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NATIONAL ASSEMBLY – SECOND SESSION

Directorate of Committee Services

THE TWENTY SECOND REPORT
OF THE
PUBLIC INVESTMENTS COMMITTEE
ON THE
AUDITED FINANCIAL STATEMENTS OF STATE CORPORATIONS

NOVEMBER 2018

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LIST OF ABBREVIATIONS/ACRONYMS

ACU	-	AIDS Control Unit
Ag.	-	Acting
AG	-	Attorney General
CACC	-	Constituency AIDS Coordinating Committee
CBA	-	Collective Bargaining Agreement
CBK	-	Central Bank of Kenya
CEO	-	Chief Executive Officer
CID	-	Criminal Investigations Department
CT	-	Computerized Tomography
DA	-	Direct Agreement
DACC	-	District AIDS Coordinating Committees
DCI	-	Directorate of Criminal Investigations
EACC	-	Ethics and Anti-Corruption Commission
EU	-	European Union
FMA	-	Financial Management Agency
FY	-	Financial Year
GDC	-	Geothermal Development Company
GoK	-	Government of Kenya
HR	-	Human Resources
IAS	-	International Accounting Standards
ICT	-	Information, Communications & Technology
IFRS	-	International Financial Reporting Standards
IPSAS	-	International Public Sector Accounting Standards
JKF	-	Jomo Kenyatta Foundation
KAA	-	Kenya Airports Authority
KACC	-	Kenya Anti-Corruption Commission

KBRR	-	Kenya Bankers Reference Rate
KCA	-	Kenya Concession Agreement
KEMSA	-	Kenya Medical Supplies Agency
KENGEN	-	Kenya Electricity Generating Company
KES	-	Kenya Shillings
KIRDI	-	Kenya Industrial Research and Development Institute
KNLS	-	Kenya National Library Services
KPC	-	Kenya Pipeline Company
KPLC	-	Kenya Power & Lighting Company
KRA	-	Kenya Revenue Authority
KRC	-	Kenya Railways Corporation
KTDC	-	Kenya Tourism Development Corporation
LPO	-	Local Purchase Order
Ltd	-	Limited
MOALF	-	Ministry of Agriculture, Livestock and Fisheries
MOU	-	Memorandum of Understanding
M.P.	-	Member of Parliament
NACC	-	National AIDS Control Council
NCPB	-	National Cereals and Produce Board
NCPD	-	National Council for Population Development
NGO	-	Non-Governmental Organization
NHIF	-	National Hospital Insurance Fund
NITA	-	National Industrial Training Authority
NSSF	-	National Social Security Fund
OAG	-	Office of the Auditor General
PAYE	-	Pay-As-You-Earn
PIC	-	Public Investments Committee
PPAD	-	Public Procurement and Asset Disposal Act
PPDA	-	Public Procurement and Disposal Act

PS	-	Principal Secretary
PwC	-	PriceWaterhouseCoopers
RVR	-	Rift Valley Railways
SAGA	-	Semi-Autonomous Government Agencies
TVETA	-	Technical and Vocational Training Authority
UFAA	-	Unclaimed Financial Assets Authority
USD	-	United States Dollar
WIP	-	Work in Progress

CHAIRPERSON'S FOREWORD

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

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

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

In examining the accounts of the Auditor General, the Committee invited accounting officers in each of the state corporations under review to adduce evidence.

This report contains observations, findings and recommendations arising from examination of tweny one (21) reports of the Auditor-General for state cooporations for different financial years.

It is structured to provide the following information: -

i) general obersavations of the the most recurring queries and their observations;

ii) all the queries identified by the Auditor General in his audit reports;

iii) management responses to each of the querries;

iv) Committee observations on each querry, and

v) recommendations.

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

May I also extend my appreciation to my fellow Members of the Committee whose immense contributions and dedication to duty has enabled the Committee to examine the audit querries and produce this report.

On behalf of the Public Investments Committee, and pursuant to Standing Order 199(6), it is my pleasant duty and honour to present to this 22nd Report of the public Investments Committee report on Audited Financial Statements for twenty one (21) state Corporations.

