Maalim Hassan, MP.
6. The Hon. Gladys Wanga, MP
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. Babu Owino Paul Ongili, MP
9. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
10. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
11. The Hon. Mohamed Hire Garane, M.P.
12. The Hon. Rashid Kassim Amin, MP
13. The Hon. Purity Wangui Ngirici, MP
14. The Hon. Justus Kizito Mugali, MP

ABSENT WITH APOLOGY

1. The Hon. John Muchiri Nyaga, M.P
2. The Hon. Mary Wamaua Njoroge, MP
3. The Hon. James Kamau Githua Wamacukuru, M.P
4. The Hon. Paul Kahindi Katana, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

IN ATTENDANCE

- | | | |
|--------------------------|---|------------------------------------|
| 1. Mr. Leonard Opar | - | Director, Audit |
| 2. Mr. John Wakaba Kuria | - | Manager, Audit |
| 3. Mr. Joshiah Oyuko | - | Manager, Audit |
| 4. Mr. James Sitienei | - | Inspectorate of State Corporations |

MIN/PIC/651/2019: PRELIMINARIES

The Chairperson called the meeting to order at twenty three minutes past ten O'clock and prayed.

The Committee expressed concern that the Office of the Auditor General had not conducted the special audit on the NSSF Hazina Trade Center project as resolved by

the National Assembly.

The Committee resolved to follow up with the OAG to establish the reasons for the delay as well as an indication on when the special audit will be finalized.

MIN/PIC/652/2019: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to a later date.

MIN/PIC/653/2019: EXAMINATION OF AUDITED ACCOUNTS OF NATIONAL SOCIAL SECURITY FUND

Gen. (Rtd.) Julius Karangi, the Board Chairperson of the National Social Security Fund accompanied by Mr. Francis Atwoli (Board Trustee), Prof. Marion Mutungi (Trustee), Ms. Jacqueline Mugo (Trustee), Hon. Joseph Lekuton (Trustee), Mr. Mark Obuya (Trustee), Ms. Damaris Muhika (Trustee), Mr. Peter Tum (Principal Secretary, Labour), Prof. Dulacha Galgalo (Alternate to the Treasury PS), Mr. Anthony Omerikwa, (Managing Trustee), Mr. Austin Ouko (Ag. Corporation Secretary) and Mr. Peter Muriuki (Manager, Property Development) appeared before the Committee to adduce evidence on historical audit queries that have recurred in the report of the Auditor General on the financial statements of the Fund.

They briefed the Committee as follows:

MIN/PIC/654/2019: DELAYED COMPLETION OF NATIONAL SOCIAL SECURITY FUND'S HAZINA TRADE CENTER

The statement of net assets available for benefits as at 30 June 2017 reflects a balance of Kshs. 20,777,695,787 under Developed Investment Property. Included in this figure is Kshs. 1,500,000,000 in respect to fair value of the Hazina Trade Centre, Nairobi.

As previously reported, the construction of Hazina Trade Centre, Nairobi commenced on 17 June 2013 and was to be undertaken in 155 weeks with an expected completion date of July 2016. However, as at 14 March 2018 the building was still incomplete and builders work had stalled after reaching 15th floor or 38% and Kshs. 1,887,744,544 spent on the project out of the total contract cost of Kshs. 6,715,218,188. All efforts should be made to ensure completion of the building to safeguard member's contributions.

Board Response

The major structural works on the building are completed. The completion date was extended from 30th June 2019 to 31st of December 2019 at the same Contract Sum of Kes 4,095,862,434 owing to delayed approvals. The Fund has made it clear to the contractor that it must stick to the revised completion date of 31st December or risk penalties for delayed completion.

Meanwhile the project is progressing well with the following major works proceeding:

1. Roofing;
2. External finishing (curtain walling);
3. Internal finishing (screeding and tiling);
4. Lift installation (manufacturing ongoing, delivery expected in December); and
5. Plumbing and electrical installations.

The latest valuation dated 1st November 2019 puts the value of work completed at KES 3,134,972,979.91 out of the total contract sum of KES 4,095,862,434.00 which translates to 77% completion rate. **Appendix I**

On the issue of the claim, the State Department of Public Works (SPDW) assessed and recommended an amount of KES 871,697,124.10 which was presented to the Fund on 12th April 2018. The contractor has on various dates written to demand payment of the claim indicating that it risks accruing penalty interest. **Appendix II**

At the 180th meeting of Board of Trustees held on 11th September, 2019 the Board resolved that ANY contractor's claim should be settled with the final account. **Appendix III**

The SDPW in their letter dated 15th April, 2019 advised the contractor as follows, **Appendix IV:**

- i. The proposed claim amount was only a recommendation by the project manager;
- ii. The proposed claim amounts to a variation to the contract and would be subject to the relevant regulatory processes before the Client can approve the same; and
- iii. Interest on delayed payment of the claim is therefore not applicable until such a time that the claim is agreed upon with the employer.

On 27th August, 2019 SDPW further advised the consultants against inclusion of evaluated claims on payment valuations without prior approval by the Fund. **Appendix V**

On 14th November 2019 the contractor wrote to the Fund seeking interest due to late settlement of the claim at Kshs. 243,672,873 i.e. Kshs 871,697.10 x 553/364 (delay period) X 18.4%. The SPDW has advised that no accrued interest amount is not payable at the moment based on their earlier advise and letters dated 15th April 2019 and 27th August 2019. **Appendix VI**

Committee Observations

The Committee made the following observations:

1. The Trustee representing the Central Organization of Trade Unions (COTU), Mr. Francis Atwoli stated that the Hazina Trade Center was a flawed project that should not have been implemented. He noted that the project should not have been revisited in 2004 as the Central Business District was not a viable place to invest in office space due to congestion. Mr. Atwoli further stated that the Management and Board of NSSF in 2004 should be prosecuted for misuse of public funds.
2. The completion date for the project was extended from 30th June 2019 to 31st of December 2019 at the same contract sum of Kes 4,095,862,434 owing to delayed approvals.
3. The latest valuation dated 1st November 2019 puts the value of work completed at KES 3,134,972,979.91 out of the total contract sum of KES 4,095,862,434.00 which translates to 77% completion rate.
4. The State Department of Public Works (SDoPW) was not involved in the project until the Board resolved to include them as per a Board resolution on 9th April, 2017. SDoPW did not know the actual amounts claimed by the contractor due to delayed completion of the project until they visited the site with the Public Investments Committee in March 2018.
5. The SDoPW assessed and recommended a claim amount of KES 871,697,124.10 which was presented to the Fund on 12th April 2018. The contractor has on various dates written to demand payment of the claim indicating that it risks accruing penalty interest.
6. At the 180th meeting of Board of Trustees held on 11th September, 2019 the Board resolved that any contractor's claim should be settled with the final account. The extract of the Board minutes provided as evidence was scanty in details and had not been confirmed.
7. The SDoPW in their letter dated 15th April, 2019 advised the contractor that the proposed claim amounts to a variation to the contract and would be subject to the relevant regulatory processes before NSSF can approve the same. Further, SDoPW noted that interest on delayed payment of the claim is therefore not applicable until such a time that the claim is agreed upon with the employer.
8. On 27th August, 2019 SDoPW further advised the consultants against inclusion of evaluated claims on payment valuations without prior approval by the Fund.
9. On 14th November 2019 the contractor wrote to the Fund seeking interest due to late settlement of the claim at Kshs. 243,672,873 i.e. Kshs 871,697.10 x 553/364 (delay period) X 18.4%. The SPDW has advised that no accrued interest amount is not payable at the moment based on their earlier advise and letters dated 15th April 2019 and 27th August 2019.
10. NSSF had not made any progress in certifying the claim amount to allow for payment to the contractor.

Committee Resolutions

The Committee made the following resolutions:

1. The NSSF Board was asked to provide the full minutes of the Board's 180th sitting held in 11th September, 2019.
2. The Committee resolved to inquire into the matter of the Hazina Trade Center project from inception in 1994 to date.

MIN/PIC/655/2019: TOP MANAGEMENT OF THE NATIONAL SOCIAL SECURITY FUND SERVING IN ACTING CAPACITY

Among the top management team, there are a total of twelve (12) staff who are in an acting capacity.

The Managing Trustee position was advertised on 26 April 2019 and interviews were conducted on 27th June 2019. The Board is currently in the final stages of vetting and appointing a substantive Managing Trustee.

In 2009 the Fund commissioned PricewaterhouseCoopers (addressed herein as "PwC") to carry out a job evaluation exercise which involved reviewing the organisation structure, determining the staffing requirements for the Fund, conducting a remuneration survey, developing a grading and salary structure and establishing an estimated cost of assimilating staff to the new structures. PWC finalised the exercise and presented its report to the Fund in August 2011. The recommendations of the exercise were partially implemented. Over the last eight years the Fund has faced human resource challenges touching on staff career progression, remuneration structure, job grading and placement.

Despite the challenges no attempts had been made to carry out an organizational review except by the current Board. Reviews of organizational structures and job evaluations are industry standards to establish fitness of purpose every four to five years. As a result, the Fund competitively procured and contracted KPMG to undertake the organizational review.

The main deliverables of the review were organizational structure review and redesign, job evaluation and grading, workload analysis, skills assessments (competency listing and skills gap assessment report), market salary survey and pay structure design, and development of career paths.

KPMG has finalized the assignment and will hand over to the Board of Trustees all reports with the deliverables of the assignment during its meeting to be held on 6th December 2019.

The Board intends to advertise and competitively fill in the vacant positions of General Managers and Managers immediately after receiving the organizational review reports and documents.

Committee Observations

The Committee made the following observations:

1. Among the top management team, there are a total of twelve (12) staff who are in an acting capacity.
2. The Managing Trustee position was advertised on 26 April 2019 and interviews were conducted on 27th June 2019. Dr. Anthony Omerikwa was appointed as the substantive Managing Trustee on 21st November, 2019.
3. In 2009 the Fund commissioned PricewaterhouseCoopers to carry out a job evaluation exercise and the recommendations of the exercise were partially implemented.
4. In 2019, the Fund competitively procured and contracted KPMG to undertake the organizational review of its staff. KPMG has finalized the assignment and will hand over to the Board of Trustees all reports with the deliverables of the assignment during its meeting to be held on 6th December 2019.
5. The Board intends to advertise and competitively fill in the vacant positions of General Managers and Managers immediately after receiving the organizational review reports and documents

MIN/PIC/656/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/657/2019: ADJOURNMENT

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

Signed


The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date..... 13/12/2019.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. John Muchiri Nyaga, M.P
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. Thuku Zachary Kwenya, M.P
5. The Hon. Omar Mohamed Maalim Hassan, MP
6. The Hon. Joash Nyamache Nyamoko, HSC, MP
7. The Hon. Paul Kahindi Katana, MP
8. The Hon. Mohamed Hire Garane, M.P.

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
3. The Hon. Gladys Wanga, MP
4. The Hon. Mary Wamaua Njoroge, MP
5. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
6. The Hon. Justus Kizito Mugali, MP
7. The Hon. Raphael Bitta Sauti Wanjala, MP
8. The Hon. Babu Owino Paul Ongili, MP
9. The Hon. Purity Wangui Ngirici, MP
10. The Hon. James Kamau Githua Wamacukuru, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-----------------------|---|-------------------------|
| 1. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 2. Ms. Winfred Atieno | - | Audio Recording Officer |

MIN/PIC/647/2019: PRELIMINARIES

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

MIN/PIC/648/2019: CONSIDERATION OF THE DRAFT REPORT ON THE INQUIRY INTO SAFETY OF FERRIES OPERATED BY KENYA FERRY SERVICES

The Committee considered the draft report of its inquiry into the safety of ferries operated by Kenya Ferry Services and made the following additional observations:

1. There was a lack of succession planning by KMA to ensure continuity of service in inspection of maritime vessels and issuance of safety certificates. There are only two officers with the requisite competence to undertake inspection of vessels; the KMA Head of Maritime Safety, Capt. Mbarak Zaunga and KMA Port State Control Officer, Mr. Shaaban Tayari. The two are employed on contract and are in service despite being past retirement age.

2. The Kenya Ferry Services has an acting Head of Engineering who is holding the position following the retirement of the previous office holder. The Corporation is in the process of recruiting a new Head of Engineering to fill the position.

Committee Recommendations

The Committee made the following additional recommendations:

1. Funds for ferry repair and maintenance should be ring-fenced in future budgets for Kenya Ferry Services to ensure availability of funds for scheduled maintenance of the vessels.
2. The Kenya Maritime Authority should re-evaluate the ferry inspection procedure in place to check for lapses and weaknesses in the process. Measures should be put in place to ensure the inspection procedure has no loopholes and that vessels are comprehensively inspected before being issued with safety certificates.
3. Board appointees to the Kenya Ferry Services should be competent and qualified individuals to provide effective leadership and strategic direction for the organization. The Board should ensure that Board members are inducted and that their skills and knowledge are regularly enhanced given the specialized nature of the maritime industry.
4. The Ministry of Transport, Infrastructure, Housing and Urban Development should fast track the implementation of infrastructure projects that provide access to South Coast so as to reduce the over-reliance on the ferries operating at the Likoni and Mtongwe channels.
5. Kenya Maritime Authority should ensure there is succession planning in hiring and staffing of maritime vessel inspectors. The Authority should put in place measures to ensure younger inspectors are recruited and trained to provide for continuity in inspection of ferries and issuance of safety certificates.

MIN/PIC/649/2019: ADOPTION OF THE REPORT ON THE INQUIRY INTO SAFETY OF FERRIES OPERATED BY KENYA FERRY SERVICES

The Committee adopted the report on the inquiry into safety of ferries operated by Kenya Ferry Services through consensus.

MIN/PIC/650/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/651/2019: ADJOURNMENT

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

Signed.....

Date..... 28/11/2019

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 85TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 21ST NOVEMBER 2019 IN THE BOARD ROOM, KENYATTA NATIONAL HOSPITAL AT 10.00A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
3. The Hon. Gladys Wanga, MP
4. The Hon. Joash Nyamache Nyamoko, HSC, MP
5. The Hon. Mary Wamaua Njoroge, MP
6. The Hon. Omar Mohamed Maalim Hassan, MP
7. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
8. The Hon. Justus Kizito Mugali, MP
9. The Hon. Paul Kahindi Katana, MP
10. The Hon. Raphael Bitta Sauti Wanjala, MP
11. The Hon. John Muchiri Nyaga, M.P
12. The Hon. Rashid Kassim Amin, MP
13. The Hon. Thuku Zachary Kwenya, M.P

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Babu Owino Paul Ongili, MP
3. The Hon. Purity Wangui Ngirici, MP
4. The Hon. James Kamau Githua Wamacukuru, M.P
5. The Hon. Mohamed Hire Garane, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-----------------------|---|-------------------------|
| 1. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 2. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|------------------------|---|------------------------|
| 1. Mr. Daniel Ndungu | - | Deputy Director, Audit |
| 2. Mr. Anthony Muriuki | - | Manager, Audit |
| 3. Ms. Joshiah Oyuko | - | Manager, Audit |
| 4. Mr. John Wagura | - | Manager, Audit |

MIN/PIC/642/2019: PRELIMINARIES

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

MIN/PIC/643/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYATTA NATIONAL HOSPITAL

Dr. Evanson Kamuri, the Chief Executive Officer of the Kenyatta National Hospital accompanied by Mr. Michael Kihuga (Deputy Director, Finance), Mr. Calvin Nyachoti (Corporation Secretary), Mr. Job Makara (Deputy Director, Planning and Strategy)) and

Ms. Rose Mutemba (Chief Accountant) appeared before the Committee to adduce evidence on the audited accounts of Kenyatta National Hospital for the financial year 2013/14 to financial year 2016/17.

MIN/PIC/644/2019: BORROWINGS FY 2014/15

The Committee visited Kenyatta National Hospital to inspect equipment bought through a loan from the Spanish government that was the subject of an audit query for the Hospital for financial years 2012/13 to financial 2014/15.

As reported by the Auditor General, the borrowings balance of Kshs.1,199,863,000 as at 30 June, 2015 relates to a loan received in 2007/2008 from the Kingdom of Spain, in form of medical equipment. Available information indicate that the loan was payable by the Hospital at an interest rate 3% per annum on a reducing balance for the first six (6) years and thereafter, the interest plus principal for the next nine(9) years with effect from 1 July, 2008. However, and according to records availed for audit review, no interest has been paid or accrued in the seven financial years 2008/2009, 2009/2010, 2010/2011, 2011/2012, 2012/2013, 2013/2014 and 2014/2015.

Although indications are that the management has sought assistance from the Ministry of Health towards settlement of the loan, response from the ministry was not availed for audit review. As a result, it has not been possible to confirm the accuracy of the loan and that the long term liability balance of Kshs.1,199,863,000 as at 30 June, 2015 is fairly stated.

Management Response

In the year 2002 Kenyatta National Hospital (KNH) was facing financial challenges that affected clinical care. This led to service delivery issues which included the following amongst others:

- Inefficiency in provision of diagnostic services;
- Prolonged length of stay of patients, thus leading to congestion; and
- Inability to replace, rehabilitate medical equipment.

The Hospital through the Ministry of Health approached several partners for aid to upgrade major medical equipment. The Ministry of Health made a formal request to the Ministry of Finance who in turn approached the Royal Government of Spain, Saudi Arabia, China and the African Development Bank to consider and extend a grant to the Hospital.

Following a positive response from the Royal Government of Spain, a Technical Team visited Spain in February 2004 to enable the Hospital assess the quality of the equipment on offer. The team agreed on the equipping of the following prioritized areas: Accident and Emergency Unit; Radiology; Cardiology; Intensive Care Unit; High Dependency Unit; Operating Theatres; New Born Unit; Laundry; and back-up standby power generators.

The Ministry of Health and Ministry of Finance reviewed equipping proposal and approved subsequent to which the Spanish Authorities approved a loan amounting to EUR.14 million for upgrade of medical equipment at KNH. The loan was secured by the Kenya Government and on-lent to KNH.

The Project commenced on 23rd June 2006 and ran for a period of 36 months up to 23rd June 2009. The Hospital received all the equipment and related services provided for in the Agreement.

The project had the following outputs: -

- a. Improved and increased critical care capacity from 11 beds and 22 beds
- b. Created extra HDU in level 4 (10 beds)
- c. Created 6 Neonatal ICU stations
- d. Established and equipping 2 new Trauma theatres in Accident & Emergency and Eye theatre, inclusive of ventilation system
- e. Renovating and equipping radiology department for improved diagnostic services
- f. Equipped Central Sterilization Services Department (CSSD) and Theatre Sterilization Services Unit (TSSU).
- g. Upgraded laundry unit.
- h. Rehabilitated the power supply systems, upgraded sub-stations, installed generators and power stabilizers.

The project has led to: improved patient monitoring; enhanced patient care; improved hospital capacity; improved hospital image; and improved training and research facilities.

In 2007, the National Treasury forwarded a Subsidiary Credit Agreement to the Hospital which has not been executed to date. However, the Hospital recognized the loan in its books of accounts and informed the National Treasury of the Hospital inability to repay the loan. This notwithstanding, the Government of Kenya has been repaying the loan.

Noting that the Government is repaying the loan, the Hospital Management submits that the National Treasury continue paying the loan and grant approval to the Hospital to recognize the same as capital grant.

Committee Observations

The Committee made the following observations:

1. The Hospital through the Ministry of Health approached several partners for aid to upgrade major medical equipment. The Ministry of Health made a formal request to the Ministry of Finance who in turn approached the Royal Government of Spain, Saudi Arabia, China and the African Development Bank to consider and extend a grant to the Hospital.
2. Following a positive response from the Royal Government of Spain, a Technical Team visited Spain in February 2004 to enable the Hospital assess the quality of the equipment on offer. The team agreed on the equipping of the following prioritized areas:
3. The Ministry of Health and Ministry of Finance reviewed equipping proposal and approved subsequent to which the Spanish Authorities approved a loan amounting to EUR.14 million for upgrade of medical equipment at KNH.
4. The terms of the contract provided that the loan was worth Euro 14,000,000,000 at 1.1% interest for a period of 15 years with a grace period of 6 years.
5. The Hospital received all the new equipment and related services provided for in the Agreement. The supplier provided spare parts for some of the equipment but there was no indication of a liability defects period for the project.

The Committee then proceeded to inspect the equipment. Three categories of equipment were inspected:

- i. equipment in working condition;
- ii. equipment that needed repair;
- iii. equipment that is obsolete;

Committee Resolution

The Committee resolved that the Office of the Auditor General should conduct an audit verification of the equipment to ascertain the number and type of equipment purchased as well as the condition of the equipment to determine if public funds were well utilized.

MIN/PIC/645/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/646/2019: ADJOURNMENT

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

Signed.....

Date..... 28/1/2019.

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 83RD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON MONDAY 18TH NOVEMBER 2019 IN THE COMMITTEE ROOM, MAIN PARLIAMENT BUILDINGS AT 2.00 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Joash Nyamache Nyamoko, MP
3. The Hon. Omar Mohamed Maalim Hassan, MP.
4. The Hon. Paul Kahindi Katana, MP
5. The Hon. Thuku Zachary Kwenya, M.P
6. The Hon. Babu Owino Paul Ongili, MP
7. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
8. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
9. The Hon. Mohamed Hire Garane, M.P.
10. The Hon. Rashid Kassim Amin, MP
11. The Hon. John Muchiri Nyaga, M.P
12. The Hon. Purity Wangui Ngirici, MP

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Gladys Wanga, MP
3. The Hon. Mary Wamau Njoroge, MP
4. The Hon. James Kamau Githua Wamacukuru, M.P
5. The Hon. Raphael Bitta Sauti Wanjala, MP
6. The Hon. Justus Kizito Mugali, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | | |
|------------------------|---|-------------------------|--------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant | <i>Not Present</i> |
| 2. Mr. Marlene Ayiro | - | Senior Legal Counsel | |
| 3. Mr. Mohamed Boru | - | Second Clerk Assistant | |
| 4. Ms. Noelle Chelagat | - | Media Relations Officer | |
| 5. Ms. Winfred Atieno | - | Audio Recording Officer | |

IN ATTENDANCE

- | | | |
|--------------------------|---|------------------------------------|
| 1. Mr. Leonard Opar | - | Director, Audit |
| 2. Mr. John Wakaba Kuria | - | Manager, Audit |
| 3. Mr. Joshiah Oyuko | - | Manager, Audit |
| 4. Mr. James Sitienei | - | Inspectorate of State Corporations |

MIN/PIC/630/2019: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past two O'clock and prayed.

MIN/PIC/631/2019: CONFIRMATION OF MINUTES

Confirmation of minutes was rescheduled to a late date.

MIN/PIC/632/2019: EXAMINATION OF AUDITED ACCOUNTS OF NATIONAL SOCIAL SECURITY FUND

Mr. Anthony Omerikwa, the Ag. Managing Trustee of the National Social Security Fund accompanied by Mr. Austin Ouko (Ag. Corporation Secretary), Mr. Moses Chesoto (Ag. General Manager, Investment), Mr. Evans Ombui (Ag. Manager, Registration and Collection), Mr. Peter Muriuki (Manager, Property Development), Mr. Stephen Obare (Manager, ICT) and Ms. Millicent Awiti (Manager, Strategy and Change) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Fund for the financial year 2017/18.

He briefed the Committee as follows:

MIN/PIC/633/2019: EXAMINATION OF AUDITED ACCOUNTS OF NATIONAL SOCIAL SECURITY FUND

1.0 Unaccounted for Members Contributions

1.1 Unremitted Members Contributions

As previously reported contributions totalling Kshs. 754,995,367 had not been remitted in stipulated time period according to twenty (20) sampled employer files maintained in nine (9) NSSF branches. This was contrary to Section 8(a) of the NSSF Act, 2013 which required employers to remit into the Fund contributions deducted from members in full and in time.

Although management took action by issuing demand letters and also made alternative payment arrangements with employers such as instalment payments before considering legal action, it has not been established whether any amounts have been realized from these arrangements.

As a result, recoverability of the unremitted members' contributions of Kshs. 754,995,367 remains doubtful for over two years.

Management Response

The outstanding arrears as at 30th June 2018 stood at Kshs.6,349,517,582 comprising of contributions and penalties. A total of Kshs. 771,225,862 had been recovered as at 31st March 2019 leaving a balance of Kshs. 5,578,291,720.

The analysis of the arrears and penalties including action taken by management is as follows;

CONTRIBUTION ARREARS	AMOUNT	ACTION TAKEN
---------------------------------	---------------	---------------------

<i>Instalment undertaking</i>	328,709,939	<i>Being recovered through instalment undertakings and the repayment plans are closely monitored and evaluated on a quarterly basis.</i>
<i>Court actions</i>	209,204,279	<i>Pursued through court action by the Fund's Prosecutors across the branch offices.</i>
<i>Demand notices/ADRs</i>	682,893,896	<i>Pursued through formal demand notices and Alternative Dispute Resolutions (ADRs). Follow-ups for payments by the branch offices are continuously being undertaken.</i>
<i>Defunct Authority</i>	241,679,597	<i>Efforts to recover the outstanding obligations through court have been unsuccessful through court rulings such as the Judicial Review No. 81 of 2013 at the High Court of Nairobi and the Application 24 of case number 240 of 2012. The matter has been referred to the Intergovernmental Relations Technical Committee (IGTC) and the Council of Governors for direction on recovery</i>
<i>Closed and receivership businesses</i>	10,276,387	<i>Employers closed down</i>
Sub Total	1,472,764,098	

OUTSTANDING PENALTIES	AMOUNT	ACTION TAKEN
<i>Instalment undertaking</i>	87,408,704	<i>Being recovered through instalment undertakings and the repayment plans are closely monitored and evaluated on a quarterly basis.</i>
<i>Court actions</i>	99,557,572	<i>Pursued through court action by the Fund's Prosecutors across the branch offices.</i>
<i>Disputed</i>	38,452,508	<i>Resolutions (ADRs) Follow-ups for reconciliation with employers</i>
<i>Demand notices/ADRs</i>	3,036,725,161	<i>Pursued through formal demand notices and Alternative Dispute Resolutions (ADRs). Follow-ups for payments by the branch offices are continuously being undertaken.</i>

<i>Defunct Authority</i>	828,272,664	<i>Efforts to recover the outstanding obligations through court have been unsuccessful through court rulings such as the Judicial Review No. 81 of 2013 at the High Court of Nairobi and the Application 24 of case number 240 of 2012. The matter has been referred to the Intergovernmental Relations Technical Committee (IGTC) and the Council of Governors for direction on recovery</i>
<i>Closed and receivership businesses</i>	15,111,013	<i>Employers closed down</i>
Sub Total	4,105,527,622	
Total	5,578,291,720	

1.2 Unidentified and Unposted Members Contributions

The financial statements under statement of changes in net assets available for benefits reflects a net surplus from dealings with members of Kshs. 9,885,860,827 for the year under review. In compliance with Retirement Benefits Act, 1997, NSSF maintains employer contribution clearing accounts for benefit payment upon qualification as per the Act. During the year under review, the contributions in transit balance changed marginally from Kshs.754 million as at 30 June 2016 to Kshs. 762 million as at 30 June 2017.

No reasons have been provided for not posting the Kshs. 762 million which has accumulated over the years to the respective member's accounts despite the Fund having acquired a Social Security Pension Administration System (SSPAS) and compliance officers to assist safeguard member's funds.

Consequently, the Fund may not have gotten value for money for SSPAS procured in the year 2011/2012 at a cost of Kshs. 300,000,000 and members risk loss of accrued interest especially those claiming benefits in the intervening period.

Management Response

The contributions in transit amount of **Kshs. 762 Million** is under reconciliation. This is a continuous process and there is a team updating member's balances on a regular basis, as at 30th June 2019 the balance stood at **Kshs. 290 Million**. The contributions in transit relates to historical records where NSSF member numbers were not provided by employers. The other measures management has implemented include:

- a) Implementation of SSPAS system where tolerance rate of receiving contributions without member numbers has been fixed at 2% and;

- b) The introduction of Eservice which require employers to confirm the accuracy of their member return on-line before paying contributions for respective Months.

The amount in contribution in transit account accrues interest as any other contribution. See the report giving position as at 30 June 2019 attached. **Appendix III**

Committee Observations

The Committee made the following observations:

1. The matter had been considered in the 22nd PIC Report on the audited accounts of State Corporations.
2. The unclaimed funds were not taken to the Unclaimed Financial Assets Authority as the NSSF was re-investing using these amounts.

MIN/PIC/634/2019: INVESTMENTS IN IMPERIAL BANK AND CHASE BANK FY 2016/17 & FY 2017/18

2.1 Fixed Deposits (Held to Maturity)

Note 17(b) to the financial statements as at 30 June 2017 reflects fixed deposits (held to Maturity) totalling Kshs. 7,729,907,953 which included deposits in Chase Bank of Kshs.70,000,000 and Imperial Bank of Kshs. 259,500,000. These fixed deposits were invested between 8 September 2015 and 3 March 2016 and were to mature between December, 2015 and May 2016. The deposits did not mature nor have they been recovered as at 30 June 2017.

Management Response

To date, the Fund has recovered Kshs. 123,373,740 from both Imperial and Chase bank. The Kshs. 70,000,000 deposited in Chase bank has been recovered in full. Regarding the balance of Kshs. 206,126,260 in Imperial bank, the Fund received a positive indication on the prospect of recovery of the amount, from Kenya Deposit Insurance Corporation (KDIC), following the takeover of 7.5% of deposits in Imperial bank by KCB in August 2018. The Fund has instructed its Fund Managers to pursue full recovery of the outstanding amounts.

<i>Bank</i>	<i>Deposits</i>	<i>Recovered</i>	<i>Balance</i>
<i>Imperial Bank</i>	<i>259,500,000</i>	<i>53,373,740</i>	<i>206,126,260</i>
<i>Chase Bank</i>	<i>70,000,000</i>	<i>70,000,000</i>	<i>-</i>
<i>Total</i>	<i>329,500,000</i>	<i>123,373,740</i>	<i>206,126,260</i>

Committee Observations

The Committee made the following observations:

1. The Fund has recovered Kshs. 123,373,740 from both Imperial and Chase bank.
2. The Kshs. 70,000,000 deposited in Chase bank has been recovered in full.
3. The Fund is following up on the balance of Kshs. 206,126,260 in Imperial bank, and has received positive indication on the prospect of recovery of the amount, from Kenya Deposit Insurance Corporation (KDIC), following the takeover of 7.5% of deposits in Imperial bank by KCB in August 2018.
4. The Fund was investing based on investment advice given by their Fund Managers
5. The Fund was only investing in Tier 1 banks at present.

Committee Resolution

The Committee made the following resolutions:

1. Management was asked to provide documentations showing how NSSF makes a determination on which banks to invest fixed deposits.
2. The Management was further asked to provide details of its engagement with Fund Managers including details of their contract agreement with the Fund Managers.

2.2 Corporate Bonds

Note 20 to the financial statements as at 30 June 2017 reflects corporate bonds balance of Kshs. 9,222,122,293 which includes Kshs. 132,200,000 invested in Imperial Bank and Kshs. 534,700,000 invested in Chase Bank which were invested between 28 September 2015 and 6 October 2015 to mature within February 2022 and September 2022 as tabulated below:

Bank	Fund Manager	Nominal Amount	Investment Date	Maturity Date	Recovery
Fixed Deposits					
Imperial Bank	GenAfrica Asset Managers Ltd	30,000,000	9/22/2015	12/21/2015	3,070,194.40
	GenAfrica Asset Managers Ltd	20,000,000	09/08/2015	01/04/2016	2,131,730.55
	GenAfrica Asset Managers Ltd	8,500,000	09/11/2015	01/04/2016	907,260.60
	Old Mutual Investment Group	201,000,000	9/30/2015	11/30/2015	20,570,302.50
Chase Bank	Britam Asset Managers Ltd	70,000,000	03/03/2016	05/09/2016	

Sub Total		329,500,000			26,679,488.05
Corporate Bonds					
Imperial Bank	Britam Asset Managers Ltd	90,000,000	9/28/2015	9/22/2020	-
	Old Mutual Investment Group	42,200,000	9/28/2015	9/22/2020	-
Chase Bank	GenAfrica Asset Managers Ltd	160,000,000	10/06/2015	02/06/2022	-
	Old Mutual Investment Group	174,700,000	10/06/2015	02/06/2022	-
	Britam Asset Managers Ltd	100,000,000	10/06/2015	02/06/2022	-
	Stanlib Kenya Ltd	100,000,000	10/06/2015	02/06/2022	-
Sub Total		666,900,000			-
Total		996,400,000			26,679,488.05

Recovery of interest on the corporate bonds for the period upto 30 June 2017 remains outstanding safe for the paltry Kshs. 26,682,488 from Chase bank.

Management Response

The Fund has partnered with other note holders through the Fund Managers association to push for the recovery of the money from Kenya Deposit Insurance Corporation.

Bank	Investment	Recovery	Amount
Imperial Bank	132,200,000	-	132,200,000
Chase Bank	534,700,000	-	534,700,000
Total	666,900,000	-	666,900,000

Committee Observations

The Committee made the following observations:

1. The Fund had invested corporate bonds worth Kshs. 132,200,000 in Imperial Bank and Kshs. 534,700,000 invested in Chase Bank. The investments between 28 September 2015 and 6 October 2015

2. No recovery has been made as yet.

Committee Resolution

Management was asked to provide details of the Fund Managers who advised on investment in the corporate bonds in questions.

2.3 Banks Holding Deposits placed under Receivership by the Central Bank of Kenya

Available information confirmed that the Central Bank of Kenya (CBK) placed Imperial Bank Ltd under receivership on 13th October, 2015 and immediately appointed the Kenya Deposit Insurance Corporation as receiver. The main reasons being irregularities and malpractices in the bank's management.

The CBK also placed Chase Bank under receivership on 7th April and appointed the Kenya Deposit Insurance Corporation as receiver the main reasons being liquidity problems. At the time banks were placed under receivership by CBK, the Fund, through appointed Fund managers had invested a total of Kshs. 391,700,000 in Imperial Bank and Kshs. 604,700,000 in Chase bank all totalling Kshs. 996,400,000.

According to documents availed for audit, out of the total investments of Kshs. 996,400,000, the Fund managers have been able to recover only Kshs.26,682,487 from Imperial Bank leaving a total balance of Kshs. 969,717,513 outstanding and in addition, no disclosure note was made in the financial statements as required.

In the circumstances, the safety of deposits totalling Kshs. 969,717,513 made by the Fund managers could not be confirmed. The Fund does not appear to have received value for money from the Kshs. 181, 518,979 paid to the Fund managers during the year under review. It is also not clear whether the deposits were insured.

The three year (3) contracts of the current Fund managers were renewed in the year 2014/2015 and it is recommended that the Fund managers be changed on expiry of their contracts.

The Fund has however, indicated the likelihood of recovering most of the investments after CBK carried out an expression of interest and received bids to sell Imperial Bank to pay off depositors while Chase Bank was reopened and was reportedly acquired by SBM Kenya Limited, a subsidiary of SBM Holdings Limited of Mauritius.

Management Response

All Fund investments are done in conformity with the Fund's Investment Policy and RBA Guidelines. All Fund managers have indemnity cover which covers negligence in decision making and not loss.

The procurement of Fund managers is done through an open and competitive process and the Fund has engaged top Fund managers in the Country.

Committee Observations

The Committee made the following observations:

1. At the time banks were placed under receivership by CBK, the Fund, through appointed Fund managers had invested a total of Kshs. 391,700,000 in Imperial Bank and Kshs. 604,700,000 in Chase bank all totalling Kshs. 996,400,000.
2. Out of the total investments of Kshs. 996,400,000, the Fund managers have been able to recover only Kshs.26,682,487 from Imperial Bank leaving a total balance of Kshs. 969,717,513 outstanding and in addition, no disclosure note was made in the financial statements as required.
3. The three year (3) contracts of the current Fund managers were renewed in the year 2014/2015 and it is recommended that the Fund managers be changed on expiry of their contracts.

MIN/PIC/635/2019: STALLED PROJECT - HAZINA TRADE CENTRE NAIROBI FY 2016/17

The statement of net assets available for benefits as at 30 June 2017 reflects a balance of Kshs. 20,777,695,787 under Developed Investment Property. Included in this figure is Kshs. 1,500,000,000 in respect to fair value of the Hazina Trade Centre, Nairobi.

As previously reported, the construction of Hazina Trade Centre, Nairobi commenced on 17 June 2013 and was to be undertaken in 155 weeks with an expected completion date of July 2016. However, as at 14 March 2018 the building was still incomplete and builders work had stalled after reaching 15th floor or 38% and Kshs. 1,887,744,544 spent on the project out of the total contract cost of Kshs. 6,715,218,188. All efforts should be made to ensure completion of the building to safeguard member's contributions.

Management Response

The major structural works is completed with major outstanding items are (i) roofing (ii) internal fittings and finishes (iii) installation of lifts and (iv) external finishes (curtain walling). The contractor has since fully mobilized and is progressing.

The completion date was extended from 30th June 2019 to 31st of December 2019 at the same Contract Sum of Kes 4,095,862,434 owing to delayed approvals. (Appendix XIII)

Committee Observations

The Committee made the following observations:

1. The total contract cost of the project had been reduced from Kshs. 6,715,218,188 to Kshs. 4,095,862,434 following revision of the project scope to 15 floors.

2. The Fund had not yet paid the agreed interest amount to the contractor following the stalling of the project due to the court case between NSSF and Nakumatt.
3. The NSSF Board had resolved to pay the interest accumulated following the stalling of the project together with the last certificate for the project. This had raised a claim of a further Kshs. 220,000,000 from the contractor for delayed payment of the initial interest amount.
4. A total of Kshs. 2,456,000,000 had been paid to the contractor for the project.

Committee Resolutions

The Committee made the following resolutions:

1. The Office of the Auditor General was asked to provide a status update on the Special Audit requested by Committee for the construction of Hazina Trade Center.
2. NSSF Management was asked to provide Board resolution on payment of the contractor's interest payment with the last certificate for the project.

MIN/PIC/636/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/637/2019: ADJOURNMENT

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

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....19/11/2019

MINUTES OF THE 79TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 7TH NOVEMBER, 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Joash Nyamache Nyamoko, HSC, MP
5. The Hon. Raphael Bitta Sauti Wanjala, MP
6. The Hon. John Muchiri Nyaga, M.P
7. The Hon. Rashid Kassim Amin, MP
8. The Hon. Purity Wangui Ngirici, MP
9. The Hon. Justus Kizito Mugali, MP
10. The Hon. Paul Kahindi Katana, MP
11. The Hon. Thuku Zachary Kwenya, M.P
12. The Hon. Mary Wamaua Njoroge, MP

ABSENT WITH APOLOGY

1. The Hon. Mohamed Hire Garane, M.P.
2. The Hon. (Prof.) Mohamud Sheikh Mohammed
3. The Hon. Gladys Wanga, MP
4. The Hon. Babu Owino Paul Ongili, MP
5. The Hon. Omar Mohamed Maalim Hassan, MP.
6. The Hon. James Kamau Githua Wamacukuru, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

IN ATTENDANCE

- | | | |
|------------------------|---|---|
| 1. Mr. Justus Okumu | - | Ag. Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Mr. Fredrick Kimani | - | Manager, Audit |
| 4. Mr. Stephen Mbatia | - | Principal Inspector of State Corporations |
| 5. Mr. Paul Kiagu | - | Principal Economist, National Treasury |

MIN/PIC/600/2019: PRELIMINARIES

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

MIN/PIC/601/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA INVESTMENTS AUTHORITY

The Committee was informed that the former Managing Director of Kenya Investments Authority, Mrs. Susan Kikwai was had not responded to the Committee's invitation and did not appear before the Committee.

The Committee expressed concern on the non-responsiveness of the former KenInvest Managing Director and resolved to re-invite the witness respond to audit queries in the reports of the Auditor General on the audited accounts of the Authority.

MIN/PIC/602/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA PORTS AUTHORITY

The Kenya Ports Authority Managing Director, Mr. Daniel Manduku accompanied by Capt. William K. Ruto (General Manager, Operations), Eng. Rashid Salim (General Manager, Engineering Services), Mr. Daniel Ogutu (General Manager, Human Resource and Administration), Mr. Edward Kamau (General Manager, Corporate Services), Mr. Said Mata (Finance Officer), Mr. Michael Sangoro (Contracts and Conveyancing Officer), Ms. Turasha Kinyanjui (Legal Officer) and Mr. Muhammad Hariz (Accountant) appeared before the Committee to adduce evidence on the audited accounts of Kenya Ports Authority for FY 2016/17.

He briefed the Committee as follows:

MIN/PIC/603/2019: RETIREMENT BENEFIT ASSET FY 2016/17

The statement of financial position reflects retirement benefit asset amounting to Kshs. 2,980,174,000 as at 30 June 2017 as detailed in Note 2 of the financial statements.

Analysis of the investments portfolio shows that investment in properties for the scheme was at 48.2% of the total assets contrary to Retirement Benefit Act, 1997 and the Regulations Act, 1997 which requires that a scheme shall only invest in an asset class which the market value of the class expressed as a percentage of the total assets shall not exceed 30%.

Further, financial statements for the Defined Benefit Scheme were not submitted for audit as required by Section 47 of the Public Audit Act. From the foregoing, the Authority breached the law.

Management Response

The scheme's investment in properties is more than 30% because of historical issues. The Board of Trustees has resolved to dispose-off some of the assets in a bid to decrease the percentage. They have already contracted a valuer to ascertain the market value to allow for the disposal of the earmarked properties. The inaugural masterplan for the scheme was finalized and assets earmarked for sale will be advertised in an open tender before June 2019.

The sale agreement for the Makande plot is being finalized. The scheme is following p with NLC on the compensation for the highway expansion. The DC scheme is undertaking a feasibility study on acquisition of the remaining piece of the same. The subdivision of the Makande plot into three separate pieces is ongoing.

The single title process for the Pandya/Dedan Kimathi Estate is also ongoing with a tentative completion date of May 2019. This will allow for the disposal of the expansive estate through tenancy buy back supported by subsidized mortgage from the sponsor as most tenants are staff.

Committee Observations

The Committee made the following observations:

1. The Board of Trustees for the KPA Retirement Benefit Scheme had resolved to dispose-off some of the assets in a bid to decrease the percentage of assets under this class to the legal threshold of less than 30%.
2. KPA advertised for the sale of the properties through open tender but on the day of the tender opening, three injunction were served to the Authority from former and current staff opposed to the sale.
3. The properties earmarked for disposal were worth approximately Kshs. 25,000,000,000.
4. Members of the Retirement Benefit Scheme had gone to court in the early 2000s in an initial attempt to stop the sale of the properties which are based in Mombasa and Nairobi. The Members opposed the sale due to what they deemed to be high prices that would lock them out from buying the properties.
5. KPA and the members of the scheme are in dispute as to whether to sell the properties at market value or offer discounted prices for staff who are members of the scheme.
6. The Scheme Trustees are retirees and elected officials with only the KPA Managing Director and one KPA Board member being part of the Trustees.
7. The properties in question are currently attracting low rent relative to the market value.
8. KPA has two retirement schemes; the Contributory Scheme and the Defined Benefit Scheme.
9. The Defined Benefit Scheme has its own management but KPA, a public entity, will meet any liability arising from the scheme as they are the sponsors. The Audit therefore raised a query on failure to submit financial statements for the Defined Benefit Scheme as required by Section 47 of the Public Audit Act due to this liability.
10. KPA concluded an asset transfer to the Trustees in 2006 following a valuation of the assets but the Authority cannot be delinked from the scheme since KPA will be liable should the scheme fail to meet its dues to members in the future.
11. The Defined Benefit Scheme had its own auditors and is not audited by the Office of the Auditor General.

Committee Resolution

The Committee made the following resolutions:

1. Management should provide a chronology of the matter including history of disputes between the scheme and KPA, documentation on transfer of assets from the Authority to the scheme and copy of Board minutes approving the disposal of the assets.
2. Management was also asked to provide a copy of the valuation report carried out in 2006 as well as a copy of the most recent valuation report of the properties.

MIN/PIC/604/2019: OTHER MATTER FY 2016/17

1.0 Budget Analysis and Performance

1.1 Revenue

The Authority had a revenue budget of Kshs. 41,403,357,656 but managed to collect Kshs. 41,41,967,695.56 leading to over-collection of Kshs. 38,610,038 for the year ended 30 June, 2017 under review.

i. Revenue under-collection

Nineteen (19) revenue stream recorded under collection from the set targets by more than 10%. No information was availed to explain the circumstances for the under-collections which are significant.

ii. Revenue over-collection

Seven revenue streams recorded collections over and above the set target by more than 10%. In most cases, the revenue targets surpassed the targets depicting a case of under-budgeting of revenues to portray a positive overall performance.

Management Response

Analysis of the revenue under-collection and over-collection are detailed in Appendix 19 and 20.

Committee Observations

The Committee made the following observations:

1. The under-collection of revenue was partly attributed to fewer ships docking in Mombasa despite the vessels being bigger in size.
2. The under-collection of Kshs. 38,610,038 against a target of Kshs. 41,403,357,656 was less than 1% of the anticipated revenue.

1.2 Expenditure

During the year under review, the Authority had a total budget of Kshs. 24,415,954,338 and incurred a total expenditure of Kshs. 23,445,252,346. Analysis of the expenditure budget revealed the following:

- i. Five cost items did not have actual expenditure for the period while the Authority had provided for a budget amounting to Kshs. 328,875,000.
- ii. The Authority underspent on twenty two (22) expenditure items with over 10% whose explanations for the under expenditure as detailed in the statement of comparison of budget and actual was not satisfactory.
- iii. Twenty one (21) cost elements had an over expenditure of more than 10% during the year. The Authority did not provide explanation for the budget overruns.

Further, the Authority under-spent on twenty two expenditure items and over-spent on twenty one expenditure items.

Management Response

- **Long service award** - This was an incentive that had been introduced but in the year under review, there was no payment done.
- **Capital expenditure** - This account is blocked and is not in use. Capital expenditure is not a recurrent expenditure item.
- **Revaluation fees** - A budget had been proposed for the revaluation of assets. As at the end of the year, the valuer had not achieved the milestones for payment.
- **Data take on:** This account had a budget provision for voluntary early retirement scheme. The approval processes from the government departments had not been granted and this being a sensitive issue, the budget was put under this account so that it's not easily detected.
- **Non-claimable VAT input:** This was a provision for input VAT that cannot be claimed. The expense related to such expenditure is debited to its respective account. Provision for a budget under this expense is erroneous. The adjustment had been made in the current year.

Committee Observations

The Committee made the following observations:

1. The Authority had a total budget of Kshs. 24,415,954,338 and incurred a total expenditure of Kshs. 23,445,252,346 leading to under-expenditure of Kshs. 970,701,992.
2. The Committee expressed concern on the expenditure under budget lines that are expected to have little to no variation. For instance, budget lines like Basic salary had an over-expenditure of Kshs. 250,682,601.24 and Overtime which had an over-expenditure of Kshs. 505,028,932.93.

Committee Resolution

The Committee resolved that Management should have better budget planning to ensure public funds are utilized in an efficient manner.

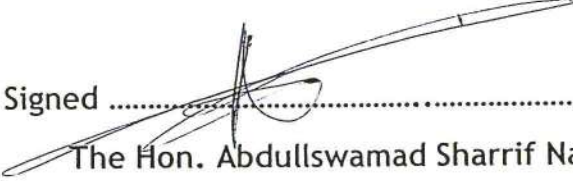
MIN/PIC/605/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/606/2019: ADJOURNMENT

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

Signed


The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....

14/11/2019

MINUTES OF THE 78TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 5TH NOVEMBER, 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. John Muchiri Nyaga, M.P
5. The Hon. James Kamau Githua Wamacukuru, M.P
6. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
7. The Hon. Joash Nyamache Nyamoko, MP
8. The Hon. Mohamed Hire Garane, M.P
9. The Hon. Gladys Wanga, MP
10. The Hon. Paul Kahindi Katana, MP
11. The Hon. Purity Wangui Ngirici, MP
12. The Hon. Thuku Zachary Kwenya, M.P
13. The Hon. Babu Owino Paul Ongili, MP
14. The Hon. Mary Wamaua Njoroge, MP

ABSENT WITH APOLOGY

1. The Hon. Omar Mohamed Maalim Hassan, MP.
2. The Hon. Raphael Bitta Sauti Wanjala, MP
3. The Hon. Justus Kizito Mugali, MP
4. The Hon. Rashid Kassim Amin, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-----------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 3. Ms. Marlene Ayiro | - | Legal Counsel |
| 4. Mr. Alex Mutuku | - | Senior Sergeant-at-Arms |
| 5. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-----------------------|---|------------------------------------|
| 1. Mr. Justus Okumu | - | Ag. Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Mr. Herrie Njoroge | - | Manager, Audit |
| 4. Mr. Victor Momanyi | - | Inspectorate of State Corporations |

MIN/PIC/592/2019: PRELIMINARIES

The Chairperson called the meeting to order at five minutes past seven O'clock.

MIN/PIC/593/2019: BRIEFING BY THE CABINET SECRETARY FOR TRANSPORT ON AUDIT RESERVATIONS WITH REGARD TO SAFETY OF FERRIES OPERATED BY KENYA FERRY SERVICES

Mr. James Macharia, EGH, the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works accompanied by Mrs. Esther Koimett, CBS (Principal Secretary, State Department of Transport), Mr. Johnson Wambugu (Chief Finance Officer, State Department of Transport), Mr. Bakari Gowa, the Managing Director of the Kenya Ferry Services and Mr. Allan Mases (Finance Officer, State Department of Transport) appeared before the Committee to adduce evidence on the audited accounts of the Kenya Ferry Services for financial year 2015/16 to financial year 2017/18.

He briefed the Committee as follows:

1. Number of Ferries - Kenya Ferry Services operates 6 vessels as itemized below:

S/No	Name of vessel	Year of Manufacture	Ferry capacity		Year of services
			Passenger	Vehicle	
1	Mv Nyayo	1990	1,200	60	30 Years
2	Mv Kilindini	1990	1,440	60	30 Years
3	Mv Harambee	1990	1,440	60	30 Years
4	Mv Likoni	2010	1,550	60	10 Years
5	Mv Kwale	2010	1,550	60	10 Years
6	Mv Jambo	2017	1,650	64	2 Years

2. Ferry operating certificates

The Committee noted that all the ferries operated by the KFS had been issued with a passenger safety Certificate by the Kenya Maritime Authority (KMA). Section 5 (j) of the KMA Act of 2006 mandates KMA to regularly inspect marries vessels to ensure passenger safety.

3. Maintenance cost of ferries

The table below summaries the request, allocations and what was utilized for maintenance in the last 5 years.

Financial year	2015/16	2016/17	2017/18	2018/19	2019/2020	Total Kshs.
Amount requested (Kshs)	199M	466M	350M	320M	310M	1.645B
Amount allocated (Kshs)	76.805M	294M	191M	177M	126M	864.805M
Amounted utilized (Kshs)	76.805M	254M	191M	130M	126M	777.805M

4. Strategic Policy of the Ministry on access to South Coast

- a. The strategic policy of the Ministry of Transport with regards to accessing South Coast and Kwale County is to do away with the ferries that ply the Likoni channel.
- b. The Ministry is putting in place physical infrastructure to provide a long term solution to the matter. The Dongo-Kundy bypass is being constructed that will provide a link between Mombasa and Kwale counties.
- c. There are plans to build a cable-stayed bridge (the 'Mombasa Gate Bridge') across the Likoni channel to provide road connectivity between Mombasa island and Likoni

Committee Observations

The Committee made the following observations:

1. There were lapses in inspection of vessels conducted by the Kenya Maritime Authority. This led to the issuance of safety certificates to ferries without undergoing the requisite inspection.
2. The Ministry of Transport was undertaking an investigation on the incident involving MV Harambee that occurred on 29th September, 2019. Action would be taken should any negligence be observed on the part of the relevant agencies.
3. The Ministry had sent a request to the National Treasury to review its budgetary allocation for FY 2019/20 with a view to securing funds for ferry maintenance.
4. The twenty-year policy on use of ferries is for purposes of depreciation and not an indicator of the vessel's safety. Ferries are utilized after the period so long as they are well maintained.
5. Most ferry users access the vessels by foot and would not benefit from the infrastructure being implemented by the Ministry.

Committee Resolutions

The Committee made the following resolutions:

1. The Ministry should provide a copy of its strategic plan on the infrastructure projects for access to South Coast and Kwale county.
2. The Ministry should further provide a copy of its correspondence with the National Treasury on the request for review of programmes in its budgetary allocation for FY 2019/20.

MIN/PIC/594/2019: MTONGWE FERRY DISASTER COMPENSATION

The Cabinet Secretary informed the Committee that two hundred and twelve (212) victims had been compensated so far for the loss from the Mtongwe disaster. A total of Kshs. 50,619,051.00 had been spent so far in compensation.

The Cabinet Secretary further expressed concern that the Law firm handling the compensation had been paid legal fees that was almost half of the amount paid to victims as compensation for their loss.

MIN/PIC/595/2019: EXAMINATION OF AUDITED ACCOUNTS OF TANA AND ATHI RIVER DEVELOPMENT AUTHORITY

Mr. Stephen Githaiga, the Managing Director of Tana and Athi Rivers Development Authority, accompanied by Mr. David Kimaiyo (Chief Manager, Finance) appeared before the Committee to adduce evidence on the audited accounts of the Authority for the financial year 2016/17.

MIN/PIC/596/2019: CASH AND CASH EQUIVALENTS FY 2016/17

The cash and cash equivalents balance of Kshs.88,259,459 as at 30 June 2017 had outstanding items in the reconciliation as follows:

- (i) Consolidated bank account had unpresented cheques totalling Kshs. 2,483,865.10. Cheques totalling Kshs. 2,062,684.10 were claimed to have been reversed on 31 January 2018 but the cashbook was not produced to confirm the reversals.
- (ii) Unpresented cheques as at 30 June 2017 for Masinga dam totalling Kshs. 254,000 were stale but had not been reversed in the cash book.
- (iii) Emali Livestock Multiplication Unit had unpresented cheques totalling Kshs.412,300 which were indicated to have cleared on 3rd July 2017 but no bank statement showing the clearance was provided for verification.
- (iv) The ledger for Emali (KCB-Machakos) Savings had a balance of Kshs. 205,953 while the cash book indicates Kshs.181,852 resulting to unexplained variance of Kshs. 24,101.

Consequently, the completeness and accuracy of cash and cash equivalents balance of Kshs. 88,259,459 as at 30 June 2017 cannot be confirmed.

Management Response

- i) Consolidated bank cashbook was availed for audit verification.
Appendix 2016/17-13a (Consolidated Cashbook Extract)
- ii) Unpresented cheque of Kshs. 254,000 for MDR was reversed back in the cashbook and availed for audit verification.
Appendix 2016/17-13b (MDR Cashbook Extract)
- iii) Emali livestock cashbook and bank statements were availed for audit verification.

Appendix 2016/17-13c (Emali Cashbook Extract)

- iv) The differences in Emali and Narok ledgers were as a result of typing error which was corrected and availed for audit verification.

Appendix 2016/17-13d (Emali Savings Ledger)

Committee Observations

The Committee made the following observations:

1. The Management of TARDA had failed to provide requisite documentation to the Office of the Auditor General during the audit period.
2. The missing documentation had since been provided to the OAG for audit verification.

MIN/PIC/597/2019: REVENUE FROM EXCHANGE TRANSACTIONS FY 2016/17

14.1 External AIA - KenGen

Revenue from exchange transactions of Kshs.168,049,484 as disclosed in Note 5 to the financial statements includes external AIA from KenGen of Kshs.67,166,640. However, no agreement between the Authority and KenGen has been provided for audit examination in support of the amount which TARDA should be receiving from KenGen and other terms pertaining to this transaction. Further, although KenGen Staff are housed in the Authority's houses and pay rent for occupation, information in form of lease agreements detailing the number of houses and the charges per month has not been provided for audit verification.

Management Response

i) External AIA - KENGEN

The dispute between the Power sector organizations, KenGen/KPLC and TARDA are based on the compensation for the loss of generating and transmitting assets at Masinga and Kiambere Dams, which were transferred to KenGen in the year 2000, and non-remittance of sales of energy to KPLC as aligned to commercial Agreement between KPLC and TARDA between 1988 -2000.

TARDA and the above-mentioned organizations always appear at the PIC on the above dispute.

One of the disputes related to this is why it was instructed by the Ministry of Energy to KenGen to pay TARDA Kshs.55million every year up to 2005 financial year when TARDA insisted to be paid Kshs.420 million but instead they have been paying Kshs.62million per year.

This is a known fact to all stakeholders. It is available in the printed estimates and written instructions.

The Kshs.420million in favour of TARDA, was advised by Price Water House Coopers in 1999/2000 financial year to the Ministry of Energy as per the latter's request. All these historical information are there more so specifically from 1988 - 2017.

a. House Rent:

KenGen have been occupying TARDA estates at Masinga, Kamburu and Kiambere without paying rent and the dispute between the two organizations have been ongoing until two years back when it was resolved by Management and the Chairman of the Board.

The Minutes indicate very clearly that before valuation is complete. KenGen will make payments based on the committees' resolution. After valuation, the subsequent monthly disbursements will be based on the valuation report and this has been the case all along. All the relevant documents related to this are available.

Valuation report is finalized and TARDA is awaiting KenGen to sign Lease agreement, which has already been signed by the Management.

Appendix 2016/17-14a (KenGen Agreement)

Committee Observations

The Committee made the following observations:

1. The audit query had been considered in the 19th and 21st Report of the Public Investments Committee on audited accounts of State Corporations.
2. ~~TARDA have scheduled a Special Board meeting regarding this matter on 12th November, 2019 with a view to suing KENGEN.~~

Committee Resolutions

1. The Committee resolved that TARDA would appear before it after the Special Board meeting to provide an update on the matter.
2. The Committee further resolved to invite KENGEN to explain the non-compliance with resolutions adopted by the National Assembly.

14.2 Other Incomes

The revenue from exchange transactions of Kshs.168,049,484 also include an amount of Kshs.61,036,682 in respect of sale of produce, sale of tree seedlings, sale of sand and honey and rendering services which was not fully supported by documentary evidence. Consequently, the validity and accuracy of the recorded amounts totalling Kshs. 61,036,682 for other incomes cannot be confirmed.

Management Response

The voluminous documents for these transactions were physically brought to Auditors at our head office and availed for audit verification. However, the documents are still available for verification.

Committee Observations

The Committee made the following observations:

1. TARDA had entered into an agreement with Embu County government and loaders and splitting of proceeds from sale of sand harvested in the county.
2. A lorry of soil was selling at a price of Kshs. 8000 in Embu county. This was split among the parties with TARDA getting Kshs. 2000 per sale while the County government and loaders were getting Kshs. 3000 each per lorry.

Committee Resolution

The Committee resolved that TARDA should provide minutes of the meeting with Embu County government and sand loaders where the respective share of income from sale of soil was agreed.

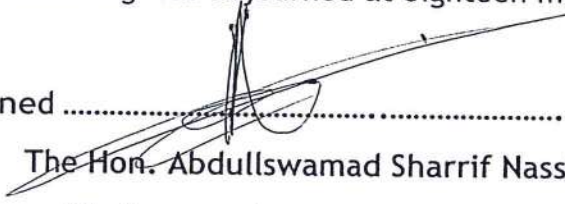
MIN/PIC/598/2019: ANY OTHER BUSINESS

No other business arose

MIN/PIC/599/2019: ADJOURNMENT

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

Signed


The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....

14/11/2019.

MINUTES OF THE 77TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON SATURDAY 2ND NOVEMBER, 2019 IN THE CONFERENCE ROOM, SERENA BEACH RESORT AT 7.00 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. John Muchiri Nyaga, M.P
5. The Hon. Mohamed Hire Garane, M.P
6. The Hon. Rashid Kassim Amin, MP
7. The Hon. Justus Kizito Mugali, MP
8. The Hon. Gladys Wanga, MP
9. The Hon. Paul Kahindi Katana, MP
10. The Hon. Purity Wangui Ngirici, MP
11. The Hon. Thuku Zachary Kwenya, M.P
12. The Hon. Babu Owino Paul Ongili, MP
13. The Hon. Mary Wamaua Njoroge, MP

ABSENT WITH APOLOGY

1. The Hon. Omar Mohamed Maalim Hassan, MP.
2. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
3. The Hon. Joash Nyamache Nyamoko, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. James Kamau Githua Wamacukuru, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-----------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 3. Mr. Alex Mutuku | - | Senior Sergeant-at-Arms |
| 4. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-----------------------|---|------------------------------------|
| 1. Mr. Justus Okumu | - | Ag. Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Mr. Herrie Njoroge | - | Manager, Audit |
| 4. Mr. Victor Momanyi | - | Inspectorate of State Corporations |

MIN/PIC/586/2019: PRELIMINARIES

The Chairperson called the meeting to order at five minutes past seven O'clock.

MIN/PIC/587/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA FERRY SERVICES

Mr. Bakari Gowa, the Managing Director of the Kenya Ferry Services accompanied by Mr. Kombo Rajab (Finance Manager), Ms. Jeniffer Cirindi (Procurement Manager) and Mr. Paul Kotut (Operations Manager) appeared before the Committee to adduce evidence on the audited accounts of the Kenya Ferry Services for financial year 2015/16 to financial year 2017/18.

MIN/PIC/588/2019: AUDIT RESERVATIONS WITH REGARD TO SAFETY OF FERRIES FY 2015/16

The Management of Kenya Ferry Services provided the following documents requested by the Committee:

- a. A copy of minutes of a meeting held between Kenya Ferry Services and Kenya Maritime Authority on 2nd September, 2019 where the matter of training course for the certification of coxswains was discussed;
- b. Copies of three letters dated 3rd February 2016, 13th July, 2017 and 8th October, 2019 where Kenya Ferry Services requested the parent Ministry for budgetary allocation to repair ferries.

The Committee made the following observations:

1. Kenya Ferry Services collected revenue worth Kshs. 562,000,000 which is utilized at source;
2. Since inception, Kenya Ferry Services has only had a surplus in three financial years due to high operating costs.

MIN/PIC/589/2019: COMPENSATION FOR THE MTONGWE FERRY DISASTER

The Committee was briefed on the compensation for Mtongwe Ferry disaster and made the following observations:

1. Two hundred and twelve (212) victims had been compensated so far for the loss from the disaster out of a total of two hundred and twenty five victims. A total of Kshs. 50,619,051.00 had been spent so far in compensation.
2. Kenya Ferry Services had reached an agreement to pay the remaining 13 victims an amount of Kshs. 750,000 each for a total of Kshs. 9,750,000.
3. Payment of compensation was done by both Kenya Ports Authority and Kenya Ferry Services since the Authority used to operate ferries before the establishment of KFS in 1996;
4. There was a similarity in the payment details of victim file no. 154 and 155. Kenya Ferry Service was asked to examine the file and provide explanation on the similarities;
5. The law firm Maina Njenga & Advocates had been contracted to handle the matter of compensation of victims from the Mtongwe disaster on behalf of Kenya Ferry Services;

6. The law firm had received payments amounting to Kshs. 25,000,000 for its services which was approximately half of the amount paid out as compensation to victims and their families;
7. The ferry involved in the Mtongwe Ferry disaster had been insured but the insurance company failed to pay compensation by claiming that the vessel was overloaded at the time of the accident.

Committee Resolution

The Committee made the following resolutions:

1. Management should enforce safety regulations aboard ferries such as restricting the number of people accessing the vessels per crossing, getting passengers out of vehicles and placing safety notices visibly.
2. Management should fine persons not adhering to safety rules when aboard a ferry.

MIN/PIC/590/2019: ANY OTHER BUSINESS

1. Insurance for MV Harambee Accident on 29th September 2019 - Kenya Ferry Services had reported the incident to the company insuring the vessel with a view to addressing insurance claims that may arise.
2. Chief Engineer at Kenya Ferry Services - The State Corporation was in the process of recruiting a Chief Engineer following the retirement of the immediate former holder of the position.

MIN/PIC/591/2019: ADJOURNMENT

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

Signed


The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....19/11/2019

MINUTES OF THE 76TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON SATURDAY 2ND NOVEMBER, 2019 IN THE CONFERENCE ROOM, SERENA BEACH RESORT AT 4.00 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. John Muchiri Nyaga, M.P
5. The Hon. Mohamed Hire Garane, M.P
6. The Hon. Rashid Kassim Amin, MP
7. The Hon. Justus Kizito Mugali, MP
8. The Hon. Gladys Wanga, MP
9. The Hon. Paul Kahindi Katana, MP
10. The Hon. Purity Wangui Ngirici, MP
11. The Hon. Thuku Zachary Kwenya, M.P
12. The Hon. Babu Owino Paul Ongili, MP
13. The Hon. Mary Wamaua Njoroge, MP

ABSENT WITH APOLOGY

1. The Hon. Omar Mohamed Maalim Hassan, MP.
2. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
3. The Hon. Joash Nyamache Nyamoko, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. James Kamau Githua Wamacukuru, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-----------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 3. Mr. Alex Mutuku | - | Senior Sergeant-at-Arms |
| 4. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-----------------------|---|------------------------------------|
| 1. Mr. Justus Okumu | - | Ag. Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Mr. Fouris Matheka | - | Manager, Audit |
| 4. Mr. Victor Momanyi | - | Inspectorate of State Corporations |

MIN/PIC/580/2019: PRELIMINARIES

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

MIN/PIC/581/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA FERRY SERVICES

Maj. (Rtd.) George Okongo, the Director General of the Kenya Maritime Authority accompanied by Capt. Mbarak Zaunga (Ag. Head of Maritime Safety) Mr. Seth Oluoch (Procurement Manager), Mr. John Omingo (Head of Commercial Shipping), Mr. Shaaban Tayari (Port State Control Officer), Mr. Cosmas Cherop (Head, Corporate Services), Mr. Bakari Mwakuyu (Internal Audit Officer) and Ms. Jane Otieno (Legal Officer) appeared before the Committee to adduce evidence on the safety of ferries as observed by the Auditor General in the audited accounts of the Kenya Ferry Services for financial year 2015/16 to financial year 2017/18.

**MIN/PIC/583/2019: AUDIT RESERVATIONS WITH REGARD TO SAFETY OF
FERRIES FY 2015/16**

In the audited Financial Statements of the Kenya Ferry Services for the financial year 2015/16, the Auditor General was concerned about the safety of the ferries managed by the Kenya Ferry Services. The Committee met with the Management of Kenya Maritime Authority, the regulator for the marine industry regarding this particular audit query with a view to establishing the state of the ferries following an accident that claimed the lives of two Kenyans.

The Committee was briefed as follows during the engagement with KMA Management:

1. Lloyds Register

- a. The Lloyds Register is a maritime classification society that classifies maritime vessels and is one of many such organizations in the world. Classification from such entities is not necessarily superior to local classification.
- b. Lloyds Register had withdrawn class certification for MV Nyayo, MV Harambee and MV Kilindini in 2006 but later issued class certificates to the three vessels following inspection on their safety conducted on 28th - 29th March, 2019.

2. Inspection of MV Harambee

- a. The inspection certificate issued by Kenya Maritime Authority following an inspection that was carried out on 6th February, 2019 had raised a total of 12 defects on MV Harambee.
- b. The non-functional prows which were submerged in water were not observed as being defective by the KMA Port State Control Officer who carried out the inspection.
- c. Kenya Maritime Authority counter-signed against the initial inspection certificate indicating that all the defects raised during the inspection had been rectified. The inspection was carried out by KMA's Port State Control Officer, Mr. Shaaban Tayari and was later countersigned by the Head of Maritime Safety at KMA, Capt. Mbarak Zaunga.
- d. The KMA Port State Control Officer, Mr. Shaaban Tayari was employed on contract and was past retirement age. The officer was still in service as

he was one of only two people with the requisite competence to inspect ships and ferries and issue safety certificate.

- e. Capt. Mbarak Zaunga, the Head of Maritime Safety and the only other person qualified to inspect maritime vessels, issued a Kenya Passenger Ship Safety Certificate for MV Harambee on 22nd March, 2019 without physically inspecting the vessel. He relied on the inspection report by the Port State Control Officer who had failed to raise the defect of the ferry prows.
- f. Kenya Maritime Authority is working on a transition plan that seeks to have younger staff undertake inspection of maritime vessels.

3. Safety of MV Harambee

- a. The Kenya Maritime Authority wrote to Kenya Ferry Services on 1st October, 2019 as per procedure whenever a maritime safety incident occurs. KMA inspected MV Harambee on 15th October, 2019 following the slipping off of a vehicle from its deck on 29th September, 2019 that cost the lives of two.
- b. The inspection conducted on 15th October, 2019 raised a number of defects on MV Harambee including the damaged prows.
- c. The class certificate for MV Harambee expired on 21st October 2018 yet the ferry was still in operation without a valid class certificate. Kenya Maritime Authority issued a Kenya Passenger Ship Safety Certificate for MV Harambee on 22nd March, 2019 despite the vessel lacking a class certificate.
- d. Safety procedures for ferries require the chain that runs across the deck to prevent vehicles from slipping off the ferry to be in place whenever a ferry crossing is made. This was absent from MV Harambee when the accident occurred.

4. Drydocking of Ferries

- a. Drydocking of ferries should be conducted every 36 months as per the provisions of the Merchant Shipping Regulations.
- b. MV Harambee was due for drydocking in 2019.

5. Competency of Coxswains

- a. The Merchant Shipping (Training and Certification) Regulations, 2016 (Legal Notice No. 41 of 2016) required that from 1st January 2017, coxswains should have their certificates regularized by the KMA. The transitional clause in the new regulations provided for updating of competency certificates of coxswains issued under the Merchant Shipping Regulations of 1970.
- b. Of the 25 active coxswains, eight (8) are certified under the old regulations and Kenya Ferry Services had sent their documents to KMA for certification. The 17 remaining coxswains lack certification under both the old and new regulations. KMA was due to meet Kenya Ferry

Services management to address matters relating to training of coxswains.

- c. Training of coxswains is currently being undertaken at Bandari Maritime Academy with a class of 150 trainees.

Committee Observations

The Committee made the following observations:

1. Lloyds Register had withdrawn class certification for MV Nyayo, MV Harambee and MV Kilindini in 2006 but later issued class certificates to the three vessels following inspection on their safety conducted on 28th - 29th March, 2019.
2. The inspection certificate issued by Kenya Maritime Authority following an inspection that was carried out on 6th February, 2019 had raised a total of 12 defects on MV Harambee. The non-functional prows which were submerged in water were not observed as being defective by the KMA Inspector.
3. Kenya Maritime Authority counter-signed against the initial inspection certificate indicating that all the defects raised during the inspection had been rectified. The inspection was carried out by KMA's Port State Control Officer, Mr. Shaaban Tayari and was later countersigned by the Head of Maritime Safety at KMA, Capt. Mbarak Zaunga.
4. The KMA Port State Control Officer, Mr. Shaaban Tayari was employed on contract and was past retirement age. The officer was still in service as he was one of only two people with the requisite competence to inspect ships and ferries and issue safety certificate.
5. ~~Capt. Mbarak Zaunga, the Head of Maritime Safety and the only other person~~ qualified to inspect maritime vessels, issued a Kenya Passenger Ship Safety Certificate for MV Harambee on 22nd March, 2019 without physically inspecting the vessel. He relied on the inspection report by the Port State Control Officer who had failed to raise the defect of the ferry prows.
6. On 15th October, 2019, KMA conducted an inspection following the accident involving MV Harambee and raised a number of defects on the vessel including the damaged prows.
7. The class certificate for MV Harambee expired on 21st October 2018 yet the ferry was still in operation without a valid class certificate. Kenya Maritime Authority issued a Kenya Passenger Ship Safety Certificate for MV Harambee on 22nd March, 2019 despite the vessel lacking a class certificate.
8. Safety procedures for ferries require the chain that runs across the deck to prevent vehicles from slipping off the ferry to be in place whenever a ferry crossing is made. This was absent from MV Harambee when the accident occurred.
9. Drydocking of ferries should be conducted every 36 months as per the provisions of the Merchant Shipping Regulations. MV Harambee was due for drydocking in 2019.

10. The Merchant Shipping (Training and Certification) Regulations, 2016 (Legal Notice No. 41 of 2016) required that from 1st January 2017, coxswains should have their certificates regularized by the KMA. The transitional clause in the new regulations provided for updating of competency certificates of coxswains issued under the Merchant Shipping Regulations of 1970.
11. Of the 25 active coxswains, eight (8) are certified under the old regulations and Kenya Ferry Services had sent their documents to KMA for certification. The 17 remaining coxswains lack certification under both the old and new regulations.

Committee Resolution

The Committee made the following resolution:

1. MV Harambee should be dry docked as soon as possible since dry-docking of ferries should be conducted every 36 months as per the provisions of the Merchant Shipping Regulations. MV Harambee was last dry-docked in 2016.

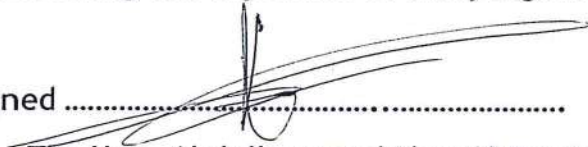
MIN/PIC/584/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/585/2019: ADJOURNMENT

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

Signed


The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date..... 19/11/2019

MINUTES OF THE 75TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON SATURDAY 2ND NOVEMBER, 2019 IN THE CONFERENCE ROOM, KENYA FERRY HEADQUARTERS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. John Muchiri Nyaga, M.P
5. The Hon. Mohamed Hire Garane, M.P
6. The Hon. Rashid Kassim Amin, MP
7. The Hon. Justus Kizito Mugali, MP
8. The Hon. Gladys Wanga, MP
9. The Hon. Paul Kahindi Katana, MP
10. The Hon. Purity Wangui Ngirici, MP
11. The Hon. Thuku Zachary Kwenya, M.P
12. The Hon. Babu Owino Paul Ongili, MP
13. The Hon. Mary Wamaua Njoroge, MP

ABSENT WITH APOLOGY

1. The Hon. Omar Mohamed Maalim Hassan, MP.
2. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
3. The Hon. Joash Nyamache Nyamoko, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. James Kamau Githua Wamacukuru, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-----------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Second Clerk Assistant |
| 3. Mr. Alex Mutuku | - | Senior Sergeant-at-Arms |
| 4. Ms. Winfred Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-----------------------|---|------------------------------------|
| 1. Mr. Justus Okumu | - | Ag. Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Mr. Herrie Njoroge | - | Manager, Audit |
| 4. Mr. Victor Momanyi | - | Inspectorate of State Corporations |

MIN/PIC/574/2019: PRELIMINARIES

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

MIN/PIC/575/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA FERRY SERVICES

Mr. Bakari Gowa, the Managing Director of the Kenya Ferry Services accompanied by Mr. Kombo Rajab (Finance Manager), Ms. Jeniffer Cirindi (Procurement Manager) and Mr. Paul Kotut (Operations Manager) appeared before the Committee to adduce evidence on the audited accounts of the Kenya Ferry Services for financial year 2015/16 to financial year 2017/18.

MIN/PIC/576/2019: AUDIT RESERVATIONS WITH REGARD TO SAFETY OF FERRIES FY 2015/16

In the audited Financial Statements of the Kenya Ferry Services for the financial year 2015/16, the Auditor General was concerned about the safety of the ferries managed by the Kenya Ferry Services. The Committee met with the Management of Kenya Ferry Services regarding this particular audit query with a view to establishing the state of the ferries following an accident that claimed the lives of two Kenyans.

The Management of Kenya Ferry Services requested the Committee to proceed with the site visit at the Likoni Ferry crossing before resuming the meeting.

MIN/PIC/577/2019: SITE VISIT TO THE LIKONI FERRY CROSSING

The Committee visited the site of the Likoni Ferry crossing to assess the state of the ferries. In particular, the Committee sought to establish the status of the pulleys on ferries that had been declared defective in the audit report and had caused prows to be submerged in water.

The Committee observed the ferries crossing the channel then took a ferry crossing from Mombasa island to Likoni via MV. Kilindini. The return crossing was via MV Harambee. ~~The later had been involved in an incident where a vehicle slipped from the ferry and led to the lives of two people.~~

Committee Observations

The Committee made the following observations:

1. The prows on MV Harambee were badly damaged and were submerged in the water. This exposed the vehicles parked on the ferry deck to the danger of slipping off the ferry and was raised in the audit report. The non-functional prow partly played a part in the aforementioned accident.
2. The submerged prows also caused a drag as the ferry made its way across the Likoni channel which leads to lower fuel efficiency and higher fuel costs.
3. In addition to the submerged prows, the chain that runs across the deck to prevent vehicles from slipping off the ferry were non-functional.
4. The prows on MV Kilindini were functional on only one side with the second side not shutting.
5. Passengers who boarded the ferry with their vehicles stayed inside the cars as the ferry made the crossing. This was against safety procedures that required passengers to disembark from their vehicles.

6. The prows on MV Jambo which was acquired two years ago were fully functional and uplifted during the ferry crossing. This secured the vehicles and passengers on deck from the danger of slipping off from the ferry.

The Committee resumed the meeting with the Management at Kenya Ferry Services Headquarters. The Management provided the following documentation requested by the Committee during the previous meeting:

1. Letters indicating the suspension and reinstatement of the Procurement Manager. The Committee observed that that two letters were not on official Kenya Ferry Services letterhead and used the same reference number.
2. A copy of the letter from Lloyds Register indicating the deregistration of MV Harambee, MV Nyayo and MV Kilindini from the register held by the company.
3. The inspection certificate of MV Harambee issued by the regulator, Kenya Maritime Authority.

Committee Observations

The Committee made the following observations:

1. MV Harambee last dry-docked in 2016 and was due for dry-docking in early 2019 which entailed significant repair including the non-functional prows.
2. The inspection certificate issued by Kenya Maritime Authority had raised a total of 12 defects on MV Harambee following an inspection that was carried out on 6th February, 2019. The non-functional prows which were glaring and submerged in water were not observed as being defective by the KMA's Port State Control Officer, Mr. Shaaban Tayari.
3. The class certificate for MV Harambee expired on 21st October 2018 yet the ferry was still in operation without a valid class certificate.
4. Kenya Maritime Authority counter-signed against the initial inspection certificate on 21st March, 2019 indicating that all the defects raised during the inspection had been rectified. The inspection was carried out by KMA's Port State Control Officer, Mr. Shaaban Tayari and was later countersigned by the Head of Maritime Safety at KMA, Capt. Mbarak Zaunga.
5. Kenya Ferry Services resolved to seek local certification from the regulator, Kenya Maritime Authority once the Authority was established by an Act of Parliament in 2006. The Ferry Management decided not to pursue certification from an international body like the Lloyds Register since the ferries do not operate in international waters and are restricted to the Likoni channel crossing.

Committee Resolution

The Committee made the following resolution:

1. Management should provide minutes of the meeting where the Procurement Manager was interdicted as well as minutes of the meeting reinstating her into the position.
2. Management should provide a copy of the letter to the Ministry of Transport indicating that the prows on MV Harambee were not functional.

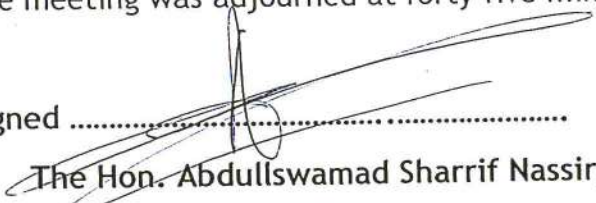
MIN/PIC/578/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/579/2019: ADJOURNMENT

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

Signed


The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....

19/11/2019

MINUTES OF THE 74TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 29TH OCTOBER, 2019 IN THE COMMITTEE ROOM, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Joash Nyamache Nyamoko, MP
4. The Hon. Gladys Wanga, MP
5. The Hon. Omar Mohamed Maalim Hassan, MP.
6. The Hon. Paul Kahindi Katana, MP
7. The Hon. Purity Wangui Ngirici, MP
8. The Hon. Thuku Zachary Kwenya, M.P
9. The Hon. Babu Owino Paul Ongili, MP
10. The Hon. Mary Wamau Njoroge, MP
11. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
12. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
13. The Hon. John Muchiri Nyaga, M.P
14. The Hon. Mohamed Hire Garane, M.P.
15. The Hon. Rashid Kassim Amin, MP

ABSENT WITH APOLOGY

1. The Hon. James Kamau Githua Wamacukuru, M.P
2. The Hon. Raphael Bitta Sauti Wanjala, MP
3. The Hon. Justus Kizito Mugali, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

IN ATTENDANCE

1. Mr. Justus Okumu - Ag. Director, Audit
2. Mr. Joshiah Oyuko - Manager, Audit
3. Mr. Victor Momanyi - Inspectorate of State Corporations

MIN/PIC/569/2019: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past ten O'clock and prayed.

MIN/PIC/570/2019: CONFIRMATION OF MINUTES

The minutes of the 73rd Sitting held on 17th October 2019 were confirmed as a true record of the proceedings after being proposed by the Hon. Gladys Wanga, MP and Seconded by the Hon. Dr. Chrisantus Wamalwa, MP.

MIN/PIC/571/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA FERRY SERVICES

Mr. Bakari Gowa, the Managing Director of the Kenya Ferry Services accompanied by Mr. Kombo Rajab (Finance Manager), Ms. Jeniffer Cirindi (Procurement Manager), Mr. Paul Koech (Operations Manager), Mr. Elijah Kitur (CS and head of legal), Tuva Kanga (Human Resource Manager), and Eng. Peter Mathenge (Principal Engineer) appeared before the Committee to adduce evidence on the audited accounts of the Kenya Ferry Services for financial year 2015/16 to financial year 2017/18

MIN/PIC/572/2019: AUDIT RESERVATIONS WITH REGARD TO SAFETY OF FERRIES.

In his audit report on the Financial Statements of the Kenya Ferry Services for the financial year 2015/16, the Auditor General was concerned about the safety of the ferries managed by the Kenya Ferry Services. He observed that most of the ferries had operated long after the scheduled services thereby risking the life of Kenyans using them as a means of transport. The Auditor General characterized his audit reservations as follows:

- i. Dry-docking for MV Kwale and MV Likoni not done as scheduled
- ii. MV Kwale engine had operated for more than 30,000 hours without undergoing engine overhaul.
- iii. Pulleys on most ferries were defective causing prows are to be submerged in water
- iv. The ferry users are not insured therefore it may difficult to settle liabilities in case of accident.

Further, in the 2016/2017 financial year, the Auditor General observed that the KFS engaged the services of a law firm to help in identification and settlement of claims of Mtongwe ferry disaster but little progress had been achieved as at 30th June 2017. It is against this background that the Committee invited the Kenya Ferry services for a briefing meeting.

Mr. Bakari Gowa and Mr. Peter Mathenge gave their evidence under oath.

In his response to the Committee, the Managing Director for the KFS submitted the following:

FLEET OF FERRIES OPERATED BY THE KFS

KFS operates 6 vessels as itemized below.

S/No	Name of vessel	Year of Manufacture	Ferry capacity		Year of services
			Passenger	Vehicle	
1	Mv Nyayo	1990	1,200	60	30 Years
2	Mv Kilindini	1990	1,440	60	30 Years
3	Mv Harambee	1990	1,440	60	30 Years
4	Mv Likoni	2010	1,550	60	10 Years
5	Mv Kwale	2010	1,550	60	10 Years
6	Mv Jambo	2017	1,650	64	2 Years

Committee Observations

(i) Replacement of ferries

The KFS MD confirmed that it was KFS's policy that ferries should be replaced after 20 years. The basis of the twenty- year replacement policy was premised on the high cost of maintaining old ferries and not whether or not they were seaworthy once they clock 20 years. As at the time of appearance before the Committee, three ferries (MV. Harambe, MV Nyayo and MV Kilindini had operated way beyond this policy due to budgetary constraints.

The KFS MD confirmed that since the year 2010, the KFS management had been requesting for allocations from the parent Ministry to replace the ferries without success.

(ii) Issuance of ferry operating certificates.

The Committee noted that all the ferries operated by the KFS had been issued with a passenger safety Certificate by the Kenya Maritime Authority (KMA). Section 5 (j) of the KMA Act of 2006 mandates KMA to regularly inspect marries vessels to ensure passenger safety. Safety Certificates can only be issued once a vessel has been surveyed by KMA and satisfied itself that it is safe to continue operating.

Besides KMA, Lloyd (which is a private Non-Governmental Organization) inspects and maintains a register of al vessels that meet its standard. Prior to the enactment of the KMA Act in 2006, Kenya vessels were being registered by Lloyd but from 2007, the KFS began registering its vessels through the KMA. All the survey fees is born by the Company that calls for Lloyd's services. The KFS Eng. Peter Mathenge confirmed that MV. Harambee, Nyayo and Kilindini were removed from the Lloyds register in 2007 due to their poor state.

Lloyd is the international standard that regulates vessels. Despite KMA having this knowledge, it proceeded to issue KFS with the seaworthiness certificate. All the rest of the ferries have been struck out of the Lloyd register but instead issued by KMA.

(iii) Maintenance cost of ferries

There had been several requests for maintenance of ferries in the last ten years. However, what had been provided was not sufficient to conclusively address the major works required of the ferries. The table below summaries the request, allocations and what was utilized for maintenance in the last 5 years.

Financial year	2015/16	2016/17	2017/18	2018/19	2019/2020	Total Kshs.
Amount requested (Kshs.)	199M	466M	350M	320M	310M	1.645bn
Amount allocated (Kshs)	76.805M	294M	191M	177M	126M	864.805M
Amounted utilized (Kshs.)	76.805M	254M	191M	130M	126M	777.805M

From the table, it is clear that budgetary request for the ferry maintenance has not been adequately provided leading to poorly maintained ferries. For instance, the following comes out clearly:

- The fabrication of prows for MV Nyayo and Mv Harambee that had badly deteriorated could not be done in the 2015/16 financial year.
- In the year 215/16, MV Kilindini that was due for dry dock could not be fully done and was limited to under water steal works.
- Mv Nyayo that was to be dry docked in the FY 2016/17 was only limited to underwater works. However, its engine was replaced.
- The funds earmarked ferry maintenance for 2017/18 was not absorbed due to late exchequer releases. The money came in July 2018 hence the reason of no absorption.

(iv) Competence of coxswains

It was observed that the coxswain operating the ferries did not have requisite certificates to operate the ships. The Merchant Shipping (Training and Certification) Regulations, 2016 (Legal Notice No. 41 of 2016) required that from 1st January 2017, coxswains should have their certificates regularized by the KMA. Two years down the line, there was no compliance. The KMA letter to KFS dated 30th September 2019 confirmed this. KFS indicated that the reason why there has been no upgrade of the existing coxswain was that there was no institution in Kenya to do that.

(v) Disposal of scrap metal from ferries

On disposal of steel from drydock, KFS confirmed to the Committee that the contract is cut and replace which entails the ship yard keeping all the scrap metal left behind after repair of ferries.. However, in major replacements such as prows, KFS cuts them off before taking them for drydock.

Committee Resolutions

The Committee made the following resolutions:

1. KFS to provide the policy document on the 20 years replacement
2. KFS to provide communication between KFS and parent Ministry regarding dilapidated state of the vessels
3. KFS to provide communications from Lloyd deregistering the vessels
4. KFS to provide the survey reports from KMA after inspecting the vessels; the issues that were raised and the feedback from KFS on the same. A letter from KMA to KFS and dated 1st October 2019
5. KFS to provide minutes of the negotiations KFS had with regard to competence of coxswains.

MIN/PIC/573/2019: ADJOURNMENT

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

Signed


The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date..... 19/11/2019

**MINUTES OF THE 73RD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON THURSDAY 17TH OCTOBER 2019 IN COMMITTEE ROOM 7, MAIN
PARLIAMENT BUILDINGS AT 11.00 A.M.**

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (**Chairman**)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (**Vice chairman**)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. Thuku Zachary Kwenya, M.P
6. The Hon. Mohamed Hire Garane, M.P.
7. The Hon. Rashid Kassim Amin, MP
8. The Hon. Omar Mohamed Maalim Hassan, MP
9. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
10. The Hon. Babu Owino Paul Ongili, MP
11. The Hon. Gladys Nyasuna Wanga, MP
12. The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

1. The Hon. Raphael Bitta Sauti Wanjala, MP
2. The Hon. Justus Kizito Mugali, MP
3. The Hon. Mary Wamaua Njoroge, MP
4. The Hon. Paul Kahindi Katana, MP
5. The Hon. Purity Wangui Ngirici, MP
6. The Hon. John Muchiri Nyaga, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-----------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 3. Ms. Winfred Atieno | - | Audio Recording Officer |
| 4. Mr. Benard Kimutai | - | Intern |

IN ATTENDANCE

- | | | |
|-----------------------|---|------------------------------------|
| 1. Mr. James Njuru | - | Deputy Director, Audit |
| 2. Mr. Charles Kiage | - | Manager, Audit |
| 3. Mr. David Macharia | - | Manager, Audit |
| 4. Ms. Florence Valla | - | Manager, Audit |
| 5. Mr. David Macharia | - | Manager, Audit |
| 6. Mr. James Sitienei | - | Inspectorate of State Corporations |

MIN/PIC/2019/564:

PRELIMINARIES

The Vice Chairperson called the meeting to order at eleven O'clock followed by a word of

prayer from Hon. Joash Nyamoko, MP.

MIN/PIC/2019/565: CONFIRMATION OF MINUTES

Minutes of the previous meetings were confirmed as follows:

1. Minutes of the 71st sitting held on 15th October, 2019 were confirmed as a true record of proceedings having been proposed by the Hon. Joash Nyamache Nyamaoko, HSC, MP and seconded by the Hon. Dr. Chrisantus Wamalwa, CBS, MP.
2. Minutes of the 72nd sitting held on 16th October, 2019 were confirmed as a true record of proceedings having been proposed by the Hon. Zachary Thuku, MP and seconded by the Hon. Mohamed Hire, MP.

MIN/PIC/2019/566: EXAMINATION OF AUDITED ACCOUNTS OF TANA AND ATHI RIVERS DEVELOPMENT AUTHORITY

Mr. Stephen Githaiga, the Managing Director of Tana and Athi Rivers Development Authority, accompanied by Mr. David Kimaiyo (Chief Manager, Finance), Ms. Beth Wanyoike (Finance Manager) and Joseph Mwangi (Deputy Finance Manager) appeared before the Committee to adduce evidence on the audited accounts of the Authority for the financial year 2014/15 to financial year 2016/17.

MIN/PIC/2019/567: EXAMINATION OF AUDITED ACCOUNTS OF TANA AND ATHI RIVERS DEVELOPMENT AUTHORITY FOR THE FINANCIAL YEAR 2016/17

MATERIAL UNCERTAINTY RELATED TO SUSTAINABILITY OF SERVICES (FY 2016/17)

The Committee heard that the Authority recorded a deficit of Kshs.552,712,373 during the year under review which, after considering a prior year adjustment of Kshs.756,883 as reflected in the statement of changes in net assets, raised its accumulated deficit to Kshs.13,353,414,171 as at 30th June 2017 (2016: Kshs.12,799,944,915). In view of the foregoing, the ability of the Authority to sustain its services is dependent on the continued financial support from the Government, and the Authority's bankers and its creditors. This material uncertainty was however not disclosed in the financial statements.

Management Response

The Managing director informed the Committee that the Authority recorded a deficit of Kshs.552,712,373 (2015/16 Kshs.572,700,415). However, the deficit for the financial year 2016/2017 had since changed to Kshs.578,318,053 after the recommended adjustments. He further averred that:

- a) Before 1988, TARDA was self-sustaining through its internally generated revenue from the projects. The Authority did not require any assistance from the Exchequer streams. Immediately KPLC disregarded the lease of commercial agreement in 1988

- and eventually transfer of power generating and transmitting assets in the year 2000, the financial base and solvency of the Authority was incapacitated.
- b) TARDA had been insolvent since the day generating and transmission assets were transferred to KenGen. Unless the claims were honored, the going concern and balance sheet accounting of the Authority will continue to be negative and recurring year after year despite the fact that it is not the inefficiency of TARDA but the effects of the power sector restructuring in the late 1990s.

Committee Observations

1. The financial statements for 2016/17 were restated following some adjustments.
2. The restatements were reflected in opening balances of the financial statements for 2017/18. The Authority therefore recorded a deficit of Kshs 578,318,053 leading to a cumulative deficit of Kshs 13,385,652,237
3. TARDA continues to reflect assets and their depreciation that were moved to KENGEN in its books
4. TARDA continued to maintain reservoir and dam monitoring and gets Kshs. 62 Million. This was too little.
5. The PIC recommendation on the engagement with parent Ministry and KENGEN was underway.
6. The Authority had provided reports of valuation of claims by Pricewater House Coopers, ISG and PIC 19th and 21st reports recommending payments of annual obligations which had accumulated to 10.7 billion by 30th June 2018

Committee Recommendation

- TARDA should not continue including assets that were transferred to KENGEN
- TARDA should sue KPLC and KENGEN to be paid
- The Committee on Implementation should follow the PIC's recommendation in the 19th and 21st reports.

WORK-IN-PROGRESS (FY 2016/17)

The Committee heard that as similarly reported in the previous year, the capital work in progress balance of Kshs.252,001,275 as at 30th June 2017 (2015/2016: Kshs.235,449,689) reflected in the statement of financial position and disclosed in Note 15 of the financial statements comprises of capital work-in-progress valued at Kshs.234,152,289 in respect of staff houses, a school, a dispensary and supermarket. Construction of these facilities commenced in 1990 at Tana Delta Irrigation Project (TDIP) in Garsen but relevant supporting documents for procurement and construction of the facilities were not availed for audit verification. These were stalled and dilapidated projects whose current value was far below the disclosed amounts.

Further, the capital work in progress figure of Kshs.252,001,275 included an amount of Kshs.17,848,986 in respect of Masinga Dam Resort construction. However, the payment certificates produced in support of the project amounted to Kshs. 10,992,767 resulting in unexplained variance of Kshs.6,856,219. Additionally, the payment vouchers and procurement documentation for the Masinga Dam Resort work in progress totaling Kshs.17,848,986 were not provided for audit verification. As a result, the accuracy and validity of the carrying amount of work in progress of Kshs.252,001,275 could not be ascertained.

Management Response

- (a) **Tana Delta Irrigation Project (TDIP) – Kshs.234,152,289:** This figure had been appearing in all TARDA audited accounts for the last 30 years since 1988. They had always been classified as work in progress because the work remained incomplete and has never been commissioned. The attempt to complete these works with use of AIA was hampered by the El Nino of 1997.
- b) **Masinga Dam Resort Construction – Kshs.17,848,986:** This project is also reported as work in progress because up to now it is not yet complete. It remains work in progress but the management hopes to complete it before the end of December 2019 through our internally generated funds.

Committee Observations

- The management did not answer the query raised by the OAG with regard to absence of procurement documents and the payment vouchers
- This project started way back when Kenya did not have a procurement law
- Management indicated that the documents got destroyed during the bomb blast in 1998. It was curious that TARDA did not have a backup to these documents.

Committee resolution

- The TARDA management to provide a catalogue of the things that got lost at the time of the bomb blast.
- TARDA to provide the requested documents if they were available
(TARDA undertook to provide documents within two weeks)

ASSETS HELD BY FORMER MANAGING DIRECTORS (FY 2016/17)

The Committee heard that, as previously reported, the Authority incurred expenditure totaling Kshs.422,500 on purchase of various mobile phones and iPads which were issued to a former Managing Director between July 2012 and February 2013. In addition, available records indicated that another former Managing Director was issued with a Laptop, camera and mobile phones which was not surrendered to the Authority as at 30th June 2017. The management did not provide satisfactory explanation why these assets were not recovered from the Managing Directors at the end of their respective tenures. In view of the foregoing, it was not possible to confirm that the property, plant and equipment balance of Kshs.10,379,031,923 as at 30 June 2017 was fairly stated.

Management Response

The Management concurred with the Auditors that assets held by former Managing Director (Mr. Abudl Agonga) of Ksh.422,500 for various mobile phones and iPads had not been recovered. The Authority wrote a letter to Mr. Abdul Agonga demanding the return of the assets in his possession but was yet to respond. Similarly, the Management wrote to former MD Mr. Francis Agoya severally to return the assets in his possession but he had not been responding to the demand letters.

Management further averred that it could be costly following legal avenues to recover the assets as they had continued to depreciate since February 2013 and therefore very low in value. However, Management had written to the Inspectorate of State Corporations to assist in the recovery of the above assets.

Committee Observations

- This matter was handled in the PIC's 21st report with a recommendation that the Inspectorate of State Corporations be enjoined in the recovery of the assets from the former MD's terminal dues.
- The former MD had since sued TARDA and the matter was live in court
- The Inspectorate of State Cooperations had done nothing on this matter through its surcharge Committee

Committee Recommendations

- The Implementation Committee should follow up on this matter pursuant to its mandate.
- The Inspectorate of State Cooperation should follow-up the matter expeditiously

TRADE AND OTHER RECEIVABLES (FY 2016/17)

The Committee heard that the trade and other receivables balance of Kshs.140,401,502 as at 30th June 2017 (2016: Kshs.92,916,780) was net of the Kenya Power and Lighting Company debtor account. According to Note 19 to the financial statements, the account related to bulk power sales amounting to Kshs.1,179,215,376 for the period prior to 1988 and which was under dispute between the Authority and Kenya Power Lighting Company.

Further, the balance of Kshs.140,401,502 included debtors account – car loan balance of Kshs.259,396 which the Authority stated as historical and impossible to analyze and debtor account-Freshco Kenya Limited of Kshs.7,576,126 which was not properly supported with contract documents.

Further, included in the trade and other receivables balance of Kshs.140,401,502 are debts amounting to Kshs.43,910,700.40 owed by various stations and departments within the Authority. These debts were, however, not supported by any corresponding liabilities in the books of accounts or documentation.

In addition, the Authority failed to provide age analysis for the trade receivables balance of Kshs.140,401,502 as at 30th June 2017. It is therefore not possible to assess the recoverability of these debts and confirm whether adequate provision had been made against the long outstanding debts. In the circumstances, it was not possible to confirm the accuracy, validity and recoverability of the trade and other receivables balance of Kshs.140,401,502 as at 30th June 2017.

Management Response

- (a) The Authority provided for provision for doubtful debts some years back, which can be verified from our trial balance, this has always been reported in our books over the years.
- (b) **Car Loan Balances – Kshs.259,396.00:** This amount has been in our books since 1998/99 financial year as a hanging figure. By the conclusion of the financial year, TARDA had lost substantial information relating to project studies, technical and financial documents as a result of the August 1998 bomblast, where TARDA was heavily affected. Among the financial and human resources documents were the car loan instruments.

- (c) **Freshco Account – Kshs.7,576,126:** This amount relates to a contract between TARDA and the company for cotton farming in Kiambere in September 2007. A copy of the contract document to support the arrangement and the above figure was availed for verification.
- (d) Inter departmental debts of Kshs. 43,910,700.00 were reconciled and corrective action taken as recommended by the Auditor.
- (e) **Age Analysis of Kshs.140,402,502:** The age analysis of this figure was similarly was availed for audit verification.

Committee Observations

- This matter had been dealt with in the 21st report of the PIC in which the authority was to digitize its files. The authority confirmed it had done of the work. The matter of debt write off had been pending since the TARDA had not been properly constituted.
- KPLC was to pay TARDA but the matter was disputed
- The OAG did a reconciliation of the amounts between TARDA and KPLC and indicated that KPLC was to pay TARDA Kshs. 2.4 billion
- Efforts to have KPLC pay the money has not born any fruit

Committee Recommendation

TARDA should sue KPLC to seek payment of the amounts due.

REVALUATION RESERVE (2016/17)

The Committee heard that reflected in the statement of financial position and disclosed in Note 23 to the financial statements is the revaluation reserve balance of Kshs.19,697,833,221 as at 30th June 2017 (2016: Kshs.19,697,833,221). However, no documentary was availed to support any revaluations of assets undertaken by management. Further, the reserve balance is not identified with any particular assets of the Authority and the depreciation on the revalued assets was never charged to the reserve. In addition, revaluation of the Authority's assets was last done in 2006 and thus the expired period is more than the five-years prescribed under International Public Sector Accounting Standards No. 17. Consequently, it was not possible to confirm whether the revaluation reserve balance of Kshs.19,697,833,221 as at 30 June 2017 is fairly stated.

Management Response

The Managing Director submitted that TARDA's assets were revalued in the year 2006 by J.B Mwaniki & Associates during which revaluation reserve was brought to Kshs.19, 697,833,221. The Management noted the Auditor's concern on charging depreciation of revalued assets to the reserve account and therefore would adopt the same in the financial year 2019/2020. Management would endeavor to make a budgetary provision to carry out revaluation exercise in the FY 2020/21.

Committee Observations

- TARDA had been requesting for asset revaluation money for the last three years but the money had not been allocated.
- Valuation will coast Kshs. 20 million.
- The revaluation report had never been availed to the auditors to estimate the depreciation

Committee resolution

TARDA to provide the revaluation report to the Committee and the OAG within a week for verification

TRADE AND OTHER PAYABLES (FY 2016/17)

The Committee heard that, as reported in the previous year, included in trade and other payables balance of Kshs.238,092,491 as at 30th June 2017 (2016: Kshs.230,532,432) are un-remitted statutory deductions of Kshs.3,355,164 relating to National Social Security Fund (NSSF) and withheld VAT of Kshs.6,475,583.60, which had been outstanding for long some dating back to 2004. Further, included in trade and other payables balance is an amount of Kshs.70,815,832.50 relating to un-remitted pension and PAYE of Kshs.54,007,140.36 dating back to 2014. No explanation has been provided why the Authority has delayed remittance of statutory deductions to the respective institutions.

Further, as reported in the previous year, the Authority does not reconcile reported amounts of arrears and penalties owed to NSSF. As a result, the management does not confirm the authenticity of the payments made and outstanding balances, an indication of poor internal control. The Authority is likely to incur heavy penalties and interest charges if management does not take corrective measures.

In addition, creditors amounting to Kshs.63,710,558.48 had been outstanding between one and twenty years. Management had not explained why the debts have remained unpaid for so long.

Additionally, payables amounting to Kshs.2,225,125.20 related to defunct organizations that ceased existing as tabulated below:

Ministry	Year	Amount Kshs
Ministry of Cooperative Development	2008	50,816.20
Ministry of Home affairs	2011	152,050
Ministry of State Dev. Of Northern Kenya	2013	85,380
Council		
Town council of Kitui	2012	213,000
Murang'a County Council	2008	1,723,879
Total		2,225,125.20

In view of these anomalies, it was not possible to confirm the accuracy, validity and completeness of the trade and other payables balance of Kshs.238,092,491 as at 30th June 2017.

Management Response

a) NSSF

Management concurred with the Auditor on the outstanding statutory and other payroll deductions. However, the NSSF balance was reconciled and fully paid and the Authority settles obligation as and when it falls due since then.

b) **Outstanding VAT:** The Authority was in the process of settling the outstanding balance.

c) Pension

Ever since 1994, TARDA had been incurring an unpaid expenditure of over Kshs.21.6million p.a as employers pension contribution on annual basis which went up to Kshs.30million p.a in 2011 to date. Management through its own resources had reduced these figures. The Authority has been requesting the National Treasury to provide Kshs.30million on annual basis to clear at least annual provision for this account. This has not been actualized and causes the above challenges.

However, Management had entered in to an agreement with Board of Trustees – TARDA Staff Pension Scheme to settle the outstanding balance as the current obligation is remitted.

d) PAYE

Management concurred with the Auditor that an amount of Kshs. 54million was outstanding in respect of PAYE.

e) Long outstanding Creditors

Included in this figure of Kshs. 63,710,558.48 are balances which have been there for over 20 years as hanging figures without supporting documents because they were part of records that were destroyed by 1998 bomb blast. On several occasions, the Authority has been requesting the Board to write off these hanging figures from our books. The Board resolution has always been that we seek concurrence from the Treasury, the Line Ministry and the Auditor General. This concurrence and advice from the above offices has not yet been availed.

f) Amounts Owed to Defunct Organizations

The Authority owed Kshs. 2,225,125.20 to defunct organizations as at the end of the year under review as reported by the Auditor. The amounts are not supported by any relevant documents nor did the TARDA receive demand notes from the respective organizations. The Authority therefore categorized these outstanding balances as hanging and unsupported figures which form part of the list earmarked for write off as explained earlier in part (e) above.

Committee Observations

- TARDA had been settling VAT to KRA as a per the agreed payment plan.
- On NSSF and pension, the auditors confirmed that it been paid
- On PAYE, the agreement was being honoured –
- On long outstanding creditors, TARDA to avail letters of concurrence
- On amount owed to defunct organizations, TARDA did not know who to pay. The limitations of actions may bar them from suing

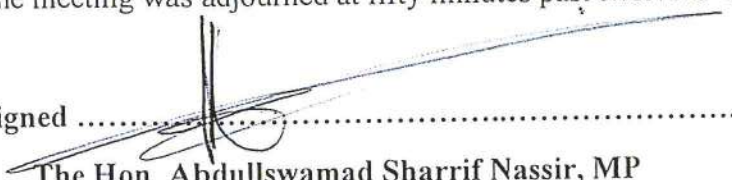
Committee resolutions

- TARDA should provide the status of VAT payment as of the date of appearance.
- TARDA to provide the agreement on settling of long outstanding creditors

MIN/PIC/2019/568: ADJOURNMENT

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

Signed


The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....

29/10/2019

**MINUTES OF THE 72ND SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON WEDNESDAY, 16TH OCTOBER 2019 IN ROOM 7, MAIN PARLIAMENT
BUILDINGS AT 10:57 A.M.**

PRESENT

The Hon. Abdullswamad Sharrif Nassir, MP (**Chairman**)
The Hon. Ahmed Abdisalan Ibrahim, MP (**Vice chairman**)
The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
The Hon. Thuku Zachary Kwenya, M.P
The Hon. Omar Mohamed Maalim Hassan, MP
The Hon. Gladys Nyasuna Wanga, MP
The Hon. Babu Owino Paul Ongili, MP
The Hon. Mary Wamaua Njoroge, MP
The Hon. James Kamau Githua Wamacukuru, M.P
The Hon. Joash Nyamache Nyamoko, HSC, MP
The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
The Hon. John Muchiri Nyaga, M.P
The Hon. Raphael Bitta Sauti Wanjala, MP
The Hon. Mohamed Hire Garane, M.P
The Hon. Purity Wangui Ngirici, MP

ABSENT WITH APOLOGY

The Hon. Justus Kizito Mugali, MP
The Hon. Rashid Kassim Amin, MP
The Hon. Paul Kahindi Katana, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-----------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Ms. Marlene Ayiro | - | Senior Legal Counsel |
| 3. Ms. Winnie Atieno | - | Audio Recording Officer |
| 4. Mr. Benard Kimutai | - | Intern |

IN ATTENDANCE

- | | | |
|-------------------------|---|----------------|
| 1. Mr. Njoroge Waithima | - | Manager, Audit |
| 2. Mr. Lawrence Oigara | - | Manager, Audit |
| 3. Mr. Joshiah Oyuko | - | Manager, Audit |
| 4. Ms. Stella Samperu | - | Manager, Audit |
| 5. Mr. Charles Kiage | - | Manager, Audit |

MIN/PIC/2019/561: PRELIMINARIES

The Chairperson called the meeting to order at fifty-seven minutes past eleven O'clock and prayed.

MIN/PIC/2019/562: EVIDENCE BY NATIONAL HOSPITAL INSURANCE FUND (NHIF)

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

REVISITING OF DOCUMENTS REQUESTED BY THE COMMITTEE ON 15TH OCTOBER 2019

The Acting CEO of the NHIF tabled the following documents

- The list contributors of the Kshs . 35 Million that had been held in suspense account
- The breakdown of Company contributions that made up of the Kshs. 35 million that was held in suspense account.

PROPERTY, PLANT AND EQUIPMENT

2.1 Land situated at Karen – 10 Hectares

The Committee heard that the Property, Plant and Equipment balance of Kshs.14,122,454,327 in the statement of financial position as at 30th June 2018 included land valued at Kshs.298,589,665 which included an amount of Kshs.93,712,675 for land Ref. No.LR 24968/2 measuring 10 hectares situated at Karen. However, the ownership of this particular parcel of land was in dispute and the matter was pending in court. Further, information available indicated that the DCI had commenced investigation to establish whether there was fraud in the transfer of ownership of the land and prosecute any person who may have been identified as having breached the law as per the PIC recommendations of the 21st and 22nd report.

Management Response

Management informed the Committee observed that issue was cited in prior years and discussed by the PIC since 2009/ 2010 Financial Year. The Directorate of Criminal Investigations commenced the inquiry/ investigations on the land and its acquisition in the year 2018. The Fund was notified of the same vide their letter Ref: DCI/IB/LFIU/SEC/2/16/VOL.X/541 dated 19th

November 2018. The DCI convened a meeting between the Chief Land Registrar from Ministry of Lands, the Land Surveyor from Survey of Kenya, Chief Valuer from Nairobi City County Government and all parties who held titles to the land. The DCI had since taken titles to the impugned land for use in the investigations.

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

Committee Observations

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

Committee Recommendation

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

2.2 Proposed Resource Centre at Karen Land

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

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

Management Response

The acting CEO of NHIF indicated that as a result of the foregoing dispute of the Karen land where the proposed resource Centre was earmarked for construction, no progress could be made

in terms of construction, over and above the lack of approval by the Ministry until the disputes were solved. In addition to the issue of prosecution, the DCI had since taken up the matter and that he was carrying out investigations as explained in above.

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

Committee Observations

- **OAG had not acted on the Committee recommendations thus far on procurement and performance audit**

Committee Recommendation

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

2.3 Construction of Multi-Storey car Park

The Committee heard that the National Hospital Insurance Fund entered into an agreement with local construction firm for construction and completion of a multi storey car park at a contract sum of 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, indicated that the contract sum was later revised upwards to Kshs.1,179,611,756 representing approximately 337 % above the original contract sum of Kshs.909,709,305.

Although records available indicated 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.

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

Management Response

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

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

Committee Observations

- **There has been no progress on implementation of the PIC's 19th and 22nd Reports especially in enjoining DCI on the investigations**

Committee Recommendation

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

2.4 Integrated Revenue management System

The Committee heard that the Property, Plant and Equipment balance of Kshs.14,122,454,327 included additions to computers and related equipment of Kshs.973,387,872. The additions further included the total cost of proposed acquisition of an Integrated Revenue Management System of Kshs.495,205,588. Available information indicated that on 4th June 2018, the Fund entered into a contract ref RFP/SSSM NO./001/2017-2018 with an IT Solutions firm for provision of Integrated Revenue Management System. Although the Fund had not acquired the system as at 30th June 2018, the total cost of the system was included under additions to

computers and related equipment thus resulting to an overstatement of Property, Plant and Equipment by Kshs.495,205,588. Further, the total amount accrued under trade payables in respect to the system amount to Kshs.469,591,506 resulting in unexplained variance of Kshs.25,614,082.

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

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

Management Response

Management concurred that the total cost of Integrated Revenue Management System was included in additions to computers and related equipment under the Property, Plant and Equipment even though the Fund had not acquired the system as at 30th June 2018. This was done on the basis that the procurement and contract for the provision of the services were entered in the financial year 2017/2018 and therefore the Fund had an obligation to recognize expenditure in the same period. Following the recommendations by the audit, the contract amount of Kshs. 495,205,588 were reversed and removed from the Plant, Property and Equipment (PPE) in the subsequent financial year.

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

Assets Disposal Act 2015 for use of single source as a selection method as this was the most appropriate method due to the following cases:

- i) The service provider had exclusive rights for the system used for Revenue Collection and Management. The Integrated Revenue Management System was a highly customized and proprietary to the Fund with source code availability limited to the software provider.
- ii) The task was a continuation of the previous tasks carried out by the same service provider. The continuation was technologically appropriate since Infrastructure was already setup in all NHIF branch/Satellite offices, 180 Health Care Providers and Contracted Banking Institutions thus eliminated disruption to service provision and compatibility related problems.

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

Section 124 (14 - 15) of Public Procurement and Assets Disposal Act 2015 states that *“Single Source Selection Shall require a placement of advertisement of the intention to single source and invite anyone who wishes to bid and in the event that there’s a response to the advert then all interested suppliers shall be invited to submit proposals. Where an alternative method is selected a report shall be prepared and submitted to the Authority for approval”*. In view of the above NHIF complied with these two requirements by:

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

The management provided the following documents to buttress their case:

1. Authority to advertise Tender for Purchase of Revenue Collection Management System on NHIF Website
2. Communication from Procurement to ICT to place the advert on the website
3. Evidence of Advert placed on the website

4. Tender Notice
5. Request to PPRA
6. Approval from PPRA

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

Committee Observations

- The reasons advanced for direct procurement were not satisfactory. One can only go for single sourcing if there is only one service provider. Though management indicated that it was Webtribe Ltd that had a source code for all the NHIF infrastructure across the country, the Committee found this assertion misleading.
- There was no feasibility study done.
- 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.
- The case on the matter was active in court being prosecuted by the DCI. The DCI is prosecuting issues related to procurement of the system. However, the NHIF did not attach any document to show that the matter was active in Court
- The system was being used by the NHIF as at the time of NHIF management appeared before the Committee
- The software was procured at Kshs. 495 Million. The NHIF was paying for the use of the software at an average (roughly) cost of kshs. 24 million per month (this figure was based on the volume of money that passed through the system). This was a very huge figure
- The letter from PPRA Ref: PPRA/P&R/22 VOL.I.(42) dated 4th April 2018 done to CEO of the NHIF (Geoffrey Mwangi) did not authorize such procurement. There was a raft of preconditions to be fulfilled which NHIF did not fulfill.
- Since the arrest, NHIF stopped paying webtribe ltd. The NHIF had already paid Kshs. 179 million.

- The tender to buy the software was only posted on the NHIF website without even advertising in the dailies. The memo further indicated that the tender had been awarded to Webtribe ltd.
- The liable person should be surcharged


Committee Resolutions

The NHIF requested the following documents from the NHIF

- The initial contracts between the NHIF and the supplier (for purchase and the use)
- The NHIF to provide the names of the officers who initiated the process from 2014, tendering process, tender committee minutes,
- Breakdown of payments done from 2014 to date
- Contract that had been done to buy the software at Kshs. 495 million
(CEO undertook to provide the requested documents 22nd October 2019).

MIN/PIC/2019/563: ADJOURNMENT & DATE OF NEXT SITTING

The meeting was adjourned at 12:25 pm. The next meeting will be held on 17th October 2019 at 10:00am.

Signed.....


The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....
17/10/2019.

MINUTES OF THE 69TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 8TH OCTOBER 2019 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:25 A.M.