HON. ABDULLSWAMAD SHARRIF NASSIR, MP

EXECUTIVE SUMMARY

The Committee held ninety one (91) sittings in which it closely examined the audited financial statements of twenty one (21) State Corporations and the Reports therein by the Auditor General.

In its inquiry into whether or not the affairs of the public investments were managed in accordance with sound business principles and prudent commercial practices, the Committee heard and received both oral and written evidence from Chief Executive Officers (Accounting Officers) of various State Corporations and other relevant witnesses.

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

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

The records of evidence adduced, documents and notes received by the Committee formed the basis of the observations and recommendations as outlined in the Report and can be obtained in the Minutes of the Committee proceedings hereto annexed.

1.0 PREFACE

1.1 COMMITTEE MANDATE

The Public Investments Committee is one among three watchdog/investigatory committees of the House established under Standing Order (S.O.) 206 and is responsible for the examination of the working of public investments on the basis of their audited reports and accounts.

It is mandated to-

(i) examine the reports and accounts of the public investments;

(ii) examine the reports, if any, of the Auditor General on the public investments; and

(iii) examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices;

The Committee is guided by the following references in carrying out its mandate: -

a) National Assembly Standing Orders 2013;

b) the Constitution of Kenya;

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

d) the State Corporations Act (Cap. 446);

e) Public Procurement and Disposal Act, 2005;

f) Public Procurement and Disposal Regulations, 2006;

g) Public Procurement and Assets Disposal Act, 2015

h) Public Finance Management Act, 2012;

i) the Public Audit Act 2003, and

j) the Public Audit Act, 2015 among others.

1.2 COMMITTEE MEMBERSHIP

Chairperson

Hon. Abdullswamad Sharrif Nassir, MP

Vice Chairperson

Hon. Ahmed Abdisalan Ibrahim, MP

Hon. Dr. Chrisantus Wamalwa Wakhungu, MP
Hon. John Muchiri Nyaga, M.P
Hon. Raphael Bitta Sauti Wanjala, MP
Hon. Omar Mohamed Maalim Hassan, MP
Hon. Justus Kizito Mugali, MP
Hon. (Prof.) Mohamud Sheikh Mohammed, MP
The Hon. Mary Wamaua Waithira Njoroge, MP
Hon. Purity Wangui Ngirici, MP
Hon. Rashid Kassim Amin, MP
Hon. Thuku Zachary Kwenya, M.P
Hon. Gladys Wanga, MP
Hon. Ahmed Kolosh Mohamed, MP
Hon. James Kamau Githua Wamacukuru, M.P
Hon. Joash Nyamache Nyamoko, MP
Hon. Babu Owino Paul Ongili, MP
Hon. Paul Kahindi Katana, MP
Hon. Mohamed Hire Garane, M.P.

1.3 COMMITTEE SECRETARIAT

Evans Oanda

Senior Clerk Assistant

Mohamed Boru

Third Clerk Assistant

Thomas Ogwel

Fiscal Analyst I

Mugure Gituto

Legal Counsel II

Sharon Rotino

Research Officer III

Noelle Chelagat

Media Relations Officer III

Winnie Atieno

Audio Recording Officer

Alex Mutuku

Senior Sergeant-at-Arms

1.4 COMMITTEE'S GENERAL OBSERVATIONS AND RECOMMENDATIONS

The 22nd Annual Report of the Public Investments Committee (PIC) contains the Committee's examination of audited financial statements of 21 state corporations that began in February 2018 and ended in October 2018.

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

The Committee was also guided by the mandate and strategic objectives that each of the State Corporation is expected to achieve.

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

1. DELAY IN APPOINTMENTS OF MEMBERS OF THE BOARD

The Committee observed that, as was the case in the previous Public Investments Committee reports, a significant number of state corporations were operating without properly constituted Board of Directors and more so lacked Chairpersons.