PRESENT

The Hon. Abdullswamad Sharrif Nassir, MP (**Chairman**)
The Hon. Ahmed Abdisalan Ibrahim, MP (**Vice chairman**)
The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
The Hon. Paul Kahindi Katana, MP
The Hon. Thuku Zachary Kwenya, M.P
The Hon. Omar Mohamed Maalim Hassan, MP
The Hon. Rashid Kassim Amin, MP
The Hon. Gladys Nyasuna Wanga, MP
The Hon. Babu Owino Paul Ongili, MP
The Hon. Justus Kizito Mugali, MP
The Hon. Mary Wamaua Njoroge, MP

ABSENT WITH APOLOGY

The Hon. Purity Wangui Ngirici, MP
The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
The Hon. James Kamau Githua Wamacukuru, M.P
The Hon. John Muchiri Nyaga, M.P
The Hon. Joash Nyamache Nyamoko, HSC, MP
The Hon. Raphael Bitta Sauti Wanjala, MP
The Hon. Mohamed Hire Garane, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-----------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Mohamed Boru | - | Clerk Assistant II |
| 3. Ms. Marlene Ayiro | - | Senior Legal Counsel |
| 4. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 5. Ms. Winnie Atieno | - | Audio Recording Officer |
| 6. Mr. Benard Kimutai | - | Intern |

IN ATTENDANCE

- | | | |
|-----------------------|---|---------------------|
| 1. Mr. Leonard Opal | - | Ag. Director, Audit |
| 2. Mr. James M. Njeru | - | Ag. Director, Audit |
| 3. Ms. Joshiah Oyuko | - | Manager, Audit |
| 4. Mr. John Wakaba | - | Manager, Audit |
| 5. Mr. Anthony Mwangi | - | Manager, Audit |

MIN/PIC/2019/549: PRELIMINARIES

The Vice Chairperson called the meeting to order at twenty five minutes past ten O'clock

followed by a word of prayer from the Hon. Paul Kahindi Katana, MP.

MIN/PIC/2019/550: EVIDENCE BY KENYA NATIONAL SOCIAL SECURITY FUND (NSSF)

Mr. Anthony Omerikwa, the Ag. Managing Trustee of the National Social Security Fund accompanied by Mr. Evans Ombui (Ag. Manager, Registration and collection), Mr. Obed Ombuvi (Ag. Manager, Capital and Money market), Mr. Peter Muriuki (Manager, Property Development), Dr. Chris Khisa (Manager, PR and Commissions), Mr. Stephen Obare (Manager, ICT), Mr. James Njiru (Ag. Manager, Property Development) Ms. Caroline RAKAWA Odera (Legal officer), Evans Moturi (Ag. Manager, Finance), Austin Ouko (Ag. GM , accounts), and Mr. Moses Chesoto (Ag. General Manager, Investment) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Fund for the financial year 2017/18.

The auditors reported to the meeting that they were not ready to proceed with the meeting since they had not had time to look at the responses and verify them. They indicated that they received responses from the NSSF in the morning of 8th October 2019. They requested the Committee for a minimum of five days to verify the submitted documents.

NSSF management gave the following reasons to the Committee for delayed submissions of documents to the Office of the Auditor General for verification:

- a. Job evaluation exercise that was going on currently and hence officers were busy
- b. Most officers had taken their leave when the invitation to appear before the Committee was made
- c. The issues raised in the audit report were many and therefore required more time

While acceding to the Auditors request for postponement, the Committee had this to say:

- a. The reasons advanced by the NSSF management for failure to submit documents to the OAG in time were not satisfactory given that the NSSF had been given a notice of 21 days to appear before the meeting.
- b. This was the last time the Committee was adjourning a meeting due to NSSF's unpreparedness
- c. The Committee would re-invite the NSSF at an opportune time to appear before the Committee and adduce evidence on the Fund's financial statements for the FYs 2016/17 and 2017/18

MIN/PIC/2019/551 ANY OTHER BUSINESS

The Committee noted that almost all the officers in the meeting from NSSF were in acting capacity. For instance, the managing trustee has been acting for the last four and half year despite the PIC reports recommending substantive appointment to this position for umpteenth time.

Responding to this, the Managing trustee averred that the NSSF had advertised for the Managing Trustee and conducted interviews on 25th June 2019. No decision has been made on the same so far.

The Committee resolved to invite the Board of NSSF to shed light on the matter.

MIN/PIC/2019/552: ADJOURNMENT

The meeting was adjourned at 10:46 a.m.

Signed.....

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....15/10/2019.

**MINUTES OF THE 68TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON WEDNESDAY 3RD OCTOBER 2019 IN COMMITTEE ROOM 7, MAIN
PARLIAMENT BUILDINGS AT 10.30 A.M.**

PRESENT

The Hon. Abdullswamad Sharrif Nassir, MP (**Chairman**)
The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
The Hon. Paul Kahindi Katana, MP
The Hon. John Muchiri Nyaga, M.P
The Hon. Thuku Zachary Kwenya, M.P
The Hon. Omar Mohamed Maalim Hassan, MP
The Hon. Joash Nyamache Nyamoko, HSC, MP
The Hon. Raphael Bitta Sauti Wanjala, MP
The Hon. Rashid Kassim Amin, MP
The Hon. Gladys Wanga, MP
The Hon. Babu Owino Paul Ongili, MP
The Hon. Justus Kizito Mugali, MP
The Hon. Mohamed Hire Garane, M.P

ABSENT WITH APOLOGY

The Hon. Ahmed Abdisalan Ibrahim, MP (**Vice chairman**)
The Hon. Purity Wangui Ngirici, MP
The Hon. Mary Wamaua Njoroge, MP
The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
The Hon. James Kamau Githua Wamacukuru, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|----------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 3. Ms. Winnie Atieno | - | Audio Recording Officer |
| 4. Ms. Marlene Ayiro | - | Senior Legal Counsel |

IN ATTENDANCE

- | | | |
|-----------------------------|---|------------------------------------|
| 1. Mr. Benson Kariuki | - | Manager, Audit |
| 2. Mr. Jared Nyasani | - | Manager, Audit |
| 3. Ms. Joshiah Oyuko | - | Manager, Audit |
| 4. Mr. Abdirahim Ali Maalim | - | Manager, Audit |
| 5. Mr. Benson Kariuki | - | Inspectorate of State Corporations |
| 6. Mr. Benson Wangombe | - | Inspectorate of State Corporations |

MIN/PIC/2019/546: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past ten O'clock and prayed.

**MIN/PIC/2019/547: CONSIDERATION OF THE AUDITOR GENERAL'S REPORT
FOR THE KENYA PIPELINE CORPORATION FOR THE FYS
2017/2018**

Mr. Hudson Andambi, Ag. Managing Director General of the Kenya Pipeline Corporation accompanied by Joshua Mutea, Laban Kosgey, T.M Ngira, Maureen Mwenje, Pius Mwendwa, J. Ladeen, Pamela Adango, Beatrice Orgut, Diterius Nyandika, Paul Njuguna and Samson Soirrio appeared before the Committee to adduce evidence on the audited accounts of the Authority for FY 2013/14 to FY 2016/17.

(Continuation of the meeting that was adjourned on 2nd October 2019)

The Committee revisited the information requested in the previous day and after swearing in the Ag. Managing Director, the following arose:

- a) On why the KPC had not paid for extension of time claim to Zakhem even after the Attorney General advising for such payment to be made, Mr. Andambi stated that the reason of nonpayment was due to the letter from the Ministry of petroleum casting doubts as to whether the matter in question was extension of time or a claim and also that the funds for the payment had not been factored in the budget.
- b) Ownership of the Triple o law firm – Jinaro Kibet was a partner and head of corporate

- c) On whether there was a conflict of interest in KPC being represented by a law firm whose partner and head of corporate was also a director of KPC Board chairing its finance Committee, Mr. Andambi stated that Jinaro Kibet declared conflict of interest when the matter of Kenol Kobil was being canvassed on provision for bad debts and recused himself from the meeting. He further stated that he was not aware of whether Jinaro declared any conflict of interest prior to his appointment to the board as required in Section 16 of the Leadership and Integrity Act and Section 12(3) of the Public Officers and Ethics Act.

The Committee directed KPC management to submit minutes of the Board in which Jinaro declared conflict of interest

- d) On whether one Millicent Wanyonyi was a board member and whether the Mr. Andambi was aware that Millicent owned a company in Court with the KPC, the Ag. MD stated that Millicent served as Board Member of KPC for four months but resigned early this year. The Ag. MD further stated that he was not aware that Millicent declared conflict interest prior to her appointment to the board.

KEY AUDIT MATTERS 2017/18

Para 1: Irregular Supply of Hydrant Pit Valves

This matter was postponed to be considered alongside the special audit report

Para 2: Unutilized New Kisumu Oil Jetty

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

Management Response

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

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

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

Committee observations

- The matter is in court in which the DCI charged the KPC officers for alleged procurement irregularities
- The Ugandan facility was 65% complete as at June 2019
- The project implementation timelines between the Kenyan side and the Ugandan side was not coordinated

Committee recommendation

- The KPC management should implore on the Ugandan side to expedite completion of the Ugandan facility operationalize the facility
- The DCI should expedite its investigations on tendering process with a view to charging suspects in court

KEY AUDIT MATTERS FY 2017/18

1. Irregular payment to a contractor.

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

Management Response

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

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

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

Committee Observations

- KPC had paid a total of Kshs. 147 million plus Kshs. 24 million and Kshs. 47 million (new contract). All these indicate there was no proper planning.
- KPC did not provide the NEMA report
- The response did not address the issue raised in the audit- the Kshs 24 million was paid based on an invoice and that that the contract of Kshs 147 million was still running (was to end in June 2017).

Committee Resolution

- KPC to provide documentation on the whole issue
- The EACC should investigate the circumstances under which the procuring entity paid Kshs. 24 million on the basis of invoices raised by the contractor without any negotiations from the KPC with a view to recovering any money that may have been lost

2. Irregular Purchase of motor vehicle accessories

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

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

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

Management Response

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

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

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

Committee Observations

- The alleged show caue letters were issued in February 2019 but nothing has happened to date indicating ineptness at the KPC
- Nothing justifies an excuse that analysis of the responses was being done since April 2019

Committee recommendations

- All officers that did such purchases should be punished
- Officers that have been procrastinating on analysis of the responses should be punished

3. Irregular Payment of overtime allowances

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

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

Management Response

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

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

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

Committee Observations

- Officers earning responsibility allowances should not have earned overtime allowance
- Being paid more than 250% indicated that one worked overtime more than the normal working hours
- There was no material placed before the Committee to show that the board had approved payment of such allowances. The only document available was a circular done by Mr. Ngira from HR ostensibly saying that officers can be paid under emergency and clarifying HR rules. This circular may have been misused.
- The monies paid irregularly had not been recovered as at the time of KPC's appearance before the Committee. The Ag. MD undertook to recover it.

4. Non-adherence to SRC guidelines on subsistence allowances

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

Management Response

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

Committee Observations

The matter was adequately addressed and therefore the query resolved.

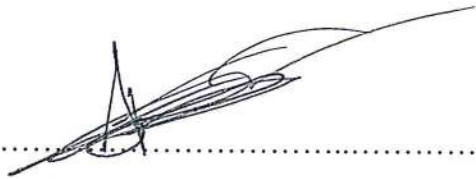
MIN/PIC/2019/547: ANY OTHER BUSINESS

- The Committee resolved to have a retreat with the KPC management for the purposes of concluding consideration of the remaining paragraphs alongside the special audit reports on KPC's line V and procurement of Hydrant Pit Valves.
- The Ag. Managing Director of the KPC underscored the enormity of the work at KPC and promised to clean everything that had gone wrong at KPC.

MIN/PIC/2019/548: ADJOURNMENT

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

Signed



The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date... 15/10/2019.

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**MINUTES OF THE 67TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON WEDNESDAY 2ND OCTOBER 2019 IN COMMITTEE ROOM 7, MAIN
PARLIAMENT BUILDINGS AT 10.47 A.M.**

PRESENT

The Hon. Abdullswamad Sharrif Nassir, MP (**Chairman**)
The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
The Hon. Gladys Wanga, MP
The Hon. Paul Kahindi Katana, MP
The Hon. Justus Kizito Mugali, MP
The Hon. John Muchiri Nyaga, M.P
The Hon. Thuku Zachary Kwenya, M.P
The Hon. Babu Owino Paul Ongili, MP
The Hon. Omar Mohamed Maalim Hassan, MP
The Hon. Mary Wamaua Njoroge, MP
The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
The Hon. James Kamau Githua Wamacukuru, M.P
The Hon. Joash Nyamache Nyamoko, HSC, MP
The Hon. Raphael Bitta Sauti Wanjala, MP

ABSENT WITH APOLOGY

The Hon. Ahmed Abdisalan Ibrahim, MP (**Vice chairman**)
The Hon. Rashid Kassim Amin, MP
The Hon. Mohamed Hire Garane, M.P
The Hon. Purity Wangui Ngirici, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|----------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 3. Ms. Winnie Atieno | - | Audio Recording Officer |

IN ATTENDANCE

- | | | |
|-----------------------------|---|------------------------------------|
| 1. Mr. Benson Kariuki | - | Manager, Audit |
| 2. Mr. Jared Nyasani | - | Manager, Audit |
| 3. Ms. Joshiah Oyuko | - | Manager, Audit |
| 4. Mr. Abdirahim Ali Maalim | - | Manager, Audit |
| 5. Mr. Benson Kariuki | - | Inspectorate of State Corporations |
| 6. Mr. Benson Wangombe | - | Inspectorate of State Corporations |

MIN/PIC/2019/543: PRELIMINARIES

The Chairperson called the meeting to order at forty-seven minutes past ten O'clock and prayed. An observation was made that most of the officers were in acting capacity due to ongoing court cases for the officers that had held substantive positions. This matter should be dealt with as a matter of urgency especially for those that have acted for more than six months and whose positions were not held by officers in court.

MIN/PIC/2019/544: EXAMINATION OF AUDITED ACCOUNTS OF THE KENYA PIPELINE CORPORATION

Mr. Hudson Andambi, Ag. Managing Director General of the Kenya Pipeline Corporation accompanied by Joshua Mutea, Laban Koasu, TM Ngira, Maureen Mwenje, Pius Mwendwa, J. Ladeen, Pamela Odongo, Beatrice Orgut, Diterius Nyandika, Paul Njuguna and Samson Soirrio appeared before the Committee to adduce evidence on the audited accounts of the Authority for FY 2013/14 to FY 2016/17.

1. QUALIFICATION MATTERS 2017/18

Paragraph 1. Unrecognized Contingent Liability Under Trade and Other Receivables

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

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

Management Response

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

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

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

The status of the cases between KPC and Kenol Kobil is as follows:

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

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

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

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

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

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

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

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

Committee Observations

- a. This case has taken a long time, ten years.
- b. KPC was not opposed to resolving this matter out of Court. KPC had a meeting with the litigants to resolve the matter out of court.

- c. By management providing for bad and doubtful debts for Kshs 4.3 billion in the 2019/2020 indicates that KPC has thrown in the towel and wants to settle the award. This amount does not include a contingent liability

Committee Resolution

- a. The KPC management to provide the Committee with bad debt & doubtful policy
- b. The Committee will invite the legal firm representing the KPC on this matter together with the KPC board – KPC to provide the details of the law firm and the amount paid so far

Paragraph 2. Incomplete Budgeting System Project

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

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

Management Response

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

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

On Professional Implementation Services, Implementation involves gathering of user requirements, Installation and configuration of the system to meet user requirements. Several workshops were held between KPC teams and the Implementation Consultant resulting in a

signed Blueprint (capturing user requirements). Attached a few workshop details, signed Blueprint, User Acceptance Testing readiness and implementation status report.

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

Table 1- Payments based on Milestones

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

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

Current Status

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

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

Committee Observations

- (i) It happens that due diligence on the company was not done or if it was done, it was shoddy
- (ii) The manufacturer is an Italian Company but the vendor was a local company
- (iii) KPC continued paying the company even after expiry of the performance
- (iv) The contract was signed between the KPC and the Kenyan Company and not the Italian Company
- (v) The KPC never borrowed on performance bond to be renewed immediately before expiry indicating complacency from KPC
- (vi) There was no termination letter of the vendor. Termination was done on 23rd December 2017

- (vii) Payment of 51% for a system upfront without any security left KPC exposed to loss
- (viii) The KPC ICT manager confirmed that the software is not in use currently and that the software can only be used after upgrade which will have to be a new contract. This software was functionally obsolete
- (ix) It was inconceivable for the KPC to indicate
- (x) There was no any legal action taken by the KPC on the two companies apart from writing to PPRA asking them to debar the companies from tendering.
- (xi) The MD indicated that KPC has had problems in contract management especially on leaving contracts to expire and not renewed before expiry. Such contracts include early oil projects

Committee Resolution

- (i) The KPC should provide the tender documents including due diligence reports of both the Italian company and the Kenyan vendor
- (ii) This matter should be handled by the EACC as a matter of urgency
- (iii) KPC to produce the termination letter of the contract and the identity & address of the vendor
- (iv) KPC to provide payment plans- details of the dates of the payments; what payments were for; terms of payments

EMPHASIS OF MATTER

Para 1 Land without Title Deeds

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

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

Management Response

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

KPC had over the years been following up the title deeds with Ministry of Lands and the National Land Commission (NLC) and wrote to The Ministry of Lands on 11th April 2013 and

the National Land Commission (NLC) on 9th March 2015 and 25th May 2015 seeking its intervention on the matter.

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

Current status

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

Committee Observation

This matter was handled in the last financial year and the status has not changed

Para 2: Pending Contract Variation Claims

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

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

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

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

Management Response

- (a) Variations:

The variation orders eight (8No) totaled USD 20,199,065.77. These variations were progressed through the Tender Committee and for cases where the Tender committee could not approve due to works having been executed, the variations were handled administratively, and approval granted following legal advice from the Attorney General. Variations were allowable under Section 47 of the Public Procurement and Disposal Act, 2005 as read together with Regulation 31 of the Public Procurement and disposal regulations 2006. The act allows for total cumulative variations of 25% of the contract sum made up of variations of works (15%) and goods supplied (10%). Variations 1 to 8 amounted to 4.13% of the total contract sum.

(b) EOT Claims:

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

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

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

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

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

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

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

Committee Observation

- (i) The DCI, in his letter to the Ag. MD for the KPC dated 26th July 2019, directed KPC not to pay the amount pending conclusion of the investigation. The letter was tabled before the Committee. However, the Committee noted that even before this letter, the previous management of KPC wanted to pay the money but were prevented by the CS for petroleum.
- (ii) Another reason , as per the ag. MD was that the matter was not budgeted for.

- (iii) The contract has taken KPC in court over the payment
- (iv) By not paying the contractor, liabilities on the matter will continue increasing
- (v) The OAG had done a special audit on this matter and its report tabled in the House

KEY AUDIT MATTERS

Para 1: Irregular Supply of Hydrant Pit Valves

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

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

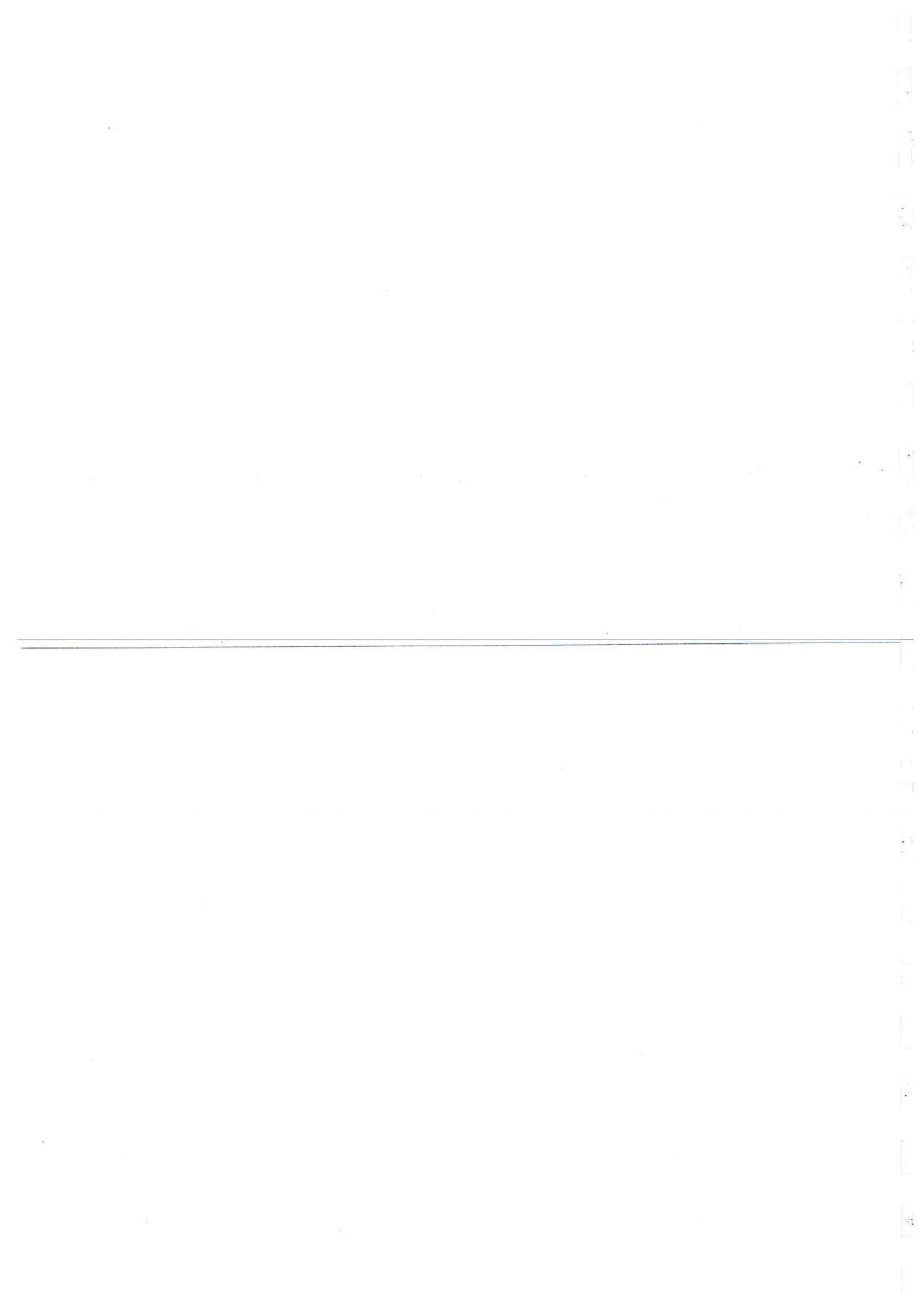
MIN/PIC/2019/545: ADJOURNMENT

The meeting was adjourned at three minutes past one O'clock. Next meeting will be on 3rd October 2019 at 9:30am whereby the KPC management will continue with its submissions.

Signed

Date..... 15/10/2019.

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)



**MINUTES OF THE 66TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON TUESDAY 1ST OCTOBER 2019 IN COMMITTEE ROOM 7, MAIN
PARLIAMENT BUILDINGS AT 10.00 A.M.**

PRESENT

The Hon. Abdullswamad Sharrif Nassir, MP (**Chairman**)
The Hon. Paul Kahindi Katana, MP
The Hon. Rashid Kassim Amin, MP
The Hon. Justus Kizito Mugali, MP
The Hon. Omar Mohamed Maalim Hassan, MP
The Hon. John Muchiri Nyaga, M.P
The Hon. Joash Nyamache Nyamoko, HSC, MP
The Hon. Thuku Zachary Kwenya, M.P
The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
The Hon. Mary Wamau Njoroge, MP
The Hon. Babu Owino Paul Ongili, MP
The Hon. Purity Wangui Ngirici, MP
The Hon. Raphael Bitta Sauti Wanjala, MP
The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

The Hon. Gladys Wanga, MP
The Hon. Mohamed Hire Garane, M.P
The Hon. Ahmed Abdisalan Ibrahim, MP (**Vice chairman**)
The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Ms. Marlene Ayiro | - | Legal Counsel |
| 3. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 4. Mr. Stephen Nyakuti | - | Audio Recording Officer |

IN ATTENDANCE

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

MIN/PIC/2019/540: PRELIMINARIES

The Chairperson called the meeting to order at forty minutes past ten O'clock and prayed.

The Hon. Babu Owino Otieno, MP brought to the attention of the Chairman that Ms. Mercy

Wanjau was not duly appointed to be the position of the Ag. Director General of the CAK and that there were Court Orders barring her to act in that capacity. This therefore meant that she had no capacity to transact any business as the Director General of the CAK akin to the agenda of the day. Challenged to produce evidence of those orders, the Hon. Babu requested for thirty minutes to get them. Acceding to the request, the Chairman adjourned the meeting for 20 minutes to allow Hon. Babu Owino to table the alleged Court Orders. He further requested Ms. Mercy Wanjau to produce an appointment letter appointing her as the Ag. Director General of CAK.

At the resumption of the meeting, the Hon. Babu Owino claimed that the counsel with Court papers was in Court and therefore could not be reached. He undertook to provide the said orders when he gets them.

Ms. Mercy Wanjau produced a letter signed by the Chairman of the CAK appointing her as the Ag. Director General. Thereafter the Chairman ruled that the meeting should proceed.

MIN/PIC/2019/541: EXAMINATION OF AUDITED ACCOUNTS OF COMMUNICATION AUTHORITY OF KENYA

Ms. Mercy Wanjau, the Ag. Director General of the Communication Authority of Kenya accompanied by Janet Munya (Ag. AD/Supply Chain) Mr. Joseph Kimanga (Director, Finance and Accounting), Mr. Christopher Wambua (Director, Consumer and Public Affairs), Mr. Dominic Ooko (Ag. Deputy Director of Finance), Ms. Beatrice Bonga (Ag. Deputy Director, HRM) and Ms. Priscah Motogua (Pa to the Ag. DG) appeared before the Committee to adduce evidence on the audited accounts of the Authority for FY 2013/14 to FY 2016/17.

Pre

MIN/PIC/2019/542: CONSIDERATION OF THE AUDITOR GENERAL'S REPORT FOR THE COMMUNICATIONS AUTHORITY FOR THE FYS 2013/14 THROUGH TO 2016/17

IRREGULAR PROCUREMENT METHODS 2016/17

1.1 Event Management Services

The Committee heard that as disclosed in Note 12 to the financial statements, the general expenses figure of Kshs. 1,969,111,000 included an amount of Kshs. 95,408,000 in respect of consumer affairs. The figure of Kshs. 95,408,000 also includes Kshs. 13,302,560 being cost of event management services during the authority's ICT forum held on 11th November 2016 whose service provider was identified through request for quotations method of procurement yet the tender amount exceeded the allowable threshold of Kshs. 2 Million. This was contrary to Public Procurement and Asset Disposal Act, 2015. In addition, no signed formal contract between the Authority and the service provider was availed for audit review.

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

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

Management response

Management informed the Committee that the Communications Authority of Kenya through its procurement plan of 2016/217 planned to carry out ICT Consumer education forums in Bungoma, Makueni, Nyeri, Busia and Baringo Counties. For each of the forums, the Authority required the services of an event manager. Event management and related services had been reserved for Youth, Women, and persons with disabilities "reservations" as PPADA means exclusive preference to procure goods, works and services set aside to a defined target group within a specified threshold or region".

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

The tender for event management was therefore tendered using The National Treasury list of firms registered under disadvantaged group of Youth, Women and Persons with Disabilities and awarded to M/s Sum Decorators. The Authority issued purchase order 1637 to M/s Sum Decorators of Kshs. 13,302,560 after receiving their acceptance letter.

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

The Authority required the services of an event management for its County ICT Consumer forums in Busia and launch of its CSR activities in Bungoma County. An advertisement was placed in the Daily Nation on 25th November 2016 with a closing date of the tender being on 21st December 2016.

The bids were evaluated and M/s Unicore was awarded one of the (7) seven blocks that were being tendered to provide event management and related services. The awarded blocks had Busia and Bungoma Counties as some of the regions to be covered by the firm and as such the firm was engaged to provide event management and related during the ICT consumer education forum in Busia and launch of the CSR activities in Bungoma Counties.

Upon acceptance of the offer, which had terms and conditions of engagement, the Authority issued two purchase orders to M/s Unicore which were signed by the Director General as per

PPADA Section 135 (1) which states “*The existence of a contract shall be confirmed through the signature of a contract document incorporating all agreements between the parties and such contract shall be signed by the accounting officer or an officer authorized in writing by the accounting officer of the procuring entity and the successful tenderer.*”

These were (one) time jobs, with specific deliverables and single tranche payment upon certification of delivery hence the Authority issued a purchase orders which specified the terms and conditions of contract binding on both parties.

Committee Observation

- (i) The Communications Authority of Kenya had time to advertise the for this tender but failed to do it thereby stifling competition.
- (ii) There was no justification for the Communications Authority of Kenya to Zero in on pre-qualified list from Treasury and not the Parent Ministry.
- (iii) There was no justification of picking only 10 firms. Restricted tendering was done to 10 event management Services Firms drawn from PPRA website.
- (iv) Mrs. Joyce Nyanamba was the head of procurement at the time

Committee Resolution

Explanation was not satisfactory

1.2 Design, Printing, Supply and Delivery of Branded Items

The Committee further heard that the general expenses figure of Kshs. 1,969,111,000 included an amount of Kshs. 95,408,000 in respect of consumer affairs under note 12 to the financial statements. The amount of Kshs. 95,408,000 also included Kshs. 11,977,070 for the design, printing, supply and delivery of branded give-away including umbrellas and spiral notebooks by three firms identified through request for quotations instead of opening tendering method for a contract of such magnitude.

However, available information revealed that on 21st June 2017, all the three firms which were awarded the tender were notified further changes affecting their contract from one off supply to a framework contract/agreement. The change to framework contract was done contrary to section 114(1) of the Public Procurement and Asset Disposal Act 2015, which provides that *a framework contract can only be entered into through open tender and when the required quantity of goods, works or non-consultancy services cannot be determined at the time of entering into the agreement.*

Management Response

Management informed the Committee that during the financial year 2015/2016, the Authority planned to implement a service delivery improvement campaign to revamp service delivery within the Authority. This involved rebranding of Authority’s service charter and undertaking both internal and external launch. One of the activities involved was printing and supply of branded giveaway which included umbrellas and spiral notebooks.

Through open tender, the Authority registered firms owned by youth, women and person with disabilities in readiness to participate under Access to Government Procurement opportunities (AGPO) as and when required.

The tender for supply of branded giveaways had been reserved for tender by the disadvantaged groups as shown in the procurement plan for 2015/2016. In this regard, the Authority invited bids for design and supply of branded giveaways from the list of the ten (10) registered suppliers in the category of design and printing of corporate materials.

This complied with the Public Procurement and Assets Disposal Act 71 (1) which provides that the *head of procurement function shall maintain and continuously update lists of registered suppliers, contractors and consultants in various specific categories of goods, works or services according to its procurement needs. The lists shall be applied on the alternative procurement methods as specified and appropriate.*

The alternative method of procurement used was restricted whereby exclusive preference to procure branded give aways was set for competitive tendering by youth women and persons with disabilities. The value was within threshold for Category A as per Threshold Matrix of Public Procurement and asset disposal Regulation 2006.

The change from one-time supply to framework agreement was informed by the fact that the Authority could not determine the required quantities of the giveaways at the time of entering into the of agreement for supply of giveaway that were needed for various corporate and consumer forums. However, the recommendation to enter into framework agreement was not implemented. The Authority only issued the orders for the one-time delivery.

The indicated expenditure of Kshs. 11,977,070 for tender for design, printing and supply of branded items was not correct. This is because the quantity was changed in consultation with the user department because there was an error in the quantities of the umbrellas and spiral notebooks (10,000 instead of 1,000).

This was in compliance with Section 162(2) Public Procurement and Assets Disposal Act 2015 which discourages overstocking of items.

Committee Observation

The tendering process should have been open rather than request for quotation in a tender involving such magnitudes of money. The explanation offered was not satisfactory.

1.3 Unclear Excessive Procurement of Brochures

The Committee heard that as disclosed in Note 12 to the financial statements, the general expenses figure of Kshs. 1,969,111,000 included an amount of Kshs. 95,408,000. The amount of Kshs. 95,408,000 also included Kshs. 13,862,670 in respect of a contract for supply of various brochures awarded to a firm on 4th November 2015 at a contract sum of Kshs. 7,675,538 for a period of one year, with a performance bond of 5% equivalent to Kshs. 383,776.88. However, available information indicated that on 5th April 2016 and 13th October 2016, the authority wrote to the above supplier to quote and supply additional brochures worth Kshs. 9,292,500 and Kshs. 5,683,485 through direct payment.

The supplier was subsequently paid for the additional brochures vide Payment Voucher. No.vb/c/2006/12/14958 dated 18th August 2016 and VB/C2006/12/13271 dated 23rd December 2016 respectively. This was contrary to section 106(2)(b) of Public Procurement and Asset Disposal Act 2015 which requires that the request shall be given to as many persons as necessary

to ensure effective competition and shall be given to at least three persons, unless that is not possible.

A physical visit to the store one year later in December 2017, revealed that a total of 139,250 child online brochures worth Kshs. 12,323,625 were still lying in store unutilized. In the circumstances, it was not possible to confirm the propriety of expenditure totalling Kshs.13,862,670 for the year ended 30th June 2017 and that the Authority was in breach of the Law.

Management response

Management informed the Committee that the Authority planned to procure printing and packaging services of its corporate and consumer education materials with a budget estimate of Kshs 47,339,379 as reflected in its 2015/2016 procurement plan.

On 24th July 2015, the Authority advertised for printing and packaging of its corporate and consumer education brochures, fliers and posters with a closing date of 12th August 2015. The tender was reserved for Youth, Women and Persons with disabilities. The Corporate and consumer education brochures, fliers and posters were to be printed as and when required during the contract period of one (1) year as indicated in the tender document (invitation to tender).

The tender attracted 62 firms and upon evaluation, the firm that offered the most competitive price for each category. M/s iBrand Ltd was awarded printing of the material at a total cost of Ksh 7,675,537.50. The contract Clause 4 A (Ceiling) stated that (i) For the services rendered pursuant to Clause 1(a) of this contract, the client shall pay the supplier a total sum of Kshs 7,675,537.50 inclusive of taxes (ii) For the services rendered pursuant to clause 1 (b) of this contract, the client shall pay the supplier a sum based on the unit rates contained in the annex upon printing, packaging and delivery of the same as and when ordered. The award for design and printing of brochures was therefore through an open tender and not direct procurement method.

On 5th April 2016 and 13th October 2016, the authority requested M/s iBrand Limited to supply additional brochures worth Kshs.9 ,292,500 and Kshs.5,683,485. This was in line with the contract entered to by the two parties. Clause 1 (b) of the contract which stated that *“The supplier shall also print and package any other corporate and consumer education brochures, fliers and posters of specifications similar to those specified in the Annex as and when required.”*

The Child online brochures were printed to be used for the child on-line campaign that had been scheduled. However, the consumer outreach events were postponed by (one) year due to the electioneering period.

The brochures are distributed through the following distribution channels. The Authority increased distribution to (2) new regional offices in Kisumu and Nyeri, Kenya National Libraries, E-resource centres and County Government offices

The stock position at year ended 30th June 2017 was 51,760 as tabulated below.

FY	LPO date	LPO No.	Quantity Ordered	Quantity Delivered	Quantity Distributed	Quantity in Stock

2013/ 2014	12-Apr- 14	240	31,320	31,320*	-	31,320
2015/ 2016	4-May- 16	1055	105,000	105,000	19,740	116,580
2016/ 2017	13-Oct- 16	1659	40,300	40,300	105,120	51,760
2017/ 2018	11-Apr- 18	3190	69,600**	-	51,760	-
Total			246,220	176,620	176,620	0

** Order cancelled

Phase II of campaign conducted FY 2017/2018 and all the brochures issued.

Committee Observations

- (i) This was a term contract
- (ii) Clause 4 A of the contract was couched in such terms as to allow whoever that has been awarded the contract can do further printing and be paid at unit cost. This clause was exploited by the CAK to allow supply of additional brochures and therefore there was no breach. However, this open headed contract may be subject to abuse
- (iii) The auditors were not given all documentation during audit hence reason of raising the query.
- (iv) Distribution of child online brochures was suspended during the electioneering period hence the reason why stocks were still in the store

Committee Resolution

- (i) The CAK should avoid open-ended contracts
- (ii) The query was successfully responded to and resolved

1.4 Supply of computers to Schools and E Resource Centres

The Committee heard that included in the general expenses figure of Kshs. 1,969,111,000 under Note 12 is an amount of Kshs. 95,886,000 in respect of universal service obligation. The amount of Kshs. 95,886,000 also included Kshs. 58,577,271 paid to a firm for supply of computers to schools and E-resource centres out of which Kshs. 55,035,471 was for supply and installation of computers, Kshs. 2,934,800 for annual computer hardware maintenance and Kshs. 607,000 for annual renewal fees for anti-virus for a period of two (2) years and three (3) months. However, examination of available records revealed that the supplier attached a manufacturer authorization letter which had a disclaimer on warranty of the products in place of the Standard Manufacturer's Authorization form/letter specified in the tender documents where Quality of the Product is guaranteed by the manufacturer.

Although the management explained that they intended to award the tender to more than one bidder as a way of extending the opportunities to the women, youth and persons with disabilities in order to minimize the risk of any possible setback to the entire project in the event that a single bidder experienced challenges that may affect the delivery of goods and services, the maximum number of lots that were to be awarded to any one bidder were three (3) out of total five (5) lots. However, this was not the case as the above supplier was awarded all the five (5)

lots. Consequently, the Authority is in breach of the law and the propriety of expenditure of Kshs. 58,577,271 for the year ended 30 June 2017 could not be confirmed.

Management Response

Management informed the Committee that in its tendering process, the Authority uses the standard tender developed by Public Procurement Regulatory Authority. All the standard tender documents have standard forms which all bidders must complete and submit as part of bidder's compliant to tendering process.

One of the forms is Manufacturers Authorization Form (Standard for attached for ease of reference). The Manufacturers Authorization Form was one of the forms that bidders had to submit during the tendering process as a documentary evidence of their eligibility to tender and that goods are from the eligible source. The tender document gave a sample format of the Manufacturer's Authorization letter but it was not mandatory that it had to match the sample word by word since manufacturers might have different formats of their Authorization letter. The purpose of the sample was to highlight on the basic requirements that were to be contained in the template.

The 303rd TC deferred the paper for re-evaluation citing reasons for value for money if the tender was awarded to one firm the Authority was to save Kshs. 2.1million. The re-evaluation was done and presented to the TC in its 304th sitting for adjudication. The TC awarded the tender to M/S Modern Integrated Business Solutions of P.O Box 78610-00507 Nairobi for the contract to supply, install and maintain computers and software at a total tender sum of Kshs 58,577,271.68, being Kshs 55,035,471.68 for supply and installation of computers, Kshs 2,934,800 for annual computer hardware maintenance and Kshs 607,000 being amount for annual renewal fees for anti-virus.

Notification letters to all participants was done vide letters dated 28th January 2016. The notification letters to the unsuccessful participants also detailed reasons for non-responsiveness of the bids. The Authority received a complaint through the Public Procurement Regulatory Authority vide letter dated 7th March 2016 requesting for assorted documents relating to the tender.

The Authority filed a response to the Public Procurement Regulatory Authority vide letter dated 16th March 2016. The documents were later returned back to the Authority and the Public Procurement Regulatory Authority never stopped the tender implementation process.

The computers were delivered and installed as per the contract specifications

Committee Observations

- (i) The tender was awarded despite existence of a disclaimer
- (ii) Although they may vary the format, warranty is a basic requirement in whichever form
- (iii) On the supplier being awarded all the five (5) lots contrary to (3) lots specified in the invitation to tender, the response given was satisfactory

2.0 UNACCOUNTED FOR EXPENDITURE 2016/17

The Committee heard that Included in the general expenses figure of Kshs. 1,969,111 under note 12 was an amount of Kshs. 54,786,000 in respect of Corporate Social Responsibility. The

amount of Kshs. 54,786,000 also included Kshs. 23,000,000 being sponsorship of the National Youth Talent Academy. The sponsorship was on furtherance of 28th June 2012 agreement between the Authority and UNICEF Kenya to sponsor the National Youth Talent Academy boys football team established by government through the Ministry of Sports, Culture and Arts at a cost of Kshs. 17,763,250 per year for three years, with a commencement date of 28 June 2012. The agreement was later renewed on 9th May 2016 for a total sum of Kshs. 69,000,000 for a period of three financial years with effect from June 2016 to 2019 at Kshs. 23,000,000 per annum. However, the Kenya Academy of sports had not submitted any returns and financial reports of the football club (Talanta) or accounted for the grants or the donations as per agreement between the two parties.

Further, according to the agreement, the utilization of the funding was to be subjected to an annual external audit by the Auditor General. The Authority was also mandated to call any time for any financial accounting and other project records maintained by Kenya Academy of Sports in pursuant to agreement and subject the records to an audit process of its choice. However, no evidence to show that the financial records of Kenya Academy of Sports were subjected to any audit was availed for audit review.

In addition it was noted on 13th December, 2016 the acting Director Corporate Services for Kenya Academy of sports wrote to Director General Communication Authority of Kenya through letter Ref. No. KAS/A/13(21) requesting for a change in remittance of the second instalment of Kshs. 23,000,000 for the football club (Talanta), from the old account No. 0260500659 at Equity Bank as per the agreement to a new account at Jamii Bora Bank account No. 1001823633002. The request was honoured on 20 January, 2017 without authority from the parent Ministry and the national Treasury.

Further, Communications Authority of Kenya did not notify Kenya Academy of Sports and the Ministry of Sports, Culture and Arts of the transfer of the funds.

Consequently, it has not been possible to confirm the propriety of expenditure totalling Kshs. 23,000,000 transferred to Jamii bora Bank account for the year ended 30 June 2017

Management Response

Management informed the Committee that the FC Talanta was initiated as a programme between cooperation of UNICEF, Kenya Secondary Schools Heads Association (KESSHA), and the Ministry of Sports, Culture and the Arts (Under the auspices the National Youth Talent Academy later transformed to Kenya Academy of Sports). UNICEF managed the programme and was responsible for the submission of the reports to the Authority as the sponsor. The initial contract was between UNICEF and the Authority in the period Year 2012- 2013.

The Kenya Academy of Sports, incorporated in year 2014, took over the management of the FC Talanta programme. Subsequently, the Authority signed the renewal of the sponsorship with the Kenya Academy of Sports in Year 2016.

FC Talanta was initially audited as a programme under UNICEF and later by Mwencha Certified Public Accountants upon takeover of the management of the programme by Kenya Academy of Sports. The Audit is currently undertaken by the Office of the Auditor General.

The FC Talanta Board granted approval of engagement of another banking institution, Jamii Bora, in accordance with its mandate. The Management of FC Talanta availed to the Authority, Minutes of the Board reflecting the approval of engagement of Jamii Bora. Additionally, both

parties revised the Cooperation Agreement to recognise the change of bank account details, as per the Article III clause (j) of the Agreement.

The Cabinet Secretary in the Ministry of Sports, Culture and the Arts was informed of the renewal of the Kshs 69,000,000 sponsorship and also invited to the occasion of the official announcement of the sponsorship renewal.

Committee Observations

- (i) The accounts were audited by a private firm appointed by UNICEF
- (ii) Audited accounts by a private auditor not appointed by the Auditor General cannot be owned by the Auditor General
- (iii) It was illegal under the PFM Act to open an account without a written permission from the National Treasury.

3.0 DIRECTORS EXPENSES FY 2016/17

3.1 Irregular payments to the directors

The Committee heard that included in the director's expenses figure of Kshs. 47,211,000 under note 10 is an amount of Kshs. 1,656,000 in respect of board welfare. The amount of Kshs. 1,656,000 also included Kshs. 1,200,000 being Christmas shopping vouchers worth Kshs. 100,000 to each Board director. The Universal Service Advisory Council members were given Christmas shopping vouchers worth KShs. 900,000 which is included in Note 12 under universal advisory council of Kshs. 47,261,000. The payment of Christmas shopping totalling Kshs. 2,100,000 was made without parent Ministry and National Treasury approval. This was done contrary to provisions of circular ref OP/CAB9/21/2A/LII/43 dated 24 November 2004. Guidelines on terms and conditions of service annex IV paragraph (i) at page 42 that provides that any other benefit that are not provided in annex iv do not apply. Consequently, the management was in breach of the Law and propriety of expenditure totalling Kshs. 2,100,000 for the year ended 30th June 2017 could not be confirmed and was not a proper charge to public resources

Management response

Management informed the Committee that section 19 (2) (a) KICA Act 2012 gives the Board a mandate to provide for the payment of the salaries, allowances and other charges in respect of the staff of the Authority and the members of the Board.

Committee Observations

As much as the law allows the Board to remunerate themselves, this may be subject to abuse. There was no law broken in this case and the matter was therefore resolved.

3.2 Irregular Disposal of MacBook laptops and IPADS to Directors

The Committee heard that examination of available record revealed that Authority assets including macbook laptops and IPADs held by the former directors were un-procedurally disposed off to the individual directors. The nine (9) MacBooks laptops with net book value of Kshs. 466,551, nine (9) iPads with net book value of Kshs. 160,515, ten (10) ipads with net book value of Kshs. 200 and fourteen (14) laptops with net book value of Kshs.280 all totalling to

Kshs. 627,553 were offset with the directors' fees due to the former directors. Offsetting of said assets was done contrary to Section 164 (3) of the Public Procurement and Asset Disposal Act 2015 which states that there shall be a technical report where appropriate by a relevant expert of the subject items for disposal that takes into account the real market price and in so doing the technical expert shall set up a reserve price which shall be the minimum acceptable price below real market value of the boarded items. Consequently, the authority was in breach of the law and the propriety of Kshs. 627,546 for the year ended 30th June 2017 could not be confirmed.

Management Response

Management informed the Committee that the Board members challenged their ouster and the matter is pending in court hence it was not possible to recover the laptops and IPADS for disposal. As a caution Management provisioned the amount equivalent to the written down value awaiting the court determination. The assets would be reverted to the Financial Statements for the year ended 30th June 2019.

Committee Observations

- (i) The matter was still in Court
- (ii) The explanation offered was satisfactory and query resolved

4.0 DISPUTED CONTRACT PAYMENTS:

This is a repeat paragraph addressed in the previous year.

MIN/PIC/2019/543 ADJOURNMENT

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

Signed

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

Date. 15/07/2019.

MINUTES OF THE 65TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON SATURDAY 28TH SEPTEMBER 2019 IN PIER CONFERENCE ROOM, ENGLISH POINT MARINAMA AT 7.32 P.M.

PRESENT

The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
The Hon. Raphael Bitta Sauti Wanjala, MP
The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
The Hon. Paul Kahindi Katana, MP
The Hon. Rashid Kassim Amin, MP
The Hon. Justus Kizito Mugali, MP
The Hon. Omar Mohamed Maalim Hassan, MP
The Hon. John Muchiri Nyaga, M.P
The Hon. Joash Nyamache Nyamoko, HSC, MP
The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

The Hon. Thuku Zachary Kwenya, M.P
The Hon. Gladys Wanga, MP
The Hon. Mohamed Hire Garane, M.P
The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
The Hon. Mary Wamaua Njoroge, MP
The Hon. Purity Wangui Ngirici, MP
The Hon. Babu Owino Paul Ongili, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Senior Clerk Assistant
2. Mr. Thomas Ogwel	-	Fiscal Analyst
3. Ms. Marlene Ayiro	-	Legal Counsel
4. Ms. Noelle Chelagat	-	Media Relations Officer
5. Ms. Winfred Atieno	-	Audio Recording Officer
6. Mr. Moses Musembi	-	Office Attendant
7. Mr. Alex Mutuku	-	SAA

IN ATTENDANCE

1. Mr. Julius Okumu	-	Deputy Director, Audit
2. Mr. Joshiah Oyuko	-	Manager, Audit
3. Mr. Fredrick Thauri	-	Manager, Audit
4. Mr. Lawrence Okubo	-	Inspectorate of State Corporations

MIN/PIC/2019/536: PRELIMINARIES

The Ag. Chairperson, Hon. Joash Nyamoko, MP called the meeting to order at thirty two minutes past seven O'clock and prayed.

MIN/PIC/2019/537: EXAMINATION OF AUDITED ACCOUNTS OF KENYA MARITIME AUTHORITY

Mj. Rtd. Geaorge Okongo, Director General of the Kenya Maritime Authority accompanied by Mr. Jack Wasonga, Luke Samba, Seth Oluoch, Juma Ahmed, Mbarak Zaunga, Cosmas Arap Cherop, Julius Ogutu, J. F. Otieno, Alphose Kioko (Director, Corporate Services), Mr. Yusuf Bagaja (Finance Manager) and Mr. Kenneth Njuru (Finance and Administration Manager, DRMC Project) appeared before the Committee to adduce evidence on the audited accounts of the Bureau for FY 2013/14 to FY 2017/18.

The DG provided the following documents requested by the Committee in the morning:

- Tender documents for Office Block
- Tender documents for Kisumu
- Breakdown of Kshs. 1 billion

(CONTINUATION WITH THE AUDIT REPORT FOR 2016/17 FY)

PARA 5.0: BOARD OF DIRECTORS COST

The Committee heard that Note 11 to the financial statements reflected an amount of Kshs .57,389,175 in respect of board of directors cost for the year ended 30 June 2017. Audit examination of the board of directors record revealed the following anomalies :

Excessive Expenditure

Audit analysis of the Board of directors costs revealed the board held forty seven (47) sittings including twenty (22) full board sittings and twenty five (25) committee sittings during the financial year and as a result meeting costs rose by Kshs 9,144,524 or 19% of expenditure balance of Kshs 48,244,651 and thirty (30) sittings reported in the year 2015/2016. This was an indication of extravagant use of public resources contrary to article 232 (1-b) of constitution of Kenya 2010 which provides that values and principles of the public service include efficient, effective and economic use of resources

Management Response

The Board meetings that took place during the period in question had duly issued notices with agendas outlined with pertinent issues for discussions. The Board will continue to ensure that the expenditure is within budget and no meetings held that could be remotely described as

“excessive”. It should be noted that special circumstances will arise and the need of convening a Special meeting as outlined in the Mwongozo code of governance Annexure 1 – pg 46 – “ Notice and Agenda for Meetings”

Committee Observations

The amount expended was within the approved budget

Para 5.2: Irregular Sittings 2016/17

The Committee heard that a total of Kshs.9,877,181 was paid to board members for foreign meetings which were not in annual approved work plan contrary to section 7 of mwongozo code of Governance for the state corporations, 2015 which requires the chairperson of the Board to ensure that the Board develops and adheres to the annual work plan .In addition ,the board members attended the following activities which were not in the annual work plan as detailed below :

Event	Amount Kshs.
Trainings	6,518,190.95
KECOSO Games	265,670.00
Agricultural Society of Kenya	1,806,399.00
Others	5,856,598.00
Total	14,446,857.95

Audit verification of the other expenditure as indicated above, revealed the expenditure included: benchmarking trip to Thailand, attending CSR activities, courtesy call to county Governor, attending burial of principal secretary’s relative sensitization of boat owners among others which are administrative functions as outlined in mwongozo code of governance for State Corporation ,2015,section 1.2(C) and 1.19 on the role and functions of the board members without evidence of notices of the meeting ,agenda for the meeting and respective board minutes for the above events as provided for by section 7 of mwongozo code of Governance for state corporation,2015.

Consequently the propriety of the board expenditure amounting to Kshs.24, 324,039 for the year ended 30 June 2017 could not be ascertained.

Management Response

The said activities under query , which the Board members attended , that is - KECOSCO & ASK shows were not merely Management functions but as well opportunity for the Board to build cohesion and integration with other stakeholders in the Ministry of Transport & Infrastructure. The KECOSCO (Kenya Communications Sports Organization) games are held annually and is a premier event of the year attending by the following entities:

1. Ministry of Information Communication & Technology
2. Ministry of Sports , culture & the Arts
3. Postal Corporation of Kenya
4. Kenya Ports Authority
5. Kenya Airports Authority
6. Kenya Civil Aviation
7. Communications Authority of Kenya
8. Kenya Ferry Services
9. Kenya Broadcasting Corporation
10. Kenya Film Classification Board.

The KECOSCO games originated from the East African community which Organized the first games under the East African Community's inter Corporations and Associated Organisations (EACASO). It should be noted that the Authority has won several accolades and brought honour as a dynamic and worthy participant in various games. The attendance and participation of the Board and senior management has been an exceptional boost to the morale and results .

As regards the A.S.K shows – the Board of Directors have been participating alongside Management in the the Shows , under the publicity and awareness programs for about eleven years now. The Board as strategic policy makers are important participants in the task of enhancing the public image, identity, creating awareness, sensitising the public on the role and mandate of the Authority. The forum creates an opportune arena for the dissemination of maritime matters and a feedback platform. Notably , the President of the Republic of Kenya graces the show and awards the best performing exhibitionists after a Luncheon where Directors of State owned Organisations attend and interact with the Head of State. Undoubtedly this is a mandatory meeting that our Board of Directors

must attend and usually only the closing and opening ceremonies presided over by the Cabinet Secretary.

CSR activities are firmly anchored in KMA's CSR policy with a focus on KMA's strategic plan , environmental protection and preservation , education , health, promotion of gender equity, sports promotion, charitable activities and empowerment of persons with disabilities. The policy has guiding principles, with a clear selection criteria for beneficiaries. Ultimately the handover of these projects are done with the Board who are first and foremost in the front line in upholding the vision of the Authority together with Managment. Their role should therefore not be undermined nor categorized as irrelevant, extravagant or usupery.

At all these functions the Board members have been invited by way of an invitation letter as instructed in the Guidelines on the terms and conditions of service for state Corporations 23rd November 2004 - Annex IV – Clause C' and the circular letter dated 14th January 2008 – ref OP/CAB.17/34A – which states verbatim as regards payment of sitting allowance; “ *an activity that bears directly on the business of the State Corporation for which the Chairman or Board member is invited in writing by the Chief Executive Officer to attend.*”

Further please note these activities did not require Minutes as ordinarily as reports are prepared by the Public relations section capturing the gains made during the forums – notices however were duly issued.

Committee Observations

This had been addressed in the previous year

PARA 6.0: EMPLOYEE COSTS FY 2016/17

The Committee heard that Note 10 to the financial statement reflected an amount of kshs 460,353,351 in respect of employee costs for year ended 30 June 2017, Audit verification of the employee cost records revealed the following anomalies

Para 6.1 : Recruitment

Records availed for audit indicate that the Authority employed thirty-one (31) additional staff during the year under review. Audit verification of recruitment process for various positions

revealed that the recruitment of nineteen new staffs including: assistant accountants, accounts assistant, assistant public relations officer, assistant human resource officer, ICT assistants, two data entry clerks was done without evidence of advertisement. This was contrary to section to section B,4(1) of the Human Resource Policies and Procedures Manual for the public service which provide that Ministries /state Departments will advertise all vacant posts in manner that reaches the widest pool of potential applicants. Further, there was no evidence that the management received approval from the National Treasury to recruit the new staff in line with National Treasury Circular No.20/2015 reference ES 1/03 “J” (79) dated 4 November 2015 freezing recruitment of new staff including in state corporation.

Further, recruitment for position of: assistant accountant, accounts assistant, assistant public relation officer, assistant human resource officer, ICT assistants. Procurement assistant, assistant internal audit officer and ICT assistant was not evidenced by application, short-listing, interview and appointment. It was therefore not evident that the vacancies were competitively filled on merits as the basis of appointments and promotion was not availed for audit review. As a result, the management was in breach of the law.

Management Response

Management informed the Committee that the positions were created by the Board’s resolution to fill the gaps in the establishment for smooth career development and succession planning in the Authority. Documentation for the same are available for verification.

Committee Observations

- (i) There was no evidence to show that recruitment was competitive
- (ii) The positions were given to officers that were working with the KMA for six years.
- (iii) Contrary to KMA’s insistence that there was approval from treasury for recruitment, the KMA did not table any material from treasury to buttress its argument
- (iv) There was approval from the Board to begin recruitment contrary to treasury freezing employment. The Board acted ultra vires in this case. The Board needs to be held responsible

Para 6.2: Staff Training

Included in the employee costs expenditure figure of Kshs, 160,353,351 as reported in Note 10 to the financial statement for the year ended 30 June 2017, was staff training figure for Kshs.180,145,891. The expenditure of Kshs. 52,100,269 being an increase of 41% compared to expenditure of Kshs. 128,045,622 reported in the financial year 2015/2016. Audit verification revealed the following anomalies.

Para 6.2.1 Lack of Training Needs Assessment

Records availed for audit verification indicate that in June 2016, the management engaged a consultant to undertake a training needs assessment of the Authority whose draft report was submitted to management in August 2016. However, there was no evidence that the exercise was finalized. In addition, it was not clearly explained the basis of preparing the staff training plan for the financial year 2016-2017 whose needs assessment had not been determined. This was contrary to section 3 of Guidelines on Managing Training in the Public service which states that “planning for training shall be guided by the outcomes of Training Needs Assessment and shall be designed in line with identified performance gaps linking training to closing of such gaps”. It was not clear how the training needs were identified. The Authority may not have obtained value for money on this expenditure.

Management Response

- Training Needs Assessment report was provided for verification by the Committee
- The minutes of Training/Advisory Committee on the approved training plan was also provided for Committee’s perusal

The observations were noted by the management which endeavored to adhere to procedures and processes.

Committee Observations

- (i) The Training needs assessment prepared by Global Trainings and Consultants firm for KMA tabled before the Committee had no signature.
- (ii) There was no evidence of documents tabled to show that the board approved the trainings and whether they were in the budget .

Committee resolution

OAG to confirm whether the trainings were within the approved budget

Para. 6.2.2: Locally Available Training Held Abroad

Included in the training expenditure of Kshs. 180,485,891 were various trainings undertaken abroad at a cost of Kshs. 23,707,024. However, audit examination of the courses revealed that the courses were locally available detailed below.

No.	Training	Country	Local Trainers	Cost of Travel
1	Records Management Training	Tanzania	Kenya School of	2,235,506
2	Microsoft Server Training	India	2KO Kenya Netcom Learning	448,844
3	Evaluation of Projects	Zambia	Kenya School of	737,330
4	Ethics Reforms Course	Tanzania	Kenya School of	571,278
5	Ethics & Governance Course	Tanzania	Kenya School of Government	571,278
6	Certificate of Competency Courses	Singapore	Kenya School of Government	6,221,764

7	Advanced Project Management Training	Tanzania	Kenya School of Government	1,268,713
8	Risk Management & Quality Assurance	Malaysia	ICPAK Governance Optimized	288,930
9	Management Development Training Program	South Africa	Kenya School of Government	790,148
10	ICT Computer Software Management	Dubai	2KO Kenya Netcom Learning	705,068
11	HIV/AIDS Workplace counselling	Tanzania	Kenya School of Government	376,947
12	IFMIS Training	Tanzania	Kenya School of	4,598,635
13	Executive Management Course	Swaziland	Kenya School of	1,974,541
14	E-Records Training	Tanzania	Kenya School of	924,238
15	Supply Chain Management	Swaziland	Kenya School of	1,233,736
16	Audit Risk Based Internal Audit	United Kingdom	ICPAK Governance Optimized	582,068
	Total			23,707,024

It was not clear why training could not be sourced locally. In addition, some of the training attended were offered by ESAMI which offer same course locally. This is contrary to section 4.2.1 of the Guidelines on Managing Training in the Public Service which provides that approval to train in foreign based institution will be granted only in instances where the course applied for is not available in any local institution.

Further the foreign travels were not supported with evidence of clearance from permanent secretary of the parent ministry contrary to revised code of regulations 2008 and circular OP/CAB/9/9 by the permanent secretary, secretary to the cabinet and head of Public service which require officers travelling abroad to seek clearance from permanent secretary of the parent ministry .

In the circumstances, the propriety of regularity for expenditure of Kshs, 180,145,891 for employees' costs for the year ended 30 June 2017 to could not be ascertained.

Management Response

Being an Institution with international Maritime mandate, the Authority allowed some staff to undertake some international training to acquire specialized technical skills which were not provided locally e.g Certificate of Competency course in Singapore. The observations were noted by the management and course approvals are currently sought from the parent ministry.

Committee Observations

- (i) Currently, the KMA does not approve abroad trainings for courses that are locally available
- (ii) The KMA acknowledged this anomaly
- (iii) The Board had approved this .

PARA 7: DUTY TRAVEL ALLOWANCES FY 2015/2016 & 2016/17

The Committee heard that included in general expenditure of Kshs.536,689,113 under note14 to the financial statements is duty travel allowances of Kshs 89,330,791 for the year ended 30 June 2017. Audit analysis revealed the expenditure increased by Kshs, 23,135,190 which is 35% compared to an expenditure of Kshs. 66,195,601 reported in 2015/2016 financial year. In addition, records availed for audit verification indicated that during the period under audit, foreign travel allowance to various staff was not supported by evidence of clearance from permanent secretary of the parent ministry. This was contrary to Revised code of regulations 2006 and circular OP/CAB.9/9 by the permanent secretary. Secretary to the cabinet and head of Public Service which Require officers travelling abroad to seek clearance from permanent secretary of the parent ministry, Therefore the management was in breach of the law

Further, included in duty travel allowances of Kshs 89,330,791 is travel allowance and air tickets expenditure amounting to Kshs 9,899,000 for staff of the ministry on foreign travels, although the management indicated that the ministry requested for the support due to constraints ,it was not clearly explained how the Authority funded activities of another entity without a budget . In the circumstances, the propriety and regularity and regularity of duty travel allowance expenditure amounting to Ksh 89,330,791 for the year ended 30 June 2017 could not be ascertained

Management Response

The circular in use at the time required only the CEO and Board members to get clearance for foreign travel. All the foreign travel for the DG and the Board members were sought from the PS. The observations were noted by the management and Government circulars which provide procedures and processes are always adhered to.

Sponsorship of Ministry staff was only done on joint activities in the fulfilment of the Authorities mandate.

Committee Observation

This is a repeat paragraph form the previous year

MIN/PIC/2019/538: ANY OTHER BUSINESS

The Committee asked the KMA to ensure that the KMA staff establishment has the face of Kenya and gender balance.

MIN/PIC/2019/539: ADJOURNMENT

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

Signed

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

Date..... 15/07/2019

**MINUTES OF THE 64TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE
HELD ON SATURDAY 28TH SEPTEMBER 2019 IN PIER CONFERENCE, ENGLISH
POINT AT 2.00 P.M.**

PRESENT

The Hon. Abdullswamad Sharrif Nassir, MP (**Chairman**)
The Hon. Raphael Bitta Sauti Wanjala, MP
The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
The Hon. Paul Kahindi Katana, MP
The Hon. Rashid Kassim Amin, MP
The Hon. Justus Kizito Mugali, MP
The Hon. Omar Mohamed Maalim Hassan, MP
The Hon. John Muchiri Nyaga, M.P
The Hon. Joash Nyamache Nyamoko, HSC, MP

ABSENT WITH APOLOGY

The Hon. Thuku Zachary Kwenya, M.P
The Hon. James Kamau Githua Wamacukuru, M.P
The Hon. Gladys Wanga, MP
The Hon. Mohamed Hire Garane, M.P
The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
The Hon. Ahmed Abdisalan Ibrahim, MP (**Vice chairman**)
The Hon. Mary Wamaua Njoroge, MP
The Hon. Purity Wangui Ngirici, MP
The Hon. Babu Owino Paul Ongili, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

IN ATTENDANCE

- | | | |
|------------------------|---|------------------------|
| 1. Mr. Julius Okumu | - | Deputy Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Mr. Fredrick Thauri | - | Manager, Audit |
| 4. Mr. Lawrence Okudo | - | Manager, audit |

MIN/PIC/xxx/2019: PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past three O'clock and prayed.

MIN/PIC/2019/533: PRELIMINARIES

The Chairperson called the meeting to order at three O'clock and prayed.

MIN/PIC/2019/534 EXAMINATION OF AUDTED ACCOUNTS OF KENYA PORTS AUTHORITY

Mr. Daniel Manduku, the Managing Director of the Kenya Ports Authority accompanied by Moses Mugambi, Eng. Vincent Sidai, Halima Noor, Hamina Kiema, Geoffrey Kavate, Patrick Nyoike, Daniel Ogutu, Turasha Kinyanjui, Addraya Eda Dena, Edward Kamau and Mohamed Haziz appeared before the Committee to adduce evidence on the audited accounts of the Authority for the financial year 2014/15 to financial year 2016/17.

Para 3.2 Approval of Access Road (FYs 2014/15)

The Committee heard that records availed for audit indicated that the Authority's board approved construction of a road linking the reclaimed parcels of land by the same developer to the Port through a defined route on parcel MSA/BLOCK 1/691 which was reclaimed through dumping material from the Port. The road was restricted and privately used by the developer who had installed a weighbridge and an office for their use. The Authority indicated that the title for the reclaimed land was acquired by the developer on behalf of the Authority at the developer's cost. The reclaimed land formed part of the harbor area which could only be amended by a gazette notice by the Minister responsible for transport and not the Authority's board or management.

The management did not explain how the developer, and under whose instructions, they applied for and acquired the title for the irregularly reclaimed land on behalf of the Authority which was eventually beneficial to the developer.

The Authority therefore violated Part IV Section 8(e) of KPA Act that requires the board to ensure that no particular person or body is given any undue preference or is subjected to any undue disadvantage.

Management Response

Management informed the Committee that the Authority approved the connecting road but on condition that it would be available for public use and not for exclusive use by the developer. letters of 23rd December 2008 & 11th January 2011 and Wayleave clause B3.

Committee Observation

Explanation was satisfactory, and query resolved.

Para 4: Intangible Assets (FY 2014/15)

The Committee heard that the statement of financial position as at 30 June 2015 reflected a net book balance of Kshs.197,580,000 in respect to Intangible assets. The total

cost as per note 7 to the financial statements amounted to Kshs.1,496,354,471.90 which included Kshs.415,436,572 being cost of Waterfront Software (Kwatos). A visit to marine operation offices revealed that marine operating system procured as a part of the Kwatos at a cost of Kshs38,160,000 (US\$ 522,750) was not in use and the marine operations department were manually recording vessel tracking data and physically transmitting the same to finance department for billing. The contract between the application vendors provided for integration of the same with SAP which had not been done as at the time of this audit. The asset had been fully depreciated in the Authority's books and there was no evidence that the Authority has derived any benefit from the asset since procurement of the same.

Further, the Authority had been incurring maintenance cost amounting to Kshs.13,549,994 (US\$ 157,557.49) annually since the year 2010 as annual maintenance fees for this system. In the circumstances, it has not been possible to confirm the validity of the Kshs.38,160,000 intangible asset as at 30 June 2015 and propriety of the annual maintenance fees amounting to Kshs.13,549,994 incurred for the year ended 30 June 2015.

Management Response

Management informed the Committee that marine operations module in KWATOS was integrated with SAP. The Interim and Final marine billing information was interfaced to SAP for billing in Finance. The SAP Interface screen where marine documents are automatically interfaced to SAP was provided in the table below.

Committee Observation

- (i) The OAG and the KPA confirmed that the entire system is currently in use
- (ii) The KPA was paying for servicing the system that was not in use effectively. It was not clear how much was paid and



SAP

System: SAP INTERFACE

Home>>SAP>>CATOS & SAP Doc No List

Period From/To: 01-01-2015 ~ 31-12-2015

SAP Doc No. [] Status: -Select-

Module Name: MARINE SERVICE CATOS Doc No. [] Location: MOMBASA

Row#	Module Name	Data Count	Catos Id	SAP id	Receipt No	Update Date	St
1	Marine Master (Interim)		MIB3112162141	0020035513	0064035259	2016-12-31 11:44:22.0	90774
2	Marine Master (Interim)		MIB3112162140	0020035510	0064035257	2016-12-31 09:51:23.0	90774
3	Marine Master (Interim)		MIB3112162138	0020035508	0064035253	2016-12-30 16:37:25.0	550077
4	Marine Master (Interim)		MIB3112162137	0020035506	0064035249	2016-12-30 12:51:28.0	90774
5	Marine Master (Interim)		MIB3112162137	0020035505		2016-12-30 12:16:55.0	90774
6	Marine Master (Interim)		MIB3112162136	0020035504	0064035251	2016-12-30 09:37:37.0	90774
7	Marine Master (Interim)		MIB3112162135	0020035502	0064035245	2016-12-30 09:29:46.0	90774
8	Marine Master (Interim)		MIB3112162134	0020035500	0064035245	2016-12-29 16:08:19.0	90774
9	Marine Master (Interim)		MIB3112162133	0020035498	0064035243	2016-12-29 16:21:20.0	90774
10	Marine Master (Final)		MIB3112162067	0000067058	0064035172	2016-12-29 15:32:24.0	90774
11	Marine Master (Final)		MIB3112162105	0000067057	0064035192	2016-12-29 15:30:21.0	90774
12	Marine Master (Final)		MIB3112162090	0000067056	0064035165	2016-12-29 15:26:22.0	90774
13	Marine Master (Final)		MIB3112162115	0000067055	0064035220	2016-12-29 15:24:22.0	90774
14	Marine Master (Final)		MIB3112162093	0000067054	0064035170	2016-12-29 15:16:24.0	90774
15	Marine Master (Final)		MIB3112162091	0000067053	0064035174	2016-12-29 15:16:21.0	90774

The benefit derived from the Marine module – SAP integration is that customers are able to receive and pay for invoices within minutes. This has eliminated the manual process of raising customer invoices and consequent delays. This improves KPA service delivery to customers as the process of dispatch and receipt of billing information is streamlined. The manual marine billing information dispatched to Finance is for reconciliation of what has already been interfaced through the system.

Once billing information is received from the Pilot (Pilot Log chits) the same is entered (manually) into the KWATOS system (Marine Module) where SAP picks the same and generates marine bills. The challenge arises from the fact that there is no separate system which can enable the Pilots to key in the information instantaneously while still onboard the ship. Hence the use and need of maintaining marine records which are used by finance for reconciliation before generating the bills. See screenshot one below;

Home>>Billing>>Marine Interim Billing

ETA 01-11-2016 02:00 ~ 19-11-2016 12:31 Vessel Schedule 2016 Find

This is the Vessel booking list

Send SAP	Vessel Code	Call Year	Call Seq	Vessel Name	Shipping Agent	Berth No	ETA	ATA	ETB
<input type="checkbox"/>	K7N	2016	1471	KIRSTEN MAERSK	STURROCK	SOT	16-11-2016 25:00		15-11-2016 21:00
<input type="checkbox"/>	9506	2016	1476	SEA LEOPARD	INCHCAPE	B01	15-11-2016 09:00		15-11-2016 10:00
<input checked="" type="checkbox"/>	1552	2016	1456	EAST WIND	ALBA PETROLEUM LTD	KOT	13-11-2016 06:00	05-11-2016 06:30	13-11-2016 07:00
<input type="checkbox"/>	9502	2016	1417	AVRA I	NISOMAR LTD	B02	17-11-2016 06:00	17-11-2016 03:30	17-11-2016 07:00
<input type="checkbox"/>	1552	2016	1411	EAST WIND	ALBA PETROLEUM LTD	SOT	03-11-2016 12:00		03-11-2016 13:00
<input type="checkbox"/>	5516	2016	1453	CORONA	OBJ MARITIME SERVICES LTD	B03	09-11-2016 23:00	10-11-2016 20:30	09-11-2016 23:30
<input type="checkbox"/>	4625	2016	1474	SWALLOW ACE	INCHCAPE	B01	13-11-2016 02:00	13-11-2016 02:00	13-11-2016 03:00
<input type="checkbox"/>	1127	2016	1445	ALPHA CHALLENGE	SOUTHERN ENGINEERING COMP	SEC	01-11-2016 06:00	01-11-2016 06:00	01-11-2016 07:00
<input type="checkbox"/>	6266	2016	1430	ELKA ATHINA	STURROCK	KOT	03-11-2016 06:00	03-11-2016 17:29	03-11-2016 07:00

The Check box with the tick sign indicates that interface to SAP has been done

Profit Center HARB. Payer Shipping Agent 310020 INCHCAPE Receipt No 054040561 Send Sap

Row#	Indicate	Billing Code	Description	Quantity	Paid
1	<input checked="" type="checkbox"/>	110000	PILOTAGE (ENTERING/LEAVING HARBOUR)	2	Y
2	<input checked="" type="checkbox"/>	110005	TUG SERV. (BERTH/UNBERTH) WITHIN 2 MILES	4	Y
3	<input checked="" type="checkbox"/>	110012	MOORING/UNMOORING	2	Y
4	<input checked="" type="checkbox"/>	110015	NAVIGATIONAL/LIGHT DUES	1	Y
5	<input checked="" type="checkbox"/>	110016	PORT (AND HARBOUR) DUES	1	Y
6	<input checked="" type="checkbox"/>	110155	SECURITY DUES	1	Y
7	<input checked="" type="checkbox"/>	110018	DOCKAGE	48	Y

These are billing items list to a particular vessel from the booking list

Billing Code --Select-- Quantity Paid Add Clear

The second screen is for final Billing of vessels after the vessel has left the port. (Marine Final Billing Screen).

Home>>Billing>>Marine Final Billing

ETA 01-11-2016 02:00 ~ 19-11-2016 12:44 Vessel Schedule 2016 Find

Send SAP	Vessel Code	Call Year	Call Seq	Vessel Name	Shipping Agent	Berth No	ETA	ATA	ETB
<input type="checkbox"/>	9507	2016	1477	SEA JAGUAR	INCHCAPE	MTG	15-11-2016 06:00	10-11-2016 20:40	15-11-2016 07:00
<input type="checkbox"/>	9506	2016	1478	SEA LEOPARD	INCHCAPE	B01	15-11-2016 09:00		15-11-2016 10:00
<input type="checkbox"/>	9195	2016	1509	SEAMER II	STURROCK	AMB	15-11-2016 09:00		15-11-2016 07:00
<input type="checkbox"/>	Y55	2016	1468	SEADYSSEY	STURROCK	KOT	10-11-2016 14:00	10-11-2016 19:00	10-11-2016 15:00
<input type="checkbox"/>	A4H	2016	1421	SERVAL	MAERSK LINE A/S	OA	06-11-2016 09:00	07-11-2016 21:00	06-11-2016 10:00
<input type="checkbox"/>	A4H	2016	1421	SERVAL	MAERSK LINE A/S	OA	06-11-2016 09:00	07-11-2016 21:00	06-11-2016 10:00
<input type="checkbox"/>	5522	2016	1510	STI VIRTUS	STURROCK	KOT	17-11-2016 06:00		17-11-2016 07:00
<input type="checkbox"/>	5513	2016	1449	STOLT SEA	STURROCK	SOT	14-11-2016 16:00	14-11-2016 18:00	14-11-2016 17:00

Profit Center HARB. Payer Shipping Agent Receipt No 054040561 Approval Send Sap

Indicate	Billing Code	Description	Quantity	Interim Qty	Paid
<input checked="" type="checkbox"/>	110000	PILOTAGE (ENTERING/LEAVING HARBOUR)	2		Y
<input checked="" type="checkbox"/>	110005	TUG SERV. (BERTH/UNBERTH) WITHIN 2 MILES	4		Y
<input checked="" type="checkbox"/>	110012	MOORING/UNMOORING	2		Y
<input checked="" type="checkbox"/>	110015	NAVIGATIONAL/LIGHT DUES	1		Y
<input checked="" type="checkbox"/>	110016	PORT (AND HARBOUR) DUES	1		Y
<input checked="" type="checkbox"/>	110155	SECURITY DUES	1		Y
<input checked="" type="checkbox"/>	110018	DOCKAGE	48		Y

Billing Code PILOTAGE (ENTERING/LEAVING HARBOUR) Quantity 2 Paid Modify Clear

Screen number three is the KWATOS-SAP interface screen which receives information from the two previous screens from the Marine module; (CATOS & SAP Doc No List Screen).



Row#	Module Name	Data Count	Catos Id	SAP Id	Vvd Code	Vessel Name	Receipt No	
1	Marine Master (Interim)		M180711165271	0020041324	OSLO20181419	HGEGH OSLO	0064040929	2016
2	Marine Master (Final)		M180311165261	0000075770	GLM20181393	GLENDA MELOI	0064040925	2016
3	Marine Master (Final)		M181910165231	0000075750	RHR20181410	RIVER SHINER	0064040858	2016
4	Marine Master (Interim)		M181311165200	0020041378	VDD20181455	VIL DARDANELI	0064040995	2016
5	Marine Master (Final)		M180811165276	0000075786	550620181425	ASIA RUBY I	0064040952	2016
6	Marine Master (Interim)		M181311165218	0020041372	551720181464	OCEANBEAUTY	0064040586	2016
7	Marine Master (Interim)		M181511165205	0020041393	MSBN20181425	MSC JEARNE	0064041007	2016
8	Marine Master (Final)		M180211165285	0000075771	JQUA20181400	JOLLY QUARZO	0064040901	2016
9	Marine Master (Interim)		M180211165256	0020041353	54X20181359	HUGO SCHULTI	0064040912	2016
10	Marine Master (Interim)		M180811165276	0020041326	950620181425	ASIA RUBY I	0064040952	2016
11	Marine Master (Interim)		M180811165275	0020041331	BRMD20181437	BERMUDA	0064040946	2016
12	Marine Master (Interim)		M181311165254	0020041366	MSDE20181467	Mac DeLasse	0064040663	2016
13	Marine Master (Interim)		M180611165267	0020041317	KDMR20181402	KOTA GEMAR	0064040934	2016
14	Marine Master (Final)		M180311165262	0000075619	828820181430	ELNA ATHINA	0064040920	2016
15	Marine Master (Interim)		M181511165231	0020041397	552320181510	STI VIRTUS	0064041011	2016
16	Marine Master (Final)		M181311165290	0000075817	3CM20181371	MAERSK JALAN	0064040977	2016
17	Marine Master (Final)		M180301165245		852320181435	MAPINDUZI II	0064040854	2016
18	Marine Master (Final)		M182510165232	0000075714	LKT20181406	LAKE STURBEO	0064040860	2016
19	Marine Master (Final)		M180311165259	0000075728	155220181423	EAST WIND	0064040914	2016
20	Marine Master (Interim)		M181611165319		552320181520	ALLAH KARIM		2016
21	Marine Master (Interim)		M180911165263	0020041345	55C820181478	SEA LEOPARD	0064040951	2016
22	Marine Master (Final)		M180511165249	0000075755	LARA20181392	MSC LARA	0064040699	2016
23	Marine Master (Final)		M180711165273	0000075601	AHN20181342	AFRICAN HALC	0064040944	2016
24	Marine Master (Interim)		M180211165253	0020041290	922420181269	AYIA MARINA	0064040905	2016
25	Marine Master (Interim)		M180611165269	0020041319	MCL20181461	MARTA CARLA	0064040932	2016
26	Marine Master (Interim)		M181411165205	0020041367	551620181453	CORDHA	0064041602	2016
27	Marine Master (Final)		M180611165267	0000075769	KDMR20181402	KOTA GEMAR	0064040934	2016

PARA 5.0 RECEIVABLES AND PREPAYMENTS FY 2014/15

The Committee heard that as reported in the previous financial years reports, the receivables and prepayments balance of Kshs.6,324,493,000.00 as at 30 June 2015, included amounts of Kshs.287,231,000 and Kshs.336,010,000 owed by the Ministry of Transport and Kenya Ferry Services Limited respectively, and which have been outstanding for more than seventeen (17) years. Although the Public Investment committee in its ninth report recommended that the Chief Executive Officer communicates with both the Parent Ministry and the National Treasury with a view to ensure that the receivables are paid to the Authority, no meaningful progress has been made in this regard.

Further, included in the receivables and prepayments balance were amounts totaling Kshs.591,459,937 in respect of debts owed by three firms and which had been outstanding since 2004/2005 financial year. These firms were Kenol Kobil, Kobil Petroleum Ltd and Kenya National Shipping Line which owed Kshs.134,684,891, Kshs.431,289,649 and Kshs.25,485,396 respectively. In addition, from a sample of trade cargo debtors, marine debtors and rental debtors selected for examination, it was noted that the Authority was still trading with debtors with outstanding balances of over 2 (two) years and for those debtors the Authority had impaired (100%) amounting of Kshs.677,959,554 in line with their policy.

Under the circumstances, the accuracy and completeness of the receivables and prepayments of Kshs.6,324,493,000 as at 30 June 2015 could not be confirmed.

Management Response

Ministry of Transport and Infrastructure (Kshs 287,231,402)

The Management informed the Committee that the said debt arose in 1994 when Kenya Ports Authority contracted M/s Dredgco Kenya Ltd to undertake maintenance dredging at the port of Mombasa. This project was to be funded by the then Ministry of Transport and Communications, through appropriations from the consolidated funds from the Government of Kenya. With consent from the National treasury and the parent ministry, KPA paid the contractor M/s Dredgco a sum of Kshs. 287,231,401.95. The payment was made in lieu of Uganda compensation. On the other hand, the withheld compensation funds amounting to Kshs. 287,231,401.95 had not been released. Despite several communications to the two ministries, this money had not been refunded.

The Authority was still in discussions with the parent ministry and the National Treasury on the write-off or resolution of this matter.

Kenya Ferry Services (Kshs 336,010,000)

The Authority received approval from the National Treasury to write-off the debt and the debt has been removed from the books. **Appendix 16.**

Kenya National Shipping Line

Both parties agree about the existence of the debt. Neither can the Authority institute legal action towards recovery of the debt since the owners of KPA and KNSL is the Government of Kenya, nor can KNSL pay the debts due to its non-performance. Recent developments are that the Ministry through the State department for Shipping and Maritime Affairs is currently restructuring KNSL.

Kenol Kobil and Kobil Petroleum Ltd.

The Authority has filed legal proceedings to recover debts of Kenol Kobil and Kobil Petroleum Ltd. The matter is still pending in court under cases Nos. HCC no 128 of 2004 and HCC no. 216 of 2009.

On 17th December 2018, the Court directed that the case should be referred for mediation. The Deputy Registrar has not yet issued directions on the matter, neither has a Mediator been appointed to hear the suit.

On 15th January 2019, the Authority also appointed the firm of Mohammed Muigai Advocates to represent its interests owing to dissatisfaction with the way the firm of M/s Daly and Inamdar Advocates had been handling the matter

Trading with debtors with Outstanding Balances of over 2 years old

Management in compliance with the International Financial Reporting Standards impaired the debts of the Kenol Kobil, Kobil Petroleum Ltd and KNSL. Indeed over 87% of the Kshs.677,959,554.09 relates to these 3 entities. As stated above, the Authority filed legal proceedings to recover debts of Kenol Kobil and Kobil Petroleum Ltd. The matter is pending in court.

All debts were actively pursued and the Board during its 347th Special Board meeting held on 24th July 2018 recommended the write-off of outstanding debts of Kshs. 78,018,967.30 as at 30th June 2018. Efforts to collect the debts had been frustrated by factors ranging from firms that are no longer transacting with the Authority, tenants who never occupied offices/plots, to disputed bills. The amounts will be written- off once approval from National Treasury had been received as PFM Act 2012.

Committee Observations

- (i) The KPA did not provide communications with regard to settlement of the amounts due from Ministries
- (ii) The auditors confirmed that amount due from KFS had been written off
- (iii) It was inconceivable that the KPA was investing in distressed companies
- (iv) The matter of Kenol Kobil has taken inordinately long time in Court. Kenol Kobil wants negotiations and are in negotiations of what they want to offer before deciding on whether or not to withdraw the Court case. Currently, Kenol Kibil is paying exactly for the services now that they contested previously
- (v) KPA is not trading with KNSL and has not taken it to Court despite owing it huge chunks of money
- (vi) The liabilities of the KNSL have been included for settlement in the currently restructuring process
- (vii) KPA is not lending KFS any money currently

Committee Resolution

KPA to provide instructions given to a law firm addressing the kenol Kobil matter

Committee Recommendations

- (i) The KPA should suspend trading with entities that fails to own their part of the financial obligations until the matter is resolved
- (ii) The KPA should expedite the negotiations process with Kenol Kobil to ensure that the money due to KPA is repaid without delay

Para 6: Pension Scheme Expenses (FY 2014/15)

The Committee heard that the Statement of comprehensive income reflected operating expenses amounting to Kshs.28,415,612,000. Included in these were expenses paid by the Authority on behalf of the KPA's pension scheme's administrative expenses amounting to Kshs.53,747,946.83. This was done contrary to the provisions of Section 10 of the Treasury circular 18/2010-52(10) dated 24 November 2010 which required the employer to meet the set up costs for the scheme only for the first year.

From the foregoing, the propriety of Kshs.53,747,946 for scheme administrative expenses for the year ended 30 June 2015 could not be confirmed.

Management Response

Management informed the Committee that the pension scheme was transitioning to full autonomous stand-alone unit. The tender for consultancy on optimal stand-alone pension structure was advertised in January 2019 and awarded to PKF who were working on the structure.

The National Treasury's letter ref EPN 171/07 VOL. Q (94) of 16th June 2011 directed changes to its circular No. 18/2010 of 24th November 2010 under variation of clause 10 to allow that scheme expenses related to in house administration may be met by the employer (KPA). These are salaries and allowances paid to employees assigned the duty to administer the scheme. Currently, the Scheme is reimbursing the Authority employees costs for the staff attached to the scheme, on a quarterly basis. **Appendix 19**

Committee Observation

The matter was satisfactory addressed, and query resolved

Para 1.0 Property Plant and Equipment (FY 2015/16)

Para 1.1 Alienated Properties FY 2015/16

The Committee heard that the statement of financial position as at 30 June 2016 reflected property plant and equipment balance of Kshs.123,242,840,000. The balance included leased land valued at Kshs.6,162,840,000 and land and buildings valued at Kshs.22,384,283,000.

Information availed for audit indicated that twenty nine (29) properties valued at Kshs. 313,400,000 belonging to the Authority were invaded by third parties. The management indicated that the invaders had purportedly acquired ownership rights over the properties and undertaken developments on the lands. The Authority has filed suits in various law courts which are pending determination, as outlined in the attached appendix marked I.

Management Response

With regard to the observation, we wish to state that the Authority has filed several cases as listed in the table below. The total number of plots belonging to KPA which have been irregularly alienated to third parties is twenty eight (28). The third parties have purportedly acquired rights (ownership) over the plots and some have even undertaken developments. However, in the month of January 2018 the National Land Commission published a notice listing parcels illegally alienated from KPA and gave the registered parcel owners 90 days to vacate the parcel.

The High Court in ELC Civil Suit No. 245 of 2004 Kenya Ports Authority Vs. G. Wayumba (Geometer Surveys Ltd), Commissioner of Lands, District Land Registrar Mombasa, Wayland Ltd, Essam Properties Ltd and Kilifi Gardens Ltd entered judgement in favor of KPA declaring that excision of portions from KPA's original parcels by creating new ones in the names of private parties and ordered for the excisions be revoked and rectification of the register. An application for a stay of the decision and setting it aside had been filed by the defendants and the ruling was delayed on 21st March 2019. The Court allowed the application for setting aside of the Ex Parte Judgment in MSA ELC Civil Suit No. 245 of 2004, as against only the 6th and 7th Defendants (Essam Properties Ltd & Kilifi Gardens Ltd), in respect of their titles No. MSA/BLOCK XXVI/508 and MSA/BLOCK XXVI/928. The Application was allowed only because there were pending suits against the two defendants namely; ELC No. 497 and 498 of 2001, where they had filed their Statements of Defence in Court. (A letter from the lawyer and a copy of the judgement is attached.)

The table below summarizes the status of these plots:

	Plot No.	Allocated To	Revalued Amount (Kshs)	Status	Case No./ Lawyers
1	XLVII/111 0.2833 Ha	Robert Mutiso P. O. Box 285587 Nairobi	87,500,000	This case is part heard and was fixed for hearing on 28 th November 2018 but could not proceed as the court was not sitting. Though the case had been fixed for hearing on 28 th March 2019, it did not proceed because the matter was not listed. The Court directed parties to take a hearing date at the Registry. It has now been fixed for hearing on 30 th October 2019	HCCC No.495/01 The law firm of M/s Timamy & Co. Advocate were retained to represent the Authority in these cases. The Litigation lawyer who was handling this case joined the judiciary and the managing partner was venturing into politics. Consequently, a decision was made to transfer the briefs to M/s A.B. Patel & Patel Advocates.
2	XLVII/112 0.7503 Acres	Stone Wave Limited P.O. Box 82576 Mombasa	153,500,000	The case was consolidated with HCCC 497/2001 & 498/2001 (see item 10 & 11) and came up for hearing on 28 th November	HCCC NO. 499/01 A.B. Patel & Patel Advocates

		<p>Directors</p> <p>Abbasali A.G. Dossa</p> <p>Naushad A. Merali</p>		<p>2018 but did not proceed as the court was not sitting. The case was fixed for hearing on 28th March 2019.</p> <p>The Court directed that the Intended Interested Party's application to be enjoined to the suit will be heard on 30th October 2019</p>	
3	<p>XLVII/113</p> <p>0.535 Acres</p>	<p>Supernova Properties</p> <p>P. O. Box 82077</p> <p>Mombasa</p> <p>Directors</p> <p>Ashok L.Doshi</p> <p>Doshi Group of Companies</p>	65,000,000	<p>An office block has been constructed on the plot.</p> <p>Application to consolidate this case and further directions was on 19th February 2019</p> <p>Court directed that the application to have the suit consolidated with others should await the decisions in the other two applications: one for joinder of an Interested Party fixed for hearing on 25th September 2019 and the other seeking to have the suit against the 1st Defendant dismissed – fixed for 2nd October 2019</p>	<p>HCCC NO. 40/05</p> <p>A.B. Patel & Patel Advocates</p>
4	<p>XLVII/114</p> <p>0.363 Acres</p>	<p>Santunia Limited</p> <p>P. O. Box 87270</p> <p>Mombasa</p>	37,500,000	<p>A boundary stone wall has been built.</p> <p>Application to consolidate this case and further directions was on 19th February 2019</p> <p>Court directed that the application to have the suit consolidated with others should await the</p>	<p>HCCC NO. 40/05</p> <p>A.B. Patel & Patel Advocates</p> <p>Same as 1 above</p>

				decisions in the other two applications: one for joinder of an Interested Party in ELC Nos. 41, 42 and 43 of 2005 fixed for hearing on 25 th September 2019 and the other seeking to have the suit against the 1 st Defendant in ELC 40 of 2019 dismissed – fixed for hearing on 2 nd October 2019	
5	XLVII/115 & XLVII/116	Freight Constructions services	50,400,000 76,000,000	Boundary wall and offices constructed. Application to consolidate this case and further directions was on 19 th February 2019 Court directed that the application to have the suit consolidated with others should await the decisions in the other two applications: one for joinder of an Interested Party in ELC Nos. 41, 42 and 43 of 2005 fixed for hearing on 25 th September 2019 and the other seeking to have the suit against the 1 st Defendant in ELC 40 of 2019 dismissed – fixed for 2 nd October 2019	HCCC No.43/05 A.B. Patel & Patel Advocates
6	XLVII/117 0.558 Acres	Nature System Limited P. O. Box 19002 Nairobi Directors Abdul-Gaffur	63,000,000	Boundary wall had been constructed. Though the case had been fixed for hearing on 28 th March 2019, it did not proceed because the matter was not listed. The	HCCC No. 496/01 A.B. Patel & Patel Advocates

		Abdulgani Pastor Abdulgani Abdul-Gaffur Pastor		Court directed parties to take a hearing date at the Registry. It has now been fixed for hearing on 30 th October 2019	
7	XLVII/118	TSS Grain Millers P. O. Box 85039 Mombasa	114,500,000	Boundary wall constructed. Application to consolidate this case and further directions was on 19 th February 2019 Court directed that the application to have the suit consolidated with others should await the decisions in the other two applications: one for joinder of an Interested Party in ELC Nos. 41, 42 and 43 of 2005 fixed for hearing on 25 th September 2019 and the other seeking to have the suit against the 1 st Defendant in ELC 40 of 2019 dismissed – fixed for hearing on 2 nd October 2019	HCCC No.41/2005 A.B. Patel & Patel Advocates
8	XLVII/179 0.0336 Ha	Akaba Investment P. O. Box 8997 Mombasa Directors Abdikarim Shigog	18,200,000	Construction had commenced but was stopped by a court order. KPA has obtained judgment against Akaba Investment in Civil suit number 245 of 2004 KPA vs G. Mwanyumba and 6 others. While in the process of execution of the said Judgment, the	HCCC No.124/01 Cootow & Asscoiates

				persons affected by the judgment have preferred an appeal and obtained a stay of execution.	
9	1/469	Hydery (P) Limited P. O. Box 82576 Mombasa	Not	Warehouse built on plot. This was a road reserve There are two Applications pending before Court: One filed by KPA & KPAPS for contempt of Court; and the other by M/s Akaba seeking stay of proceedings pending the hearing and determination of an appeal they have preferred. Parties are filing the responses to the Applications. The matter will be mentioned on 8 th August 2019 to confirm compliance. Letter dated 16 th July 2019 from M/s Cootow & Associates is attached.	No court case filed as yet awaiting judgement on the related cases to be used as a test case.
	0.2501 Ha	Masumali G. Merali Naushad A. Merali	Revalued		
10	XXVII/508 0.1278 acres	Essam Properties P. O. Box 82578 Mombasa Directors Masumali G. Merali Naushad A.	108,000,000	KPA house was demolished. A boundary stone wall built on the plot. The case has been consolidated with HCCC No. 498 of 2001 and 499 of 2001 herein were fixed for	HCCC No. 497/01 A.B. Patel & Patel Advocates

		Merali		<p>hearing on 28th March 2019 (see item 11 & 2)</p> <p>Though the case had been fixed for hearing on 28th March 2019, it did not proceed because the matter was not listed. The Court directed parties to take a hearing date at the Registry.</p> <p>It has now been fixed for hearing on 30th October 2019</p>	
11	XXVI/928 0.900 acres	<p>Kilifi Gardens Limited</p> <p>P. O. Box 82576</p> <p>Mombasa</p> <p>Directors</p> <p>Masumali G. Merali</p> <p>Naushad A. Merali</p>	Not valued	<p>KPA house was demolished. A boundary wall built around the plot. This was a road reserve.</p> <p>This case has been consolidated with HCCC 497/2001, 499/2001 (see items 10 & 12) The case was fixed for hearing in 28th November but did not proceed as the court was not sitting.</p> <p>Though the case had been fixed for hearing on 28th March 2019, it did not proceed because the matter was not listed. The Court directed parties to take a hearing date at the Registry.</p> <p>It has now been fixed for hearing on 30th October 2019</p>	<p>HCCC No. 498/01</p> <p>A.B. Patel & Patel Advocates</p>
1 2	XXVI/1001 0.1805 Ha	Wayland Limited	37,000,000	KPA house occupied by OCPD Port.	HCCC No. 500/01 (Now ELC. No. 211 of 2018)

		P. O. Box 12416 Nairobi Directors Not on company registry database Geometer Ltd – Directors Gordon Wayumba , Alice Ochieng , Francis Odhiambo		The case is now fixed for hearing on 28 th March 2019. See also attached judgment in ELC 245/2004 The matter is fixed for hearing on 2 nd October 2019	A.B. Patel & Patel Advocates
1 3	XLVII/149	Osman Taraab and Zera Taraab	61,500,000	Warehouses. This was a road reserve.	No court case filed as yet awaiting judgement on the related cases to be used as a test case.
1 4	XLVIII/15 0 0.1551 Ha	Sunnex Ent. Limited P. O. Box 82077 Mombasa Directors Ashok L.Doshi Doshi Group of Companies	55,000,000	Plot created from road reserve at either side of road at Dockyard and adjacent to Port fence	No court case filed as yet awaiting judgement on the related cases to be used as a test case.
1 5	XLVII/151 0.450 Ha	Venezia Ent. Limited P. O. Box 86029 Mombasa Directors Abdul-Gaffur Abdulgani Pasta	37,500,000	Plot created from road reserve at either side of road at Dockyard and adjacent to Port fence. No development.	No court case filed as yet awaiting judgement on the related cases to be used as a test case.
1 6	XLVII/152 0.450 Ha	Venezia Ent. Limited P. O. Box 86029 Mombasa Abdul-Gaffur Abdulgani Pasta	37,500,000	As above	As above

17	XLVII/153 0.450 Ha	As above	37,500,000	As above	As above
18	XLVII/154 0.0450	As above	37,000,000	As above	As above
19	XLVII/155 0.0675 Ha	Oceanfreight (MSC) P. O. Box 80637 Mombasa	38,500,000	Grabbed and sold to MSC. Car Park built	As above
20	XLVII/162 0.0451 Ha	Vanezia Ent. Limited P. O. Box 86029 Mombasa Abdul-Gaffur Abdulgani Pasta Abdulgani Abdul-Gaffur Pasta	37,500,000	Plot created from road reserve at either side of road at Dockyard and adjacent to Port fence. No development.	As above
21	XLVII/163 0.0531	Osman Hajj Talab & Zera Osman Talab P. O. Box 98142 Mombasa	60,000,000	Plot created from railway reserve. Boundary wall and buildings.	Railway siding plots allocated to private individuals. No cases have been filed.
22	XLVII/164 0.500 Ha	As above	40,000,000	As above	As above
23	XLVII/165 0.0496 Ha	As above	20,000,000	As above	As above
24	XLVII/166 0.0497	Joseph Ngetich P. O. Box	20,000,000	As above	As above

		Mombasa			
25	XLVII/167 0.0502 Ha	Lumda Ent. P. O. Box 20712 Nairobi. Mwenda Mbogori Lucy G. Mwenda	22,000,000	As above	As above
26	XLVII/168 0.0501 Ha	Gladys Tesot	40,000,000	As above	As above
27	XLVII/169	Not registered	12,800,000	As above	As above
28	I/528 & 529	Chembe Holdings and Musk Deer Daniel N Kihiko Abbas M Yusuf	Not Revalued	Road reserve	Ethics & Anti-Corruption Commission filed a civil case seeking cancellation of the titles and a criminal case against the suspected grabbers.
		TOTAL	1,367,400,000		

Letters dated 7th August 2019 from A. B. Patel & Patel Advocates and letter dated 16th July 2019 from Cootow & Associates were provided as appendix 3.

Committee Observation

- (i) The NLC had recommended revocation of titles to these properties
- (ii) Despite these being old matters, they were not captured in the previous audits ostensibly because of sampling. These matters were discussed by PIC in 2002. The Committee would look at the PIC reports of those years to ascertain what was recommended
- (iii) There is need to know who was allocating the KPA land to private individuals

Committee Resolution

KPA to provide copies of the titles in the above properties for perusal

PARA 1.2: LAND WITHOUT TITLE DOCUMENTS (FY 2015/16)

The Committee heard that included in the property plant and equipment balance of Kshs.123,242,840,000 for the year ended 30 June 2016 was land and buildings valued at Kshs.22,384,283,000 owned by the Authority. However, documents availed for audit review indicated that the Authority did not have title deeds for thirty four (34) parcels of land valued at Kshs.3,478,490,000, as shown in the attached appendix marked II.

Although the management had engaged a consultant to conduct verification of all its properties, no documents were presented for audit to confirm that the parcels were owned by the Authority and were free from encumbrances.

Management Response.

Managed provided a list indicating land with no titles and KPA's remarks per title **Appendix 4**. For the parcels of land without titles, action to secure new titles were underway. The Authority proceeded and undertook official searches for the plots. The Authority also filed affidavits for issuance of provisional titles. For two plots MSA/BLOCK/XLVIII/131 and MSA/BLOCK/I/315 the green cards were missing in the Kalamazoo and in the loss cards. KPA could not thus lodge the searches. KPA therefore wrote to the Land Registrar to ensure he avails the files. KPA also filed cautions to protect the interests of the Authority.

On 26th July 2019 the four plots were gazetted and an application for provisional certificate of title deed will be submitted to the Mombasa lands office upon expiry of the 60 days. Details of the plot and gazette notice are (refer to Appendix 4) shown below;

- a) Notice No 6899 for MSA/Block/XLVIII/131
- b) Notice No 6900 for MSA/Block/XLVIII/558
- c) Notice No 6901 for MSA/Block/I/315
- d) Notice No 6902 for MSA/Block/XLVIII/156

Some plots were grabbed from the Authority and have cases in court while others were consolidated/subdivided leading to new titles. The rest of the plots have titles. Copies of the titles are attached. **Appendix 4**

Committee Observation

OAG confirmed seeing the titles as per the responses

PARA 1.3 : IDLE PARCELS OF LAND 2015/16

PARA 1.4: RECLAIMED LAND 2015/16

PARA 1.4.1: EXCISION OF PART OF HARBOR AREA 2015/16

PARA 1.4.2: APPROVAL OF ACCESS ROAD 2015/16

PARA 2: INTANGIBLE ASSETS 2015/16

(These matters had been dealt in the 2014/15).

PARA 3.0 RECEIVABLES AND PREPAYMENTS (FY2015/16)

Lessee Holding of 33 year for Kipevu Parcel LR No. MN/VI/3957

The Committee heard that an application by Zynmat to lease MN/VI/3957 was considered. In September 2008, KPA leased to Zynmat parcels MN/VI/4407 and MN/VI/4408 for Kshs. 13,348,649 stand premium Kshs. 12,200,000 and annual rent of Kshs. 1,016,665. The lease was signed on 29th July 2009 for 33 years with effect from 1st August 2008, annual rent of Kshs. 2,750,000.

In March 2009, Zynmat paid Kshs. 13,348,649 and sought waiver of 2 years rent for reasons that the land had been invaded by squatters which prompted them to pursue negotiations, compensation and resettlement and further the parcel would require earth work. There was also an oil pipeline with a way-leave zoning which rendered a substantial portion of the parcel unusable for the intended purposes. Zynmat therefore requested for a rent moratorium from 26th March 2010 to 31st July 2018.

In May 2008, Zynmat sought consent to charge by proposing to curve out plot A and B out of the property MN/VI/3957 and to charge the same to raise collateral for the proposed development. This request was declined as was the one on rent moratorium. Zynmat stopped paying rent and by 2018 had accumulated arrears amounting to Kshs. 25,822,735. A demand notice was issued to their last known address but was returned undelivered. **Appendix 16**

We are currently considering advertising the termination through the local media and upon expiry set in motion the process of disposal of the interest.

Recovery of the rent arrears appears to be remote and the lessee is so far untraceable.

The Board in its 347 Special Board meeting held on 24th July 2018 recommended the debt for write-off subject to approval from the National treasury through the parent ministry as per the PFM Act 2012. **Appendix 17**

The management had in the meantime recognized a provision as per the existing impairment policy.

Committee Observation

- i) The KPA does not know the address of these people
- ii) KPA undertook to serve them through substituted service
- iii) KPA should provide CR12 for the companies to the Committee

PARA 4.0: SHORT TERM DEPOSITS

The Committee heard that the statement of financial position reflects short-term deposits balance of Kshs.12,540,442,000 as at 30 June 2016, an increase of Kshs.3,302,558,000 from balance of Kshs.9,237,887,000 as at 30 June 2015. During the financial year 2015/2016, the Authority invested Kshs.2,957,000,000 with Chase Bank. The bank was placed under receivership by the Central Bank on 7 April 2016 and as at the time of this audit, the Authority had not recovered these funds which had already matured.

Under the circumstance, it was not possible to confirm recoverability of the short-term deposits totaling to Kshs.2,957,000,000 invested in Chase Bank as at 30 June 2016.

Management Response

Management informed the Committee that Chase bank was placed under receivership by the Central Bank of Kenya (CBK) on 7th April, 2016. As at this date, the Authority had placed time deposits with the bank amounting to KShs.2,956,547,180. The deposits had earned an interest of KShs.74,859,759 up-to the date of receivership, bringing the total to KShs.3,031,406,939.92 details are as follows:

	Date Invested	Tenor	Maturity Date	Interest Rate	Principal Amount Kshs	Interest Earned Kshs	Total Kshs
1	22 nd December 2015	5 Months	22 nd May 2016	14.5%	1,000,000,000	36,041,329	1,036,041,329
2	26 th January 2016	3 Months	26 th April 2016	15.35%	1,000,000,000	25,667,213	1,025,667,213
3	1 st March 2016	4 Months	1 st July 2016	16%	956,547,180	13,151,217	969,698,397
Total					2,956,547,180	74,859,759	3,031,406,939

Following the receivership, the Kenya Deposit Insurance Corporation (KDIC) appointed KCB Bank Kenya Ltd as the receiver manager of Chase Bank and modalities for reopening the bank were put in place, resulting in its partial reopening on April 27, 2016 but still under receivership. At that point, Chase Bank customers were given immediate access to their deposits up to a maximum of KShs.1 million.

On 30th March, 2017, CBK and KDIC invited investors to present an initial Expression of Interest to take an equity interest in Chase Bank. On January 5, 2018, CBK and KDIC announced the receipt and acceptance of a Binding Offer from State Bank of Mauritius

(SBM) Holdings Limited, through SBM Bank (Kenya) Ltd with respect to Chase Bank and CBK issued a Gazette notice to this effect.

Based on the agreement between the CBK, KDIC and SBM Bank Kenya, a transfer of 75% of the value of deposits (KShs.2,273,555,204) moved to SBM Bank Kenya while 25% (KShs.757,851,734) remained with Chase Bank (Receivership) in the custody of KDIC.

In compliance to the IFRSs, Management impaired the 25% deposits, recognizing a loss of KShs.757,851,734 during the financial year ended 30th June 2018.

For the 75% of moratorium deposits transferred to SBM, the terms were as below:

No.	Description	Equivalent Amount (KShs)
i	18.75% is held in a current account with SBM Kenya with unrestricted usage	568,388,801
ii	18.75% is held in a savings account with SBM Kenya at an interest rate of 6.30% per annum with unrestricted usage	568,388,801
iii	37.5% is held in a fixed deposit with SBM Kenya at an interest rate of 6.30% per annum with restricted access; Maturing as one-third on first, second and third anniversaries respectively.	1,136,777,602
Total moratorium deposits		2,273,555,204

The transition process was completed on 17th August 2018 and SBM Kenya Limited opened its doors on 20th August 2018 offering full banking operations.

The SBM had since transferred a total of KShs.1,175,061,018 to the Authority's Bank account at Citibank, following management instructions as follows:

- 27th February 2019 - KShs.1,122,161,722
- 11th April 2019 – KShs.52,899,296

The Authority's current and Savings accounts at SBM have nil balances. The remaining 37.5% of the deposits (KShs.1,136,777,602) are on a Fixed deposit account earning interest at 6.3% p.a with restricted access; maturing as one-third on first, second and third anniversaries respectively.

Committee Observations

- (i) Treasury had given approval to invest in Chase Bank. This approval documents and the choice of chase bank was not provided.
- (ii) The Chairman of KPA during that time was Hon. Danson Mungatana while the CEO of KPA was Mr. Ndua G
- (iii) None of the current Board members that sat in that that approval process

Committee Resolutions

- (i) The KPA should provide details on how the KPA arrived at the investing in Chase Bank; Treasury Approval; Board approval

PARA 5.0: CURRENT LIABILITIES (FY 2015/16)

Para 5.1: Trade and Other Payables Variances

The Committee heard that the statement of financial position reflected trade and other payables balance of Kshs.5,668,561,000 as at 30 June 2016 as detailed in Note 27 to the financial statements. Included in other payables was general trade payables balance of Kshs.285,978,000, which KPA circularized vide letter referenced FA/12/01 dated July 2016 to 53 suppliers out of which only one supplier (2%) responded. The supplier stated that KPA owed them Kshs.4,730,596 .64 and USD 287,708.65 while the Authority acknowledged owing Kshs.3,153,676.39 only resulting to a difference of Kshs.1,576,920.25 and USD 287,708.65 which the Authority's management had not explained as at the time of this audit.

Management Response

The Management informed the Committee that the Authority disagrees with the amounts indicated by the vendor/supplier. Some of the invoices included in the outstanding statement by the supplier had been processed and paid before the closure of the financial year. The balance shown in our accounts is therefore correct; a reconciliation of the amounts is shown in appendix 19 provided.

And in as much circularization is important, the Authority cannot force responses from suppliers.

Committee Observation

The reconciliation is still pending

Committee resolution

OAG and KPA to sit together and reconcile the balances

Para 5.1: Long Outstanding Balances FYs 2015/16

The Committee heard that the included in the trade and other payables balance of Kshs.5,668,561,000 as at 30 June 2016 is a general trade balance of Kshs.285,978,000 out of which Kshs.87,843,356.60 is owed to Kenya Oil Company Limited since 2005.

Consequently, it has not been possible to confirm the accuracy and completeness of the trade and other payables totaling to Kshs.5,668,561,000 as at 30 June 2016.

Management Response

In this matter, Kenol has sued KPA claiming the amount allegedly being agreed purchased price for fuel products sold and supplied by Kenol to KPA during May and June, 2008. The case Nbi HCCC No. 216 of 2009 is still pending in court. The amount was not paid to the vendor and was held as a counter claim for the debtor's amount. This matter is still pending in court since the Plaintiff; Kenol Kobil has not taken any steps to progress the matter.

Committee Observation

OAG confirmed satisfaction with the response

PARA 6.0: IRREGULAR PAYMENTS OF LEGAL FEES

The Committee heard that the statement of comprehensive income for the year ended 30 June 2016 reflected administrative expenses amounting to Kshs.3,194,375,000 which included legal fees amounting to Kshs.388,528,000 as detailed in Note 5 to the financial statements. Review of the legal records availed for audit revealed that the management did not comply with the provisions of the Attorney-General Circular number AG/CONF/6/E/247NOL.II which required that;

- I. Hire of services of private legal consultants by National Government entities be approved by the Attorney-General ;
- II. All material litigation be notified to the Attorney-General within (3) three days after filing of any pleadings and
- III. Legal fees paid to various law firms be approved and authorized by the Attorney- General.

Consequently, it has not been possible to confirm the propriety of the legal expenses amounting to Kshs.388,528,000 incurred during the year ended 30 June 2016.

Management Response

Management informed the Committee that the Authority's lawyers were not aware of the existence of the circular from the office of Attorney General which was under the reference of KENAO, and KPA recently obtained a copy of the said circular from Mr. Alex Mbuvi of the Office of the Attorney General after this issue was brought to KPA's attention. A copy of the forwarding email was attached and marked **Appendix 20**.

In addition, KPA pointed out that upon its analysis of the said Attorney General's circular, KPA opined that it did not apply to State Corporations and therefore KPA had sought clarification, advice and direction from the Office of the Attorney General as indicated in the attached letter marked **Appendix 21**. However, even though KPA had not yet received a response from Attorney General on this issue as KPA had stated herein, KPA had informed the office of the Attorney General of two recently filed major court cases for their noting and advice as indicated in the attached letter herewith attached and marked **Appendix 22**.

Also KPA pointed out that out of the total expenditure of Kshs 388,528,406.12 only Kshs. 77,259,112.32 was actually paid out as indicated in the attachment hereto marked **Appendix 23**.

The accrued expenditure of Kshs. 311,269,293.80 was derived from ongoing communications, discussions and negotiations on pending fee-notes between respective lawyers and the Authority as can be discerned from some of the bundle of correspondences herewith attached bundle marked **Appendix 24**.

Committee Observation

The explanation given was satisfactory.

PARA 7.0: PENSION SCHEME EXPENSES 2015/16

This was a repeat paragraph addressed in 2015/16 FY.

MIN/PIC/2019/535 ADJOURNMENT

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

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date... 15/10/2019 -

MINUTES OF THE 63RD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON SATURDAY 28TH SEPTEMBER 2019 IN PIER CONFERENCE ROOM, ENGLISH POINT MARINAMA AT 9.50 A.M.

PRESENT

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

ABSENT WITH APOLOGY

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

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

IN ATTENDANCE

- | | | |
|------------------------|---|------------------------------------|
| 1. Mr. Julius Okumu | - | Deputy Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Mr. Fredrick Thauri | - | Manager, Audit |
| 4. Mr. Lawrence Okubo | - | Inspectorate of State Corporations |

MIN/PIC/530/2019: PRELIMINARIES

The Chairperson called the meeting to order at fifty minutes past nine O'clock and prayed.

MIN/PIC/531/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA MARITIME AUTHORITY

Mj. Rtd. George Okongo, Director General of the Kenya Maritime Authority accompanied by (Director, Corporate Services), Mr. Yusuf Bagaja (Finance Manager) and Mr. Kenneth Njuru (Finance and Administration Manager, DRMC Project) appeared before the Committee to adduce evidence on the audited accounts of the Bureau for FY 2013/14 to FY 2017/18.

MIN/PIC/532/2019: PROPERTY, PLANT & EQUIPMENT FY 2016/17

During the financial year 2016/2017 the Authority revalued its plant, property and equipment from Kshs. 637, 151, 088 as at 30 June 2016 to Kshs.361, 849,239. However the revaluation report provided for audit did not contain the certificate of the

Each committee having at least 3 members. It was therefore difficult to constitute all the committees without repeating committee membership.

1.2 Purchase of Land for Search and Rescue Centers FY 2016/17

The Committee heard that included in property, plant and equipment balance of Kshs 396,495,684 is a figure of Kshs 242,726,737 in respect of land and building as at 30 June 2017. The figure of Kshs 242,726,737 as at 30 June 2017 includes additions of Kshs 35,180,040 which relates to purchase of three pieces of land for search and rescue centers as shown below;

Location	Acres	Amount
Kwale	3.13	19,500,000
Kisumu	0.8	14,280,040
Deposit for Kwale Land		1,400,000
Total		35,180,040

Audit verification of the procurement documents revealed the following anomalies;

- 1.2.1 According to the head of procurement's professional opinion for Kwale land prepared on 10 June 2017, it was indicated that the head of procurement compared the prices quoted against the valuation report for each piece of land although the valuation reports were dated 21 July 2016. It implies the valuation report which was received after the head of procurement had issued his professional opinion did not provide guidance in determining the value of the land. This was in violation of Section 84 (1) of the public Procurement and Asset Disposal Act, 2015 which provides the head of procurement shall alongside the report of the evaluation committee, review the lender valuation report and provide a signed professional opinion to the accounting officer on

the procurement or asset disposal proceedings. Therefore, the head of procurement's professional opinion report was misleading.

1.2.2 Correspondence by the Ministry of Land and Physical Planning attached to draft valuation report that referred to a letter reference KMA/PRO/41 dated 13 October 2015 by Kenya Maritime Authority requesting for valuation of the same pieces of land implies that the selected plots had already been identified before the advertisement for expression of interest on 25 February 2016. In addition, the letter was not availed for audit verification despite several requests. It is an indication of predetermined supplier.