This anomaly was attributed to delays by the appointing authority to fill up vacancies once they arise. This has resulted in lack of proper oversight of public funds and management by the State corporations. Due to the intervention of the Committee, most of the vacant positions have since been filled.

Committee Recommendations

The Committee reiterates and renews the previous P.I.C recommendations that:

(i) The relevant appointing authority for the respective Board Members ensures that all vacancies in the Boards of various State Corporations are filled within three months and that the tenure of the Board members is staggered to avoid a situation where the term of all Board Members expires at the same time.

(ii) The National Assembly should amend the State Corporations Act to make it clear that no entity should be allowed to make any financial commitment without fully constituted Board of Directors.

(iii) The Inspectorate of State Corporations should be generating and sharing a half-year status report with the Presidency and Parliament indicating the status of

Boards of State Corporations. The report should include the current status of Boards as well as an indication of which Board members are close to completing their terms.

(iv) **With regard to the position of Chief Executive Officers and Managers of State Corporations, such position should not be left vacant for more than twelve months. The respective appointing authorities should ensure that a person who serves in an acting capacity as a CEO/Manager for more than twelve months is confirmed in the position.**

2. LACK OF OWNERSHIP DOCUMENTS ON LAND AND BUILDING

The Committee noted that a number of state corporations did not possess the title documents for the various assets that they own, including land and buildings. This has been a perenial observation that has been made from year to year.

Cases in point are:

i. National Social Security Fund's parcels of Land in Mavoko and Upper Hill
ii. the Kenya School of Law's land in Upper Hill
iii. the National Council for Population and Development (NCPD) parcels of land in Muranga, Kisii and Nairobi among others.

Further, the committee observed that the National Land Commission takes relatively long periods to resolve issues surrounding land ownership by State Corporations and blames the Ministry of Lands for delay in availing the necessary documents. Correspondence availed to the Committee showed that the corporations sought the services of the Commission back in 2013 and yet the issues are yet to be resolved to date.

Committee Recommendations

The Committee recommends that:

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

(ii) **As in the recommendation of the 21st report, the Cabinet Secretary for Land, Housing and Urban Development and the Chairman, National Land Commission should put caveats on all the parcels of State Corporations' land that are in private hands.**

(iii) **Further, the Commission should prioritize and expedite resolving ownership issues surrounding parcels of land belonging to State Corporations.**

(iv) **As in the recommendation of 21st report, the Judiciary should also consider prioritizing and expediting conclusion of cases involving illegal acquisition of public land with the view of restoring the land back to the public.**

(v) **Any officer that causes delay in processing of titles should be personally and severally held responsible going forward unless the delay is caused by judicial action.**

3. DELAY IN AVAILING DOCUMENTS TO THE AUDITOR- GENERAL

The Committee observed that some accounting officers were taking inordinately long time to avail documents to the Office of the Auditor General for audit verification leading to unnecessary audit queries.

Committee Recommendations

The Committee recommends that: -

(i) **Chief Executive Officers (Accounting Officers) must at all times comply with the audit timelines as specified in Section 68(k) of the PFM Act 2012 and must take appropriate measures to resolve any issues arising from audit which may remain outstanding as required by Section 68(l) of the PFM Act 2012.**

(ii) **Chief Executive Officers (Accounting Officers) who submit or delay the submission of audit documents be held personally liable and be surcharged for such delays. The National Assembly should amend the relevant laws to effect this.**

(iii) **Three months after the close of a financial, the Auditor-General should publish and publicize the names of all State Corporations that have submitted their complete financial statements for audit.**

(iv) **The Auditor-General should not accept any documents submitted after the end of six months after the close of each financial year, and instead should submit its report to the National Assembly for consideration as stipulated in Article 229 (4) of the Constitution.**

4. POOR PROJECT CONCEPTION AND IMPLEMENTATION

The Committee observed with concern that there were serious capacity challenges in project conception and implementation within a number of state corporations. Mega projects worth substantive amounts of taxpayers' money should ordinarily be conceived having done a feasibility study and a cogent implementation plan drawn to execute the project.