1.2.3 According to the advertisement for Kisumu land, the land was expected to measure 1 acre and within the vicinity of the port. However, the tender was awarded to a bidder whose land measured 0.8 acres and was 7.1 kilo meters from Kisumu Port. This is contrary to the Section 80 (2) of the Public Procurement and Assets Disposal Act, 2015 which provides that the evaluation and comparison shall be done using the procedures and criteria set out in the tender documents.

Management Response

Valuation report having been received after the procurement professional opinion.

Management informed the Committee that pieces of land in question were two and not three as reported. The purchase prices were also as indicated in the table below;

Location	Acres	Audit Report Amount	Purchase Price
Kwale	3.13	19,500,000	14,280,040
Kisumu	0.8	14,280,040	19,500,000

Included was a deposit of 10% which was paid as commitment fee before the transfer of the Title was effected in order to clear the remaining 90% after transfer.

It was reported that the head of procurement professional opinion was prepared on 10th June 2017 while the valuation report were dated 21 July 2016. It should be noted the Professional opinion was prepared on 10th June 2016 and NOT 10th June 2017. The valuation was dated 31st May 2016 and NOT 21st July 2016 as reported. The valuation report (dated 31st May 2016) was therefore received before the professional opinion was prepared on 10th June 2016.

Request for valuation of identified lands done in 13th October 2015

The Authority identified suitable areas as early as 2014 (Report Ref: KMA/SS/2/21 dated 28th August 2014 attached). However, the request to Ministry of Lands was not

honored owing to the approach KMA had taken of identifying general areas and not specific areas. The Ministry further informed KMA that valuation is **done only** when we submit documents of specific Title since it involves the Ministry carrying out its own search in their offices. The Authority was further advised to first express interest then once the interested bidder had supplied documents of ownership then only then the exercise would be undertaken. The exercise was later conducted on those parcels where the Authority confirmed were suitable.

Kisumu land measuring 0.8 acres and 7.1 Km

The distance of 7.1 kilo meters given by the auditor by measuring road distance while for purposes of boat operations the distance over water is approximately 3 KM from the Port of Kisumu hence it was within the proximate distance given (Google map showing the exact distance attached). The ground trothing exercise conducted by the Government Surveyor at the time of valuation showed the piece of land measured approximately one acre.

Evidence:

1. *Procurement professional opinion*
 2. *Report and Valuation upon an Agricultural Cum Residential Property Kisumu/Nyalenda 'B'/594 Dunga Area Kisumu County REF:VAL 852/XIV/12*
 3. *Report on the Land Identification for Expansion of Search & Rescue Centres Ref: KMA/SS/1/2*
-

Committee observations

- (i) A property 7 Km away from the rescue centre. It was supposed to be at the vicinity of the port and at least one acre. There was one responsive bidder. This is against the opening tendering process procedure that requires that if there is only one bidder responsive, retendering should be done.
- (ii) The letter requested by the Auditor was not provided. Only memos available
- (iii) There is a title of the land that was purchased of 0.22hacteres. It was bought for Kshs 19.5 million even after valuation indicating it was worth Kshs 17M
- (iv) Valuation of land before issuing expression of interest implied that the outcome was predetermined
- (v) It was reported that the head of procurement professional opinion was prepared on 10th June 2017 while the valuation report was dated 21 July 2016. It should be noted the Professional opinion was prepared on 10th June 2016 and NOT 10th June 2017. The valuation was dated 31st May 2016 and NOT 21st July 2016 as reported. The valuation report (dated 31st May 2016) was therefore received before the professional opinion was prepared on 10th June 2016.
- (vi) The seller of the land was Maurice Oduor
- (vii) The Audit Committee of the Board of the Kenya Maritime Authority is looking at this issue

Committee resolution

The KMA to avail all the tender documents of purchase of Kisumu land; copy of the title to purchased Kisumu land (a soft copy was provided).

2.0 Mortgage Guarantees FY 2016/17

The Committee heard that the statement of financial position reflected a balance of Kshs 156,655,845 in respect of Mortgage guarantees. Information available indicated that the Authority has as staff car loan and mortgage schemes operated by Family Bank and Kenya Commercial Bank respectively. However, financial statements were not submitted to the Auditor-General for Audit contrary to section 81 (1&4) of the Public Finance Management Act, 2012 which requires that at the end of each financial year, the accounting officer for a national government entity shall prepare financial statements in respect to the entity and submit the same to the Auditor General. In addition, according to paragraph 5 of part 4 of the Salaries and Remuneration Commission's circular SRC/ADM/CIR/1/13 Vol.III (128) dated 17 December 2014 on the management car loan and mortgage schemes for state officer requires each scheme to be subjected to annual audit of the government. As a result, the accuracy, completeness and legality of mortgage guarantees balance of Kshs 156,655,845 as at 30 June 2017 could not be confirmed.

Management Response

The Committee heard that the Authority advanced funds to KCB and Family bank to administer the Staff Mortgage and Car loan schemes respectively. The funds advanced to the financial institutions are security backing to the loans the financial institutions have advanced to staff under the two schemes.

The two financial institutions also hold ownership documents, such as log book for cars and land titles for houses/plots, on behalf of the Authority. This is to guard against loss/default thus a default risk mitigation factor.

The financial institutions send reports which shows the amount loaned to staff, loan balances and the funds balances.

The Authority was in the process of streamlining the Staff Mortgage and Car loan schemes to comply with the Public Finance Management Act 2012 and the SRC Circular No. SRC/ADM/CIR/1/13 Vol.III(128) of 17th Dec 2014. A committee was appointed on 22nd February 2019 to look into the issues of the two schemes. The Authority has also embarked on preparation of the financial statements for the Car and Staff Mortgage schemes from their inception to date. These shall be submitted for audit by 30 September 2019.

Evidence: Mortgage Committee Ref: KMA/HRM 3/2/1

Committee observation

- (i) Noncompliance with section 81 of the Public Finance Management Act 2012 and the SRC Circular No. SRC/ADM/CIR/1/13 Vol.III(128) of 17th Dec 2014 shows incompetence of the KMA

- (ii) It is inconceivable that KMA gives financial institutions money for them to lend at interest rates thus earning interest to third parties. Choice of family bank is risky as it is a very small bank that can go under at any time.
- (iii) There is need to reprimand whoever that drafted this policy
- (iv) The Scheme was initiated when the current PS, Nancy was the DG but concluded after her exit. The matter was advertised and KCB warn. All the proposals were approved by the Board
- (v) The OAG confirmed that it has not received policies on the two schemes despite KMA saying so
- (vi) Kshs. 30.5M and Kshs. 170M advanced to car loan and mortgage respectively as at now.

Committee resolution

- (i) KMA to provide a copy of the policy regarding these two schemes
- (ii) OAG to confirm whether financial institutions can administer a fund for a government entity

3.0 Merchant Shipping Levy FY 2016/17

The Committee heard that the statement of financial performance reflected a figure of Kshs 1,327,603,245 in respect of Merchant Superintendent Shipping Levy (MSS) for the year ended 30 June 2017. Records availed for audit indicated that Kenya Maritime Authority had outsourced the collection of merchant shipping levy to the Kenya Revenue Authority. However, audit verifications revealed that the management had not put in place a system for determining merchant shipping levy collectable although Kenya Revenue Authority has been remitting copies of the cargo manifests to Kenya Maritime Authority. It was observed that the management only relies on revenue reports remitted by Kenya Revenue Authority without any evidence of reconciliation between the expected revenue as per the cargo manifest against remittances by the Kenya Revenue Authority.

Consequently, the accuracy, validity and completeness of levies figure of Kshs 1,327,603, 245 for the year ended 30 June 2017 could not be confirmed.

Management Response

Management informed the Committee that using manifest data, KMA's independent calculation for the 2017 financial year was Kshs. 1.667 billion against KRA's actual remission of Kshs. 1.535 billion within the same period. The shortfall of Kshs. 132 million was raised with KRA on 9th May, 2018 which also pointed out a number of issues KMA needed KRA to address.

Possible attributes to the shortfall

- a) KMA's calculation is based on cargo manifest, which is a summation of all cargo on board a ship while the actual Levy collected is based on cargo that has been cleared by customs;
- b) Part of the manifested cargo may be short landed, abandoned in port,

condemned or cleared late, which will definitely create variation in calculations pegged on manifest and customs declaration entry

- c) The manifest are usually lodged days before arrival of the vessel and this also creates a discrepancy with the actual levy amount collected as currently almost all clearance procedures are concluded once the cargo has landed at the port.

Ongoing Measures towards strengthening reconciliation

The authority had taken several measures to strengthen the accuracy and credibility of the reconciliation process thus:

- a) Review of the MS levy business rules to provide clear and distinct segmentation between the different types of cargo as provided for in the fees regulations, a copy of which is attached.
- b) The MOU with KRA had been reviewed and awaits consent from KRA for actualization, a copy of which is attached and also further follow up communications on finalization of the review.

Evidence submitted was a Letter to KRA on 9th May, 2018; MS levy business; MOU with KRA & Follow up communications

Committee Observations

- (i) Signing of new MoU has seen increase of collections by Ksh. 20m per month; the KMA has access to the KRA's collection systems
- (ii) Being a separate authority from KRA, KMA should collect its revenue as per the Act establishing it . However, KMA indicated that it makes ease of doing business by KRA collecting on behalf of KMA

Committee resolution

- (i) Provide the MoU signed with KRA
- (ii) Reasons occasioning increase of collection by Kshs. 20m per month since signing of MoU between KMA and KRA

4.0 Investments

The Committee heard that Note 16 to the financial statements reflected an amount of Kshs 1,050,901,393 in respect of various fixed deposits during the year ended 30 June 2017. However, there was no evidence of how the banks were identified and selected. In addition, there was no evidence that the national Treasury approved the investments in line with section 1.7 of the National Treasury Circular No. 15/2016 Reference No. DGIPE/A/1/10 dated 19 August 2016 which states that "*...no state corporation should invest surplus funds in any financial institution/bank without prior approval of the National Treasury other than where the investments is in treasury Bills or Bonds*". Further section 20(a) of the Kenya Maritime Authority Act

2006 provides that surplus funds shall be invested in Government securities. Therefore, the management was in breach of the law.

In the circumstances, legality and value for money from the investments of Kshs 1,050,901,393 for the year ended 30 June 2017 could not be ascertained.

Management Response

Management informed the Committee that Section 20 of the Kenya Maritime Authority Act, 2006 gives two options for investment of surplus funds. Section 20 (a) recommends investment in Government Securities while Section 20 (b) of the Act allows the Authority to place as deposits surplus funds with banks as it may determine. The placement of surplus funds in Fixed and Call deposits by the Authority were therefore in line with the provisions of section 20(b) of the Kenya Maritime Authority Act, 2006.

The Authority has since taken the advice of OAG and invested all the matured fixed deposits to Treasury bills with effect from 3rd August 2018. The Authority operates Virtual Account No. 1000353856 Portfolio No.136022-1 at the Central Bank of Kenya from November 2017.

The following was given as evidence: Call Deposit Retirement Instruction Ref: KMA/FIN/2/6/A; Treasury Bills Account Statement & 4th Quarter Financial Statements FY2018/2019

Committee Observations

- (i) Evidence on the choice of the areas to invest was not provided
- (ii) The KMA confirmed that overlooked treasury guideline on investment of surplus funds. Since the matter had been flagged by the OAG, the KMA has always sought the authority of treasury before investing
- (iii) KMA confirmed that there was approval of the Board to invest Kshs 1 billion. But details on that approval as to when, where and when the amount was not availed to the Committee or OAG for audit verification

Committee Resolution

- (i) KMA to provide details of how the Kshs 1 billion was invested - where, when , how much, how banks were chosen and interest rates

(ii) KMA to provide minutes from the Board in which it approved investment whereby treasury was represented

MIN/PIC/2019/532: ADJOURNMENT

The Chairperson adjourned the meeting at 12:53 pm till 2:30 pm in the same day same venue.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date..... 15/10/2019.

MINUTES OF THE 62ND SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 26TH SEPTEMBER 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
3. The Hon. Joash Nyamache Nyamoko, HSC, MP
4. The Hon. Justus Kizito Mugali, MP
5. The Hon. James Kamau Githua Wamacukuru, M.P
6. The Hon. John Muchiri Nyaga, M.P
7. The Hon. Omar Mohamed Maalim Hassan, MP.
8. The Hon. Paul Kahindi Katana, MP
9. The Hon. Purity Wangui Ngirici, MP
10. The Hon. Thuku Zachary Kwenya, M.P
11. The Hon. Babu Owino Paul Ongili, MP
12. The Hon. Mary Wamaua Njoroge, MP
13. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Raphael Bitta Sauti Wanjala, MP
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. Gladys Wanga, MP
5. The Hon. Mohamed Hire Garane, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

IN ATTENDANCE

- | | | |
|----------------------|---|------------------------|
| 1. Mr. Peter Lugerah | - | Deputy Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |

MIN/PIC/521/2019: PRELIMINARIES

The Chairperson called the meeting to order at two minutes past ten O'clock followed

by a word of prayer.

MIN/PIC/522/2019: EXAMINATION OF AUDITED ACCOUNTS OF NATIONAL IRRIGATION BOARD

Mr. Gitonga Mugambi, the General Manager of the National Irrigation Board accompanied by Eng. Daniel Atula (Deputy General Manager, Operations and Irrigation Management Services), Eng. Charles Muasya (Chief Engineer), Ms. Jedidah Narocho (Head of Finance), CPA Joseph Kigotho (Accountant) and Mr. Tirus Kabuthia (Accountant) appeared before the Committee to adduce evidence on the audited accounts of the Board for FY 2016/17 to FY 2017/18.

MIN/PIC/523/2019: WATER RESOURCES MANAGEMENT AUTHORITY (WARMA) DEBT

Included in the statement of financial position is payables from exchange transactions balance of Kshs.3, 560,750,127 as at 30 June 2017 comprising of various outstanding balances. Included in trade payables amount is Kshs.20, 981,308 indicated as owing to Water Resources Management Authority. However, upon verification from WARMA books, the amount indicated as receivable from the Board is Kshs.26, 820,104 resulting in an unexplained variance of Kshs.5, 838,796.

Management Response

The figure of Ksh. 20,981,308 given in the books of National Irrigation Board as owed to WARMA is the figure that the management can support from its records. However, when the discrepancy was brought to the attention of the management, it wrote to WARMA requesting for a statement of account to facilitate reconciliation so as to establish as to what they might have posted as owed by NIB which may not have reached our office for posting. They however, did not respond as at the time of this response. Necessary reconciliation will be carried out once we receive the statement and any outstanding dues recognized in NIB books. *Annex VIII.*

Committee Observations

The Committee made the following observations:

1. A technical committee had been formed between NIB and WARMA to reconcile the differences in the amount owed.
2. NIB has no provision in its budget for payment of water use by farmers.

Committee Resolutions

Management was asked to provide minutes of their discussions with WARMA regarding the matter.

MIN/PIC/524/2019: OTHER MATTER FY 2016/17

2.2 Kalundu Kitui clusters Irrigation Scheme Development Project, Phase II, in Kitui County

Examination of documents in regard to Kitui Clusters Irrigation Project, Phase II revealed the following observations/findings;

The contract No. NIB/T/106/2013-2014 awarded to Aventure Ltd at an amount of Kshs.16, 982,900 and notification for the award dated 18 December, 2014 was to take twelve (12) months that is from 1 March, 2015 to 1 March 2016. However, the contract was signed on 10 February, 2015 and the Board modified the completion date from 1 March, 2016 to 30 September, 2016. The contractor Aventure Ltd was to take twelve (12) months but has taken over thirty-six (36) months without the project being completed.

A default notification letter dated 30 June, 2017 was written by the Deputy General Manager (ES) Ref: NIB/HQ/K1/74A (33) bringing to the attention of the Contractor on the following issues; On failure to secure an extension of the contract period which ended on 30 September 2016; Failure to extend the performance bond which is not valid since 26 July, 2015; Failure to resume work on site despite numerous reminders by the Resident Engineer.

The delay by the contractor to complete the projected slated to take one year but delayed for another two years puts into question the competence of the contractor.

In consequence, the Board has not achieved its operational and strategic objectives for the year under review.

Management Response

The contract was terminated due to nonperformance of the contractor. Please refer to annex XIV.

Current Status

The remaining component in the contract was power connection and the National Irrigation Board has requested for a quotation from Kenya Power on the cost of Power connection which will be paid directly using the funds which were to utilized for this item in the contract.

Committee Observations

The Committee made the following observations:

1. The contract was terminated due to nonperformance of the contractor.
2. The remaining component in the contract was power connection and the National Irrigation Board has requested for a quotation from Kenya Power on the cost of Power connection.

3.0 Budgetary Controls Over-Expenditure

Audit examination of the budget versus actual revealed that the Board in the year under review had overshot her budget for repairs and maintenance by Kshs.21, 967,163. No reason has been provided for failure to spend within the approved

budget nor formalizing the over expenditure through supplementary budget as required.

Management Response

The year in question was one of the years that experienced severe drought. This even led to the President's waiver of Operational & maintenance fee for Mwea farmers. National Irrigation Board had to ensure that canals and other irrigation infrastructures are well maintained to ensure that there was a smooth flow of the little water available. This necessitated going an extra mile and incurring extra expenditure to achieve the above and ensure that the crop which was in the field does not fail. The overshoot was 4.39 % and was necessitated by a noble cause to save a crop in the entire Mwea Scheme. The management will ensure that there is no budget overshoot in future. Please refer to annex XV.

Committee Observations

The Committee made the following observations:

1. The year in question was one of the years that experienced severe drought.
2. NIB undertook maintenance of canals and other irrigation infrastructures to ensure that there was a smooth flow of the little water available. This necessitated incurring extra expenditure.
3. The expenditure exceeded the budgetary allocation by 4.39%.

MIN/PIC/525/2019: PROPERTY, PLANT AND EQUIPMENT FY 2017/18

2.1. Loss of a Vehicle.

The Board incurred a loss of motor vehicle registration no. KBT 972A whose ownership details were not provided for audit review.

Management Response

The project vehicle was stolen while still under the contractor and had not been handed over to the employer. The contractor was instructed to replace the vehicle accordingly as per the conditions of the contract by the employer; National Irrigation Board. Please refer to annex III.

The vehicle could also not have been included in the fixed assets register since it was still in possession of the contractor and had not been handed over to NIB.

NIB has given instructions to the contractor to replace the vehicle since it was his failure to procure a comprehensive cover for the vehicle. Please refer to Annex II.

Committee Observations

The Committee made the following observations:

1. The project vehicle was stolen while still under the contractor and had not been handed over to the employer.

2. NIB has given instructions to the contractor to replace the vehicle since it was his failure to procure a comprehensive cover for the vehicle.
3. The vehicle had been insured when it was stolen. It has since been replaced and will be handed over once the project is complete.

MIN/PIC/526/2019: UNACCOUNTED FOR RETENTION MONIES

A difference of Kshs.461,065,826 between the bank account balance and the amount reflected in the financial statements that has not been explained.

Management Response

The figure of Ksh 560,207,474 refers to the retention money deducted from contractors' payments but not transferred from the main development bank account to the retention bank account as it used to be done before. This has led to the variance of Ksh.461, 065,826 between the retention ledger account and the retention bank account.

Committee Observations

The Committee made the following observations:

The figure of Ksh 560,207,474 refers to the retention money deducted from contractors' payments but not transferred from the main development bank account to the retention bank account.

MIN/PIC/527/2019: OTHER MATTER - GALANA KULALU FOOD SECURITY PROJECT

1.5 Payment certificates

According to the status report dated 1 March 2019 the contractor had presented 11 completion certificates, out of which 10 totalling Kshs.5,711,546,898.03 had been fully settled. In addition, the Board paid to the contractor the gross amount, which included total VAT for Certificate Nos.1 to 5 amounting to Kshs.417,036,617.79 contrary to clause 60.1(b) of the signed contract which stipulated that all taxes should be withheld and remitted by the employer.

Management Response

The variance between the Auditor's perspective and NIB's is caused by a contradiction between the VAT Act and provisions of the contract. In this case, the Board invoked the provisions of the VAT Act regarding tax deduction and remittance.

Committee Observations

The Committee made the following observation:

1. The provisions of a written law, in this case the VAT Act supersedes that of the contract for the project.
2. Management was in order to invoke the provisions of the VAT Act.

1.6 Purchase of vehicles and mowers

The contract document provided for purchase of two prado vehicles for the Project Manager and deputy but the project instead procured five prado vehicles. In addition, the contract document provided for purchase of one mower but instead the project procured three. No reason was given for these variations.

Management Response

The need to purchase additional 3 Prado vehicles was justified to facilitate effective supervision of the project due to the bad road conditions in Galana and the expansive project area to be covered. The variation was presented by the Engineer to the Employer and it was approved. Please refer to annex IX.

Also due to the big size of the farm there was need to also increase the number of mowers from one to three to facilitate in land preparation during production and the variation was duly approved by the employer. Please refer to annex X.

Committee Observations

The Committee made the following observations:

1. The need to purchase additional 3 Prado vehicles was justified due to the bad road conditions in Galana and the expansive project area to be covered.
2. The variation was presented by the Engineer to the Employer and it was approved.
3. There was need to also increase the number of mowers from one to three to facilitate land preparation during production and the variation was duly approved by the employer.

1.7 Irrigation systems

1.7.1 The supply and installation of centre pivots irrigation system was verified during audit inspection but testing and operation was not done as no water was available to enable testing of the same. Consequently, their functionalities could not be confirmed. Further, the contractor is yet to supply and install the 4 remaining centre pivots.

1.7.2 Drip irrigation system will be used for the irrigation of 5,265 acres. The contractor had supplied drip lines capable of covering 2,050 acres. A physical verification revealed that the main pipeline and the first reservoir of about 45 cubic meters for sedimentation for the first drip irrigation area of 2,435 acres was complete but the other laterals were yet to be installed. The next pipeline to the drip area of 2,830 acres was under construction but had stalled.

Management Response

The contractor was instructed to proceed with the works under the drip irrigation system but declined. Please refer to annex XI.

Committee Observations

The Committee made the following observation:

The type of irrigation system to be used formed part of the disagreement between NIB and the contractor with different opinion being held on the type of system to be used.

1.8 Pumping station

Two pumping stations were planned for construction. The first pumping station was to have 5 pumps to irrigate 4,265 acres and to supply water also for all the domestic requirements at the logistic centre and staff quarters. The second pumping station was to have 8 pumps installed to irrigate 5,735 acres.

It was explained that eight pumps were installed but during the long rains season in 2018 the area had been flooded and after receding of the floods, the 8 pumps were cleaned and retested. Out of the 8 pumps, 6 pumps were said to have been tested but failed to restart. So only two pumps are said to be working. However, during the audit inspection the pumps were not tested as no water was available to pump. Consequently, their functionalities could not be confirmed.

The diversion canal had also been damaged during the floods and was also heavily silted. National Irrigation Board has contracted another contractor to de silt the canal. No reason was given for awarding another contract to a third party when the project has not yet been handed over to the Board by the main contractor.

However, it was noted that the pumping station had not been roofed although the roofing materials were on site and abandoned by the contractor for reasons that he had not been paid Certificate No.11.

Management Response

After the flood event of May 2018, the contractor was instructed by the Employer to desilt the inlet canal to allow water to flow to the pumping stations and resume production activities in the farm. The contractor declined guided by the conditions of the signed contract, the employer NIB, engaged another contractor at the cost of the original contractor. Please refer to annex XII.

Committee Observations

The Committee made the following observations:

1. The contractor declined to desilt the inlet canal following siltation caused by floods in May 2018, as guided by the conditions of the signed contract.
2. NIB engaged another contractor to desilt the inlet canals at the cost of the original contractor.

1.9 Logistics Centre and Machinery

The logistics centre was set up to consist of several components some were differed while others had not been completed installed and or supplied.

The logistics center appears like a hangar. The office is in an open garage area. There is no air conditioning and staff working in the offices are at the mercy of the extreme conditions of weather.

Management Response

Due to the failure of the contractor to proceed with the works as per the agreed work program, the office for the employers supervising staff has not been constructed and the logistics centre is the only convenient for office space. Please refer to annex XIII.

Committee Observations

The Committee made the following observations:

1. The failure of the contractor to proceed with the works as per the agreed work program, including construction of an office for staff necessitated the housing of the staff in the open garage area.
2. The office has not been constructed and the employers' staff are still operating from the logistics centre. Improvements to provide air-conditioning has been made tto the faciity.
3. Silos for the produce from the project are based in Voi which has seen the Board incur extra expenses in transporting the produce from the farm to the silo.

1.10 Land Preparation

National Irrigation Board has prepared 570 acres of land under centre pivots for crop production. However, the contractor had stopped working and had actually vacated the site other than for a very lean staff comprising of watchmen. It is therefore apparent that the project will not be completed soon. The National Irrigation's Board attempt at carrying out task of preparation of land and irrigation of the 570 acres appears intended to fail as the Board had not initially planned for the actual implementation of the irrigation process and does not appear to have the capacity to carry out the growing of maize.

Management Response

National Irrigation Board was has continued with the land preparation and is prepared for production in the farm.

Committee Observations

The Committee made the following observations:

Currently 1,000 acres has been cropped and this will continue until the whole area of 3,300 acres under the centre pivot is cropped by September 2019. Please refer to annex XV

3.0 Yakitaa Irrigation Development Project

Tender No.NIB/T/004/2015-2016 for the above project was awarded to Benisa Limited for a contract sum of Kshs.123,500,147. The start and completion dates were 30 December 2015 and 30 December 2016, respectively. Although Certificate No.1 for Kshs.40,381,824 has been paid, the completion status is 30%. The performance guarantee was for up to 30 December 2016. No reason has been provided for the delay in completion of the project.

Management Response

The contract was terminated due non-performance of the contractor and failure to extend the performance guarantee and the balance of the works have been procured. Please refer to annex XVIII.

Committee Observations

The Committee made the following observations:

1. There was a delay in release of exchequer funds which limited NIB's ability to make payments to the contractor.
2. NIB's delay in paying for certificates completed played a part in the the non-performance of the contractor who attributed it to lack of funding.
3. The contractor acknowledged that he wouldn't claim any extra fees and di not bid when the tender was re-advertized.
4. The new contract sum for the project was Kshs. 219,000,000 including additional works added to the contract. The new contractor is currently mobilizing to commence the works.

5.0 Lower Kithengi Irrigation Development Project

Contract No. NIB/T/120/2013-2014 in respect of construction works for Lower Kithengi Irrigation Development Project was awarded to Ziyale Investment at a sum of Kshs.27,546,902.77. The works commenced in July 2015 and were expected to be completed in June 2016.

A certificate for an amount of Kshs.18,618,185 representing about 68% of the contract sum was approved on 29 January 2016 and paid but the project stalled. No explanation has been provided for non-completion of the project.

Management Response

The contract was terminated due to non-performance of the contractor and the balance of the works have been procured. Please refer to annex XX.

Committee Observations

The Committee made the following observations:

1. The contract was terminated due to non-performance of the contractor.
2. The balance of the works have been procured with the new contractor having achieved 80% completion status.

Committee Resolution

Management was asked to provide a schedule of all the payments made in the project and the relevant approved completion certificates.

6.0 Rehabilitation Works of Riu Nderi Water Pan

Contract No. NIB/T/087/2014-2015 for rehabilitation works of Riu Nderi Water Pan was awarded to Bofas Zipper Ltd at a sum of Kshs.84,476,370. The works commenced on 24 September 2015 and were expected to be completed on 24 June 2016. The works were as of 30 June 2018 still being reflected as in progress in the financial records and a total of Kshs.60,797,600 or 72% of the contract sum had been paid to the contractor. Although, performance guarantee expired on 24 June 2016, the management did not confirm the extension of the performance guarantee. Further, no reasons were given for the delay in completion of the project.

Management Response

~~The contract was terminated due non-performance of the contractor and procurement to complete the balance of the works has been initiated. Please refer to annex XXI.~~

Current Status

Procurement of a new contractor is in process

Committee Observations

The Committee made the following observations:

The contract was terminated due non-performance of the contractor and procurement to complete the balance of the works has been initiated.

The contractor agreed to the termination of the contract with no claims to be made.

Committee Resolution

Management was asked to provide confirmation that the contractor was in concurrence with the cancellation and would make no further claims for payment.

8.0 Failure to Implement Internal Audit Management System

The Board had procured an Internal Audit Management System for control management, analysis and risk assessment in September 2015. The Audit Management System (Pentana v2015) was procured from Service and Computer Industries Kenya Limited vide Contract Number: NIB/T/061/2014-2015 of 4 September 2015 at a contract sum of Kshs.6,499,736.

A total payment of Kshs.5,531,461.36 has been made to date to the firm in two instalments vide cheque No. 012122 dated 8/29/2017 for Kshs.2,209,523.81 and cheque No.012807 dated 3/21/2018 for Kshs.3,321,892.55. However, it was observed that the system was not being used by the internal auditors for their audits.

Consequently, the Board appear not to have obtained value for money in respect of the expenditure of Kshs.5,531,461.36 so far incurred for the Audit Management system.

Management Response

Immediately after the implementation of the Internal Audit Management system, it was noted that the system was using a database which was not compatible with the ERP system to allow ease of integration. This posted a challenge in operationalizing all the modules. However, this has now been rectified.

Current Status

The system is now operational. However, NIB is currently experiencing some technical challenges with the system Licenses but this is currently being sorted out with the system owner.

Committee Observations

The Committee made the following observations:

1. The system was using a database which was not compatible with the ERP system to allow ease of integration but this has now been rectified.
2. The system is now operational.

MIN/PIC/528/2019: ANY OTHER BUSINESS

No other business arose.

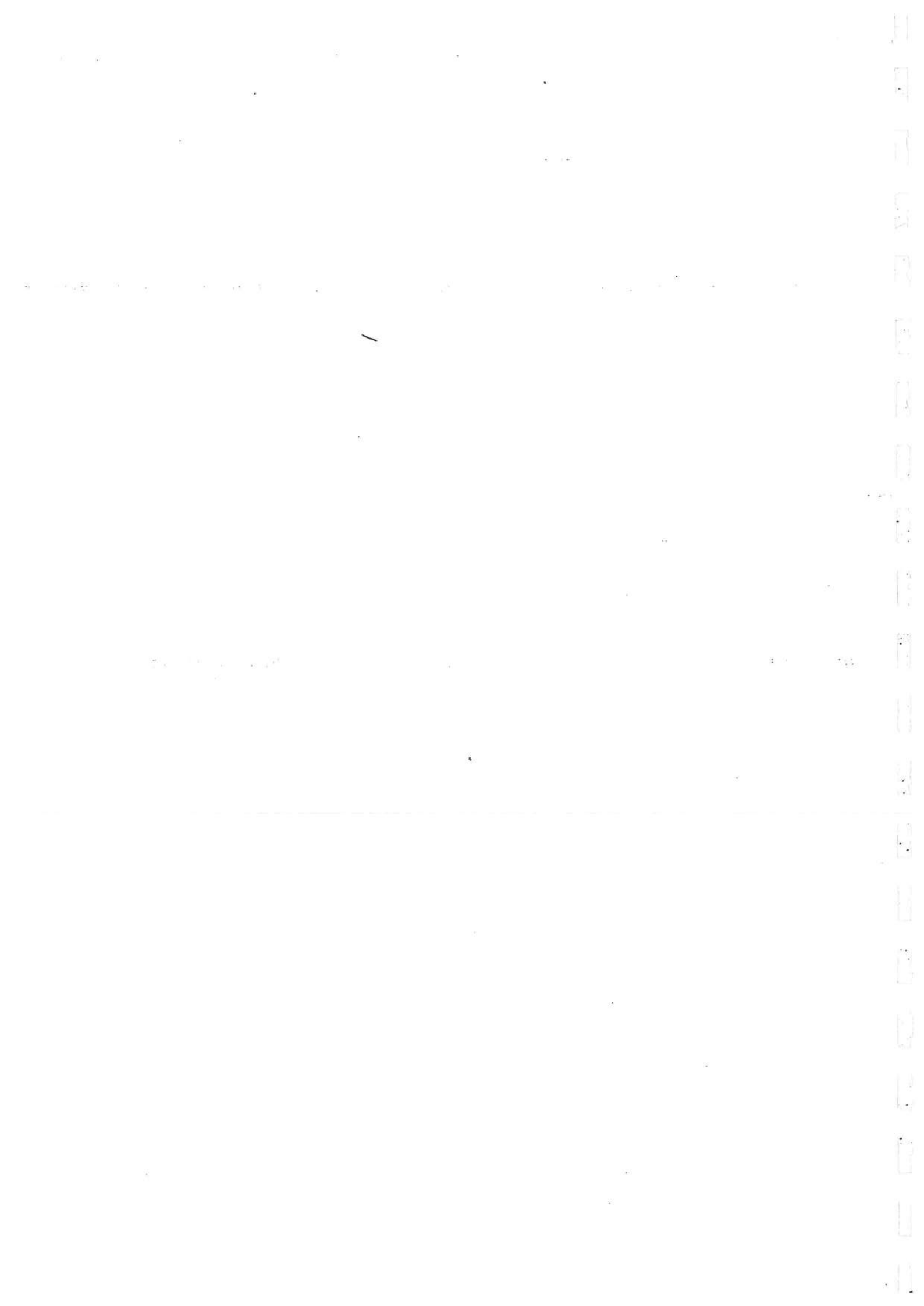
MIN/PIC/529/2019: ADJOURNMENT

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

Signed


The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....15/10/2019



MINUTES OF THE 61ST SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY 25TH AUGUST, 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

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

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Gladys Wanga, MP
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. Mary Wamaua Njoroge, MP
5. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

IN ATTENDANCE

- | | | |
|-------------------------|---|------------------------|
| 1. Ms. Josephine Warega | - | Deputy Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Mr. Moses Murira | - | Manager, Audit |
| 4. Mr. David Mutunga | - | Manager, Audit |
| 5. Ms. Anna Obudho | - | Manager, Audit |
| 6. Mr. Maurice Otieno | - | Supervisor, Audit |

MIN/PIC/515/2019: PRELIMINARIES

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

MIN/PIC/516/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA REVENUE AUTHORITY

Mr. Githii Mburu, the Commissioner General of the Kenya Revenue Authority accompanied by Mr. Kevin Safari (Commissioner, Customs and Border Control), Mr. Ezekiel Saina (Commissioner, Corporate Support), Ms. Grace Mrichu (Deputy Commissioner, Supply Chain Management), Mr. Caxton M. Ngeywo (Deputy Commissioner), Ms. Grace Wandera (Deputy Commissioner), Mr. Benson Chacha (chief Manager), Mr. Muema Joseph (Chief Manager) and Ms. Beatrice Mundia (Communications Manager) appeared before the Committee to adduce evidence on the audited accounts of the Authority for financial year 2014/15 to financial year 2017/18.

MIN/PIC/517/2019: STATEMENT OF REVENUE COLLECTION AND TRANSFERS FY 2015/16

1.2 Other Refund Payments

The statement of revenue collection and transfers similarly, reflects Other Refunds payments and balances amounting to Kshs.1,056,763,277 and Kshs.1,863,207,221 for the years 2014/2015 and 2013/2014 respectively. These payments have neither been supported nor analyzed and as a result, their propriety and accuracy could not be ascertained.

Management Response

The Other Refunds payments of year 2015 of Kshs. 1,056,763,277 relate to refunds on Income Taxes, Traffic Revenue, Stamp Duty, opening balances and a one-off allocation of Kshs 700m on VAT as well. The year 2014 figure of Kshs 1,863,207,221 relates to the closing balance in the payment account. Appendix 1.2

Committee Observations

The Committee made the following observations:

1. The Authority had failed to provide supporting documents for Other Refunds payments amounting to Kshs.1,056,763,277 and Kshs.1,863,207,221 for the years 2014/2015 and 2013/2014 respectively.
2. The Authority undertook to provide the relevant supporting documents for audit verification.

Committee Resolution

The Auditors were asked to review the supporting documents and report back to the Committee.

1.3 Other Payments

The statement also reflects Other Payments amounting to Kshs. 2,427,624,473 for the year 2013/2014. This amount has also not been supported or analyzed and therefore its propriety and accuracy could not be confirmed.

Management Response

Other payments amounting to Kshs. 2,427,624,473 for year 2014 related to cross Account corrections for mis-postings and revolving funds payment on Excise Stamps. Appendix 1.3

Committee Observations

The Committee made the following observations:

1. The payments amounting to Kshs. 2,427,624,473 for year 2014 related to cross Account corrections for mis-postings and revolving funds payment on Excise Stamps.
2. Reconciliations had been done and the matter was resolved.

2. Outstanding Revenue

There were no records availed in respect of tax arrears disclosed under Note 9.13 - Statement of Outstanding Revenue amounting to Kshs. 158,008,209,235 as at 30 June 2015. It has not been possible under the circumstances to ascertain the accuracy of the arrears of revenue.

Management Response

Details supporting outstanding tax revenue arrears of Kshs 158,008,209,235 is per the schedules provided. However, due to historical challenges with the legacy system, data cleaning initiative is in progress to further refine data on debt. Appendix 2

Committee Observations

The Committee made the following observation:

The details supporting outstanding tax revenue arrears of Kshs 158,008,209,235 were provided though there were no details on the individual debtors who owed the respective amounts.

Committee Resolution

The Authority was asked to submit details of the individual debtors to the Auditors for audit verification.

3. Bank Reconciliation Statements

Audit review of bank reconciliation statements for the agency taxes as at 30 June 2015 revealed long outstanding receipts in the cash book that have not been banked, and similarly, long outstanding receipts in the bank statement that have not been recorded in the cash book as summarized:

Agency Taxes	Account No.	Receipts in Cash Book and not in Bank Statement (Ksh.)	Receipts in Bank Statement and not in the Cash Book (Ksh.)
Aviation Revenue	04-010-0223/1000007826	2,820,403,839.84	3,384,048,511.04
Petroleum Regulatory Levy	1000009004	40,405,004.00,	48,843,052.00
Road Maintenance Levy	04-010-0155	511,533,432.00	129,756,842.90
KAA Concessions Fees	04-010-0260/1000008121	24,450,809.50	32,912,124.00
APSC	1000007451	652,160,308.43	148,673,377.15
Petroleum Development Levy	04-010-0128/1000007435	63,854,907.80	77,645,945.00
Transit Toll	04-010-0220	198,472,749.00	472,527,114.60
APSC	2022315100100	USD 50,011,224.19	USD 28,534,781.52

No satisfactory explanation has been provided for failure to clear the items and respective amounts from the bank reconciliation statements.

Management Response

All receipts were banked. The transactions classified as receipts in cashbook not in the bank statement are those which could not individually be traced in the bank statement but are being addressed with the respective banks. Similarly, transactions classified as receipts in the bank statement not in the cashbook are those which could not be individually traced to the system reports but are being addressed with the respective banks as well.

These outstanding items mainly arise from the following;

1. Where a single remittance amount effected at the bank relates to Multiple E-slips that have to be separately identified.
2. Where a commercial bank inadvertently remits an amount to a wrong KRA Account at Central Bank (Misposting).

A significant part of these transactions have been cleared through the ongoing exercise with the banks and the status is as reflected in Appendix A3.

Committee Observations

The Committee made the following observations:

1. The transactions classified as receipts in cashbook not in the bank statement are those which could not individually be traced in the bank statement but are being addressed with the respective banks.
2. Upto 96% of these transactions have been cleared through the ongoing exercise with the banks and the status was provided. The rest would be cleared by the end of 2019.
3. The hitch arose due to the transfer of the Authority's payment system from a manual to an automatic one.

4. Income Tax Declarations/Self-Assessments without Corresponding Payments

A review of sampled taxpayers in various stations namely Nyeri, Naivasha, Thika, Kakamega and Eldoret revealed that taxpayers made income tax declarations amounting to Kshs. 3,681,312,529 for the year 2014/15 without making corresponding payments of the taxes declared as detailed in Appendix I attached.

The debt of Kshs. 3,681,312,529 in question is accounted for as follows;

Debt Description	Amount (Kshs. M)
Debt Amount Paid	619,936,937
Data Capturing Error Corrections Being Undertaken	236,246,085
Objected debt	120,252,991
Tax Being Pursued Recovery Thro' Enforcement Measures	3,056,814
Tax Being Pursued Recovery Thro' Set Off Via Refund Cases	10,843,953
Karuturi Case Under Liquidation	2,690,975,749
Total	3,681,312,529

Management Response

Of the total debt, Kshs. 2,690,975,749 was owed by Karuturi Limited from a Transfer Pricing Audit.

This amount was reduced to Kshs.1,684,102,524 following Local Committee determination. Karuturi is in Liquidation following a case filed by Stanbic Bank Ltd because of a loan owed to them. KRA enjoined in the case and its debt has been proved and listed in the list of proofs tendered to the court. Tax debt is ranked 2nd after the payment of salaries from the proceeds of liquidation. The collection of this amount is hindered by the fact that the matter is held up in court. The amounts will be recovered once the assets are sold.

Employees of the Company obtained Court Orders stopping the sale of the assets until their dues/benefits are paid. The matter is still pending in Court.

Documents were provided to the auditors. (Appendix 4)

Committee Observations

The Committee made the following observations:

1. The bulk of this debt, Kshs. 2,690,975,749, was owed by Karuturi Limited from a Transfer Pricing Audit.
2. This amount has since reduced to Kshs.1,684,102,524 following Local Committee determination.
3. Karuturi is in Liquidation following a case filed by Stanbic Bank Ltd because of a loan owed to them. KRA was enjoined in the case and its debt has been proved and listed in the list of proofs tendered to the court.

5.1 Non Collection of Amounts Due

Failure to Collect Taxes from Compliance Checks

An audit review during the month of February 2016 revealed that two stations namely Kakamega and Thika conducted routine compliance audit checks in which Kshs. 145,951,524 of various taxes namely Turn over tax, PAYE, Value added tax and Withholding tax were raised as detailed in Appendix II. However, a portion of the taxes raised has not been collected. Further, there is no evidence that recovery measures have been put in place to collect this revenue.

Management Response

The total amount outstanding was Kshs 145,951,524. An Amount of Kshs. 112,179,252 has been collected. The outstanding balance is Kshs. 33,772,277.

Of this outstanding amount, Kshs. 32,472,875 is purely penalty and interest owed by Presbyterian University. The taxpayer has indicated that they will apply for waiver after having paid the last instalment of the principal tax in July 2018. (Appendix 5)

Kshs. 939,402 is owed by four other taxpayers, who are being pursued for recovery.

Committee Observations

The Committee made the following observations:

1. Out of the initial outstanding amount of Kshs 145,951,524, an amount of Kshs. 112,179,252 has been collected. The outstanding balance is Kshs. 33,772,277.
2. Kshs. 939,402 is owed by four other taxpayers, who are being pursued for recovery.
3. Of the outstanding amount, Kshs. 32,472,875 is purely penalty and interest owed by Presbyterian University. The University has applied for a waiver having cleared the principal outstanding debt.

5.2 Ineffective Debt Management Operations

An audit review during the month of February 2016 further revealed that tax arrears amounting to Kshs.9,383,523,206 as detailed in Appendix III unearthed through compliance checks performed in Thika, Kakamega, Eldoret, Kisii, Nakuru and

Machakos Stations were transferred to the centralized debt management unit at the Authority's head office for enforcement of collection. This practice leads to accumulation of tax arrears at the stations and ineffective debt management as opposed to when tax arrears were collected by the respective stations.

Management Response

Debt Management has been revamped in line with recommendations in the 6th Corporate plan. This is in line with the new debt structure.

Centralised Debt Enforcement is in line with International best practice. The strategy is to focus on the hard core debtors. Stations still handle the non-hard core debtors. The new structure has proved to be more effective than the previous one and has so far recovered a total of 73.8 Billion. (28.76 b in 2017/2018).

To address the original challenges experienced during restructuring the Authority has deployed more resources to revamp the Division.

Committee Observations

The Committee made the following observations:

1. The Authority's Debt Management has been revamped in line with recommendations in the 6th Corporate plan.
2. Centralised Debt Enforcement is in line with International best practice. The strategy is to focus on the hard core debtors. Stations still handle the non-hard core debtors.
3. The strategy has proved more effective than the decentralized method suggested by the Auditors.

5.3 Variances in Revenue Collected

An audit verification of the Domestic Taxes Department stations in Kisumu, Kisii, Nakuru, Meru, Machakos, Nyeri, Eldoret and Kakamega undertaken in the month of February 2016 revealed that there was a variation amounting to Kshs. 319,549,633 in revenue collected at the stations against the revenue reported by the Kenya Revenue Authority Finance /Revenue departments as detailed in Appendix IV. This variance has not been explained.

Management Response

The official source of KRA's revenue report is the Finance Department, extracted from the system and bank statements.

The variances indicated have arisen due to timing differences in revenue reporting by finance and station compliance officers.

Differences in reporting arose from the following;

- Compliance officers may record a payment from evidence presented by a taxpayer but such payment may take a few days before it hits the KRA Central account. This may cause a variance in reporting.

- Some payments hit KRA bank account but for lack of PIN number, which is the identifier, they delay to be posted to the taxpayer's ledger. Though Finance will report this amount, Stations may not report it hence the variance.

A few cases arise from double reporting from changes in the Pin bases. Finance will report the payment once but two stations may report same figure.

Committee Observations

The Committee made the following observations:

1. There was a variation amounting to Kshs. 319,549,633 in revenue collected at particular stations against the revenue reported by the Kenya Revenue Authority Finance.
2. The variances indicated may have arisen due to timing differences in revenue reporting by finance and station compliance officers.
3. The differences are eventually reconciled once the payment reflects in the KRA Central account and posted to the taxpayers' ledger.

MIN/PIC/518/2019: OTHER MATTERS

1. Value Added Tax (VAT) Refunds

1.1 Payment of VAT Refunds without Exit Reports and Certificate of Exports

Seventeen (17) tax payers as detailed in Appendix V (A) claimed and were paid VAT refunds amounting to Kshs. 1,357,713,399 during the year 2014/2015. However, records including Simba system, rotation registers and claimants' files for the related goods claimed to have been exported with customs value of Kshs. 16,044,971,219 did not include exit reports and certificate of export. The Government therefore appears to have lost uncollected VAT on goods totalling Kshs. 2,567,195,395 and irregular VAT refunds of Kshs. 1,357,713,399.

Further refund claims amounting to Kshs.10,099,203 were paid in relation to transit exports totalling Kshs.1,010,842,196 at the exit point of Mombasa as detailed in Appendix V(B). The bonds guaranteeing these exports were irregularly cancelled and retired without verification reports in the Simba system and Certificate of Exports (COEs) as evidence of exportation of the goods. As a result, the Government appears to have lost Kshs. 10,099,203 as refunds paid, Kshs. 252,710,549 in uncollected duties and Kshs. 202,168,439 as VAT not collected from goods whose export custom value is Kshs. 1,010,842,196.

Management Response

- i. Evidence in form of exit reports demonstrating that the goods exited the country were provided to the auditors see attached Appendix Folio 1 - sample of exit report extracts & Appendix Folio 2 - Amounts recovered from Ainamushi Ltd.

Committee Observations

The Committee made the following observations:

1. Records including Simba system, rotation registers and claimants' files for the related goods claimed to have been exported with customs value of Kshs. 16,044,971,219 did not include exit reports and certificate of export.
2. Refund claims amounting to Kshs.10,099,203 were paid in relation to transit exports totalling Kshs.1,010,842,196 at the exit point of Mombasa. The bonds guaranteeing these exports were irregularly cancelled and retired without verification reports in the Simba system and Certificate of Exports (COEs) as evidence of exportation of the goods.
3. Documentation to show that the goods exited the country were provided during the meeting. The Auditors were asked to review the documents for audit verification.

1.2 Irregular Refunds of VAT to Ainushamsi Energy Limited

The Value Added Tax (VAT) refunds of Kshs. 1,357,713,399 paid in 2014/2015 included an amount of Kshs. 14,315,227 as detailed below paid to Ainushamsi Energy Limited in respect of input taxes attributable to zero rated fuel exports.

Table 1

AINUSHAMSI ENERGY LIMITED			
Claim Number	Voucher Number	Date	Amount
58169	39384	3/10/2014	3,119,652.00
57864	39105	3/9/2014	3,706,082.00
57865	39163	2/9/2014	3,526,215.00
57863	39179	2/9/2014	3,963,278.00
TOTAL			14,315,227.00

The refund was made despite having several anomalies highlighted below;

- a) The exports with customs value of Kshs.1,708,106,250.80 as recorded in monthly zero rated sales summary return (VAT 3B) did not have corresponding single entry document (C.17B) export entries or Automated System for Customs Data (Asycuda) entries as required in the VAT refunds manual.
- b) A physical inspection of the rotation registers and the original documents maintained in the registries at the Malaba and Busia border stations revealed that the claimant, Ainushamsi Energy Limited, did not export any goods.
- c) Ainushamsi Energy Limited was not an exporter of fuel during the period under review as the Company's name was not in the list of exporters maintained in rotation register and other documents at Busia and Malaba and, therefore could not claim VAT refunds attributed to zero rated exports.

From the foregoing, the Government appears to have lost Kshs. 14,315,227 as paid refund.

Management Response

The Authority provided documentary evidence to the auditor in form of extracts of entries from the Simba system as proof of exportation.

This was an issue of technical interpretation in relation to oil exports that was being dealt with by the Department at the time of the external audit. The issue has now been given a clear policy direction.

As a result, the amount of Kshs. 14,315,227 was recovered from Ainushsamsi Ltd and documentary evidence for the payment provided in Appendix Folio 2

Committee Observations

The Committee made the following observations:

1. An amount of Kshs. 14,315,227 was irregularly paid to Ainushsamsi Energy Limited in respect of input taxes attributable to zero rated fuel exports. This was despite the fact that the Company was not an oil exporter and hence not eligible for VAT refund.
2. The amount was recovered once it was flagged as an audit query by the Office of the Auditor General.
3. The recovered amount was irregularly placed under the Authority's revenue accounts for the financial year 2016/17 instead of being returned the VAT refunds account. The Company in questions could therefore claim the amount was an advanced tax payment .

Committee Resolutions

The Committee made the following resolutions:

1. Management was asked to provide a breakdown of all VAT refunds for oil exporters for the last three financial years.
2. Management was further asked to indicate who approved the payments to Ainushamsi Ltd. and what administrative action had been taken against them, if any.

1.3 Irregular Refund Paid to Ericsson Kenya Limited

During the financial year 2014/2015 the Authority paid Ericsson Kenya Limited VAT refunds totalling Kshs 383,555,287.00 as detailed below without confirmation of Withholding Value Added Tax (WHVAT) payments totaling Kshs. 507,916,445 against the relevant VAT 32's for contract services offered to both Safaricom Kenya Ltd and Telkom (Orange) Kenya Ltd:

ERICKSSON KENYA LTD		
Voucher No.	Date	Amount
39056	1/9/2014	83,555,287.00
38854	26/8/2014	100,000,000.00
38118	30/6/2014	100,000,000.00
37830	28/5/2014	100,000,000.00
Totals		383,555,287.00

Similarly, sample copies of invoices and contracts attributed to the Withheld Value Added Tax (WHVAT) were not attached to Value Added Tax return (VAT 3).

The VAT refunds paid were also in respect of exported services, consultancy and management services, with customs value of Kshs.4, 429,690,643.00 as shown in Appendices V(A) and V(B) which could not be confirmed as copies of invoices and contracts were not attached to VAT 3.

Management Response

Ericsson have their regional headquarters Nairobi and are in the business of providing network rollout and net support services both in Kenya and other countries in Africa. The network roll out includes installation, commissioning and maintenance of mobile telephone equipment. The auditor requested for Export entries from Simba system. These were however not available given that this was export of services. Export of services are not captured in the Simba System.

The contract documents, sample invoices and bank statements were provided to the auditors. Being a first claim it was taken through a pre-audit process to determine its validity. The audit process raised an assessment of Kshs 572,895,133.00 which was objected to and the matter ended up in High court. The court ruled that the assessment and refunds claim to be separated. It gave orders for payment of refund to be made which was done. Thereafter, the taxpayer opted to go to TAT for determination.

On 5th September 2016, the TAT ruled in favour of KRA and the amount 572,895,133 was off-set against existing VAT credits. The required evidence i.e. audit report, contract documents, sample invoices and bank statements relating to Ericsson Kenya Limited has been provided to the auditors as Appendix folio 3

Committee Observations

The Committee made the following observations:

1. During the financial year 2014/2015 the Authority paid Ericsson Kenya Limited VAT refunds totalling Kshs 383,555,287.00.

2. Being a first claim, the VAT refund was taken through a pre-audit process to determine its validity. The audit process raised an assessment of Kshs 572,895,133.00 which was objected to and the matter ended up in High court. The court ruled that the assessment and refunds claim to be separated.
3. On 5th September 2016, the Tax Appeal Tribunal ruled in favour of KRA and the amount 572,895,133 was off-set against existing VAT credits.
4. The sample invoices and bank statements provided to the auditors were deemed to be unsatisfactory and the Authority was asked to submit additional evidence to the Auditors for audit verification.

4. Refunds Made to Taxpayers with Outstanding Debts.

The Authority processed and paid Value Added Tax (VAT) refunds totalling Kshs. 901,708,927.00 to twenty three firms (claimants) who at the time of refund had outstanding tax liabilities or debts amounting to Kshs. 4,598,303,016.00 as detailed in Appendix VI. The payments of these refunds contravened Section 7.1.2.7 of the Kenya Revenue Authority's Refunds Procedure Manual which provides for the recovery of any outstanding debts from the amounts claimed. No explanation was provided as to why the debts were not recovered at the time of processing and payment.

Management Response

Two (2) of the claimants in the OAG report had no outstanding debts i.e Lab International Ltd and Njimia pharmaceuticals

The remaining 23 VAT refund claimants sampled were subjected to Debt Validation before refunds were processed as evidenced by Debt validation forms provided to the auditors. All the other cases did not have outstanding debt although they had ledger debit balances which require ledger correction and updating to capture payments and correction of errors made during data capture of tax return.

For 8 (eight) cases the ledgers have since been updated and evidence provided to the auditors while ledgers of the remaining 15 claimants are undergoing data correction process which is pending awaiting iTax Phase 4 enhancement. Appendix Folio 4

Committee Observations

The Committee made the following observations:

1. Two (2) of the claimants had no outstanding debts i.e Lab International Ltd and Njimia pharmaceuticals.
2. The remaining 23 VAT refund claimants sampled were subjected to Debt Validation before refunds were processed.
3. For 8 (eight) cases the ledgers have since been updated and evidence provided to the auditors while ledgers of the remaining 15 claimants are undergoing data correction process.

5.1 Under Declaration of Import Duty

TMSA 110 - James Finlay Mombasa Ltd

An audit verification undertaken at the facility in December 2015 revealed that 2,798 packages of tea leaves with a customs value of Kshs. 51,710,103.55 as per the striking entries had been under declared at the point of entry. The Government as a result lost revenue amounting to Kshs. 23,269,546.60 in form of uncollected import duty of Kshs. 12,927,525.90 and corresponding Value Added Tax (VAT) of Kshs. 10,342,020.70 as detailed in Appendix VII (A).

Management Response

James Finlay Msa Ltd - TMSA 110 has accounted for all the T810s into the transit godowns by submitting the cargo receipts and order numbers vide KRA/SR/C&BC/MBF/KENAO/02/16 of 22.6.2016 to the auditors and is awaiting their clearance comments (Appendix B5.1)

Committee Observations

The Committee made the following observations:

1. Invoices, purchase orders and delivery noted for all the T810s in transit were provided to the Auditors and underwent audit verification.
2. The audit query had been resolved.

5.2 TMSA 066 - Cargill Kenya Ltd

Audit review of the striking entries at the facility in December 2015 revealed that 2,041 packages of tea leaves with a customs value of Kshs. 29,090,302.10 were under declared at the point of entry. The Government as a result lost revenue amounting to Kshs. 13,090,635.95 in form of import duty of Kshs. 7,272,575.50 and corresponding Value Added Tax (VAT) of Kshs. 5,818,060.40 as detailed in Appendix VII (B).

Management Response

Cargill Kenya Ltd - TMSA 066 has accounted for all the T810s into the transit go-down. The response accounting for all the T810s was forwarded to the auditors vide KRA/SR/C&BC/MBF/KENAO/02/16 dated 22.6.2016 and awaiting their clearance/comments.(Appendix B5.2)

Committee Observations

The Committee made the following observations:

1. Invoices, purchase orders and delivery noted for all the T810s in transit were provided to the Auditors and underwent audit verification.
2. The audit query had been resolved.

6.1 Un-accounted For and Irregular Release of Fuel (JET A1) Warehoused at Kenya Pipeline Company (KPC) Embakasi

Examination of Customs Oil Stock Management System (COSIS) records and Aviation Delivery Receipts (ADRs), revealed that fuel was being delivered/released at Kenya Pipeline Company Embakasi months before warehousing (W720) entries were lodged and passed at document processing center (DPC). This resulted in the station irregularly releasing 470,320,285 litres of Jet A1 fuel with a security bond in force amounting to Kshs. 2,777,626,486 as detailed in Appendix VIII (A). The Kenya Revenue Authority management issued charge sheets to the affected oil marketers expressing the intention to charge them a penalty of 25% of the Customs Value (CV/CIF) amounting to Kshs.7,229,288,479 in accordance with Section 61(a) of the East Africa Community Customs Management Act (EACCMA, 2004) for irregularly accessing warehoused goods. There was to be a further fine not exceeding five thousand dollars as per Section 209 for failing to enter the goods as required by Section 34 of the Act. However, no further communication on the progress made on payment of the penalty and fines has been received to date. In addition, no computation has been made in relation to the fines.

Management Response

Background

The issue was occasioned by operational challenges and procedural differences between KRA and Kenya Pipeline Company (KPC), and the nature of how the product is drawn for use. KPC pumps over product to various destination in line with their mandate of creating ullage from KOSF(Kipevu Oil Storage Facility)

Jet A-1 is consumed by aircrafts against Aviation Delivery Receipts (ADRs) which record volumes delivered to the aircrafts. After the consumption, the same is given to KPC who have to do further documentation processing by giving the conversion factor.

Due to the volume of ADRs the work is done in batches. This therefore means there is time lapse before the ADRs are presented to Customs, who then requires entry cross referenced on every ADR.

There was a procedure lapse on brought about by late submission of the batch letters used for batch processing to the Oil Marketing Companies (OMCs). KRA was in no position to deny the oil marketers their products because it could have led to aircraft delays at the airport. The delay by KPC to send pump over batch letters to the OMCs led to the audit query. KPC Embakasi is a bonded facility handling duty exempt product JET A-1.

Committee Observations

The Committee made the following observations:

1. Reconciliation has since been done by the various Oil Marketing Companies and maximum fines levied against the offender in the spirit of the law and core

mandate of custom of trade facilitation. The fines were levied under section 203(f) of the EACCMA.

2. There is no revenue loss of Kshs 2,775,876,431.3 as indicated. This was a reconciliation issue and the amount is accounted for.
3. A procedure has been put in place between KRA and KPC and all aviation deliveries receipts are now being matched to entries.

MIN/PIC/519/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/520/2019: ADJOURNMENT

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

Signed

Date..... 15/10/2019

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

MINUTES OF THE 60TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 24TH AUGUST, 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 11.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
3. The Hon. Mary Wamaua Njoroje, MP
4. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
5. The Hon. Joash Nyamache Nyamoko, MP
6. The Hon. Paul Kahindi Katana, MP
7. The Hon. Purity Wangui Ngirici, MP
8. The Hon. Gladys Wanga, MP
9. The Hon. Thuku Zachary Kwenya, M.P
10. Hon. Justus Kizito Mugali, MP
11. The Hon. John Muchiri Nyaga, M.P
12. The Hon. James Kamau Githua Wamacukuru, M.P
13. The Hon. Omar Mohamed Maalim Hassan, MP.
14. The Hon. Raphael Bitta Sauti Wanjala, MP

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Babu Owino Paul Ongili, MP
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. Mohamed Hire Garane, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

IN ATTENDANCE

- | | | |
|-------------------------|---|------------------------|
| 1. Ms. Josephine Warega | - | Deputy Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Mr. Moses Murira | - | Manager, Audit |
| 4. Mr. David Mutunga | - | Manager, Audit |
| 5. Ms. Anna Obudho | - | Manager, Audit |
| 6. Mr. Maurice Otieno | - | Supervisor, Audit |

MIN/PIC/508/2019: PRELIMINARIES

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

MIN/PIC/509/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA REVENUE AUTHORITY

Mr. Githii Mburu, the Commissioner General of the Kenya Revenue Authority accompanied by Mr. Kevin Safari (Commissioner, Customs and Border Control), Mr. Ezekiel Saina (Commissioner, Corporate Support), Ms. Grace Mrichu (Deputy Commissioner, Supply Chain Management), Mr. Caxton M. Ngeywo (Deputy Commissioner), Ms. Grace Wandera (Deputy Commissioner), Mr. Benson Chacha (Chief Manager), Mr. Muema Joseph (Chief Manager) and Ms. Beatrice Mundia (Communications Manager) appeared before the Committee to adduce evidence on the audited accounts of the Authority for financial year 2014/15 to financial year 2017/18.

MIN/PIC/510/2019: FINANCIAL STATEMENT FY 2014/15

Debtors and receivables balance of Kshs. 473,261,000 reflected in the financial statements and disclosed in Note 10 includes staff debtors balance Kshs. 119,315,000. The staff debtors in turn include medical scheme debtors totaling Kshs. 31,212,517 out of which an amount of Kshs. 7,167,670 relates to 2013/2014 and earlier years. No recoveries in respect of the amounts for earlier years were made in the year under review and appropriate provision was not made for those doubtful debts. Consequently, debtors and receivables may be overstated.

Management Response

Out of the Kshs 7,167,670 which was outstanding;

- Kshs 3,325,406 has been cleared. Kshs 2,752,771.70 recovered as per Appendix 5.3 and Kshs 572,634.30 for in patient costs expensed as per policy
- Board approval was obtained to write off amounts relating to retired and deceased staff totaling Kshs 3,262,700 Appendix 5.1
- Kshs 579,564 is still outstanding and relates to staff who have resigned, are dismissed or terminated but yet to clear with the Authority. The amounts will be recovered once the staff clear with the Authority. Appendix 5.2

The Authority has also implemented the biometric medical cards system to enhance the administration and controls which has addressed the issue.

Committee Observations

The Committee made the following observations:

1. An amount of Kshs 2,752,771.70 was recovered and Kshs 572,634.30 for in patient costs was expensed as per policy.

2. Board approval was obtained to write off amounts relating to retired and deceased staff totaling Kshs 3.262,700.
3. Board approval for write off is limited Kshs. 100,000 and the Authority would need approval from the parent Ministry. Management had written to the CS Treasury seeking write off approval for the deceased staff.
4. Kshs 579,564 is still outstanding and relates to staff who have resigned, are dismissed or terminated but yet to clear with the Authority.

Committee Resolution

Management should provide a copy of the letter to the Cabinet Secretary seeking write off of amounts incurred by deceased or retired staff.

MIN/PIC/511/2019: STATEMENT OF REVENUE ACCOUNTABILITY FY 2015/16

The Commissioner General further adduced evidence on the audited accounts of the Authority for financial year 2014/15 to financial year 2017/18.

MIN/PIC/512/2019: STATEMENT OF REVENUE COLLECTION AND TRANSFERS FY 2015/16

1.1 Agency Commission

The statement of revenue collection and transfers reflects Agency commission deducted totalling Kshs.1,249,516,180 and Kshs.1,744,694,150 for years 2014/2015 and 2013/2014 respectively. However, computations of the agency commission based on the actual agency collections revealed that the commissions ought to have been Kshs.1,104,853,225 and Kshs.1,040,305,611 for 2014/2015 and 2013/2014, respectively. The commission deducted is excessive as detailed:

	2015	2014
	KSHS.	KSHS.
Agency Collections	47,622,983,833.00	44,840,759,085.00
Commission 2%	952,459,676.66	896,815,181.70
VAT 16%	152,393,548.27	143,490,429.07
Total Commission	1,104,853,224.93	1,040,305,610.77

Management Response

There was no excess commission deducted on Agency collections. The referred amount was wrongly computed by incorporating opening balances, non-adjustment for the Miscellaneous Revenue which is 100% Appropriation In Aid (AIA) to KRA and Petroleum Development Levy (PDL) remittances to Exchequer. Relevant tabulation incorporating adjustments has been provided per attached Appendix A1.

Committee Observations

The Committee made the following observations:

1. There was no excess commission deducted on Agency collections. The referred amount was wrongly computed by incorporating opening balances, non-adjustment for the Miscellaneous Revenue
2. Relevant tabulation incorporating adjustments has been provided for audit verification.

Committee Resolution

The Committee observed that the documentation provided by the Authority was not well prepared and was not easy to follow. The Committee resolved to adjourn the meeting to allow preparation of documentation.

MIN/PIC/513/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/514/2019: ADJOURNMENT

The meeting was adjourned at ten minutes past noon.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....15/10/2019

MINUTES OF THE INSPECTION VISIT OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON FRIDAY, 20TH SEPTEMBER 2019 AT GALANA KULALU FOOD SECURITY PROJECT AT 11.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Dr. Chrisantus Wamalwa Wakhungu, MP
3. The Hon. Raphael Bitta Sauti Wanjala, MP
4. The Hon. James Kamau Githua Wamacukuru, M.P
5. The Hon. Joash Nyamache Nyamoko, MP
6. The Hon. Omar Mohamed Maalim Hassan, MP
7. The Hon. Rashid Kassim Amin, MP

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Gladys Wanga, MP
3. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
4. The Hon. Purity Wangui Ngirici, MP
5. The Hon. Thuku Zachary Kwenya, M.P
6. The Hon. Mary Wamaua Njoroge, MP
7. The Hon. John Muchiri Nyaga, M.P
8. The Hon. Mohamed Hire Garane, M.P.
9. The Hon. Paul Kahindi Katana, MP
10. The Hon. Babu Owino Paul Ongili, MP
11. The Hon. Justus Kizito Mugali, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|-----------------------|---|-------------------------|
| 1. Mr. Evans Oanda | - | Senior Clerk Assistant |
| 2. Ms. Winfred Atieno | - | Audio Recording Officer |
| 3. Mr. Alex Mutuku | - | Senior SAA |

IN ATTENDANCE

OFFICE OF THE AUDITOR GENERAL

Mr. Peter Lugera - Deputy Director, Audit

NATIONAL IRRIGATION BOARD (NIB)

- | | | |
|------------------------|---|--|
| 1. Mr. Gitonga Mugambi | - | General Manager |
| 2. Eng. Daniel Atula | - | Deputy General Manager, Operations and Irrigation Management Services) |
| 3. Ms. Jedidah Narocho | - | Head of Finance) |
| 4. Mr. Tirus Kabuthia | - | Accountant |
| 5. Mr. Francis Awiti | - | Green Arawa |

- | | | |
|------------------------|---|------------|
| 6. Dr. Raphael Wanjogu | - | NIB |
| 7. Mr. Daniel Nzonzo | - | SOCC - NIB |
| 8. Ms. Nancy Wambugu | - | Co-ICT |
| 9. Eng. Odwie HO | - | RE- Galana |

MIN/PIC/NIB/INSPECTION VISIT/01/2019: PRELIMINARIES

The Inspection visit begun at 11:00am after a brief introduction.

MIN/PIC/NIB/INSPECTION VISIT/02/2019: INSPECTION VISIT AT GALANA KULALU FOOF SECURITY PROJECT

The Committee went through the project and observed the following:

1. There NIB had leased 20,000 acres of land from ADC out of which only 10,000 had been put to use.
2. Contrary to NIB's submission that the remaining 10,000 acres were under the police post, contractor camp site, access roads & machine yard, the committee ascertained that these utilities occupied a negligible piece of land and that the rest was idle.
3. The contract for the implementation of the project was given to Green Arava Limited at a Cost of Kshs. 14,545,106,960. The contract is currently 85% complete.
4. To complete the remaining works, the contractor insists to be paid on the basis of the Invoice while the NIB stands its ground that the contractor should follow the law governing such contracts and submit the bill of lading before payment is made. No payment has been made so on the same.
5. Contrary to the initial design that the remaining 15% will be under drip irrigation, the NIB wants to use the center pivot instead. Reason being rollers are cheaper (last more than 20 years and can cost NIB Ksh. 500 million) while machines for drip irrigation will cost NIB about Kshs. 989 million and will have to be replaced after 3 years; cost of production per acre using center pivot is Ksh. 20,000 while tha of drip is Khs. 40,000 occasioned by double pumping of water
6. By the contractor charging NIB Kshs. 1500 per Meter sq for a lining which ordinarily costs Khs. 450 per Meter sq has caused conflict between the NIB and the contractor. This should however been foreseen by the Management of NIB at the project conception and feasibility study stage.
7. The NIB had issued the Contractor with a notice of termination of the contract in May 2019 and recalled the performamce bond of Kshs. 97 million from the bank after the contractor declined to extend.
8. The place under irrigation has been divided into blocks with maize grown at intervals across the year.

Committee Resolutions

The Committee made the following observations:

1. The Committee asked the NIB to submit all the necessary information that itemizes the source of variance/ conflict between NIB and the contractor to help the Committee make an informed decision.
2. The NIB should also provide the Committee with all the correspondences the NIB had with regard to termination of the contract and recalling of the performance bond from the bank.
3. The Committee will interrogate that information when it meets the NIB to conclude with the remaining audit observations on 26th September 2019.
4. In the spirit of procedural fairness, the Committee would invite the contractor to give his side of the story before the final decision is made.

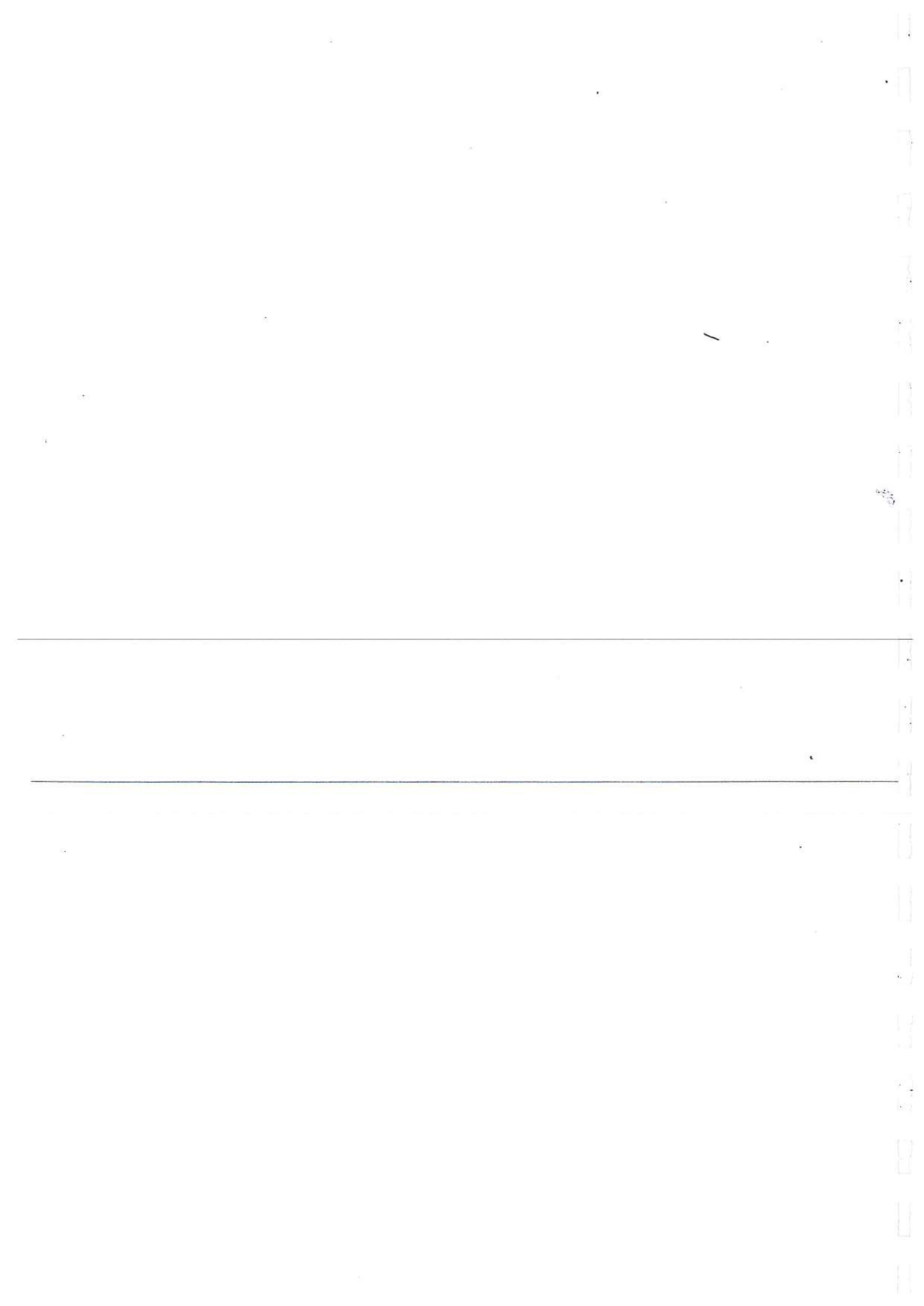
MIN/PIC/NIB/INSPECTION VISIT/03/2019: ADJOURNMENT

The Committee adjourned at 1430hrs.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date..... 04/10/2019



MINUTES OF THE 59TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 19TH SEPTEMBER 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
4. The Hon. Joash Nyamache Nyamoko, HSC, MP
5. The Hon. Mohamed Hire Garane, M.P.
6. The Hon. Mary Wamaua Njoroge, MP
7. The Hon. Omar Mohamed Maalim Hassan, MP
8. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
9. The Hon. Justus Kizito Mugali, MP
10. The Hon. Paul Kahindi Katana, MP
11. The Hon. Raphael Bitta Sauti Wanjala, MP
12. The Hon. John Muchiri Nyaga, M.P
13. The Hon. Rashid Kassim Amin, MP
14. The Hon. Purity Wangui Ngirici, MP
15. The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

1. The Hon. Gladys Wanga, MP
2. The Hon. Babu Owino Paul Ongili, MP
3. The Hon. Thuku Zachary Kwenya, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

IN ATTENDANCE

- | | | |
|------------------------|---|------------------------------------|
| 1. Mr. Daniel Ndungu | - | Deputy Director, Audit |
| 2. Mr. Rowland Muriuki | - | Manager, Audit |
| 3. Ms. Joshiah Oyuko | - | Manager, Audit |
| 4. Mr. John Wagura | - | Manager, Audit |
| 5. Mr. George Ombua | - | Inspectorate of State Corporations |

MIN/PIC/497/2019:

PRELIMINARIES

The Chairperson called the meeting to order at twenty seven minutes past ten O'clock

followed by a word of prayer.

MIN/PIC/498/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYATTA NATIONAL HOSPITAL

Dr. Evanson Kamuri, the Ag. Chief Executive Officer of the Kenyatta National Hospital accompanied by Dr. I.W Inwaki (Director, Clinical Services), Mr. Michael Kihuga (Deputy Director, Finance), Mr. Calvin Nyachoti (Corporation Secretary), Mr. Job Makara (Deputy Director, Planning and Strategy) Ms. Wasonga Twitty (Chief Accountant) and Ms. Rose Mutemba (Chief Accountant) appeared before the Committee to adduce evidence on the audited accounts of Kenyatta National Hospital for the financial year 2013/14 to financial year 2016/17.

MIN/PIC/499/2019: NATIONAL HOSPITAL INSURANCE FUND (NHIF) LOSS KSHS.323,843,000

Included in the operating and maintenance cost of kshs.3, 543,468,000 for the year ended at 30 June 2013 is National Hospital Insurance Fund (NHIF) loss of Kshs.323,843,000 .The loss is the net of rebate received from NHIF and the amount the Hospital spent in the treatment of NHIF members. According to information available, the Hospital entered into a contract with NHIF in August 2008 to treat NHIF members at a rebate rate of Kshs.2, 400 for inpatient care per day. However, the contract expired in August 2010 and had not been renewed as at 30 June 2013. Information available in the contract document indicates that the contract provided for a variation for the rate of rebate depending on the quality management reports and increases of scope of services. However, this rebate rate has remained the same despite the continued losses.

In the circumstances, it has not been possible to confirm the propriety of this particular expenditure/loss amounting to Kshs.323,843,000 for the year ended 30 June 2013.

Management Response

NHIF loss arises from the difference between patients' actual medical bills incurred by members of National Hospital Insurance fund (NHIF) and the applicable rebates as per the then existing medical service contracts.

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

The management continuously made follow ups vide letters Ref: KNH/ADM/CR/40 dated 2nd October 2013, Ref: KNH/CEO/54/(9) dated 3rd June 2014, Ref: KNH/CS/23/A/21 dated 6th February 2014, Ref: KNH/CS/232/A/45 dated 11th February 2015 and Ref: KNH/CS/232/A/55 dated 18th September 2015, (appendix G1) where appeals were made to NHIF to consider reviewing of the reimbursable rates in order to avoid losses to the hospital.

Upon exhausting all the negotiation mechanisms without success the hospital management sought to discontinue the loss making contracts vide letters to the Fund and the Ministry of Health from the year 2014 to 2016 (appendix G2). However, the Hospital did not discontinue offering services to NHIF members because the Fund responded vide letter Ref: HF/FIN/29

VOL VIII/116 dated 7th April 2014 (appendix G3) explaining inability to increase the rebate that had been coupled with litigations causing delayed adjustment of premiums.

Further, the hospital was directed by the Ministry of Health vide letter Ref: MOH/M1/4/1/1(32) dated 30th May 2014 (appendix G4) to continue offering the services on the same terms despite making losses.

Consequently, the engagement resulted to signing of a new contract on 21st March, 2019 (appendix G5) which has enhanced the number of claimable services which includes:

- a. Inpatient rebate per day at Ksh.4,000
- b. Surgical packages where reimbursement is made per case up to a maximum of the cost allocation as stipulated in the contract.
- c. Radiology services i.e. C.T Scan, M.R.I and ultrasound at Kshs.8,000, Kshs.15,000 and Kshs.3,000 respectively.
- d. Dialysis at KShs.9,500
- e. Chemotherapy and radiotherapy services reimbursed at a cost approved by the Fund

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

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

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

Committee Observations

The Committee made the following observations:

1. The loss arises in instances where the cost of providing medical services is higher than the rebate amount.
2. The signing of a new contract with NHIF on 21st March, 2019 enhanced the inpatient rebate per day at Ksh.4,000 from Kshs. 2400 which has reduced the amount of loss.
3. The services provided by Kenyatta National Hospital are specialized in nature hence the relatively high cost.
4. Management was in discussion to increase the reimbursement for both rebate and surgical procedures payable in Level 6 hospitals so as to minimize losses.

Committee Resolutions

Management should provide evidence of negotiations with NHIF on increased rebate amount for Level 6 hospitals.

MIN/PIC/500/2019:

BORROWINGS FY 2012/13

As previously reported, the borrowings balance of Kshs.1, 199,863,000 as at 30 June 2013 relates to a loan received in 2007/2008 from the Kingdom of Spain, in form of medical equipment. According to information available, the loan was payable by the Hospital at an interest rate of 3% per annum on a reducing balance for the first six (6) years and thereafter, the interest plus principal for the next nine (9) years with effect from 1 July 2008. However and according to records seen, no interest has been paid or accrued in the five financial years 2008/2009, 2009/210, 2010/2011, 2011/2012 and 2012/2013. Although indications are that the Management has sought assistance from the Ministry of Health towards settlement of the loan, response from the ministry was not availed for audit review. As a result, it has not been possible to confirm the accuracy of the loan and that the long term liability balance of Kshs.1,199,863,000 as at 30 June 2013 is fairly stated.

Management Response

The Government of the Republic of Kenya and the Kingdom of Spain signed a loan agreement on 29th July 2005 for a loan of Euros 14 million (Kshs. 1,199,862,823) in form of medical equipment for KNH.

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

The Hospital through various correspondences to The National Treasury, has since January 2008 been expressing its inability to service the loan due to its poor financial performance over the years. The Hospital management has been consistent in their request for the Government to take over the loan and convert it into a grant. The latest request was dated 5th April 2017, Ref: KNH/ADM/CR/138 (appendix C1).

Further, the Hospital vide letter Ref: KNH/FIN/278/VOL.1/40 dated 5th March 2019 (appendix C1) requested National Treasury for confirmation of the loan balance to the Office of the Auditor General balance as at 30th June 2018. Subsequently, the National Treasury responded with a confirmation that the loan is being serviced (principal & interest) vide letter Ref: DMD 4/78 dated 20th March 2019 (appendix C2).

Committee Observations

The Committee made the following observations:

1. There was no formal subsidiary agreement executed between National Treasury (NT) and KNH detailing how KNH was to service the Spanish loan though the Hospital recognized the assets (medical equipment) and the Spanish loan in its books (principal amount).
2. The National Treasury provided confirmation that the loan is being serviced (principal & interest) vide letter Ref: DMD 4/78 dated 20th March 2019.

Committee Resolution

Management was asked to provide a copy of the contract to confirm if the Hospital has any liabilities to meet regarding the loan.

MIN/PIC/501/2019: RECEIVABLES FROM EXCHANGE TRANSACTIONS FY 2013/14

2.5 Payment to Monarch Insurance

Included in the receivables balance of ksh.1, 018,659,000 is kshs.23,684,480 being an amount paid by Kenyatta national hospital on behalf of Monarch Insurance Company in respect of claims under staff superannuation scheme for period December 2005 to September 2007. The payment was authorized by Kenyatta national hospital board's special meeting of 30 January 2014 and the money was to be refunded to hospital thereafter. However as at the time of the audit, the money had not been refunded and the management has not indicated when the same will be refunded. In the circumstance and in the absence of any other information to the contrary, it has not been possible to confirm the validity and accuracy of the receivables from exchange transactions balance of kshs.1,018,659,000 as at 30 June 2014.

Management Response

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

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

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

Committee Observations

The Committee made the following observations:

1. There was a disagreement between the parties (Monarch and KNH) on the amount of money to be paid as additional premium for the stated period and the hospital borrowed Kshs.23,684,480 from the staff Superannuation Scheme to ensure continuation of death-in-service benefits in anticipation that Monarch Insurance Company would later settle the insurance claims.
2. The Hospital management was following up with the insurance company for reimbursement of the amount spent but no progress had been made so far.

MIN/PIC/502/2019: PROPERTY, PLANT & EQUIPMENT FY 2013/14

3.2 Jointly owned land by KNH, KMTC & UON - Valued at KES.220,000,000

Land registration number LR/No 209/13978 valued at kshs.220 million and measuring 2.544 hectares has a title deed but the land is jointly owned by Kenyatta national hospital, Kenya Medical Training College and the University of Nairobi. It is not clear why the parcel should be shown as wholly owned by the hospital. In the circumstances, it has not been possible to ascertain the ownership status of the Parcels of land in dispute, and that the balance of Kshs.11, 726,762,000 as at 30 June 2014 is fairly stated.

Management Response

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

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

Committee Observation

The Committee made the following observation:

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

MIN/PIC/503/2019: NATIONAL HOSPITAL INSURANCE FUND (NHIF) LOSS FY 2013/14

4.2 Free Maternity Loss

The general expense of kshs.2,074,480,000 also includes a loss of kshs.133, 900,000 occasioned by the free maternity services offered by the hospital as per the letterref.ACC/FCM HS/1/28A dated 1 April 2014 from the Cabinet Secretary, Ministry of Health which communicated the decision from the Government to reimburse an amount of kshs.17,500 per delivery. However Kenyatta national Hospital receives complicated maternal referrals and as a result the costs are higher and the reimbursable amount of kshs.17, 500 has remained the same despite the high costs. The hospital will therefore continue to incur losses if the reimbursable amounts are not reviewed.

Management Response

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

The cost of offering maternity services includes related complications that require specialized treatment in renal, intensive care unit and pre-term care. The cost also includes pre-natal and post-natal care. The Hospital's actual cost of offering free maternity services exceeds the reimbursement from the Government and therefore resulting to losses.

The management vide ref: KNH/FIN/13/26 dated 1st July 2015 appealed to the Principal Secretary MOH for review of the reimbursement rate to Ksh.39,000 (*appendix F1*). However, this proposal did not yield a positive consideration.

In July 2017, the Government transferred the Free Maternity Scheme to Linda Mama Programme under the NHIF management. The Linda Mama covers delivery and peri delivery incidental costs only. The hospital has engaged NHIF in full implementation of the programme where NHIF agreed to take care of post-natal and delivery complication through Letter ref HF/CB/12/3/ (97) dated 11th April 2018 (*appendix F2*). The reimbursable amounts include:

- a. Delivery package KShs.17,500

- b. Complications arising from pregnancy related rebate of Kshs.4,000 per day
- c. Three months post Natal at rebate of Kshs. 4,000 per day for baby's complication leading. A disclosure note in relation to free maternity loss has been made in the financial statements.

Committee Observations

The Committee made the following observations:

1. The cost of offering maternity services includes related complications that require specialized treatment in renal, intensive care unit and pre-term care.
2. The Hospital's actual cost of offering free maternity services exceeds the reimbursement from the Government and therefore resulting to losses.
3. In July 2017, the Government transferred the Free Maternity Scheme to Linda Mama Programme under the NHIF management. The Linda Mama covers delivery and peri delivery incidental costs only. The hospital has engaged NHIF in full implementation of the programme where NHIF agreed to take care of post-natal and delivery complication through Letter ref HF/CB/12/3/ (97) dated 11th April 2018

MIN/PIC/504/2019: PROPERTY, PLANT & EQUIPMENT FY 2014/15

2.2 Hospital Management Information System

The property, plant and equipment balance of Kshs.11,736,391,000 includes capital work in progress of Kshs.420,797,000 out of which Kshs.26,986,031 relate to payment made to Systems Partners for the provision of Hospital Information Management system. However, out of Kshs.26,986,031 paid Kshs.5,397,206 relates to 15% paid in addition to 60% paid earlier as a result of addendum to the original contract which had provided for 20% payment to be made after testing and commissioning of the system. Further the project was to take a period of six (6) months in the year 2013/2014, but as at the time of this audit, the system was still under testing stage having not achieved its intended purpose. In addition, the original contract and performance bond expired before completion of the project. No explanation had been provided for breach of the contract.

Management Response

Background

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

Challenges faced during implementation

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

Board and Management action

In the HMIS report of 17th August 2016, it was noted that the vendor was not able to complete the work as per contract hence the system was to be commissioned as is. It was recommended that the hospital acquires a more robust HMIS, and immediately embark on Business Process Re-engineering in line with the ICT strategy.

During the 130th regular Board meeting held on 22nd June 2016 (appendix O1), the Board compelled Management to move with speed in concluding the negotiations with the vendor. Subsequently, KNH Management and the vendor signed a maintenance SLA in February 2017 and commissioned the system as is.

Value for Money

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

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

The HMIS contract

The original contract (appendix O2) stipulated payment terms will be made in 3 installments as indicated below;

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

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

An addendum as raised on 25th February 2015 (appendix O3) after negotiation with the vendor, to amend the terms of payment to:

a)	Supply, delivery and installation	-	60%
b)	Testing (upon attainment of 70%)	-	15%
c)	Commissioning	-	5%
d)	Six months after commissioning	-	20%

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

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

Implementation progress to 100% thereafter became slow. The vendor demanded for payment on 'additional modules' during customization (appendix O4). Management resolved to commission the HMIS as-is, after reaching an agreement with the vendor, that there shall be no further claim for any payment beyond the amount already paid at 75% of contract price despite the project implementation being estimated at 80% (appendix O5). The system was

fully commissioned in June 2017 and all rights of ownership documents handed over (appendix 06).

Performance Bond

Although the first performance bond expired before the completion of the project, the vendor was asked to renew the performance bond, which was renewed up to 30th December 2015 (Appendix 7).

Current automation status

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

The Consultant reviewed all KNH business processes that led to the documentation and validation of "AS IS" and "TO BE" KNH processes. An integrated Health Management Information System and ERP technical specifications were developed and the Hospital Management proceeded to advertise an international open tender for the supply, delivery, installation, testing, commissioning and support of the integrated health management information system. The KNH tender, as advertised, covered automation requirements for the end to end Hospital processes: Health Management Information System (HMIS), covering the clinical modules; Enterprise Resource Planning System (ERP), covering the hospital administrative and support modules; and Supporting ICT Infrastructure for HMIS, ERP, Database Management System and end to end IT security. This was subsequently cancelled on Friday 15th June 2018 on the strength of the advisory that the Hospital automation needs will be met under the Health Information Technology (HICT) solution being implemented by the Ministry vide letter REF:MOH/MES/ADMIN/18/04/12 (appendix 08).

The Hospital was, however allowed to tender for the Enterprise Resource Planning System (ERP) and Supporting ICT Infrastructure for HMIS, ERP, Database Management System and end to end IT security. This tender has since been awarded and implementation is currently ongoing (appendix 09). The ERP will go a long way in addressing what was not achieved through the HMIS.

Committee Observations

The Committee made the following observations:

1. The delay in completion of the project was caused by among others the customization that was carried out by the vendor not being fully acceptable to KNH, the pro-longed re-mapping of processes to align to standard practices and the interface challenges experienced during integration with District Health Information System.
2. In the HMIS report of 17th August 2016, it was noted that the vendor was not able to complete the work as per contract hence the system was to be commissioned as is
3. Due to the protracted implementation period, it was deemed necessary to separate the payment on testing and commissioning from 20% to two separate payments of: Testing 15% and commissioning 5%.
4. The first performance bond expired before the completion of the project, the vendor was asked to renew the performance bond, which was renewed up to 30th December 2015 (Appendix 7).

5. Many of the hospital process were automated following the implementation of the software and services that were previously done manually could now be done online and on real-time.
6. There has been notable growth in internally generated revenue over the years from Kshs. 3.6 billion in FY 2012/13 to Kshs.5.2 billion in FY 2017/18

2.3 Refurbishment of Private Wing

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

Management Response

Tender Award

The said lowest bidder who had quoted Kshs.148,299,879.80 failed the technical stage and therefore could not proceed to the financial stage. The technical evaluation criterion of setting limits within plus (+) or minus (-) 10% of the official limits was provided for in the standard tender documents (appendix P1).

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

Pursuant to Public Procurement and Disposal Act 2005 section 9(c)(i) and Public Procurement Regulation 2006 Section 29 on tender document which states that:- "The Authority shall avail the standard tender documents to procuring entities-(appendix P2)." In addition the (PPOA) Public procurement & Disposal General Manual section 7(g) indicates that standard tender documents have been developed by the PPOA and MUST be used with minor necessary modifications (appendix P3).

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

The 1st and 2nd lowest bidders were therefore non-responsive based on this criterion (appendix P5).

Defects

The refurbishment works were practically completed and handed to the users on 28th July 2015 as per completion certificate No.KNH/SP/15/Vol.3 (appendix P6) accompanied by a snag list of defects (appendix P6) to be addressed during the defects liability period. Certificate

of making good defects Ref. No. 1033 (appendix P7) has since been issued together with the final account for the project.

The nurse call communication system initially provided by the contractor did not meet the specification and therefore was rejected and subsequently omitted from the project and not paid for as illustrated in the final accounts (appendix P8). Subsequently the hospital tendered for the system from a different contractor and the same was installed and is currently operational (appendix P9).

Committee Observations

The Committee made the following observations:

1. The lowest bidder who had quoted Kshs.148,299,879.80 failed the technical stage and therefore could not proceed to the financial stage
2. The 1st and 2nd lowest bidders were deemed non-responsive as they failed to meet the criteria that was derived from the standard tender document.
3. Defects were to be addressed during the defects liability period.
4. The nurse call communication system initially provided by the contractor did not meet the specification and therefore was rejected and subsequently omitted from the project and not paid for. The hospital tendered for the system from a different contractor and the same was installed and is currently operational.

2.4 Provisions of Hot Water System

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

In the circumstances, it have not been possible to ascertain the ownership status of the parcels of land in dispute, the propriety of the expenditure totaling Kshs.211,215,295.20 on work in progress and that the balance of Kshs. 11,736,391,000 as at 30 June, 2015 is fairly stated.

Management Response

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

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

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

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

Committee Observations

The Committee made the following observations:

1. The failure of the hot water system in March 2015 was occasioned by power surge from the KPLC power supply line on 19th March 2015 which damaged the water re-circulation pump motor and the booster electrical elements. The cause of the damage could not be attributed to the contractor.
2. The cost of replacing the damaged items (circulation pump and heating elements) was Kshs.623,000.

MIN/PIC/505/2019: UNSUPPORTED COSTS FY 2014/15

6.1 Subsistence Allowance

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

Management Response

The amount of Kshs.725,060 has since been fully recovered from the two doctors (*Appendix T*).

Committee Observations

The Committee made the following observations:

1. The amount of Kshs.725,060 has since been fully recovered from the two doctors.
2. The daily subsistence allowance paid to the two doctors who were attending training in Singapore was insufficient hence the additional allowance.
3. Management should have sought approval of the Board of Directors before making the additional payment to the doctors.

Committee Resolution

Management should provide details of the training including the duration of the training and the amount to be paid.

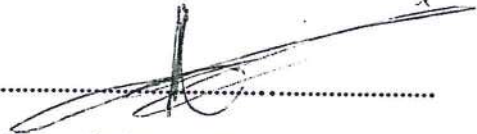
MIN/PIC/506/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/507/2019: ADJOURNMENT

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

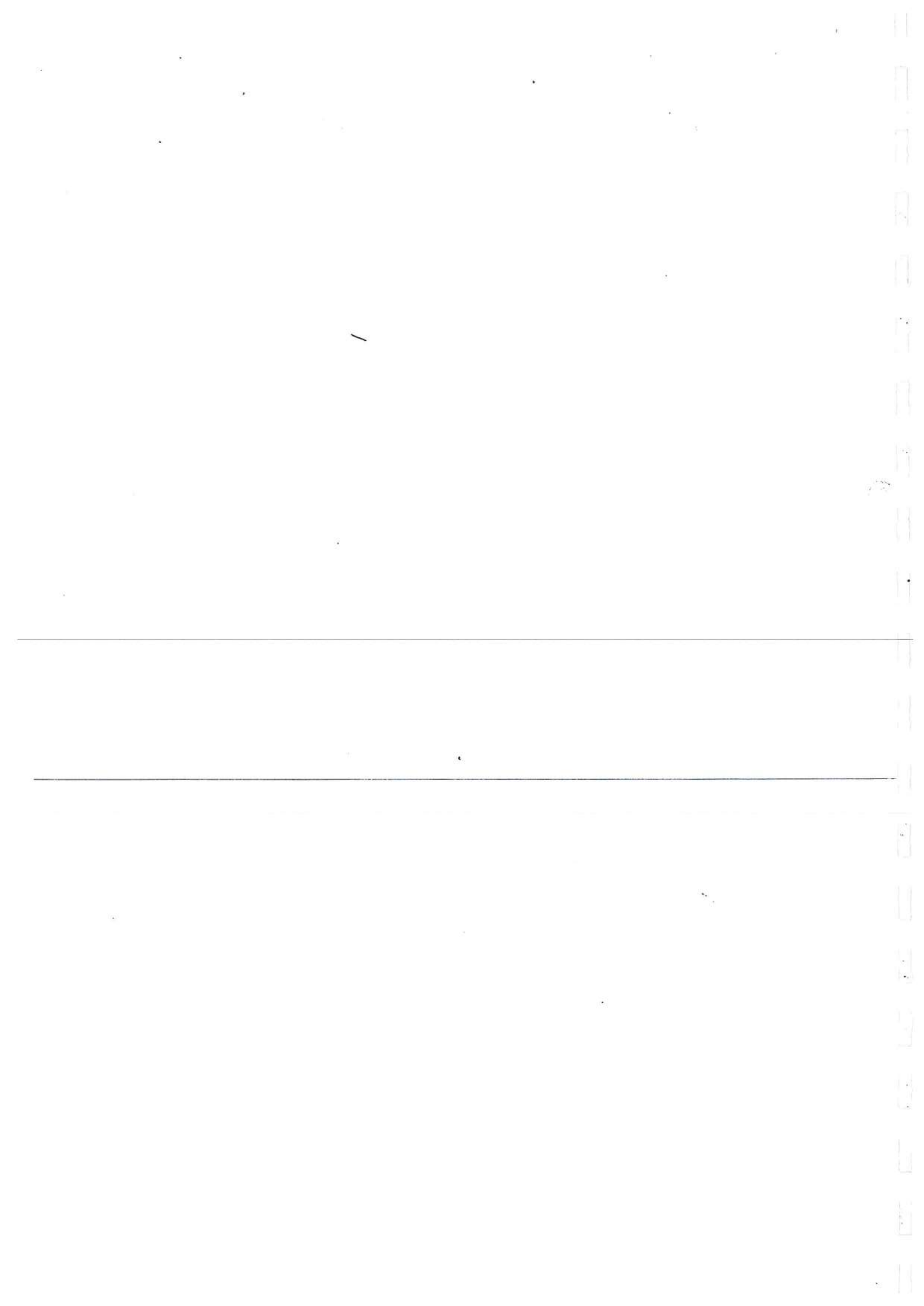
Signed



The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....

09/10/2019



MINUTES OF THE 57TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 12TH SEPTEMBER, 2019 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 11.00 A.M.

PRESENT

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

ABSENT WITH APOLOGY

1. The Hon. Gladys Wanga, MP
2. The Hon. Justus Kizito Mugali, MP
3. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
4. The Hon. Babu Owino Paul Ongili, MP
5. The Hon. Mary Wamaua Njoroge, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

MIN/PIC/484/2019: PRELIMINARIES

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

MIN/PIC/485/2019: EXAMINATION OF AUDITED ACCOUNTS OF NATIONAL IRRIGATION BOARD

The Committee heard that the Chief Executive Officer of the National Irrigation Board had sent apologies due to an official engagement out of office.

MIN/PIC/486/2019: ANY OTHER BUSINESS

The Committee resolved to visit the Galana-Kulalu project being implemented by the National Irrigation Board in relation to an audit query raised by the Auditor General in the audited accounts of the Board for the financial year 2015/16.

MIN/PIC/487/2019: ADJOURNMENT

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

Signed


The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

Date..... 09/10/2019.

MINUTES OF THE 56TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON FRIDAY 16TH AUGUST, 2019 AT THE SITE OF THE PROPOSED KENYA MARITIME AUTHORITY HEADQUARTERS AT 1.00 PM.

PRESENT

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

ABSENT WITH APOLOGY

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

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

IN ATTENDANCE

- | | | |
|-----------------------|---|------------------------------------|
| 1. Mr. Justus Okumu | - | Ag. Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Mr. Herrif Njoroge | - | Manager, Audit |
| 4. Mr. Peter Ruteere | - | Inspectorate of State Corporations |

MIN/PIC/480/2019: PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes past one O'clock

followed by a word of prayer.

MIN/PIC/481/2019: SITE VISIT TO THE PROPOSED HEADQUARTERS OF KENYA MARITIME AUTHORITY

Maj. (Rtd.) George Okongo, the Director General of the Kenya Maritime Authority accompanied by Mr. Joash Akuma (Chief Finance Officer), Mr. Seth Oluoch (Procurement Manager), Mr. John Omingo (Head of Commercial Shipping), Mr. Cosmas Cherop (Head, Corporate Services), Mr. Peter Kinyanjui (Architect, Mengi Designs Ltd.), Arch. Henry Kahiga (State Department of Public Works), Arch. Evans Mutai (Lins Consult), Mr. Robinson Kariguh (Lins Consult), Mr. Mike Mutunga (Structural Engineer, APCA Ltd.), Mr. Bakari Mwakuyu (Internal Audit Officer), Mr. Juma Ahmed (Research Officer), Mr, Salim Muslih (ICT Officer) and Ms. Raya Salim (Legal Officer) took the Committee through the site of the proposed Kenya Maritime Authority Headquarters as part of the audit queries for the Authority for financial year 2016/17

The Committee visited the site and made the following observations:

1. The structural works for the 18 story building were largely complete with finishing work for the project ongoing.
2. During excavation for the project construction, neighboring houses started caving in and the residents had to be relocated.
3. Soil check which should have been done before the project commenced was done once the project started which led to a variation of the contract amount by Kshs. 128,000,000.
4. The State Department of Public Works (SDoPW) was called in once the embankments started collapsing and the foundation design had to be modified. The SDoPW supervised the revisions and the structural issues were corrected.
5. The SDoPW should have been involved from the start of the project to ensure quality control and avoid unnecessary variation to the contract sum.

Committee Resolution

The Kenya Maritime Authority should provide details on the variation of the contract sum exclusive of the variations occasioned by arithmetic errors.

MIN/PIC/482/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/483/2019: ADJOURNMENT

The meeting was adjourned at four minutes to two O'clock.

Signed

The Hon. Abdullswamad Sharrif Nassir, MP

Date..... 09/10/2019

MINUTES OF THE 55TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON FRIDAY 16TH AUGUST, 2019 IN THE CONFERENCE ROOM, ENGLISH POINT MARINA AT 10:00 AM.

PRESENT

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

ABSENT WITH APOLOGY

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

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

IN ATTENDANCE

- | | | |
|-----------------------|---|------------------------------------|
| 1. Mr. Justus Okumu | - | Ag. Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Mr. Herrif Njoroge | - | Manager, Audit |
| 4. Mr. Peter Ruteere | - | Inspectorate of State Corporations |

MIN/PIC/476/2019: PRELIMINARIES

The Chairperson called the meeting to order at twenty five minutes past ten O'clock

followed by a word of prayer.

MIN/PIC/477/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA MARITIME AUTHORITY

Maj. (Rtd.) George Okongo, the Director General of the Kenya Maritime Authority accompanied by Mr. Joash Akuma (Chief Finance Officer), Mr. Seth Oluoch (Procurement Manager), Mr. John Omingo (Head of Commercial Shipping), Mr. Cosmas Cherop (Head, Corporate Services), Mr. Bakari Mwakuyu (Internal Audit Officer), Mr. Juma Ahmed (Research Officer), Mr. Salim Muslih (ICT Officer) and Ms. Raya Salim (Legal Officer) appeared before the Committee to adduce evidence on the audited accounts of the Authority for financial year 2012/13 to financial year 2017/18.

The Authority provided the following documents requested during the previous meeting including:

- i) The advertisement on the tender for the purchase of the land for the KMA headquarters;
- ii) Tender opening register;
- iii) Tender Committee minutes;
- iv) Evaluation report of the tender;
- v) Valuation report by the Ministry of Lands on the pieces of land identified for purchase;
- vi) Letter of notification of the contract award;
- vii) Transfer of lease for the Mombasa land purchased; and
- viii) Tender documents for the procurement of consultancy services for the project.

Committee Observations

The Committee made the following observations:

1. The consultant for the project was privy to information regarding the tender for the construction of the Kenya Maritime Authority headquarters. Having worked with the winning bidder before, the consultant could have shared confidential information with the winning bidder that would disadvantage of the other bidders.
2. The Authority acknowledged that there was conflict interest whereby the project consultant and contractor had previous history of working together and this was not disclosed during the tender process for procurement of the consultancy services.
3. The Board of KMA deliberated on the tender for the project and expressed concern about the arithmetic errors in the tender sum.
4. The Ministry of Land had valued the land purchased for construction of the headquarter at Kshs. 150,000,000 and not Kshs. 190,000,000 as stated by Management.

Committee Resolutions:

The Committee made the following resolutions:

1. The Board of Kenya Maritime Authority should appear before the Committee to adduce evidence on the audit query including what they knew regarding the variation of the tender sum as well as any action they took on this matter.
2. The Committee would conduct a site visit to the construction site later in the day.

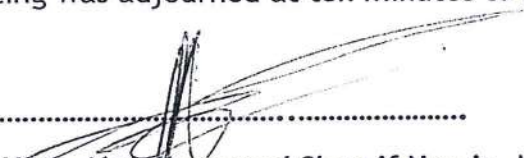
MIN/PIC/4782019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/479/2019: ADJOURNMENT

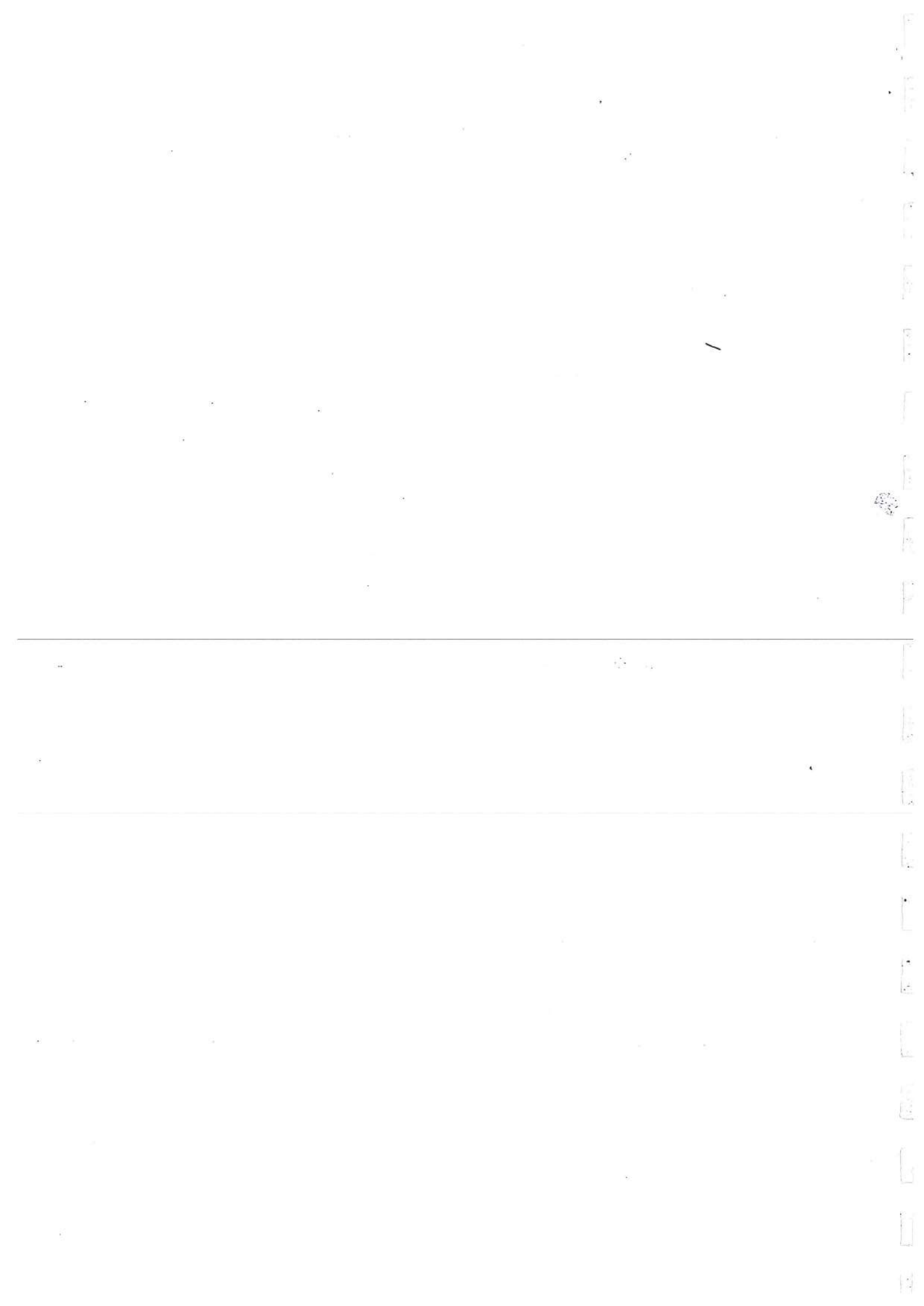
The meeting was adjourned at ten minutes to twelve O'clock.

Signed


The Hon. Abdulsamad Sharrif Nassir, MP
(Chairperson)

Date.....

09/2019



MINUTES OF THE 54TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 15TH AUGUST, 2019 IN THE CONFERENCE ROOM, ENGLISH POINT MARINA AT 4.00 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
3. The Hon. Joash Nyamache Nyamoko, HSC, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Justus Kizito Mugali, MP
6. The Hon. Paul Kahindi Katana, MP
7. The Hon. Thuku Zachary Kwenya, M.P.
8. The Hon. Mary Wamaua Njoroge, MP
9. The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. John Muchiri Nyaga, M.P
3. The Hon. Mohamed Hire Garane, M.P.
4. The Hon. Rashid Kassim Amin, MP
5. The Hon. Purity Wangui Ngirici, MP
6. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
7. The Hon. Gladys Wanga, MP
8. The Hon. Omar Mohamed Maalim Hassan, MP.
9. The Hon. Babu Owino Paul Ongili, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

IN ATTENDANCE

- | | | |
|-----------------------|---|------------------------------------|
| 1. Mr. Justus Okumu | - | Ag. Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Mr. Herrif Njoroge | - | Manager, Audit |
| 4. Mr. Peter Ruteere | - | Inspectorate of State Corporations |

MIN/PIC/466/2019: PRELIMINARIES

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

MIN/PIC/467/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA MARITIME AUTHORITY

Maj. (Rtd.) George Okongo, the Director General of the Kenya Maritime Authority accompanied by Mr. Joash Akuma (Chief Finance Officer), Mr. Seth Oluoch (Procurement Manager), Mr. John Omingo (Head of Commercial Shipping), Mr. Cosmas Cherop (Head, Corporate Services), Mr. Bakari Mwakuyu (Internal Audit Officer), Mr. Juma Ahmed (Research Officer), Mr. Salim Muslih (ICT Officer) and Ms. Raya Salim (Legal Officer) appeared before the Committee to adduce evidence on the audited accounts of the Authority for financial year 2012/13 to financial year 2017/18.

MIN/PIC/468/2019: TRADE AND OTHER PAYABLES FROM EXCHANGE FY 2015/16

The statement of financial position as at 30 June 2016 reflects a balance of Kshs 43,431,930 in respect of trade and other payables from exchange which have been arrived at after set-off against various debit balances totaling Kshs 2,497,467. The set off contravened International Public Sector Accounting Standard No.1 which prohibit netting off debit and credit balances.

Consequently, the accuracy and completeness of trade and other payables from exchange of Kshs 43,431,930 as at 30 June 2016 cannot be confirmed.

Management Response

The Authority noted the OAG advice and reversed all items that had been netted off against the outstanding payable balance to comply with IPSAS 1.

The Authority dealt with the negative payables balances through adjustments of the creditors' accounts.

Annex 1: Trade Payables Supporting Schedule

Committee Observations

The Committee made the following observations:

1. All items that had been netted off against the outstanding payable balance were reversed to comply with IPSAS 1.
2. The Authority adjusted the creditors' accounts to deal with the negative payables balance.

MIN/PIC/469/2019: CASH AND CASH EQUIVALENTS FY 2015/16

Note 16 to the Financial Statements reflects cash and cash equivalents balance of Kshs. 1,093,971,702 as at 30 June 2016. Audit examination of the bank reconciliation

statements revealed that included in the reconciling items, were stale cheques totaling Kshs 2,480,014.50 outstanding for more than twelve months reversed in the cash book. In addition, receipts in bank amounting to Kshs 238,715.10 were not recorded in the cash book. The management attributed their non-clearance to lack of information on the depositors and as a result it's is not clear how long the transactions shall remain unrecorded.

In the circumstance, the accuracy and completeness of cash and cash equivalents balance of Kshs 1,093,971,702 as at 30th June 2016 could not be confirmed.

Management Response

Bank reconciliations as at 30th June 2016 did not have stale cheques as these are reversed on the date/month they become stale. The items which were outstanding for more than twelve months, totaling Kshs 2,480,014.50, were direct deposits into the Authority bank account without sufficient depositors' details to enable matching with relevant invoices.

The cashbooks were updated with the deposits by recognizing them as liabilities. Whenever complete details of such deposits are received the customer account is credited with a corresponding entry to the liability account (Un-presented Deposits).

Annex 2: Bank Reconciliation Statements FY2017/2018

Committee Observations

The Committee made the following observations:

1. The items which were outstanding for more than twelve months, totaling Kshs 2,480,014.50, were direct deposits into the Authority bank account without sufficient depositors' details to enable matching with relevant invoices.
2. The cashbooks were updated with the deposits by recognizing them as liabilities.

Committee Resolution

The Authority should make changes to its payment system to provide for traceability of payments received including use of proforma invoice and/or automation of payment.

MIN/PIC/470/2019: BOARD OF DIRECTORS COSTS FY 2015/16

Note 11 to the financial statements reflects a balance of Kshs 48,244,651 in respect of Board of Directors costs for the year ended 30 June 2016. Analysis of the expenditure revealed that the Board held thirty (30) sittings during the financial year and as a result meeting costs rose by Kshs 31,230,001 or 184% of the expenditure balance of Kshs 17,014,650 reported in the year 2014/2015. In addition, examination of expenditure records revealed that the sitting allowances totaling Kshs 4,400,000 were paid to several board members but minutes of the meetings were not presented for audit. In addition, available evidence indicated that the meetings related to attendance at Agricultural Society of Kenya shows, KECOSO games and boat launches

in Kisumu and Lamu counties, which are administrative functions for execution by management.

Consequently, the propriety and regularity of Board of Directors costs totaling Kshs 4,400,000 for the year ended 30 June 2016 could not be confirmed.

Management Response

During the financial year the Board of Directors held a number of meetings because most of the board members were new and had to meet regularly to address a number of pending issues. Among this issue were staff unrest relating to promotion and staff recruitment that had reached the media and the Ministry level.

The said activities under query, which the Board members attended, that is - KECOSCO & ASK shows were not merely Management functions but as well opportunity for the Board to build cohesion and integration with other stakeholders in the Ministry of Transport & Infrastructure. The KECOSCO (Kenya Communications Sports Organization) games are held annually and is a premier event of the year attending by the following entities:

1. Kenya Maritime Authority
2. Ministry of Information Communication & Technology
3. Ministry of Sports, culture & the Arts
4. Postal Corporation of Kenya
5. Kenya Ports Authority
6. Kenya Airports Authority
7. Kenya Civil Aviation
8. Communications Authority of Kenya
9. Kenya Ferry Services.
10. Kenya Broadcasting Corporation
11. Kenya Film Classification Board.

The KECOSCO games originated from the East African community which organized the first games under the East African Community's inter Corporations and Associated Organizations (EACASO). It should be noted that the Authority has won several accolades and brought honor as a dynamic and worthy participant in various games. The attendance and participation of the Board and senior management has been an exceptional boost to the morale and results.