This was however not the case in most of the projects that were being implemented at the Kenya Airports Authority that ended up in termination leading to loss of public resources. Other examples incude the construction of Multi storey car park by the NHIF and NSSF's Hazina Trade centre. Some projects end up taking inordinately long period of time than was

allotted at planning stage due to the nature of the project vis a vis the actual budget allocation. An example is the construction of the Kenya National Library Services Headquarters, which has been ongoing since 2012 yet the project was scheduled to be complete by June 2016.

The Committee notes that this results in loss of public funds through payment of interests on delayed payments.

Committee Recommendations

(i) **The accounting officers should always undertake feasibility studies on any project they wish to undertake before implementing the projects;**

(ii) **The accounting officers should place responsibilities on entities with capacities to monitor and implement projects to avoid unnecessary terminations and variations**

(iii) **The National Treasury should endeavour to allocate adequate budgetary provisions to state corporations undertaking mega projects that are solely funded by the government so that they are able to complete their projects within the scheduled time, and thus minimize loss of public funds through payment of avoidable interests.**

5. QUALITY OF AUDITS

The Committee noted that the Office of the Auditor General had serious human resources challenges and as a result was unable to audit all government agencies effectively. Despite the fact that the Public Audit Act allows the Auditor General to outsource audit assignment, the committee noted that most of the outsourced services were in the Energy Sector.

Secondly, the Auditor General has continued to outsource such audit assignments despite the House resolving that accounts of strategic state corporations should not be outsourced in the P.I.C's 19th Report.

Thirdly, audit reports that result from the outsourced work were unqualified. An example is the unqualified reports on the accounts of the Kenya Power and Lighting Company Ltd for the financial years 2012/2013 through to 2016/2017. Several managers of KPLC have since been prosecuted for corruption related offences traced to the years when the audit was done.

Committee Recommendations

i) **The Committee re-emphasizes the recommendations of the 19th Report of the Public Investments Committee on audited accounts of State Corporations that unless there are compelling reasons, the audit exercise of key State Corporations should not be outsourced.**

ii) **Parliament should amend the Public Audit Act to restrict outsourcing of audit for State Corporations taking into consideration their strategic importance and turnover of the corporation.**

iii) **Parliament should adopt regulations that guide the outsourcing of audit exercise of State Corporations. The guidelines can give directions on how to outsource and sanctions for audit firms that flout these regulations.**

iv) **The National Assembly and the National Treasury should allocate adequate resources to the Office of the Auditor General to enable it to employ enough staff to effectively audit all government entities**

6. VARIATION OF TENDER AMOUNTS

The Committee noted some inconsistencies in the procurement of public goods and services. These include:

(i) award of tenders
(ii) amendments to tender specifications,
(iii) awarding tenders to contractors who were not part of the winning tenders
(iv) changes to contract sum beyond the limits allowed in law

An example in this regard is the construction of a multi-storey car park by the National Hospital Insurance Fund (N.H.I.F) that was varied more that three hundred and thirty eight percent.

Committee Recommendations

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

(ii) **The Chief Executive officers who exceed the maximum contract variation of 25% should be surcharged for the variation in price incurred by their respective corporations over and above the allowed threshold in law.**

7. INVESTMENT BY STATE CORPORATIONS

The Committee noted with concern that most state corporations concentrated their investments in purchase of land. This poses the risk of unrecoverable loss where ownership of the land is in dispute or is lost thereby failing to realise value for money in land-based investments. A case in point is the National Social Security Fund that has invested heavly in land and buildings especially in Movako, Kisumu, Upper Hill whose issues are not yet resolved.

Committee Recommendations

i) **Commercial State corporations should ensure that they diversify their investment portfolios to maximize on profit and safeguard against losses.**

ii) **Parliament should enact legislation outlining guidelines relating to the investment of surplus revenue.**

iii) **Parliament should enact legislation to regulate the deposit of money in private banks by state corporations.**

8. IMPLEMENTATION OF COMMITTEE RECOMMENDATIONS:

The Committee observed that a number of recommendations of the previous committees have not been implemented. This has led to some audit queries subsisting for several financial years.

Committee Recommendation

Parliamentary Committees should form sub-committees that will work closely with the Committee of Implementation to track and report to the committee on the status of implementation of their recommendations as well as provide institutional memory during examination of accounts.

9. SPECIAL AUDITS

In the process of examining accounts of State Corporations, matters incidental thereto were encountered necessitating the Committee to request for Special Audits from the OAG. Such matters include:

(i) Line V Replacement by the Kenya Pipeline Company;
(ii) Unaccounted for transit goods destined to neighbouring countries by the Kenya Revenue Authority;
(iii) Purchase of maize stocks by the National Cereals and Produce Board in the FY 2017/2018;

Committee Recommendation

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

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

2.1 KENYA POWER AND LIGHTING COMPANY (FY 2012/2013 – 2016/2017)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE KENYA POWER AND LIGHTING COMPANY FOR THE FINANCIAL YEARS 2012/2013 TO 2016/2017

Dr. Ken Tarus, the Managing Director of the Kenya Power and Lighting Company accompanied by Mr. Harun Karisa (Ag. General Manager, Finance), Mr. Daniel Tare (General Manager), Mr. Peter Mwichigi (General Manager), Mr. Samuel Ndirangu (General Manager ICT), and Johnstone Ole Turana (Corporate communications) appeared before the Committee on 15th May 2018 to adduce evidence on the report of the Auditor General on the financial statements of the KPLC for the financial years 2012/13 to 2016/2017.

1. **Examination of KPLC's Accounts for the FY 2012/13:** The Committee heard that KPLC's account for the financial year 2012/2013 was unqualified.
2. **Examination of KPLC's Accounts for the FY 2013/14:** The Committee heard that KPLC's account for the financial year 2013/2014 was unqualified.
3. **Examination of KPLC's Accounts for the FY 2014/15:** The Committee heard that KPLC's account for the financial year 2014/2015 was unqualified.
4. **Examination of KPLC's Accounts for the FY 2015/16:** The Committee heard that KPLC's account for the financial year 2015/2016 was unqualified.
5. **Examination of KPLC's Accounts for the FY 2016/17:** The Committee heard that KPLC's account for the financial year 2016/2017 was unqualified.

Committee Observations

(i) **The Kenya Power and Lighting Company was issued with unqualified reports for the Financial Years 2012/2013 through to 2016/2017.**

(ii) **The Office of the Auditor General had outsourced the audit assignment for the period under consideration from Price Water House Coopers (PWC) pursuant to Section 23 of the Public Audit Act, 2015. This was contrary to the P.I.C's 19th report recommendation that audit assignment on strategic government corporations such as the KPLC should not be outsourced but rather done by the Office of the Auditor General (OAG).**

(iii) Most of the audit assignments of corporations within the energy sector such as Kenya Electricity Generating Company (KENGEN), Geothermal Development Company (GDC), Kenya Electricity Transmission Company (KETRACO) and National Oil Corporation (NOCK), among others, were outsourced.

(iv) Even after the Office of the Auditor General issued unqualified reports, there have been several cases lodged in court regarding financial irregularities at Kenya Power with senior Managers of the State prosecuted for various charges including economic crimes and abuse of office.

Committee Recommendations

(i) The OAG should conduct a forensic audit of the Kenya Power and Lightning Company based on the internal audit for 2014/2015 onwards. The forensic audit should take into consideration the issues of procurement of faulty transformers and prepaid tokens meters.

(ii) The Government should allocate adequate resources to the Office of the Auditor General to hire enough staff to effectively audit all the strategic government corporations.

(iii) In the event that the investigations disclose that outsourced audit firms are found to be culpable, the firms should be barred from contracting with government pursuant to the provisions of the Public Procurement and Disposal of Assets Act (2005) and Public Procurement and Asset Disposal Act (2015) and individuals behind the firms be held responsible.