As regards the A.S.K shows - the Board of Directors have been participating alongside Management in the Shows, under the publicity and awareness programs for about eleven years now. The Board as strategic policy makers are important participants in the task of enhancing the public image, identity, creating awareness, sensitizing the public on the role and mandate of the Authority. The forum creates an opportune

arena for the dissemination of maritime matters and a feedback platform. Notably, the President of the Republic of Kenya graces the show and awards the best performing exhibitionists after a Luncheon where Directors of State owned Organizations attend and interact with the Head of State. Undoubtedly this is a mandatory meeting that our Board of Directors must attend and it is usually only the closing and opening ceremonies presided over by the Cabinet Secretary.

At all these functions the Board members have been invited by way of an invitation letter as instructed in the Guidelines on the terms and conditions of service for state Corporations 23rd November 2004 - Annex IV - Clause C' and the circular letter dated 14th January 2008 - ref OP/CAB.17/34A - which states verbatim as regards payment of sitting allowance ; "an activity that bears directly on the business of the State Corporation for which the Chairman or Board member is invited in writing by the Chief Executive Officer to attend."

Further please note these activities did not require Minutes as ordinarily as reports are prepared capturing the gains made during the forums.

Committee Observations

The Committee made the following observations:

1. The Board members attended these functions, that is - KECOSCO & ASK shows, having been invited by way of an invitation letter as instructed in the Guidelines on the terms and conditions of service for State Corporations 23rd November 2004 - Annex IV - Clause C' and the circular letter dated 14th January 2008 - ref OP/CAB.17/34A.
2. The functions which the Board members attended provided an opportunity for the Board to build cohesion and integration with other stakeholders in the Ministry of Transport & Infrastructure.
3. As regards the A.S.K shows - the Board of Directors have been participating alongside Management in the Shows, under the publicity and awareness programs for about eleven years now.
4. The President of the Republic of Kenya graces the show and awards the best performing exhibitionists after a Luncheon where Directors of State owned Organizations attend and interact with the Head of State.

MIN/PIC/471/2019: PUBLICITY AND AWARENESS FY 2015/16

Included in the general office expenditure balance of Kshs 337,595,541 reported in Note 15 to the financial statement, is publicity and awareness costs balance of Kshs 64,890,008. However, audit verification revealed that the payments were made to various media firms for print, outdoor and television advertisements contrary to circular Ref. MIC/G/2/4 dated 03 March 2016 by ministry of information, Communication & Technology which required all government entities to place their advertisements through the Government Advertising Agency. In addition, there was no documentary evidence showing that the media firms were identified and selected in

accordance with the requirements of the Public Procurement and Asset Disposal Act, 2015.

The Authority breached the government regulations on placement of medical advertisements and as a result the propriety and regularity of publicity and awareness expenditure balance of Kshs 64,890,008 for the year ended 30 June 2016 cannot be ascertained.

Management Response

Prior to March 2016, selection of Media houses to run KMA advertisements were done through the Authority's Procurement section, in line with the existing procurement guidelines.

From March 2016, all the Authority's advertisements were handled by the Government Advertising Agency as directed by the official communication to the Authority from vide Government Circular , Ref. MIC/G/2/4 dated 3rd March, 2016, from the Ministry of Information, Communication and Technology, Office of the Principal Secretary. The payments were paid to the media houses in accordance with GAA's directive that appeared on the invoices and circular.

Annex 4: Payment Vouchers (PV2016/03015, PV2016/03183 and PV2016/03431)

GAA concurrence to pay the vendors attached to the vouchers

Committee Observations

The Committee made the following observations:

1. KMA advertisements that were done before March 2016 were advertised through various media channels but since March 2016, all the Authority's advertisements were handled by the Government Advertising Agency as directed by the official communication to the Authority from vide Government Circular.
2. The payments were paid to the media houses in accordance with GAA's directive that appeared on the invoices and circular.

MIN/PIC/472/2019: DUTY TRAVEL ALLOWANCES FY 2015/16

Included in the general expenditure balance of Kshs 337,595,541 reported under Note 15 to the financial statements are duty travel allowance payments totaling Kshs 66,195,601 paid in the year under review. Expenditure under the account increased by Kshs 34,374,540 or 108% of the balance of Kshs 31,821,061 reported in the previous (2014/2015) financial year. In addition, records presented for audit revealed that during the year under review, foreign travel allowances totaling to Kshs 13,454,426.40 were paid to various staff without evidence of travel authority from the Permanent Secretary of the parent Ministry. This was contrary to the revised code of Regulations, 2006 and Circular OP/CAB.9/9 by the Head of Public Service which require officers traveling abroad to seek clearance from the Permanent Secretary of the Parent Ministry.

In the circumstances, the propriety of the duty travel allowance expenditure totaling to Kshs 13,454,426.40 for the year ended 30 June 2016 cannot be ascertained.

Management Response

The Authority interpretation of the circular was that is only the CEO and Board members who were required to seek travel clearance from the Permanent Secretary of the parent Ministry. All the foreign travel for the DG and the Board members were sought from the PS. The observations were noted by the management and Government circulars which provide such guidelines are adhered to.

Committee Observations

The Committee made the following observation:

Authorization for all the foreign travel for the Director General and the Board members were sought from the Principal Secretary.

Committee Resolution

The Auditor was asked to confirm which cadre of staff at the Authority require clearance from the Principal Secretary for foreign travel.

MIN/PIC/473/2019: PROPERTY, PLANT AND EQUIPMENT FY 2016/17

The statement of financial position reflects a balance of Kshs 396,495,684 as at 30 June 2017 in respect of property, plant and equipment as detailed in Note 22 to the financial statements. Audit verifications revealed the following anomalies.

1.1 Construction of office block Kshs. 1.825billion.

Included in trade receivables from exchange transactions balance of Kshs 266,166,914 at note 17 to the financial statements is other non-trade figure of Kshs 183,837,788 as at 30 June 2017. The balance of Kshs 183,837,788 includes advance payment of Kshs 182,523,994 to the contractor for construction of office headquarters. Information available indicates that the contract was awarded to the winning bidder at the price of Kshs 1,825,239,939. However, audit verification of the procurement records revealed the following:

1.1.1 Correction of the tender sum.

The tender sum was corrected upwards by the tender evaluation committee leading to an increase of Kshs 97,063,521 on the bidders' quote of Kshs 1,728,176,418 to award price of Kshs 1,825,239,939. This was contrary to Section 82 of the Public Procurement and Assets Disposal Act, 2015 which states that "the tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity". Although the management has argued that the decision was based on section 50 of the public Procurement and Disposal regulations, 2006, however, section 82 of the Public Procurement and Asset Disposal Act, 2015 is not subject to application of regulations. As a result, the decision was irregular.

Consequently, the irregularity led to the loss of Kshs 97,063,521 of public funds.

Management Response

The tender for the development of the KMA office block was preceded by prequalification of main contractors. The prequalification document was detailed enough with preliminary and technical evaluation criteria in the prequalification document. Four firms were prequalified and thus invited to tender i.e.

-Dinesh Construction Ltd.

-EPCO Builders Ltd.

-Parbat Siyani Construction Ltd

- China Zhongxing Construction Co. Ltd.

Having considered the preliminary and technical evaluation criteria, the firms were invited and issued with bills of quantities for the proposed works. This involved filling in the BQs and the tender prices. This evaluation involved verification of the unit prices and quantities in the BQs from all the bidders to ensure that all tender sums submitted by all bidders are correct.

Section 82 of the Public Procurement and Asset Disposal Act, 2015 states that the tender sum as read out in the tender opening is absolute and cannot be changed. The evaluation and error correction was based on section 50 (3) of the Public Procurement and Disposal Regulations, 2006.

The Authority was guided that the Public Procurement and Asset Disposal Act, 2015 prevails upon the Public Procurement and Disposal Regulations, 2006 irrespective of the Interpretation and General Provisions Act (2014) and that as a result of the development the amendment of the contract becomes necessary to revert the contract sum from corrected sum to the figure read out at tender opening. It is to be noted that even after reversion the contractors' tender remains the most financially responsive either way and does not affect the award of the contract.

The Authority (KMA) embarked on the process of correcting the tender from Kshs. 1,825,239.939.24 to Kshs. 1,728,176,418.00 which is the amount that was read out at the tender opening. This was acceptable to the Authority (KMA) and EPCO Builders Limited and the principal agreement was amended by way of addendum no. 01 thus reverting the tender sum that was read out at time of tender opening in accordance.

Annex 1: Contract and Addendum to the Contract

Committee Observations

The Committee made the following observations:

1. The contract for the project was signed on 30th January, 2017 and an addendum to the contract done on 26th July, 2018.

2. The project was advertised in August 2016 with 12 firms submitting proposals for pre-qualification. Following evaluation, four firms were found to be responsive and these four were invited to tender on 29th November, 2016. The tender was closed on 23rd December, 2016.
3. Due diligence on the lowest evaluated bidder was carried out on 2nd January, 2017 and the contract award was done on 11th January, 2017.
4. The tender sum was corrected upwards by the tender evaluation committee leading to an increase of Kshs 97,063,521 on the bidders' quote of Kshs 1,728,176,418 to award price of Kshs 1,825,239,939.
5. The Management based the decision to adjust the tender sum on section 50 of the Public Procurement and Disposal Regulations (2006). The contract was however signed on 30th January, 2017 and was therefore governed by the provisions of the Public Procurement and Disposal Act (2015).
6. The decision to adjust the tender sum was contrary to Section 82 of the Public Procurement and Assets Disposal Act, 2015 which states that "the tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity".
7. The information on the changes to the tender sum was communicated to all the bidders who were agreeable to the change. The matter was also captured in the letter of award for the contract.
8. The Public Procurement Regulatory Authority visited the site of the project in October 2017 and advised the Authority to reconcile the arithmetic error and the contract sum be maintained at Kshs. 1,728,176,418.
9. The Committee expressed concern on the negligence that led to arithmetic errors being found in such a contract which advised the decision of the Authority to adjust the tender sum.

Committee Resolution

The Authority should provide a chronology of the project to include how the project was conceptualized, any feasibility studies done, the details of the tender advertisement, evaluation and award, circumstances under which the bids were adjusted, the number and dates of bids corrected, correspondence with bidders on adjustment to the tender sum and PPRA's advise on the tender sum.

1.1.2 Non-disclosure of conflict of interest.

Information available indicates that project's lead consultant and who was part of the bid evaluation team had previously worked with one of the bidders who eventually won the contract. However, the consultant did not declare the conflict of interest as required by Section 66 (6) of the Public Procurement and Assets Disposal Act, 2015.

In the circumstances, the propriety and legality of Kshs 182,523,994 in respect of property, plant and equipment and value for money for the year ended 30 June 2017 could not be confirmed.

Management Response

The contractor, Lins Consult and Hill Associates were main contractor, lead consultant and environmental consultant in the Kibera Slum Soweto East Zone A upgrading under the Ministry of Housing valued at 2.9billion. However, this was an independent project from the KMA's office block construction. The firms are thus independent entities that may be able engage in various projects or contracts based on their technical expertise and the assignment.

Committee Observations

The Committee made the following observations:

1. The project's lead consultant who was part of the bid evaluation team had previously worked with one of the bidders who eventually won the contract. However, the consultant did not declare the conflict of interest as required by Section 66 (6) of the Public Procurement and Assets Disposal Act, 2015.
2. The contractor, Lins Consult and Hill Associates were main contractor, lead consultant and environmental consultant in the Kibera Slum Soweto East Zone A upgrading under the Ministry of Housing.

Committee Resolution

The Authority was asked to provide a chronology on the tender process for the consultancy services for the project.

1.2 Purchase of Land for Search and Rescue Centers

Included in property, plant and equipment balance of Kshs 396,495,684 is a figure of Kshs ~~242,726,737~~ in respect of land and building as at 30 June 2017. The figure of Kshs 242,726,737 as at 30 June 2017 includes additions of Kshs 35,180,040 which relates to purchase of three pieces of land for search and rescue centers as shown below;

Location	Acres	Amount
Kwale	3.13	19,500,000
Kisumu	0.8	14,280,040
Deposit for Kwale Land		1,400,000
Total		35,180,040

Audit verification of the procurement documents revealed the following anomalies;

- 1.2.1 According to the head of procurement's professional opinion for Kwale land prepared on 10 June 2017, it was indicated that the head of procurement compared the prices quoted against the valuation report for each piece of land although the valuation reports were dated 21 July 2016. It implies the valuation report which was received after the head of procurement had issued his professional opinion did not provide guidance in determining the value of

the land. This was in violation of Section 84 (1) of the public Procurement and Asset Disposal Act, 2015 which provides the head of procurement shall alongside the report of the evaluation committee, review the lender valuation report and provide a signed professional opinion to the accounting officer on the procurement or asset disposal proceedings. Therefore, the head of procurement's professional opinion report was misleading.

- 1.2.2 According to a correspondence by the Ministry of Land and Physical Planning attached to draft valuation report. It referred to a letter reference KMA/PRO/41 dated 13 October 2015 by Kenya Maritime Authority requesting for valuation of the same pieces of land. It therefore implies that the selected plots had already been identified before the advertisement for expression of interest on 25 February 2016. In addition, the letter was not availed for audit verification despite several requests. It is an indication of predetermined supplier.
- 1.2.3 According to the advertisement for Kisumu land, the land was expected to measure 1 acre and within the vicinity of the port. However, the tender was awarded to a bidder whose land measured 0.8 acres and was 7.1 kilo meters from Kisumu Port. This is contrary to the Section 80 (2) of the Public Procurement and Assets Disposal Act, 2015 which provides that the evaluation and comparison shall be done using the procedures and criteria set out in the tender documents.

Management Response

Valuation report having being received after the procurement professional opinion.

The pieces of land in question were two and not three as reported. The purchase prices were also as indicated in the table below;

Location	Acres	Audit Report Amount	Purchase Price
Kwale	3.13	19,500,000	14,280,040
Kisumu	0.8	14,280,040	19,500,000

Included was a deposit of 10% which was paid as commitment fee before the transfer of the Title was effected in order to clear the remaining 90% after transfer.

It was reported that the head of procurement professional opinion was prepared on 10th June 2017 while the valuation report were dated 21 July 2016. It should be noted the Professional opinion was prepared on 10th June 2016 and not 10th June 2017. The valuation was dated 31st May 2016 and not 21st July 2016 as reported. The valuation

report (dated 31st May 2016) was therefore received before the professional opinion was prepared on 10th June 2016.

Request for valuation of identified lands done in 13th October 2015

The Authority identified suitable areas as early as 2014 (Report Ref: KMA/SS/2/21 dated 28th August 2014 attached). However the request to Ministry of Lands was not honored owing to the approach KMA had taken of identifying general areas and not specific areas. The Ministry further informed KMA that valuation is done only when we submit documents of specific Title since it involves the Ministry carrying out its own search in their offices. The Authority was further advised to first express interest then once the interested bidder had supplied documents of ownership then only then the exercise would be undertaken. The exercise was later conducted on those parcels where the Authority confirmed were suitable.

Kisumu land measuring 0.8 acres and 7.1 Km

The distance of 7.1 kilo meters given by the auditor by measuring road distance while for purposes of boat operations the distance over water is approximately 3 KM from the Port of Kisumu hence it was within the proximate distance given (Google map showing the exact distance attached). The ground trothing exercise conducted by the Government Surveyor at the time of valuation showed the piece of land measured approximately one acre.

Evidence:

1. *Procurement professional opinion*
2. *Report and Valuation upon an Agricultural Cum Residential Property Kisumu/Nyalenda 'B'/1594 Dunga Area Kisumu County REF:VAL 852/XIV/12*
3. *Report on the Land Identification for Expansion of Search & Rescue Centres*

Ref: KMA/SS/1/2

Committee Observations:

The Committee made the following observations:

1. The Professional opinion was prepared on 10th June 2016 and NOT 10th June 2017. The valuation was dated 31st May 2016 and NOT 21st July 2016 as reported.
2. The valuation report (dated 31st May 2016) was therefore received before the professional opinion was prepared on 10th June 2016.
3. The errors in dates should have been corrected during the audit process and should not have escalated to an audit query.

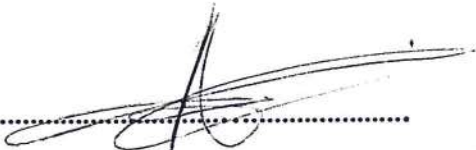
MIN/PIC/474/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/475/2019: ADJOURNMENT

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

Signed



The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date.....

09/17/2019

MINUTES OF THE 53RD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 15TH AUGUST, 2019 IN THE CONFERENCE ROOM, ENGLISH POINT MARINA AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
3. The Hon. Gladys Wanga, MP
4. The Hon. Joash Nyamache Nyamoko, HSC, MP
5. The Hon. Raphael Bitta Sauti Wanjala, MP
6. The Hon. Justus Kizito Mugali, MP
7. The Hon. Omar Mohamed Maalim Hassan, MP.
8. The Hon. Paul Kahindi Katana, MP
9. The Hon. Thuku Zachary Kwenya, M.P
10. The Hon. Babu Owino Paul Ongili, MP
11. The Hon. Mary Wamaua Njoroge, MP
12. The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. John Muchiri Nyaga, M.P
3. The Hon. Mohamed Hire Garane, M.P.
4. The Hon. Rashid Kassim Amin, MP
5. The Hon. Purity Wangui Ngirici, MP
6. The Hon. (Prof.) Mohamud Sheikh Mohammed

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

IN ATTENDANCE

- | | | |
|-----------------------|---|------------------------------------|
| 1. Mr. Justus Okumu | - | Ag. Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Mr. Herrif Njoroge | - | Manager, Audit |
| 4. Mr. Peter Ruteere | - | Inspectorate of State Corporations |

MIN/PIC/462/2019: PRELIMINARIES

The Chairperson called the meeting to order at ten minutes past ten O'clock followed

by a word of prayer.

MIN/PIC/463/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA PORTS AUTHORITY

Capt. William K. Ruto, appearing on behalf of the Kenya Ports Authority Managing Director Mr. Daniel Manduku, accompanied by Mr. Patrick Nyoike (General Manager, Finance), Mr. Addraya Denna (General Manager, Board of Directors), Eng. Rashid Salim (General Manager, Engineering Services), Eng. Vincent Sidei (General Manager, Infrastructure Development), Mr. Daniel Ogutu (General Manager, Human Resource and Administration), Mr. Edward Kamau (General Manager, Corporate Services), Mr. Geoffrey Kavate (Head of Financial Accounting), Mr. Muhammad Hariz (Accountant), Ms. Halima Noor (Asst. Accountant) and Ms. Margaret Shali (asst. Accountant)

The Committee was informed that the Managing Director of Kenya Port Authority was unavailable and could not attend the meeting.

The Committee resolved to adjourn the meeting due to the unavailability of the Accounting Officer who was the only one mandated to respond to audit queries in the reports of the Auditor General on the audited accounts of the Authority.

MIN/PIC/464/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/465/2019: ADJOURNMENT

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

Signed

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

Date..... 09/10/2019.....

MINUTES OF THE 52ND SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY 14TH AUGUST, 2019 IN THE CONFERENCE ROOM, ENGLISH POINT MARINA AT 3.00 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Joash Nyamache Nyamoko, MP
3. The Hon. Raphael Bitta Sauti Wanjala, MP
4. The Hon. Justus Kizito Mugali, MP
5. The Hon. Omar Mohamed Maalim Hassan, MP.
6. The Hon. Paul Kahindi Katana, MP
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. Babu Owino Paul Ongili, MP
9. The Hon. Mary Wamaua Njoroge, MP
10. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
11. The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
3. The Hon. John Muchiri Nyaga, M.P
4. The Hon. Mohamed Hire Garane, M.P.
5. The Hon. Rashid Kassim Amin, MP
6. The Hon. Gladys Wanga, MP
7. The Hon. Purity Wangui Ngirici, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

IN ATTENDANCE

- | | | |
|-----------------------|---|------------------------------------|
| 1. Mr. Justus Okumu | - | Ag. Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Mr. Herrif Njoroge | - | Manager, Audit |
| 4. Mr. Peter Ruteere | - | Inspectorate of State Corporations |

MIN/PIC/451/2019: PRELIMINARIES

The Chairperson called the meeting to order at three O'clock followed by a word of

prayer.

MIN/PIC/452/2019: EXAMINATION OF AUDITED ACCOUNTS OF COAST WATER SERVICES BOARD

Mr. Jacob Torrut, the Managing Director of the Coast Water Services Board accompanied by Ms. Harriet Ngeera (Finance Manager), Mr. Martin Tsuma (Technical Manager) and Mr. Stanslaus Jira (Procurement Manager) appeared before the Committee to adduce evidence on the audited accounts of the Coast Water Services Board for financial year 2015/16 to financial year 2017/18.

MIN/PIC/453/2019: PROPERTY PLANT & EQUIPMENT FY 2015/16

The property, plant and equipment balance of Kshs 1,356,447,793 as at 30th June 2016 excludes assets of undetermined value transferred to the board from the Ministry of Water and irrigation and National Water Conservation and Pipeline Corporation pursuant to Legal Notice No.101 of 12th August 2005.

Additionally, land for WaSSIP project (Mkanda dam) was not factored in the financial statements and was not updated in the fixed asset register.

Further, more than a third of the Board's land in Shanzu has been encroached by private developers.

In the circumstances, the property and equipment balance of Kshs 1,356,447,793 as at 30th June 2016 could not be ascertained.

Management Response

Coast Water Services Board inherited assets previously owned by Ministry of Water and Irrigation and National Water Conservation and Pipeline Corporation as per Act 2002. However, the inherited assets were not verified and also the handing over documents were not signed and therefore the asset listing had not confirmed.

The board complied an asset inventory of all assets handed over for verification Also the board has in place an asset register of all assets acquired since inception and this have been incorporated in the Financial statements.

The final process of verification for handover is being handled by a task force composed of members from the ministry of water, CWSB and National pipeline corporation and the final report is awaiting the Direction of the Ministry

The land acquired under Mkanda Dam was way leave for the dam from people who had encroached the same as a result the Dam now has a large service area which has been fenced off by the board. No title was pursued as this is a community project which has already been handed over back to the county after rehabilitation. The acquisition was factored in the financial statements under resettlement compensation expense both for WaSSIP and Mkanda Dam.

The Shanzu land under private developers is in the Asset Inventory for assets handed over so as to facilitate the process of transfer. CWSB has obtained CAVIETS on the Shanzu land among others and the process of recovery is ongoing. CWSB has engaged NLC on land issues and CAVEAT have been obtained on all land.

Committee Observations

The Committee made the following observations:

1. The inherited assets previously owned by Ministry of Water and Irrigation and National Water Conservation and Pipeline Corporation were not verified and also the handing over documents were not signed and therefore the asset listing had not confirmed.
2. The matter was handled in the 21st Report of the Public Investments Committee on audited accounts of State Corporations.
3. CWSB has engaged NLC on land issues and caveats have been obtained on all their land as per the recommendations of the 21st PIC Report. Of the 53 contested pieces of land, 40 were in the Shanzu area.
4. The Mkanda dam project was a community project that was completed and handed over to the community.

Committee Resolution

Management should follow up with the relevant authorities to secure titles for the land.

MIN/PIC/454/2019: TRADE AND OTHER RECIEVABLES FY 2015/16 TO FY 2017/18

2.1 Water Debts

Included in the amount owed to the board was long overdue debts of Kshs 84,427,767 due from Mombasa water Company and no reason has been provided as to why recovery is not taking place.

2.2 Salary Advances and Imprest

Included in the receivables was Kshs 4,807,409 overdue imprest which were yet to be recovered. As at 30th June 2016, salary advances totaling Kshs 2,312,284 were outstanding unrecovered

Management Response

The board has been facing huge challenges in collecting the pending water bills and when pressure is exerted to the water providers to pay by way of disconnection, the matter gets political and this makes it difficult for the board to collect. In 2016 the board engaged directly with the counties in an effort to collect the debt and the counties made undertakings to clear the bills. However, the counties failed to owner their undertaking despite several follow ups. The board resolved to engage the services of a debt collector to assist in collecting the old debt and currently the progress is being awaited from the debt collector.

Out of the outstanding imprest amount, Kshs 2,687,640.00 was in respect to staff who had left the Board through natural attrition and other ways and this has been provided for in the Financial statements accordingly. The balance of Kshs 2,119,769 has been accounted for accordingly as it related to staff who were out of station on official duty at close of the Financial Year.

Salary Advances is given to the staff on a continuous basis as per the existing Human Resource Policy and recovery is a continuous process through the payroll. The balances not recovered as at 30th June 2016 were shown in the financial statements as debtors and this is as per the Act.

Committee Observations

The Committee made the following observations:

1. The Board engaged directly with the counties which made undertakings to clear the bills. However, the counties failed to own their undertaking despite several follow ups.
2. The board resolved to engage the services of a debt collector to assist in collecting the old debt and currently the progress is being awaited from the debt collector.
1. Of the outstanding imprests queried, Kshs 2,119,769 has been accounted for by staff who were out of station on official duty at close of the financial year. Kshs 2,687,640.00 was in respect to staff who had left the Board through natural attrition.

Committee Resolutions

The Committee made the following resolutions:

1. The Board should sue Counties which undertook to clear their long outstanding water bills but had failed to do so.
2. Management should provide details of the outstanding imprest and unrecovered salary advances to show current status.
3. Management should seek write off for imprest held by deceased staff.

MIN/PIC/455/2019: TRADE & OTHER PAYABLES FY 2015/16 TO FY 2016/17

3.1 Unremitted Deductions

As at 30th June 2016, there was unremitted statutory and other deductions of Kshs 61,587,916 and also Kshs 94,496,967 in respect to the paymaster general.

3.2 Audit Fees

The audit fee was not reconciling with an amount of Kshs 396,519 between the records of the Auditor general and the records maintained by CWSB.

Management Response

This situation was greatly contributed by the failure by WSPs to pay their bills in full with collection efficiency being about 50%

As at this time the board was not receiving any recurrent budget support from the Treasury and there was no other way of settling the bills. During the F/Y 2018-2019, the board was allocated recurrent budget support. This has greatly supported clearance of the outstanding statutory obligations.

The office of the auditor general was requested to submit their statement for reconciliation. The amount to be settled once reconciliation is completed.

Committee Observations

The Committee made the following observations:

1. The Board's financial situation affected the ability to settle audit fees.
2. Reconciliation between the Board and the auditor was underway to determine the audit fees due.
3. The Board is currently meeting its statutory obligations.

MIN/PIC/456/2019: WORLD BANK LOAN FY 2015/16 TO FY 2017/18

Repayment of the loan from World Bank was yet to commence. The loan is being translated using transactional rates rather than closing rate.

Management Response

Repayment of the loan was pegged on water payment by Water Service Providers (WSPs) and a loan repayment component was factored in the approved water tariff. However, WSPs have not been meeting their obligations in respect to bulk water payments.

This situation made it difficult for CWSB to service the loan since there no other source of income to be applied for loan repayment. Provisions were made through water Act 2016 and tariffs for the period 2017-2018 to 2019-2020 for WSPs adjusted but for bulk water to allow for loan repayment but still the water companies could not remit any amount for loan.

Repayment is expected to commence once the appointed Debt collector fulfills is obligation.

On loan translation, the loan amount is recognized by CWSB based on actual amount in Kshs currency

Committee Observations

The Committee made the following observations:

1. The Board's financial situation affected the ability to service the loan obligations.
2. The loan amount is recognized by CWSB based on actual amount in Kshs currency

Committee Resolution

The Committee made the following resolution:

The Board should disconnect water to Counties that are not paying their water bills as the lack of revenue was impacting the Board's ability to meet its financial obligations.

MIN/PIC/456/2019: BOARD EXPENSES FY 2015/16 TO FY 2016/17

The statement of comprehensive income indicated that Kshs 19,617,680 had been incurred as board expenses against a budget of Kshs 15,000,000,000. The approval for the excess expenditure of KShs. 4,617,680 was not availed for audit verification.

The board members were observed to have attended public events and other unplanned activities thus incurring expense outside the board calendar amounting to Kshs 5,129,931 for the year ended 30th June 2016.

The number of board members was also noted to be in excess of the maximum of 7 that is required by Mwongozo code. Chapter 1 paragraph 1.1

Management Response

The board expenditures were based on approved Board calendar for the Year. The budget for the board was adjusted by five million after the board was fully constituted and the same was approved by the full board.

Board members are appointed through the parent ministry at an institutional level, CWSB does not have any direct role in the appointment of board members. This is by the appointing authority as the law provides. However, State Corporation Act section 6(1) has a provision of seven board members in addition to the Chairman, Chief Executive and representatives from the National Treasury and the parent ministry. Mwongozo basically provides guidelines for the best practices but it is not law. The current board is composed of eleven members including the representative of the national treasury and the parent ministry. It is also noted that in the introductory page of the MWONGO code of governance for state corporations, it is stated that 'in the event that the provision of this code are in conflict with any sector specific code of governance, the higher standard shall prevail.

Committee Observations

The Committee made the following observations:

1. The budget for the board was adjusted by five million after the board was fully constituted and the same was approved by the full board.
2. The current board is composed of eleven members including the representative of the national treasury and the parent ministry.
3. The State Corporation Act section 6(1) has a provision of seven board members in addition to the Chairman, Chief Executive and representatives from the National Treasury and the parent ministry. Under MWONGO code of governance for state corporations, it is provided that 'in the event that the provisions of the code are in conflict with any sector specific code of governance, the higher standard shall prevail.

MIN/PIC/457/2019: OTHER MATTER FY 2015/16

1.0 Staff acting for More than 6 months

The board had 6 staffs in acting capacity for more than 6 months which was against the operating guidelines.

Management Response

The staff were in acting capacity awaiting appointment of a full board of Directors to undertake recruitment for the position.

These positions have now been substantially filled.

The Committee made the following observations:

The staff who were in acting capacity were awaiting appointment of a full board of Directors to undertake recruitment for the position and the positions have now been substantially filled.

MIN/PIC/458/2019: OTHER MATTER FY 2016/17

1.0 Budget Control and Performance

1.1 Revenue Budget

During the year under review, the Board's revenue budget was Kshs 1,411,185,216 against actual collections of Kshs 2,063,618,780 (146%), thus resulting to over collection of Kshs 652,433,564.

As the collection grants received from the Government was more than double the budget amount by 601,676,066 or 166%. Also, total other incomes exceeded the budgeted amount by Kshs 3,874,909 of 93%.

Management Response

As was noted in the audit observation the budget for revenue was within expenditure forecast. However, during the year under review more funds were received from the treasury through the parent ministry to cater for emerging issues like drought, Equalization funds, Priority projects among others hence the difference in receipts as these funds were not captured in the forward budget.

1.2 Expenditure Budget

Over-Expenditure

During the year under review, the Board had budgeted to spend a total of Kshs 1,487,463,891 on its various programs and activities. However, the Board spent Kshs 1,741,801,426, thus exceeding the overall budget expenditure by Kshs 254,337,535 or 17%.

During the year under review, the Board had budgeted to spend Kshs 15,948,000 on four (4) activities and programs but ended up actually spending KShs. 245,075,285 resulting to over absorption of Kshs 229,127,285 or 1,437%.

The Board has not provided a revised budget for approval of the over expenditure of Kshs 229,127,285 or 1,437%.

Management Response

This was not over expenditure but project related costs under World Bank Funding and the same had been approved under the World Bank budget approval under GOK counterpart funding for World Bank operations and the Contracted Professional services relates to Consultancy services for supervision of the said projects.

Under Expenditure

Under-Expenditure During the year under review, the Board had budgeted to spend KShs. 340,070,304 on 28 activities and programs but ended up actually spending Kshs 227,995,225, resulting to under absorption of Kshs 112,075,079 or 33%.

The management has not provided satisfactory explanation for the failure to utilize all approved budgetary provisions. Underutilization of budget results in non-implementation of planned activities and programs, resulting to unfinished work/activities/programs to the detriment of delivery of goods and services to the citizens of the Coast region.

Management Response

The under expenditure was as a result of less revenue received from sale of Bulk water to water companies.

Due to partial payments, the Board had no other source of revenue to meet the said budgeted expenditure as per the approved budget. What plans does management have to ensure programs approved are undertaken within financial year the activities are planned? Explanation is Satisfactory

Committee Observations

The Committee made the following observations:

1. During the year under review, CWSB received more funds from the Treasury through the parent ministry to cater for emerging issues like drought, and Equalization funds hence the difference in receipts as these funds were not captured in the forward budget.
2. Over expenditure but project related costs under World Bank Funding and the same had been approved under the World Bank budget approval under GOK counterpart funding for World Bank operations.
3. The under expenditure was as a result of less revenue received from sale of Bulk water to water companies so the Board had no other source of revenue to meet the said budgeted expenditure as per the approved budget.

MIN/PIC/458/2019: FINANCE COSTS FY 2017/18

Included in the statement of financial performance is finance costs consisting of interest incurred on three loans as per interest amortization schedule availed to support the expenditure. Two of the loans were from World Bank -IDA. However only two loan amortization scheduled for loans obtained from World Bank-IDA were availed.

Comparison of the loan amortization schedule and finance costs schedule supporting financial statements for the loans revealed a variance of Kshs.37,618,420 between interest as per loan amortization schedule and as disclosed in financial statements.

Management Response

The loan interest of KShs 72,169,028 was calculated by the board as observed using interest rates applicable as per loan agreements but not as per the treasury loan schedules and hence the difference. The interest difference will be adjusted in the next Financial year (2019) as per treasury amortization schedules.

Committee Observations

The Committee made the following observation:

The interest difference will be adjusted in the next Financial year (2019) as per treasury amortization schedules.

MIN/PIC/459/2019: ADMINISTRATIVE EXPENSES FY 2017/18

Depreciation charge of Kshs.170,143,747

The audit recalculation of depreciation charge for the year amounted to Kshs.110,278,473 resulting to reconciled nor explained variance of Kshs.59,865,274.

Management Response

As noted in the FY statements and as per audit observation, the recalculation for Depreciation was based on straight line basis. However the Depreciation charges reflected was computed on Reducing balance basis hence the difference.

MIN/PIC/460/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/461/2019: ADJOURNMENT

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

Signed

Date.....

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

MINUTES OF THE 51ST SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY 14TH AUGUST, 2019 IN THE CONFERENCE ROOM, ENGLISH POINT MARINA AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Joash Nyamache Nyamoko, MP
3. The Hon. Raphael Bitta Sauti Wanjala, MP
4. The Hon. Justus Kizito Mugali, MP
5. The Hon. Gladys Wanga, MP
6. The Hon. Omar Mohamed Maalim Hassan, MP.
7. The Hon. Paul Kahindi Katana, MP
8. The Hon. Purity Wangui Ngirici, MP
9. The Hon. Thuku Zachary Kwenya, M.P
10. The Hon. Babu Owino Paul Ongili, MP
11. The Hon. Mary Wamaua Njoroge, MP
12. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
13. The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
3. The Hon. John Muchiri Nyaga, M.P
4. The Hon. Mohamed Hire Garane, M.P.
5. The Hon. Rashid Kassim Amin, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

IN ATTENDANCE

- | | | |
|-----------------------|---|------------------------------------|
| 1. Mr. Justus Okumu | - | Ag. Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Mr. Herrif Njoroge | - | Manager, Audit |
| 4. Mr. Peter Ruteere | - | Inspectorate of State Corporations |

MIN/PIC/426/2019: PRELIMINARIES

The Chairperson called the meeting to order at ten O'clock followed by a word of

prayer.

MIN/PIC/427/2019: EXAMINATION OF AUDITED ACCOUNTS OF COAST DEVELOPMENT AUTHORITY

Dr. Mohamed K. Hassan, the Managing Director of the Coast Development Authority accompanied by Ms. Pamela Ngure (Manager, Finance and Accounts), Ms. Josephine Chikoloh (Senior Internal Auditor), Ms. Dorris Juli (Internal Auditor), Ms. Muzny Ahmed (Coordinator, Mombasa County), Ms. Dullu Amuma (Accountant), and Ms. Monicah Chepkemoi (Accountant) appeared before the Committee to adduce evidence on the audited accounts of the Authority for financial year 2012/13 to financial year 2017/18.

MIN/PIC/428/2019: GOING CONCERN FY 2012/13

As at 30th June, 2013 the Authority realized a deficit of 191,532,553 (2011/2012 Kshs. 132,158,890) Which reduced its total funds to Kshs. 560,248,722 (2011/2012-624,403,967). In addition, the statement of financial position reflects a net current liability of Kshs.27, 332,056 clearly indicating that the Authority is unable to settle its obligation as they fall due.

Included in the Kshs. 191,532,553 deficit is a loss Kshs. 35,915,251 realized under the coral block project as compared to a profit of Kshs. 28,102,029. in the previous financial year. No explanation was provided for the huge loss. The financial statements have therefore been prepared on going concern bases; which assumes continued support from the Government and the donors.

Management Response

The deficit in the year under review was as a result of the following;

In 2011/2012, the Authority had undergone restructuring and recruited Chief Managers and Managers; however, the statutory payments were not remitted resulting in huge balances in payroll liabilities.

(Annex1) Letter from Permanent Secretary Ministry of Regional Development, ledger/TB extract)

Coral block expenses incurred at the sites increased due to expenses from the previous year posted in the year under review. *(Annex 1 Ledger Extract)*

Committee Observations

The Committee made the following observations:

1. The Authority received a supplementary budgetary funding of Kshs. 269,000,000 in financial year 2015/2016 and cleared pending liabilities.
2. The Authority has no pending liability at present.

MIN/PIC/429/2019: COMPLIANCE WITH LAW FY 2012/13

Although the mandate and operating framework for the Authority is provided under Coast Development Authority Act, Cap 449 the Authority has undertaken activities that are in contravention of the Act and outside their mandate as detailed below:

- i. The Authority though not in the business of lending monies, advanced to a private Company an amount of Kshs. 1,018,317 with no clear lending and repayment terms. The private entity is no longer in operation.

The Authority in a bid to broaden its financial base in its early years of its formation (1992-1993) registered a subsidiary company whose main objective was to venture into commercial activities and generate revenue to assist in financing Authority's operations. The then Managing Director wrote to the Solicitor General regarding the same (Annex 2- MD letter ref 020 of 15 Jan 1993) and a further reply from the Solicitor General on the same copy (Annex 2 letter (PR/BPK SG01 on 19th Jan 1993)

The company was later registered with the registrar of Company-Registration no.C.52001. (Annex 2 Registration certificate)

Authorized share capital of 1,000 shares each of Kshs. 1,000. The Parent Ministry then was to subscribe to one share and the Authority was to own 999 shares. In this regard, the Authority gave seed money to the company to support its initial operations. The same operations of the Pambazuko company were discussed in the PIC meeting of 19th September 1996 as quoted by the Auditor General (Annex 2 letter ref. PIC/CDA/167/ (10)) requesting for the financial statement for the same company as directed by PIC. The financial statement was forwarded to the Auditor General (Annex 2 letter ref.CDA1/2/8/VOL.11/29dated 2/4/1997). However, the authority realized minimal return from this investment as per the financial statements of the year (Annex 2 1993/1994/1995 attached.)

There was also evidence of inter-transfers of funds from Pambazuko Company to CDA confirming the inter-linkages of the entities. None the less, very minimal returns were realized and the Authority discontinued into this venture. (Annex 2. copy of bank statement)

- ii. The Authority advanced Ksh 1.735,135 to an insolvent Local Authority for construction of a local stadium without any proper documentation on terms and conditions of advance. In addition, the Authority is unlawfully holding an uncharged title to public land as security for the advance for the Local Authority. The Local Authority is no longer in existence as it ceased on 4th March 2013 rendering the recovery of the amount doubtful.

Under the circumstances, the Authority applied public and donor funds on activities that are not within their mandate and in contravention of Coast Development Authority Act Cap 449.

Management Response

Ukunda showground was owned by the Kwale Harambee Show Committee and the then Managing Director was the Chairperson of the Show Committee. The show committee undertook to refurbish showground based on BQ's from the District Works Officer Kwale.

(Annex 2 BQ for refurbishment).

CDA entered into an agreement to advance the Show Committee Ksh 1,650,000 EL-Amin Trading Company was given the contract to refurbish the showground. Attached please find copies of agreements signed between the EL- Amin and The Kwale Harambee Show Committee for your verification. *(Annex 2 -Contract between Kwale Show committee and El Amin)*

The Authority is holding the title of land as collateral.

Committee Observations

The Committee made the following observations:

The audit query was considered by the Public Investments Committee in 1996 and recommendations adopted by the House.

Committee Resolution

Management should fast track the process of winding up the company.

MIN/PIC/430/2019: NON-COMPLIANCE WITH VALUE ADDED TAX ACT FY 2016/17

The Authority is registered for VAT and is supposed to remit monthly returns to the Kenya Revenue Authority on all input and output tax incurred or charged by the Authority. The Authority constantly charged VAT on most of its sales and is also charged VAT on most of the purchases/ expenditure but has never filed the VAT returns as required by the law, neither do they maintain any records of both input and output taxes, no provision to cover for unpaid principle VAT amount and the penalties that may be levied by KRA have been incorporated on these financial statements.

Management Response

The Authority is registered as a Withholding Tax Agent on I-Tax. The Authority withholds VAT from all supplier payments and files the same promptly on I-Tax. The Withheld VAT is paid immediately to KRA.

Committee Observations

The Committee made the following observations:

The Authority remitted VAT to the Kenya Revenue Authority and had cleared all statutory dues with KRA.

MIN/PIC/431/2019: INAPPROPRIATE PAYMENT OF BONUS FY 2012/13

The Authority paid bonus to staff and Directors amounting to Kshs. 2,590,000 however, the payment was not supported by achievements of previously set objectives, since the financial year deficit of Kshs. 191,532,553 would not warrant payment of any bonus. In addition, an amount of Kshs. 300,000 withdrawn for paying the bonus could not be adequately supported. Consequently, the propriety of the bonus expenditure of Kshs. 2,890,000 could not be ascertained.

Management Response

The Authority paid Kshs. 2,590,000 as bonuses to staff in the financial year under consideration due to improved performance. There were no target objectives upon which the bonuses were paid.

Committee Observations

The Committee made the following observations:

The Authority paid staff bonus of Kshs. 2,590,000 despite accumulating a deficit of Kshs. 191,532,553 in the financial year under consideration.

MIN/PIC/432/2019: PROPERTY, PLANT & EQUIPMENT FY 2012/13 TO FY 2013/14

As reported in the previous years, property plant and equipment balance of Kshs. 205,156,009 as at 30th June 2013 exclude the value of four (4) parcels of land located at various places in the Coast Region. The following issues were noted in respect to these parcels;

- (i) The land is yet to be surveyed, as the Authority is yet to settle the necessary survey fees.
- (ii) The Authority does not have in its possession any documentation as proof of ownership
- (iii) The rates payable on the land have neither been determined nor has it been provided for in the financial statements. Consequently, the carrying values of the property plant and equipment as stated in the financial statements as at 30th June 2013 could not be confirmed.

Management Response

All the Authority plots have all been surveyed and survey fees paid.

All the parcels of land owned by the Authority have necessary land documentation issued as follows:

- Kwale plot- Title
- Kilifi plot-Leasehold
- Tana River- Title
- Ijara- Allotment letter

- Hola plot (IFPP) - Title deed
- Masalani- letter of allotment
- Kwale Mwavumbo- Title deed
- Kwale kidimu- Title deed

All land rates have been paid to the relevant County Governments.

Committee Observations

The Committee made the following observations:

1. All the Authority plots have all been surveyed and survey fees paid.
2. All the parcels of land owned by the Authority have necessary land documentation.

MIN/PIC/433/2019: TRADE & OTHER RECEIVABLES FY 2012/13

- (i) The trade and other receivables balance of Kshs 34,570,009 includes an amount of Kshs. 30,655,905 in respect of outstanding imprest due from employees out of which Kshs. 7,006,888 is owed to the Authority by former staff. In addition, an amount of Kshs. 260,256 due from former staff has been outstanding for several years. Any provision that would have been necessary in relation to these uncertainties has not been incorporated in these financial statements.
- (ii) Also as reported in 2011/2012 financial year, the trade and other receivables include an amount of Kshs. 123,733 advanced to Regional Development Authorities, which has been outstanding for more than three years. There was no documentary evidence availed for audit in support of how the lending was done, and the terms and conditions for the lending.
- (iii) Similarly, as reported in the previous years, the trade and other receivables include an amount of Kshs 1,756,135 being funds advanced to Kwale County Council for the construction of a stadium at Ukunda showground. Information available however indicates that the construction work stalled owing to lack of funds. Although the Authority is holding uncharged land title deed for the showground as a security for the advance amounting to Kshs. 1,756,290, the recovery of the debt remains doubtful as realization of the security is not legally enforceable
- (iv) In addition, and as reported in the previous years, The Authority had in 1997 advanced an amount of Kshs. 1,018,317 to Pambazuko Development Co. Ltd, a private Company who has since ceased operating. The recovery of the advance to the Company is not clearly doubtful as the advance had clear lending terms nor was there any security to safeguard the Authority in case of default.

Under the circumstances, the accuracy and validity of the trade and other receivables balance of Kshs. 34,570,009 as at 30th June 2013 could not be confirmed.

Management Response

- (i) It is true that the Ex staff had uncleared imprests. These officers resigned from the Institution to take up jobs from other entities. However, they did not come back to clear with CDA. Follow up letters were sent to them advising on status of outstanding imprest and requesting them to immediately settle/ surrender on the same and necessary follow up are put in place on the same.

(Annex 6.1 Ex Staff Imprest List, Demand letters to Ex Staff)

- (ii) The debt was incurred during a meeting to prepare the Ministry and RDAs Strategic Plans in 2008 in a Mombasa Hotel. This was share of conference charges among Regional Development Authorities as paid by CDA on behalf of the other Regional Authorities as directed by the PS of the Parent Ministry. All the RDAs undertook to refund the Authority. The Authorities have not refunded the amounts yet despite reminder by the Permanent Secretary. The amounts outstanding are ;

Ewaso Nyiro North Development Authority- Kshs 58,000

Lake Basin Development Authority- Kshs 35,000

Tana and Athi River Development Authority- Kshs 30,733

(Annex 6.2 Ministry invite letter, reminder refund letter)

- (iii) Ukunda showground was owned by the Kwale Harambee Show Committee and the then Managing Director was the Chairperson of the Show Committee. The show committee undertook to refurbish showground based on BQ's from the District Works Officer Kwale.

(Annex 6.3 BQ for refurbishment).

CDA entered into an agreement to advance the Show Committee Ksh 1,650,000 EL- Amin Trading Company was given the contract to refurbish the showground. Attached please find copies of agreements signed between the EL- Amin And The Kwale Harambee Show Committee for your verification. (Annex 6.3 -Contract between Kwale Show committee and El Amin)

The Authority is holding the title of land as collateral.

- (iv) The Authority in a bid to broaden its financial base in its early years of its formation (1992-1993) registered a subsidiary company whose main objective was to venture into commercial activities and generate revenue to assist in financing Authority's operations. The then Managing Director wrote to the Solicitor General regarding the same (Annex 6.4- MD letter ref 020 of 15 Jan 1993) and a further reply from the Solicitor General on the same copy (Annex 6.4 letter (PR/BPK SG01 on 19th Jan 1993)

The company was later registered with the registrar of Company-Registration no.C.52001. (*Annex 6.4 Registration certificate*) Authorized share capital of 1,000 shares each of Kshs. 1,000. The Parent Ministry then was to subscribe to one share and the Authority was to own 999 shares.

In this regard, the Authority gave seed money to the company to support its initial operations.

The same operations of the Pambazuko company were discussed in the PIC meeting of 19th September 1996 as quoted by the Auditor General (*Annex 6.4 letter ref. PIC/CDA/167/ (10)*) requesting for the financial statement for the same company as directed by PIC. The financial statement was forwarded to the Auditor General (*Annex 6.4 letter ref.CDA1/2/8/VOL.11/29dated 2/4/1997*). However the authority realized minimal return from this investment as per the financial statements of the year (*Annex 6.4 1993/1994/1995 attached.*)

There was also evidence of inter-transfers of funds from Pambazuko Company to CDA confirming the inter-linkages of the entities. None the less, very minimal returns were realized and the Authority discontinued into this venture. (*Annex 6.3. copy of bank statement*)

Committee Observations

The Committee made the following observations:

1. The Authority had outstanding imprest due from employees out of which Kshs. 7,006,888 is owed to the Authority by former staff.
2. Kshs. 123,733 advanced to Regional Development Authorities had been outstanding for more than three years. There was no documentary evidence availed for audit in support of how the lending was done.
3. The recovery of the amount of Kshs 1,756,135 being funds advanced to Kwale County Council for the construction of a stadium at Ukunda showground is doubtful as realization of the security is not legally enforceable. The Authority is holding uncharged land title deed for the showground as a security for the advanced amount.

Committee Resolution

The Committee made the following resolutions:

1. The Authority should write to the current employers of the staff who left without clearing imprest and seek surcharge for the respective amounts.
2. Management should follow up with the Regional Development Authorities for recovery of the amounts due to CDA.

MIN/PIC/434/2019: TRADE AND OTHER PAYABLES FY 2012/13

The trade and other payables balance of Kshs. 98,337,921 as at 30th June 2013 includes creditors amounting to Kshs. 26,203,533 which have been outstanding for more than a year.

In addition, trade and other payables balance include an amount of Kshs. 9,418,110 being unremitted VAT payable, which has no supporting evidence. The balance decreased from Kshs. 17,241,584 as at 30th June 2012 to Kshs. 9,418,110 as at 30th June 2013 but the movement of Kshs. 7,823,474 could not be explained or supported.

Under the circumstances, it has not been possible to ascertain the accuracy and validity of the trade and other payables balance of Kshs. 98,337,921 as at 30th June 2013.

Management Response

The Authority after its restructuring in 2011/12 had experienced some funding challenges and hence was not able to clear its pending bills for several years, these included PAYE, Pension and other suppliers. The same was communicated to the parent Ministry which forwarded to the treasury. However, CDA was not able to get additional funding to pay these debts as per then. (Annex 7 PS -Planning Letter And PS Treasury Reply). Management is putting all possible efforts to pay these debts from savings. CDA was advised that all pending bill accrued before 2014/15 be forwarded to the Ministry for transmission to the pending bill committee.

The VAT outstanding is with respect for supply of goods and services for the MISHDIP that is being Financed by the Italian Government. The Financing agreement committed the Government of Kenya to exempt all taxes on the project.

The amount was reflecting as outstanding because Treasury was yet to clear the DA1 forms submitted to them by the Authority

The amount outstanding decreased to Kshs 9,418,110 from Kshs 17,241,584 in 2011/2012 financial report due to posting of approved DA1 forms by the National Treasury.

Committee Observations

The Committee made the following observations:

1. Management is putting efforts to pay these debts and has forwarded all pending bill accrued before 2014/15 to the parent Ministry for transmission to the pending bill committee.
2. The Financing agreement committed the Government of Kenya to exempt all taxes on the project with respect to supply of goods and services for the MISHDIP project.

MIN/PIC/435/2019: PREPAYMENTS FY 2012/13

As reported in the previous years, included in the prepayments balance of Kshs. 1,297,332 as at 30th June 2013 is an amount of Kshs. 221,250 being an advance

payment for purchase of computers in the year 2009/2010. The computers have not been received to date. Available information indicates that the supplier has since closed down the business. In the circumstance, the recoverability of the amount of Kshs 221,250 or receipt of the computers is uncertain.

Management Response

In October 1996, the Authority ordered Olivetti typewriter valued at Ksh 537,827 from a supplier based in Mombasa and a down payment of Ksh 250,000 was made. Subsequently an Olivetti typewriter was delivered costing Ksh 28,750 and the firm closed their offices thereafter. All efforts to trace the Company and the owners have been futile. The same was communicated to Ministry as it kept recurring in CDA annual audit queries. The National Treasury has requested PPRA to debar following recommendation from the PIC as per the letter written to CDA by PPRA.

Committee Observations

The Committee made the following observations:

1. The matter has been previously handled by the Public Investments Committee.
2. The company was barred from conducting business with government by the PPRA.

MIN/PIC/436/2019: CASH AND BANK BALANCE FY 2012/13

Included in the net cash and bank balance of Kshs 24,334,399 as at 30th June 2013 is an amount of Kshs. 2,626,114 in respect of cash in hand at the coral block sales office whose cash count certificate and supporting documentation were not availed for audit.

In addition, as at 30th June 2012 the coral block sale office cash in hand of Kshs. 11,232,565 could not be supported and has neither been supported as at June 2013 there by invalidating the opening balance of these financial statements. Under the circumstances, the accuracy of the net cash and the bank balance of Kshs 24,334,399 as at 30th June 2013 could not be confirmed.

Management Response

CDA ventured into an income generating activities in order to broaden its revenue base Coral block production was one of those activities within Kilifi. The expenses incurred from the production site were not availed for posting in time. This delay caused these discrepancies. However, the necessary updating to reconcile this was done.

The amounts were reconciled and posted correctly. (Annex 9 Coral Block Ledger extract)

Committee Observations

The Committee made the following observations:

1. The amounts were reconciled and posted correctly.

2. The audit query was brought up due to delayed submission of relevant ledgers to the auditors during the audit cycle.

MIN/PIC/437/2019: NON-COMPLIANCE WITH STATUTORY REQUIREMENT FY 2013/14

Included in the balance of employee benefits obligation of Kshs. 81,866,239 as at 30th June 2014 under note 26 to the financial statements is unremitted staff pension contribution amounting to Kshs. 22,567,319. Similarly, possible penalties for non-compliance have not been accrued in these financial statements. In the circumstances, the management is in breach of the law.

Management Response

The Authority after its restructuring in 2011/12 had experienced some funding challenges and hence was not able to remit staff pension contribution on time for several years, continuous efforts to offset this shortfall was communicated to national treasury through our parent ministry (Annex 3.3 ref PS -Planning Letter and PS Treasury Reply). The authority paid the entire outstanding staff pension contribution amount upon receiving supplementary budget 2016/17 (*Annex 3.3 Payment voucher attached*)

Committee Observations

The Committee made the following observations:

1. The Authority had failed to remit statutory deductions amounting to Kshs. 22,567,319 due to lack of funding.
2. The Authority received a supplementary budgetary funding of Kshs. 269,000,000 in financial year 2015/2016 and cleared the statutory payments due.

MIN/PIC/438/2019: RECEIVABLES FROM EXCHANGE TRANSACTION FY 2013/14

Included in the balance of outstanding imprest of Kshs 35,507,001.00 are multiple imprests held by 9 (Nine) staff amounting to Kshs. 22,816,171. The audit revealed that the Imprests were issued before surrender of the previously imprest. It is not clear why the Imprest were Issued before the previous imprests were surrendered contrary to the government Financial Regulations and procedures. In the circumstance, the Irregularity and propriety of outstanding imprest of Kshs 22,816,171.00 as at 30th June 2014 could not be confirmed.

Management Response

These imprest were issued on special circumstance to several project field staffs who were in the Income Generating Activities projects which were under strict timelines in distant and remote locations.

These imprests were fully surrendered/recovered from these officers. (*Annex 5.2 Payroll Imprest recovery list*)

Committee Observations:

The Committee made the following observations:

1. The Authority issued imprest to staff before surrender of the previously held imprest contrary to the government Financial Regulations and procedures.
2. The imprests were fully surrendered/recovered from the officers.

MIN/PIC/439/2019: EXCESS EXPENDITURE FY 2014/15

As reflected in the statement of comparison and actual amount, the Authority had an approved total budget of Kshs, 208,900,000. However during the year under review, the Authority spent Kshs. 481,000,000 resulting to excess expenditure of Ksh. 272,100,000. There was no evidence availed for audit review to confirm that parent Ministry authorized the excess expenditure and approved by the National Treasury in line with Public Finance Management Act, 2012. In the circumstances, the management was in breach of the law.

Management Response

The Authority after its restructuring in 2011/12 had experienced some funding challenges and hence was not able to clear its pending bills for several years. These included PAYE, Pension and other suppliers. The same was communicated to the parent Ministry which forwarded to the Treasury. However, CDA was not able to get additional funding to pay these debts. (Annex 2 PS -Planning Letter And PS Treasury Reply). The Authority total expenditure for 2014/2015 included both capital and recurrent expenditure (Kshs. Kshs.206M Development Grants, 58M Recurrent 8.7M Donor Funds KCDP and 50M AIA). The deficit of 157M arose as a result of underfunding leading to unremitted statutory deduction. There were also expenditure incurred in the previous year whose payments were posted in current year under review.

Committee Observations

The Committee made the following observations:

The excess expenditure of Ksh. 272,100,000 was used to clear pending bills accumulated over several years and included payments for PAYE, Pension and other suppliers.

Committee Resolution

The Committee made the following resolution:

Management was asked to provide a breakdown of the expenditure for the financial year in comparison with the budgetary allocation for the year to the auditors for audit verification.

4.2 Motor Vehicles

It was observed that 3 motor vehicles were repossessed by Auctioneers during the year under review for non- settlement of debt owed by the Authority. The matter is still pending in court and the possible cost associated with this litigation has not been disclosed neither provided for in this financial statements.

Consequently, the accuracy of the current value of property, plant and equipment balances of Ksh. 203,775,626 as at 30 June 2015 could not be confirmed.

Management Response

Murphy Merchants Auctioneers took possession of the motor vehicles over a non-settlement of debt owed to MS Kithimba & Associates amounting to Kshs 5.5m The Authority cleared the outstanding amount of Kshs 5.5m after losing the appeal in court. Thereafter the Auctioneer demanded accumulated storage fees for the withheld motor vehicles amounting to Kshs.11m. The Authority disputed the amount and the matter is still pending in court. (Evans M. Maabi T/A Murphy Auctioneer vs CDA). The Authority sought guidance from the Attorney General who gave direction. Currently, the Auctioneer has proposed to the Authority a sum of Kshs.4.5m which the Authority is still considering to negotiate downwards. (*Annex 4.2 Case documents and correspondence from the Attorney General.*)

Committee Observations

The Committee made the following observations:

1. The Attorney General had advised the Authority to settle the amount with the auctioneers and conclude the matter.
2. The vehicles in question have decreased in value over time.

Committee Resolution

The Committee made the following resolutions:

The Authority should negotiate with the auctioneers and settle the matter.

2. Compensation of Employees

The statement of receipts and payments for the financial year ended 30th June 2016 reflects employees' costs of Kshs. 129,153,256. However, the amount budgeted for compensation of employees for the year under review was Kshs. 58,000,000, thus resulting in an over expenditure of Kshs. 71,153,256. The management has not provided satisfactory explanation for the excess expenditure of Kshs. 71,153,256 and further for the over-expenditure has not been availed for audit review.

Consequently, the validity and legality of the expenditure of Kshs. 71,153,256 on employees cost for the year-end 30th June 2016 cannot be confirmed.

Management Response

The Authority after its restructuring in 2011/12 had experienced some funding challenges for several years, consulted efforts to offset this shortfall was communicated to national treasury through our parent ministry.

The over expenditure was funded through a supplementary budget and the recurrent printed estimates were enhanced in the subsequent years. (Annex 2 Ref PS -Planning letter and PS Treasury reply).

The Committee made the following observations:

The over expenditure was funded through a supplementary budget and the recurrent printed estimates were enhanced in the subsequent years.

MIN/PIC/442/2019: PROJECT EXPENSES FY 2015/16

Note 10 to the financial statements for the year ended 30th June 2016 reflects project expenses balance of Kshs. 45,808,738. However, the schedules availed for audit review indicated an amount of Kshs. 47,463,898, resulting in an explained variance of Kshs. 1,655,160.

In addition, budgets for the projects were and not availed for audit and as a result, it was not clear how the funds were allocated to the projects.

Further, Note 6 to the financial statements reflects other income of Kshs. 31,344,546, which directly relates to these projects. There was therefore a net outflow of resources from the projects of Kshs. 16,119,352. This brings into question the viability and sustainability of the projects.

Further, requisitions and approval for the recruitment of the casual workers at a cost of Kshs. 11,970,437 and which costs are included in the project expenses were not availed for audit review. In consequence, the accuracy, validity and propriety of the projects expenditure of Kshs 45,808,738 for the year ended 30th June 2016 could not be ascertained.

Management Response

CDA ventured into income generating activities in order to broaden its revenue base. The projects were budgeted in the annual budget 2015/16 under the development budget of Kshs. 8.8B as part of Capital Projects for the financial year

The project expenses balance relates to income generating projects and totals to Kshs 45,808,738. However during the audit exercise schedules provided were not matching the financial statement. The correct matching schedules have since been provided.

Schedules availed for verification (*Annex 10. Project Lead Schedules*)

The casuals are engaged as part of community support programme to provide employment to the local youth in the project sites. This initiative has helped reduce incidences of crime and drug abuse in the area.

A requisition from the Ag manager Business development department to the Managing Director was done in 1st July 2016 for the youth engagement.

Committee Observations

The Committee made the following observation:

The Authority provided two sets of schedules which did not tally; the first one was provided during the audit exercise schedules did not matching the financial statement and a subsequent matching schedules were provided.

Committee Resolution

The Committee made the following resolution:

Management should provide details on the each of the projects including the project scope, amount budgeted, amounts spent, and completion status of each project.

MIN/PIC/443/2019: AUDIT FEES FY 2015/16

Included in trade and other payables from exchange transactions balance of Kshs. 39,175,235 as at 30th June 2016 is an audit fees payable balance of Kshs. 1,429,360 owed to the office of the Auditor General. However, this amount has not been disclosed separately in the financial statements and further has been outstanding since the 2013/2014 financial year.

Management Response

The amount of Kshs. 1,429,360 owed to the office of the Auditor General was reflected as part of creditors under trade and other payable from exchange transactions Kshs. 39,175,235. Currently all audit fees are paid as they fall due.

Committee Observations

The Committee made the following observation:

The amount of Kshs. 1,429,360 owed to the office of the Auditor General was reflected as part of creditors under trade and other payable from exchange transactions. The amount has since been cleared.

Committee Resolution

The Committee made the following resolution:

Audit fees payable to the Office of the Auditor General should be paid when they fall due.

MIN/PIC/444/2019: COMMUNITY PROJECTS FY 2015/16

Note 18 to the financial statement reflect community projects/ work in progress balance of Kshs. 561,887,759. However, analysis of this items /projects indicates that some of them have been outstanding for over three years. Management has not explained the reasons why projects totaling Kshs. 79,531,920 have not recorded any movement at over the years and why they have not been handed over to the communities they were intended to benefit. Further, as most of the projects take more than one year to complete, they have been wrongly classified under current asset, rather than under property, plant and equipment as prescribed under the International Public Sector Accounting Standard 1. Consequently, the accuracy, validity and completeness of the community project balance of Kshs. 561,887,759 as at 30th June 2016 cannot be ascertained.

Management Response

The amount of Kshs. 561,887,759 relates to projects implemented for and on behalf of the community. After completion, these projects are handed over to the community and subsequently removed from the Authority's books.

The projects with no movements have not received adequate funding and are yet to be complete. The budget allocation for capital project is project specific and transfer of funds from project is strictly prohibited by the National Treasury and requires approval. Furthermore, the amounts allocated were inadequate to complete the projects.

Committee Observations

The Committee made the following observations:

1. The projects that have been completed are handed over to the community and subsequently removed from the Authority's books.
2. Projects that have not received adequate funding are yet to be complete.

MIN/PIC/445/2019: RECEIVABLES FROM NON-EXCHANGE TRANSACTIONS FY 2016/17

The statement of financial position reflects receivables from non-exchanged transactions balance of Kshs, 51,965,210 at detailed in note 17 of the financial statement for the year ended 30th June 2018. Included in the balance is Kshs. 2,172,938 PAYE, Kshs.4, 800 Union, Kshs, 380,945 VAT receivable. However, ledgers availed for audit review reflected negative balances of the same figures. This resulted to netting off assets and liabilities which is prohibited by the IPAS1 paragraph 48 which states that assets and liabilities, and revenue, and expenses shall not be offset unless required or permitted by an IPAS.

In the circumstance, the accuracy and validity of the receivables from non-exchange transactions balance of Kshs.51, 965,210 as at 30th June 2018 could not be confirmed.

The statement of financial performance reflects board expenses balance of Kshs.7,134,558 as detailed in note 9 to the financial statements for the year ended 30th June 2018. However, re-computation of the board expenditure schedule amounted to Kshs.6,282,708 resulting to a variance of Kshs.851,850 and which has not been explained or reconciled.

In the circumstances, the accuracy and completeness of board expenses balance of Kshs. 7,134,558 as at 30th June 2018 could not be confirmed.

Management Response

The balances on PAYE and KUCFAW relate to double posting of monthly staff deductions which have been reconciled and corrected.

The VAT balances receivables relates to the VAT element for the supplier invoice booked in the system. The same has not been claimed from KRA.

The Board expenses for FY 2017/2018 was Ksh 7,134,558. The correct detailed board expenses analysis schedule has been availed for verification. (Annex 3.3 -Board Expense Analysis).

Committee Observations

The Committee made the following observations:

1. The balances on PAYE and KUCFAW relate to double posting of monthly staff deductions which have been reconciled and corrected.
2. The VAT balances receivables relates to the VAT element for the supplier invoice booked in the system.
3. The analysis schedule for the board expenses of Ksh 7,134,558 has been availed for verification.

Committee Resolution

MIN/PIC/446/2019: PROPERTY, PLANT AND EQUIPMENT FY 2017/18

6.2 Land Balance Payables

The statement of financial position reflects trade and other payables from exchange transaction balance of Ksh. 25,874,990 as at 30 June 2018. Excluded in this balance is Ksh. 5,199,500 with respect to land balance payables. Records availed for audit reveal that the purchase price on one of the pieces of land (Mwapula/Magogoni plot No. 432/1211) of 49 acres was for Ksh. 9,800,000 as per the sales agreement, and the Authority paid Ksh. 4,600,500 and had an outstanding balance of Ksh, 5,199,500 as at 4th August 2014. However, as per Land report tabled at the 76th Full Board meeting held on September 2018, it was reported that the total purchase price of Ksh. 9,800,000 had been paid but the land was unscrupulously sold by a squatter to a private investor. The case is before the court awaiting determination.

Consequently, the accuracy and completeness of the carrying values of the property, plant and equipment totaling to Ksh. 410,600,629 as at 30 June 2018 could not be confirmed.

Management Response

The Authority purchased two pieces of land Mwapula/Magogoni plot no 432 measuring 22 acres at a purchase price of Ksh 4.4m and plot no 1122 measuring 27acres at a purchase price of Ksh 5.4 M at Jaribuni, Kilifi County. The land was to be used as a proposed Ballast Crushing project. The Sale Agreements were signed on 27th Feb 2012 for the two plots. The 1st instalment of kshs. 4,000,000,000 was paid after signing the agreement. The balance was to be paid in quarterly basis after the first installment.

After the initial payment, the Authority took possession of Plot No 432 to start boulders extraction. Immediately thereafter conflict on the ownership of land among the community members followed and CDA staff were attacked and chased by rowdy community members from the site. The same matter on the ownership dispute went to the High Court of Malindi.

The court ruled in the community member's favour. The Authority appealed against this judgement in the Court of Appeal. (Case No.ELC No.35 & 146/2014)

(Annex 6.2 Sale Agreement, Payment Voucher And Bank Transfer)

Committee Observations

The Committee made the following observations:

1. The Authority had bought the land in Mwapula/Magongoni plot no. 432 from an entity which later leased the same land to Chinese investors who conduct the same ballast crushing project that the Authority had intended to conduct.
2. The Authority lost a court case regarding the ownership of the contested land.

MIN/PIC/447/2019: MEDICAL EXPENSES FY 2017/18

Note 7 to the financial statement for the year ended 30 June 2018 reflects medical expenses of Kshs.5, 305,995.75. Review of payment voucher no. 10775 revealed procurement of medical cover for staff through tender number REF: CDA T-10/2017-2019 and contract of Kshs. 13,304,522 was awarded to AAR Insurance. However, approved budget for the same was not availed for audit review. Consequently, the propriety of the medical expenses of Kshs.5, 305,995.75 for the year ended 30 June 2018 could not be ascertained.

Management Response

The medical Cover for staff is included in the staff expenses budget for 2017/2018 under PE. The Budget for 2017/2018 was availed for audit review. The annual cost for the medical contract was Ksh. 13,304,522. However, as the contract was entered into five months to the end of financial year, the expenses were apportioned pro-rata for

the remaining five months (13,304,522/12). The amount of 5,305,995.75 reflected in the financial statement was the outstanding amount which was cleared in the following financial year.

(Annex 10 Approved budget)

Committee Observations

The Committee made the following observations:

1. The budget for 2017/2018 was availed for audit review. The annual cost for the medical contract was Ksh. 13,304,522.
2. As the contract was entered into five months to the end of financial year, the expenses were apportioned pro-rata for the remaining five months (13,304,522/12). The amount of 5,305,995.75 reflected in the financial statement was the outstanding amount which was cleared in the following financial year.

MIN/PIC/448/2019: OTHER MATTER

1.0 Budgetary Control and Performance

1.0 Revenue Budget

During the year under review, the Authority's revenue budget amounted to KSHS 313,274,000 against actual disbursement of ksh .307,969,000 (98%) ,thus resulting to net under disbursement of ksh .3,305,000 or 2%.

The Authority had a slightly negative balance of kshs. 5,305,000 or 2% on its revenue budget during the year under review.

Management Response

Public contributions and donations are funds received from donor agencies through the implementing entities and are based on approved workplans. The amounts are affected by exchange rate fluctuations between the time of budget and when funds are disbursed. The Authority has no control over this. Further prices of goods change during the year due to various factors.

1.1 Expenditure Budget

During the year under review, the Coast Development Authority had a final budget of Kshs. 313,274,000 against actual expenditure of Kshs.300,296,000, resulting to an overall under absorption of Kshs.12,978,000 or 4%.

Underutilization of budgeted amount of kshs.23,656,000 or 4% is an indication of non-implementation of planned development projects negatively affecting community development and empowerment. Further, approval for the over expenditure of Kshs.23,656,000 was not availed for audit review as per Section 12 of the state Corporations Act, Cap 446 which states that no state corporation shall, without prior approval in writing of the Minister (Cabinet Secretary) and the treasury ,incur any

expenditure for which provision has not been made in annual estimate prepared and approved in accordance with section 11.

The management was therefore in breach of the law.

Management Response

The amounts reflected as underutilization of budgetary allocation relate to:

- (i) Staff medical Scheme was budgeted for 30 Million but actual expenditure was 13,304,522 Million. This was through a competitive bidding by service providers where CDA managed an affordable bid. *Annex 6*
- (ii) A Senior Manager had retired during the period and has not replaced hence reducing the actual expense on Employee Compensation.

Committee Observations

The Committee made the following observations:

- 1. The variation in the budget was below the 10% threshold provided by law.
- 2. The under expenditure of Kshs. 17,000,000 in the financial year under consideration was due to a cheaper medical cover and absence of senior staff who hadn't been replaced.

MIN/PIC/449/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/450/2019: ADJOURNMENT

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

Signed

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

Date..... 09/10/2019

MINUTES OF THE 50TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 13TH AUGUST, 2019 IN THE CONFERENCE ROOM, ENGLISH POINT MARINA AT 3.00 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Joash Nyamache Nyamoko, MP
3. The Hon. Raphael Bitta Sauti Wanjala, MP
4. The Hon. Justus Kizito Mugali, MP
5. The Hon. Gladys Wanga, MP
6. The Hon. Omar Mohamed Maalim Hassan, MP.
7. The Hon. Paul Kahindi Katana, MP
8. The Hon. Purity Wangui Ngirici, MP
9. The Hon. Thuku Zachary Kwenya, M.P
10. The Hon. Babu Owino Paul Ongili, MP
11. The Hon. Mary Wamau Njoroge, MP
12. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
13. The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
3. The Hon. John Muchiri Nyaga, M.P
4. The Hon. Mohamed Hire Garane, M.P.
5. The Hon. Rashid Kassim Amin, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

IN ATTENDANCE

- | | | |
|-----------------------|---|------------------------------------|
| 1. Mr. Justus Okumu | - | Ag. Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Mr. Matheka Fouris | - | Manager, Audit |
| 4. Mr. Peter Ruteere | - | Inspectorate of State Corporations |

MIN/PIC/415/2019: PRELIMINARIES

The Chairperson called the meeting to order at three O'clock followed by a word of

prayer.

MIN/PIC/416/2019: EXAMINATION OF AUDITED ACCOUNTS OF TECHNICAL UNIVERSITY OF MOMBASA

Prof. Laila Abubakar, the Vice Chancellor of the Technical University of Mombasa accompanied by Prof. Joseph Rasowo (Deputy Vice Chancellor, Administration and Finance), Mr. Justin Ombul (Chief Accountant), Mr. James Odhiambo (Procurement Manager), Ms. Serah Okumu (Legal Officer) and Mr. Dalton Mwachughu (Finance Officer) appeared before the Committee to adduce evidence on the audited accounts of the Technical University of Mombasa for financial year 2013/14 to financial year 2017/18.

The Committee observed that the documents submitted by the University Management were not well organized and poorly annexed.

The Committee resolved to postpone the sitting with the Technical University of Mombasa to allow Management to prepare a well prepared submission.

MIN/PIC/417/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA FERRY SERVICES

Mr. Bakari Gowa, the Managing Director of the Kenya Ferry Services accompanied by Mr. Kombo Rajab (Finance Manager), Ms. Jeniffer Cirindi (Procurement Manager), Mr. Paul Kotut (Operations Manager), Mr. Henry Katana (Principal Internal Audit) and Mr. Athmani Washenga (Head of Engineering) appeared before the Committee to adduce evidence on the audited accounts of the Kenya Ferry Services for financial year 2016/17 to financial year 2017/18.

MIN/PIC/415/2019: PROPERTY PLANT & EQUIPMENT FY 2016/17

1.1 Fully depreciated assets

The statement of financial position as at 30th June 2017 reflects a balance of Kshs. 2,181,924,000 in respect of property, plant and equipment which includes fully depreciated assets with a total cost of Kshs 473,885,000 (2015/2016 Kshs 69,784,000) as per disclosure under note 16 to the financial statements. Although some of the assets are in use, the economic value of these assets has not been accounted for in these financial statements as they are carried at zero value contrary to international accounting standards No. 16 which states that revaluations should be carried out regularly, so that the current amount of an asset does not differ materially from its fair value at the balance sheet date.

As a result, it has not been possible to ascertain that the property, plant and equipment balance of Kshs 2,181,924,000 as at 30th June 2017 is fairly stated.

Management Response

The Company engaged the State Department of Public Works to value items identified for disposal in the year 2017/2018 and a report for the same is hereby attached. The

items had been earmarked for disposal and include; guard rails, LED screens, computers, engines, and other equipment. Management advertised to dispose the same in May 2019. The disposal process has since started and all the items shall be removed from the books.

Annex 1: Valuation report from state department of public works and copy of the newspaper advert

Committee Observations

The Committee made the following observation:

Management had engaged the State Department of Public Works to value items identified for disposal in the financial year 2017/2018 and an advertisement to dispose the same was done in May 2019. The disposal process is ongoing.

MIN/PIC/416/2019: LONG OUTSTANDING DEBTS FY 2016/17

Included in trade and other receivables balance of Kshs 716,622,000 as at 30th June 2017 are staff receivables of Kshs 10,157,000. Audit verifications revealed that staff advances amounting to Kshs 4,178,131 was owing from former staff. The management has not clearly explained how the staff were cleared before settling the debts.

Consequently, it has not been possible to confirm the validity and recoverability of trade and other receivables balance of Kshs 716,622,000 as at 30th June 2017.

Management Response

The advances owing by former staff amounting to Kshs 3,691,229 is being pursued for recoverability through court processes whereas some have/are paid/paying their outstanding balances. No staff has been cleared to leave the organization before settling their account balances.

The following is the summary of status of each ex-staff member account

No.	Staff No.	Name	Original amount Kshs	Paid	Current Balance Kshs	Remarks
1	FER300	Ambrose Riasi Getenge	20,000	-	20,000	Dismissed
2	FER347	Mwangi Kahora Gitonga	356,315	145,677	210,638	Resigned, partly repaid
3	FER391	Mong'are Edwin Momanyi	116,065	116,065	-	Cleared
4	GMA002	Joel John Ria	798,735	-	798,735	Dismissed
5	KOO001	Kenedy Oyugi Onkoba	858,801	-	858,801	Dismissed

6	SNR003	Sajad S Janoowalla	13,750	13,750	-	Written off
7	SNR005	Deche Nelson Kachero	748,586	-	748,586	Dismissed
8	SNR009	George Chiwai Barua	295,937	-	295,937	Deceased
9	T020	Edwin Osano Onkoba Motuka	82,515	-	82,515	Dismissed
10	T023	Martin Mwenda Mbaka	244,244	-	244,244	Dismissed
11	T022	Joseph Kariuki	22,500	-	22,500	Dismissed
12	FER313	Kurgat Kiprop	180,140	-	180,140	Retired, not cleared
13	FER242	Victor Chite	45,100	-	45,100	Dismissed
14	FER178	Fredrick Baraza Dodi	259,920	129,960	129,960	Dismissed
15	FS325	Douglas Kitonyi Ndeto	161,738	161,738	-	Cleared
16	FS185	Salim Mwabaka	54,073	-	54,073	Dismissed
		Total	4,258,419	567,190	3,691,229	

Committee Observations

The Committee made the following observation:

The advances owing by former staff amounting to Kshs 3,691,229 is being pursued for recoverability through court processes.

MIN/PIC/417/2019: ADMINISTRATION EXPENSES FY 2016/17

The statement of comprehensive income for the year ended 30th June 2017 reflects Kshs 111,392,000 in respect of administration costs. Included in administration costs figure of Kshs 111,392,000 is Kshs 8,572,000 in respect of legal dues. Records availed for audit indicate that Kshs 6,020,000 was paid to a law firm as a deposit based on a proposal presented by the firm to finalize outstanding cases arising from Mtongwe Ferry disaster of 1994. However, as at the time of audit, there was no documentary evidence of any progress made towards achieving objectives if the proposal including court application and settlement of claims by affected persons. It was therefore not clear which service was rendered by the law firm. The public have not realized the value for money.

Consequently, the propriety and validity of expenditure amounting to Kshs 8,572,000 incurred on the administration expenses for the year ended could not be confirmed.

Management Response

In April 2017, the Company developed a plan to close all cases that were still outstanding arising out of the Mtongwe ferry disaster of 1994.

To implement that plan, the Company together with its external Advocates handling the cases arising out of the Mtongwe disaster of 1994 jointly published a notice on the 22nd June 2017 in the Nation Newspapers informing affected persons that the Company was committed to bring all outstanding cases to a closure by the 31st December 2017, and to this end required such affected persons with outstanding claims against the Company to report to the external Advocates within 60 days of the notice.

At the end of the advertisement period, although more than 70 persons had visited the offices of the external advocates, only 13 had requisite documents.

The external advocates then proposed that the 13 persons be compensated through an out of court settlement in the following terms:

- a. Liability be apportioned at 70:the 30 in favour of deceased or injured persons.
- b. Damages to be a total of Kshs 750,000/= per person all inclusive, that is including quantum, filing charges and advocates fees.
- c. The total amount payable to the 13 persons in the proposed settlement would be Kshs 9,750,000/=.

The Committee recommended to the Board to approve the payment of out of court settlement.

Due to cash flow challenges, the Company will settle the amount through its external advocate in instalments. The first instalment of Kshs 3M was made to the external advocate in early October 2018. Progress report on this item will be given in subsequent periods

Appendix: Copy of the advert inviting the victims and a vetting report

Committee Observations

The Committee made the following observation:

1. KFS had published a notice on the 22nd June 2017 in the Nation Newspapers informing affected persons that the Company was committed to bring all outstanding cases to a closure by the 31st December 2017, and to this end required such affected persons with outstanding claims against the Company to report to the external Advocates within 60 days of the notice.
2. A total of 13 persons who were found to have relevant documentations were to be compensated through an out of court settlement.

3. Due to cash flow challenges, the Company will settle the amount through its external advocate in instalments. The advocate handling the matter on behalf of KFS is Maina Njanga & Co. Advocates.

Committee Resolution

Management should provide a breakdown of all the expenditure under the Mtongwe Ferry disaster compensation.

MIN/PIC/418/2019: OTHER MATTER FY 2016/17

1.0 Budgetary Controls and performance

The Company had an over expenditure on various vote items Kshs 87,369,000 in the financial year under consideration with no approval of the budget by line Ministry.

Management Response

The Company did not overspend on the listed budgetary items. The correct position was clarified by the Company. However, the auditors did not use the final revised budget. Overall, the Company spent within the budgetary allocation levels for various main classes of expenditure as detailed in the statement of comparison between actual and budgeted amounts save for dry-docking expenses which are an accounting allocation/ book entries and does not involve cash movement/application.

	Component	Budget	Actual	Difference	% Variance
1	Printing, Advertising and Information Supplies	5,648,000	5,103,000	545,000	10%
2	Sports & Recreation	7,475,000	7,492,000	17,000	0%
3	Training Expenses	15,500,000	15,542,000	42,000	0%
4	IT Implementation	6,124,000	6,197,000	73,000	-1%
5	Legal Dues/Fees	9,000,000	8,572,000	428,000	5%
6	Contracted Professional Services	10,500,000	10,753,000	253,000	-2%
7	Fuel Oil & Lubricants	71,524,250	71,379,000	145,250	0%
8	Board Expenses	22,197,208	22,521,000	323,792	-1%

9	Dry Docking	30,000,000	63,041,000	-	-110%
10	Safety Equipment Repairs	8,500,000	8,676,000	176,000	-2%
	Total	186,468,458	219,276,000	32,807,542	

Committee Observation

Management contested the auditor's observation on over expenditure and provided a breakdown of the amounts spent under the queried votes.

Committee Resolution

The Auditors were asked to verify the actual expenditure and report back to the Committee.

2.0 Safety of ferry vessels

Auditor's observation

- i. Dry-docking for MV Kwale and MV Likoni not done as scheduled
- ii. MV Kwale engine had operated for more than 30,000 hours without undergoing engine overhaul.
- iii. Pulleys on most ferries are defective causing prows are to be submerged in water
- iv. The ferry users are not insured therefore it may difficult to settle liabilities in case of accident.

Management Response

KFSL had a fleet of 5 vessels. To operate optimally it requires 4 vessels for Likoni and one for Mtongwe channel (Mtungwe channel was re-opened in March 2017 after closure for 5 years). While these vessels were scheduled for dry dock in March 2017, it was impractical to take them to dry dock because this would have meant complete withdrawal of service for a period of not less than 3 months; The Likoni channel would have operated with 3 ferries (deficit of one) and Mtongwe channel be closed down.

After taking in to account demand for the ferry service and assessing the safety condition of the vessels, the company undertook minimal maintenance works on the said ferries and reviewed the major maintenance schedule to have the dry docking of the two vessels after delivery of M.V Jambo in July 2017. Consequently the two ferries were dry docked for major repair works in November 2017 for M.V Kwale and MV Likoni was dry docked during the same period.

The ferries are fitted with CAT C12 Engines, which according to its manufacturer's (CATERPILLAR PLC) the engines are to undergo major overhaul at a minimum of

8,000hours. Indeed, total running hours at as the time of the audit was 3,000 hours operating at an average of 8 knots/ maximum speed since the previous maintenance. The engines had already undergone the major overhaul way back and were due for replacement. These have since been replaced with new engines.

The company has a program to repair the lifting systems of the ferry prows, which entails the pulleys and associated parts. These have been repaired M.V Kilindini in January 2019, M.V Likoni June 2019 Plans are underway to repair M.V Nyayo (Scheduled for Dry Docking in September 2019).

As explained above, the main cause of this is due to non-availability of the vessel for repairs. The Company managed to undertake reasonable repair works on the engine to mitigate on hour overrun safety exposure. However, the engine was overhauled in the year under review and services were offered without any disruption.

All vessels have sea worthiness certificates issued by KMA (certificate no. 35) and since the vessels are non-deep sea going (international waters), the issuance of an international certificate is of no use. Further, KMA is the local representative of the International Marine Classification bodies. Please find relevant certificates attached.

All the ferry vessels are insured against Protection and third part indemnity liability as well as hull and all machinery.

Committee Observations

The Committee made the following observations:

1. M.V Kwale and MV Likoni was dry docked for major repair works in November 2017.
2. The lifting systems of the ferry prows, which entails the pulleys and associated parts have been repaired for M.V Kilindini in January 2019, M.V Likoni in June 2019 with plans to repair M.V Nyayo in September 2019.
3. Scheduled dry docking for repair works is delayed due to budgetary constraints at Kenya Ferry Service.
4. Kenya Ferry Service has an annual expenditure of Kshs. 102,000,000 on fuel of which 25% is accounted for by machine inefficiency that increases consumption.
5. The ferries at Likoni and Mtongwe carry an average of 340,000 people and 5800 cars per day.
6. All the ferry vessels are insured against Protection and third part indemnity liability as well as hull and all machinery.

Committee Resolution

The Committee made the following resolutions:

1. Management should provide a breakdown of its annual budgetary allocation and its annual expenditure to provide a clearer picture of the financial challenges experienced that prevent scheduled maintenance of ferries.

2. The Committee would recommend for ring-fencing of budgetary allocation for maintenance of ferries to ensure the repairs are done after the requisite number of hours in operation.

MIN/PIC/419/2019: PROPERTY, PLANT & EQUIPMENT FY 2017/18

1.3 Construction of two new ferries

As previously reported, Kenya Ferry Services Limited awarded contract for supply and delivery of two new passage ferries at a cost of kshs.1,863,000,000 (US \$18,630,000) . The company made a down payment of kshs.598,023,000 (US \$5,920,726.70) to the local appointed Agent in August 2015, but failed to withhold 6% of VAT totaling to kshs.35,881,380 and withholding tax at 20% for non -residents company totaling Kshs 119,604,600 despite professional advice from Kenya Revenue Authority to subject payment ton both taxes.

In addition, according to the contract signed on 27 June 2015, the new ferries were to be delivered after seventeen (17) months, but as at this audit in November 2018, the second ferry had not been delivered. Also, an email to the supplier dated 9 January 2019 requesting for direct confirming of the amount received from Kenya Ferry Services Limited for the second ferry, the outstanding balance and the date of delivery of the ferry has not been responded to.

In light of the foregoing it has not been possible to confirm the validity, accuracy and completeness of the building and supply of two ferries at a cost of the propriety of expenditure totaling kshs.1,519,379,614 paid to the contactor as at 30 June 2018.

Management Response

Downpayment of Kes doesn't attract Withholding Tax and Withholding VAT according to Sec10 of VAT Act.

Upon delivery of MV Jambo, all requisite taxes amounting to Kshs 170,821,184 were paid at the port of entry.

The second ferry had not been delivered at the time of Audit in November 2018 due to a court order halting its construction following a constitutional petition at the High Court of Mombasa. The Company appealed successfully and construction of the same is ongoing with delivery expected as per the revised production plan in January 2020.

Annex 3 : Copy of KRA Professional Advise

Committee Observations

The Committee made the following observations:

1. The requisite taxes amounting to Kshs 170,821,184 were paid at the port of entry upon delivery of MV Jambo.
2. The second ferry had not been delivered at the time of Audit in November 2018 due to a court order halting its construction following a constitutional petition

at the High Court of Mombasa. The Company appealed successfully and construction of the same is ongoing with delivery expected as per the revised production plan in January 2020.

Committee Resolution

The Committee made the following resolution:

Management should provide evidence to confirm the expected delivery date of the second ferry.

MIN/PIC/420/2019: TRADE & OTHER PAYABLES FY 2017/18

The trade and other payable balance of Kshs.228, 905,000 excluded an amount kshs.162, 497,579 (USD 1,577,646.4) in respect to taxes charged on purchase of one ferry vessel (MV Jambo) completed and delivered in July 2017. The management did not avail evidence of payment of the above Tax to Kenya Revenue Authority as demanded through a letter reference H.O 1035 dated December 2016.

Under the circumstances, it has not been possible to confirm the validity and accuracy of trade and other payable balance of Kshs. 228,905,000 as at 30 June 2018.

Management Response

The exclusion of Kshs 162,497,579 in respect to taxes relating to MV Jambo does not affect the fairness of the payables; this was not the liability of KFS. Such taxes were payable by the shipyard at the port of entry when the vessel was being cleared by KRA. In fact, KFS did not have any the capacity nor the mandate to enforce payment of taxes at the port of entry since it is the responsibility of other Government agencies. However, from documents provided the contractor indicated that taxes were paid to KRA, the relevant Government agency that deals with this matter.

Annex 6: Receipts of taxes and duties payment by contractor to KRA

The Committee made the following observation:

The applicable taxes were paid by the contractor upon delivery of the ferry.

MIN/PIC/421/2019: INCOME FROM OPERATIONS FY 2017/18

The loaded motor vehicles are charged at different rates from unloaded ones. However the toll collectors rely on information provided by the drivers regarding the state of load in the motor vehicles. It was not evident that all cargo-carrying motor vehicles are inspected to confirm the state of load carriage before payment is made.

In the circumstances, the accuracy and completeness of income from operations amounting to Kshs 493,972,000 for the year ended 30th June 2018 could not be confirmed.

Management Response

For loaded vehicles, they are charged the same rate as unloaded plus a surcharge. It quite in order for the toll cashiers to engage the clients (motorists in discussion and ascertainment of the status of the load in a particular vehicle. This type of engagement provides a feedback mechanism on two parties. Ultimately the person responsible to bill the customer (vehicle) is the cashier taking into account of the requisite information before him/her. Once the customer is billed, the customer is subjected to an inspection process where the validity of the ticket is confirmed. The ticket is further subjected to spot checks on a random basis.

Committee Observations

The Committee made the following observation:

Loaded vehicles are charged the same rate as unloaded plus a surcharge.

MIN/PIC/422/2019: BANK & AND BANK BALANCE FY 2017/18

The statement of financial position as at 30th June 2018 reflects bank and cash balances amounting to Kshs 325,953,000 out of which Kshs 5,604,000 was held at National bank collection account as detailed in note 23 in the financial statements. However, the bank reconciliation availed for audit supported an amount of Kshs 4,879,258 resulting to un-reconciled variance of Kshs 724,742 as at 30th June 2018.

In the circumstances, the accuracy and completeness of the bank and cash balances of Kshs 325,953,000 as at 30th June 2018 could not be confirmed.

Management Response

The bank and cash reconciliation balanced and supporting evidence have been provided as Annex 8 (Statement)

Committee Observation

The bank reconciliation availed for audit supported an amount of Kshs 4,879,258 resulting to un-reconciled variance of Kshs 724,742.

MIN/PIC/423/2019: OTHER MATTER FY 2017/18

1.0 Budgetary Controls and performance

Auditor's observation

The statement of comparison of budget and actual amounts for the year ended 30th June 2018 reflects budget of Kshs 1,294,662,000 and actual expenditure of Kshs 1,237,662,000 resulting to a net under absorption of Kshs 57,002,000 as summarized below;

	ITEM	Budget (Kshs '000')	Actual (Kshs '000')	Under - absorption (Kshs '000')	Over - absorption (Kshs '000')	%
1	Staff costs	536,472	519,259	17,213	-	3.2
2	Administration costs	107,458	108,372	-	914	0.8
3	Operation costs	340,936	243,180	97,756	-	28.6
4	Board costs	16,700	16,572	128	-	0.76
5	Repairs and maintenance	140,673	135,946	4,727	-	3.3
6	Depreciation	152,090	213,998	-	61,908	40.7
7	amortization	333	333	-	-	0
	TOTAL	1,294,662	1,237,660	119,824	62,822	44.0

The Kenya Ferry Services limited under spent to a tune of Kshs 119,824,000 or 9% of the total budget allocation. The funds could have been allocated to other deserving areas that could improve the ferry services to the public. This may also be an indication of improper planning and the management needs to rethink on its budget making process in view of focusing on more priority areas. Further, Kenya Ferry Services limited overspent the budget by Kshs 62,822,000. However, there was no evidence of authority to overspend or reallocate funds in line with section 48 (5) of the public finance management (National Government) Regulations, 2015 which states that 'reallocations under this regulation shall be by the respective Accounting officer of the entity'.

Consequently, Kenya Ferry Services Limited is in breach of the law.

Management Response

The company ensured prudent financial management of financial resources throughout the year. Part of the operational cost included a provision for salary reviews expected to be implemented within the year. As at the close of the year, the CBA for union staff had been referred to the court and was still outstanding. Once the matter is determined at the courts the same will be implemented and adjustments made accordingly.

Further to the aforesaid, the company did not receive full disbursements for funds allocated and posted a deficit in government subvention.

Annex 9: Extracts of Financial Statements

Committee Observations

The Committee made the following observations:

The Kenya Ferry Service did not receive full disbursements for funds allocated and posted a deficit in government subvention.

2.0 Legal fees

Note 7 to financial statement for year ended 30 June 2018 reflects legal dues/fees, arbitration and services to the company in different cases. However, the management did not avail authority from the Attorney General approving the hiring and payment of legal fees to private law firms contrary to Attorney General circular AG/CONF/6/E/247 VOL II which states that legal fee payable to any private advocate or law firm under such an arrangement must be approved and authorized by the Attorney General. It further states that any procurement of legal services secured without the authority of the Attorney General constitutes a breach of law and may condemn the concerned officer to a liability of surcharge is provided by the article 226 (5) of the constitution.

The management is therefore in breach of the law.

Management Response

The company procures legal services from the office of the Attorney General. In all cases, the company has always written to the AG for resources. Where the AG is not in a position to provide, the company engages external lawyers and the office of the AG is enjoined and involved. External advocates, where required are acquired as per the Public Procurement and Asset Disposal act 2015, and other laws governing such procurements. It is further noted that, the requirement under Government circular number AG/Circular/2018 dated 1st March 2018 and entitled, "Guidelines on provision of legal services by the office of the Attorney General & Department of justice" was quashed by the High Court of Kenya under application no. 364 of 2018 where the guideline was found to be in breach of section 134 and other sections of the Procurement and Asset Disposal-Act 2015 as well as article 227 of the Constitution of Kenya.

*Annex 9: Letter to AG for legal assistance, Advertisement for Provision legal services
Full judgment on case no. 364 of 2018.*

Committee Observations:

The Committee made the following observations:

The Circular (AG/Circular/2018) dated 1st March 2018 and entitled, "Guidelines on provision of legal services by the office of the Attorney General & Department of justice" was quashed by the High Court of Kenya under application no. 364 of 2018 where the guideline was found to be in breach of section 134 and other sections of

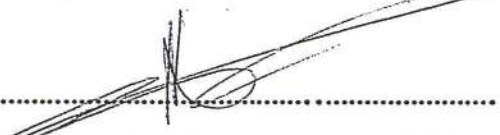
the Procurement and Asset Disposal Act 2015 as well as article 227 of the Constitution of Kenya.

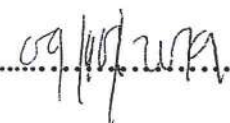
MIN/PIC/424/2019: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/425/2019: ADJOURNMENT

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

Signed 

Date 

The Hon. Abdullswamad Sharrif Nassir, MP
(Chairperson)

MINUTES OF THE 49TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY 13TH AUGUST, 2019 IN THE CONFERENCE ROOM, ENGLISH POINT MARINA AT 9.30 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Joash Nyamache Nyamoko, MP
3. The Hon. Raphael Bitta Sauti Wanjala, MP
4. The Hon. Justus Kizito Mugali, MP
5. The Hon. Gladys Wanga, MP
6. The Hon. Omar Mohamed Maalim Hassan, MP.
7. The Hon. Paul Kahindi Katana, MP
8. The Hon. Purity Wangui Ngirici, MP
9. The Hon. Thuku Zachary Kwenya, M.P
10. The Hon. Babu Owino Paul Ongili, MP
11. The Hon. Mary Wamaua Njoroge, MP
12. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
13. The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Dr. Chrisantus Wamalwa Wakhungu, CBS, MP
3. The Hon. John Muchiri Nyaga, M.P
4. The Hon. Mohamed Hire Garane, M.P.
5. The Hon. Rashid Kassim Amin, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

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

IN ATTENDANCE

- | | | |
|-----------------------|---|------------------------------------|
| 1. Mr. Justus Okumu | - | Ag. Director, Audit |
| 2. Mr. Joshiah Oyuko | - | Manager, Audit |
| 3. Mr. Matheka Fouris | - | Manager, Audit |
| 4. Mr. Peter Ruteere | - | Inspectorate of State Corporations |

MIN/PIC/403/2019: PRELIMINARIES

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

MIN/PIC/404/2019: EXAMINATION OF AUDITED ACCOUNTS OF KENYA FERRY SERVICES

Mr. Bakari Gowa, the Managing Director of the Kenya Ferry Services accompanied by Mr. Kombo Rajab (Finance Manager), Ms. Jeniffer Cirindi (Procurement Manager), Mr. Paul Kotut (Operations Manager), Mr. Henry Katana (Principal Internal Audit) and Mr. Athmani Washenga (Head of Engineering) appeared before the Committee to adduce evidence on the audited accounts of the Kenya Ferry Services for financial year 2015/16 to financial year 2017/18.

MIN/PIC/405/2019: FINANCIAL PERFORMANCE FY 2015/16

The Company recorded a net loss of Kshs 108,273,000 in 2015/2016 financial year resulting to accumulated deficit of Kshs 913,494,000 as 30th June 2016. The financial performance of the Company is precarious and if strategies are not put in place to reverse the trend, the Company will experience financial challenges in future.

Management Response

The Company made a loss of Kshs 108,273,000 in 2015/2016 financial year thereby bringing accumulated deficits to Kshs 913,494,000 over time. One of the Company's long term objectives is to strengthen her financial base and posting surpluses in the near future. To this end, the Company is pursuing strategies to ensure long-term financial sustainability of her operations. Key among these is a continuous and timely revision of its vehicular toll charges. The Company has a policy to review its toll charges after every two years to ensure that charges levied can help meet operational costs. The last reviews were done in 2010/2011 and 2013/2014 financial years and this resulted in improvement in revenue. The Company submitted a proposal to review its charges in the financial year 2015/2016 to its parent ministry for consideration and at the time of audit, Company was awaiting gazettelement of the same by Ministry of Transport & Infrastructure.

The toll tariffs were gazzeted and subsequently implemented with effect from 15th February 2018 and the resultant impact is an increase of toll revenue from Kshs 401 million in 2015/2016 to Kshs 552 million in 2018/2019; since then the company's financial position has improved; from a deficit making to a surplus making. For example in the year, 2017/2018 the company posted a surplus of 43 Million and is expecting to post similar results in 2018/2019. Overall accumulated deficit has been reduced from Kshs 913, 494,000 to Kshs 638 Million in the year 2017/2018.

The Company is also pursuing other projects as strategies to improve her revenue generation capacity such as the Multilevel Ferry Terminus, Integrated Marine Transport System and Likoni Cable Express. The Likoni Cable Express has been approved by Cabinet and Project Commercial Agreement between KFSL and Likoni Cable Express Ltd on 18th October 2018. Management is in the process of clearing Conditions Precedent to the contract and the ground breaking of the project is expected to be done in the November 2019. The Cable Car Project is expected to generate an average of Kshs 50 million per annum for KFSL.

(Annex 1 - Financial Statements 2017/2018

Contract agreement for Likkoni Cable Car system (Extract)

Approval of concept for the Integrated Marine Transport system project by the PPP committee at the National Treasury

Committee Observations

The Committee made the following observations:

1. The toll tariffs for ferry operations were gazzeted and implemented with effect from 15th February 2018 and the resultant impact is an increase of toll revenue from Kshs. 401 million in 2015/2016 to Kshs. 552 million in 2018/2019.
2. The company's financial position has improved. In the financial year 2017/2018, the company posted a surplus of Kshs. 43 Million.
3. The overall accumulated deficit has been reduced from Kshs 913,494,000 to Kshs. 638,000,000 in the financial year 2017/2018.
4. Keny Ferry Services has an M.o.U with the Ministry of Transport on charging citizens using the ferry.

Committee Resolution

Management should provide a copy of the M.o.U with the Ministry of Transport on charging citizens using the ferry.

MIN/PIC/406/2019: PROPERTY, PLANT & EQUIPMENT FY 2015/16

2.1 Understated Works in Progress

The Company capitalized a security project during the previous year of Kshs 82,100,150 instead of Kshs 104,535,330 which was the actual cost of the project. No adjustment was made in the books of account to correct the anomaly during the year under review hence property plant and equipment is understated by Kshs 22,435,100.

Management Response

While the contract sum was Kshs Kshs104, 535,330, as stated and observed by the auditor, this is the gross amount, which included VAT of 16%. Kshs 82,100,150 of the cost of project was capitalized in the year 2015/2016. The balance of Kshs 7,616,513.71 in the financial year 2016/2017 and the balance of the amount was VAT (Ksh 14,818,666.30) which cannot be capitalized. Hence, property plant and equipment was not understated.

Extract of general ledger for easy of reference. (Annex 2).

Committee Observations

The Committee made the following observations:

1. The contract sum was Kshs Kshs104, 535,330 but this is the gross amount, which included VAT of 16%.

2. Kshs 7,616,513.71 was capitalized in the financial year 2016/2017 and the balance of the amount was VAT (Ksh 14,818,666.30) which cannot be capitalized.

Committee Resolution

The Committee made the following resolutions:

The property plant and equipment value was not understated.

2.2 Idle Assets

During the year under view, the management procured and installed weigh bridges on both sides of the Likoni channel at a cost of Kshs. 26,779,893 as indicated in the assets register. Although the weigh bridges were integrated with the revenue system, they are practically, idle assets since KFS do not use them to charge for use of its ferries by motor vehicles. Furthermore, management indicated that the bridges were a control measure to enhance safety by estimating the weight of motor vehicles boarding ferries at the channel. However, there was no evidence showing that weights of motor vehicles measured through the weigh-bridges are used to control the number of motor vehicles that board the ferries.

Consequently, it has not been possible to confirm the propriety of the expenditure totaling Kshs. 25,779,893 incurred on installation of weigh-bridges at Likoni Ferry during the year under view.

Management Response

The weighbridges were installed in 2013/2014 financial year. The purpose of the weighbridge as an integral part of the revenue billing system was to bring equity in terms of ensuring that vehicles are billed according to among others the load they carry. The billing system in place charged motorist as either loaded or empty, with the component of load appearing as a surcharge to the empty component. To cure this anomaly the proposed system wanted to introduce a rate per tonnage and length of the vehicle.

During construction time and before completion of the project, KFS was directed to stop the construction of the facility by its parent Ministry. This was due to challenges experienced at the time in queue management as a result of weighing of one vehicle at a time. In its part, the Company pleaded with the Government to be allowed to complete the project since an earlier termination could have attracted unnecessary claims from the contractor. The facility as it is now has these capabilities, to bill even on the weight of the vehicles and would still push for its utilization.

The Company has engaged the State Department of Public Works in developing a Part Development Plan (PDP) with the aim of reorganizing the ferry approach area to provide for expanded infrastructure and smooth flow, which shall include full utilization of the weighbridge.

(Annex 3 - Correspondence with the Ministry of Transport Infrastructure Housing and Urban Development Part Development Plan)

Committee Observations

The Committee made the following observations:

1. The project was implemented without a feasibility study being carried out.
2. Traffic flow at the Ferry was affected by the construction of the project and the Company was instructed to halt the project by the parent Ministry.

Committee Resolutions

1. Management should provide a copy of the Minutes where the decision was made to carry out the project;
2. Management should also provide all correspondence it had with the parent Ministry regarding the project.

2.3 Irregular Award of Tender for Two New Ferries Kshs1,863,000,000

During the year view, Kenya Ferry Services Limited Company awarded a contract for supply and delivery of two new passenger ferries at the cost of Kshs. 1,863,000,000 (US\$ 18,630,000). Information availed for audit review indicated that the tender award process had the following anomalies:

2.3.1 Technical Evaluation

The contract was awarded to the bidder who was ranked No 4 at the technical evaluation stage. The technical evaluation report indicated that the type of ferry to be supplied by the winning bidder was Roll on/Roll off and that the dead weight at designed draft was approximately 490 tons. However, review of the winning bidder's tender revealed that the bidder did not provide this information.

2.3.2 Irregular Down Payment

The company made a down payment of Kshs. 598,023,000 (US\$ 5,920,726.7) to the local appointed agent in August 2015. Section 17.1 of the contract document required that such payments be made upon production of an unconditional bank guarantee issued by an established and reputable bank located in Kenya. The winning bidder submitted a performance bank guarantee of Kshs. 93,150,000 (USD 931,500) issued by a foreign bank, located in Istanbul, Turkey. However there was no evidence showing that due diligence was carried out to establish the validity of the guarantee. It was further noted that the performance bond dated 13 July 2017 was submitted sixteen days after the signing of the contract contrary to Paragraph 10 on General Conditions of the contract which required the contractor to furnish the employer with performance security before the signing of the contract.

2.3.3 Failure to Deduct and Remit Taxes

During the year under audit, the company made an advance payment of Kshs. 598,023,000 (US\$5,920,726.70) to the Kenyan agent but failed to withhold 6% of the value-added-tax totaling to Kshs 35,881,380 and withholding tax at 20% for the non-resident company totaling to Kshs. 119,604,600 despite professional advice from Kenya Revenue Authority to subject the payments to the taxes.

2.3.4 Delay in Executing the Contract

The contract was signed on 27 June 2015 and the new ferries were to be delivered after seventeen (17) months, by November 2016. However as the time of this audit in January 2017, there was no evidence of the level of progress-of-work since photographs of work-in-progress stipulated in the contract, and progress reports by the project Manager, were not availed for audit review.

In the light of the foregoing, it has not been possible to confirm the validity and accuracy of the building and supply of two new ferries at cost of Kshs 1,863,000,000 (USD 18,630,000) and the propriety of the expenditure totaling Kshs. 598,023,000 paid to the contractor during the year under review.

Management Response

Technical Evaluation

Evaluation of tender for design, build, supply and commissioning of two new passenger/vehicle ferries was carried out based on the criteria set out in the tender document obtained by all bidders who participated in the tender as per section 66 (2) of the Act which provides that "The evaluation and comparison shall be done using the procedures and criteria set out in the tender document and no other criteria shall be used" and consequently each member of the technical evaluation committee evaluated independently from the other member as per Regulation 16 (6) of the Public Procurement and disposal Regulations 2006.

Four bidders were evaluated at technical evaluation stage and their scores were; 83.25%,80.43% and two bidders scored 80.25% (Including the lowest evaluated) . All the four qualified for financial bid evaluation. The successful bidder having scored a combined score of 80.25% was above the required pass mark of 80% for qualification for financial bid evaluation. Award of contract was based on evaluation of the technical bids and financial bids. The successful candidate was the lowest evaluated bidder.

The bidder quoted for Roll on/Roll off type of ferry as evidenced from the drawings attached to his bid document . Roll on/Roll type off vessels are designed to carry wheeled cargo such as cars, trucks, semi-trailer trucks, trailers, and railroad cars, that are driven on and off the vessel on their own wheels or using a platform vehicle such as a self-propelled modular transport. Indeed one of the ferries supplied (MV Jambo) is Roll on/Roll off type and is currently operating at the Likoni channel.

From the parameters given derived from the technical drawings the proposed vessel met the minimum requirement of dead weight. The 490/500 tones was just indicative as per the tender document i.e. "approximately". Since this was a design and build contract, the actual dead weight could only be established upon final design made and approved. Particulars of the ferry as built (attached as annex) indicate the ferry's dead weight as 526 tones and type of ferry as Roll on - Roll off (Ro-Ro)

Annex 4: Extract of the technical evaluation Report, Extract of the tender document -Technical drawing, Extract of final approved drawings - Ship particulars as built)

Committee Observations

The Committee made the following observations:

1. Four bidders were evaluated at technical evaluation and qualified for financial bid evaluation stage and their scores were;
 - Southern Engineering Co. Ltd & BV Scheepswerf Domen Gorinchem Joint Venture - 83.25%, (Financial bid - USD 18,999,960)
 - JGH-WMS Joint Venture - 80.43%; (Financial bid - USD 19,132,892.19)
 - Xin Yue Feng Shipyard Ltd. - 80.25%; (Financial Bid USD 19,600,000)
 - Ozata Tersanecilik San Vertic. Ltd. & Moto Nguvu EA - 80.25%. (USD 18,630,000)
2. The successful bidder having scored a combined score of 80.25% was above the required pass mark of 80% for qualification for financial bid evaluation. Award of contract was based on evaluation of the technical bids and financial bids.
3. The successful candidate was the lowest evaluated bidder.
4. Southern Engineering with the highest technical evaluation score of 83.25% raised a complaint at the Public Procurement Regulatory Board and the Board ruled in favour of Kenya Ferry Services.
5. A member of the public had also challenged the procurement process in court and the case was ruled in favour of the Kenya Ferry Services.
6. Additional information regarding the technical evaluation was provided to the Auditors outside of the audit period.
7. The audit query on technical evaluation was resolved in the subsequent financial year.

Irregular Down Payment

Due diligence was conducted through the company's bankers M/s National Bank of Kenya Ltd who are a local bank on 21st August 2015 and the bank issued a confirmation of authenticity dated 25th August 2015.

Annex 5: Correspondence with National bank of Kenya

Committee Observations

The Committee made the following observations:

1. The performance bank guarantee was issued by a foreign bank contrary to section 17.1 of the contract document that provides for a guarantee issued by a Kenyan bank.
2. The Kenya Ferry Service carried out due diligence on the performance bond issued by the foreign bank. The due diligence was conducted by National Bank of Kenya on behalf of KFS.
3. The award of the contract was done in December 2014 but signing of the contract was done in June, 2015. The six-month delay was occasioned by an injunction of the Public Procurement Regulatory Authority. Additionally, the Attorney General reviewed the contract which further delayed the signing.
4. The winning bidder agreed to wait for the resolution of these matters before signing the contract.
5. The Public Procurement and Disposal Act (2005) under which the contract was administered did not provide for a limit of 25% down payment for the project.
6. The Public Procurement Regulatory Authority and the Office of the Attorney General both gave their approval for the contract to be signed.
7. The winning bidder, Ozata Tersanecilik San Vertic. Ltd. Gave agency to Moto Nguvu EA to act as their local agent for the implementation of the contract.

Committee Resolution

The Committee made the following resolution:

The Management should provide copies of correspondence with the winning bidder on the agreement to wait for resolution of arising disputes before signing the contract.

Failure to Deduct and Remit Taxes

KFS consulted with Kenya Revenue Authority (KRA) for guidance on treatment of taxes in regard to the project vide letter reference MD/FIN/2 dated 4th December 2016 and response on the same was given which indicates among others that advance payment was not subject to withholding taxes. The withholding of 6% VAT does not apply in this case since this is an importation of a goods and not services (6% withholding only relates to local goods and services. The company thereby implemented the advice from KRA and did not fail to recover taxes since the Kshs 598,023,000 was an advance payment for foreign goods to facilitate implementation of the project.). Upon importation of the complete ferry, the shipyard paid all the duties and taxes

Annex 6: Advice from Kenya Revenue Authority dated

Receipts of payment of taxes issued by KRA

Committee Observations

The Committee made the following observations:

1. The advance payment was not subject to withholding taxes. The withholding of 6% VAT as per Section 10 of the VAT Act does not apply in this case since this is an importation of goods and not services.
2. Upon importation of the complete ferry, the shipyard paid all the duties and taxes.

Delay in executing the contract

The signing of the contract was to assist parties move to effective date which was delayed by availability of funds. Although the contract was signed on 27/06/2015 the effective date of the contract was August 2016 after revolving Letters of Credit were put in place. Construction period as per the contract was 18 months with a further 3 months for delivery (voyage) and therefore ferries were to be delivered in April 2018. The first ferry was delivered in July 2017 therefore there was no delay in terms of delivery.

The second ferry is expected to be delivered on 15th January 2020

Annex 7: Addendum to contract attached and production plan

Committee Observations

The Committee made the following observations:

1. The effective date of the contract was August 2016 after revolving Letters of Credit were put in place. Delay in provision of the letters of credit by KFS occasioned the delay of the effective start of the contract.
2. The consultant for the project took Kenya Ferry Services to court following cancellation of their contract in June 2017. KFS won the case whose judgement was given in April 2018.
3. KFS is pursuing damages against the consultant and Management has forwarded details of the consultants to PPRA for blacklisting.

Committee Resolution

The Committee made the following resolution:

Management should provide a chronology of the circumstances that occasioned the delay in executing the contract including details on the procurement process for the services of the consultant, the cancellation of the consultant's contract and the court case.

MIN/PIC/407/2019: REVENUE FY 2015/16

3.1 Income from operations

The statement of comprehensive income reflects an amount of Kshs 410,742,000 as income from operations. However records availed for audit review indicated that the company toll collections amounted to Kshs 410,845,000 resulting in an unexplained variance of Kshs 103,000.

Management Response

The Company's income from operations amounted to Kshs 410,742,086 as per the attached trial balance and general ledger accounts. The said amount of Kshs 103,000 reconciled with the same amount of Kshs 103,000 in the bank balance as indicated under item 4 on bank balances below where a corresponding difference of equal amount was observed. This was reconciled as Ksh 410,742,086.

Annex 8: Trial Balance as at 30th June 2016 and Ledger

Committee Observations

The Committee made the following observations:

1. The relevant ledgers were belatedly provided for audit verification and reconciled.
2. The delay in provision of the documents was contrary to Section 62 of the Public Audit Act.

3.2 Variance between receipt books and control records

During the year under review one thousand, two hundred and ninety (1,290) manual receipt books were issued by the revenue section to collect as shown in the control receipt book register(CRBR).However the number of receipt books issue to the revenue section by the procurement department was shown in bin cards five hundred and seventy (570) resulting in an excess of seven hundred and twenty (720) receipt books that did not originate from the procurement department. Although the management has explained that the extra 720 receipt books were received directly from the suppliers, the receipt books had not been accounted for as at 30 June 2016.

Furthermore stores records reviewed at the close of financial year under review manual receipt books balance was one hundred and fifty (150).Whereas stock taking records revealed a nil balance thus resulting to an unaccounted surplus of one hundred and fifty receipt books.

Management Response

The Company makes orders from suppliers for receipt books and the same are taken on charge in the stores upon receipt. However, on three occasions, there were stock-outs of the receipt books and due to the emergencies that existed at the time (prolonged power outage), these were delivered by the supplier to Finance Department at the revenue section (user) and received by Senior Officer Revenue. Revenue collected from these receipt books was accounted for and verified by the Office of the Auditor General for the period and no revenue was lost. KFS has since acquired personal digital assistants (PDAs) which are integrated to the mainstream billing system and connected to main server as a long-term solution to be used in times of power outage. Revenue billed from these gadgets is captured in a real time basis to the main server.