2.2 GEOTHERMAL DEVELOPMENT COMPANY (FY 2015/2016)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF GEOTHERMAL DEVELOPMENT COMPANY FOR THE FINANCIAL YEAR 2015/2016

Eng. Johnson Nchoe - Chief Executive Officer of Geothermal Development Company accompanied by Ms. Beatrice Kosgei – Company Secretary; Mr. Stephen Busieney – General Manager, Finance; and Ms. Jackyline Wakhungu – Chief Accountant; appeared before the Committee on 1st and 9th March, 2018 to adduce evidence on the report of the Auditor General on the financial statements of Geothermal Development Company for the financial year 2015/2016.

1) CORPORATION TAX AND RELATED PENALTIES

The Committee heard that Geothermal Development Company (GDC), a state corporation, is required to comply with the tax laws and regulations. Amongst others, it should remit taxes to the Kenya Revenue Authority as per the prescribed due dates.

The statement of financial position as at 30 June 2016 reflected current tax liabilities of Kshs 1,656,555,000 (2015 Kshs 724,236,000) which included a balance of Kshs. 1.4 billion, on account of unpaid corporate income tax for the financial year ending 30 June 2015 and a quarterly instalment due as at 30 June 2016 of Kshs. 724,236,000 and Kshs. 675,764,000 respectively.

A charge of revenue of Kshs. 405,572,000 on account of penalties had been effected in the year's financial statements with the continued delay, the unpaid amounts continued to attract interest and penalties.

Management response

The GDC Management informed the Committee that in the Financial Year 2016/2017, it requested the Ministry of Energy & Petroleum and the National Treasury for a supplementary budget to cater for the shortfall in funding for the taxes. GDC had also requested Treasury through the Ministry of Energy & Petroleum to consider re-classification of grants from the government to enable the company to enjoy the tax shield from capital investments and reduce the tax exposure or consider tax abandonment during the initial development phase of geothermal resources.

The matter was awaiting response from the National Treasury.

Committee Observation

i) **The National Treasury had taken inordinately long to address this matter by failing to provide additional funding to cater for the taxes.**

ii) **There were on-going consultations to provide budgetary support to GDC through**

the Departmental Committee on Energy. The Committee will closely follow the matter and support any initiative to provide the much needed budgetary support to the GDC

iii) **The National Treasury's response dated 19th January 2017 was categorical that GDC should first meet the requirements under the Tax Procedures Act for it to qualify for corporate tax waiver.**

Committee Recommendation

The National Treasury should allocate the requested funds within the financial year 2018/2019 through a supplementary budget to resolve this audit query.

2) PROCUREMENT OF RIG MOVE SERVICES

The Committee heard that the Geothermal Development Company entered into a rig move service contract on 4 May 2011 for twelve rig moves covering a period of one year at a rate of KES 19,550,000 per move estimated 50 loads. The contract further provided for prorated incremental charge levy where the loads per move exceeded 50 loads. The services were retendered in 2012 and re-awarded to the previous contractor with a contract dated October 2012. The new contract was for a period of 2 years or 40 rig moves on a need basis and at a price of KES 42, 746,000 per move estimated to constitute 100 loads.

Amongst other clauses, the new contract provided for constant pay-out rate when the load is 100 loads or below but prorated incremental payment for loads exceeding 100; constant pay-out rate when the distance covered is 11 kilometres or less but prorated incremental payment for distance exceeding 11 kilometres; and penalties on GDC in the event of delays occasioned by its staff at the rate of KES 50,000 per truck and KES 160,000 per crane per day but on the other hand, if the contractor were to cause the delays, it would only be liable to penalties of 0.001% of the unit contract price amounting to KES 427.

Further and as reported in the 2014/2015 financial year, the contract was under investigation by the Ethics and Anti-Corruption Commission (EACC) for possible irregularities. In the consequence, the company's management stopped usage of the contracted services, resulting in the contractor threatening to commence legal proceedings for breach of contract. At the time of concluding the audit assignment, GDC issued notice to terminate the contract pursuant to contractual provision clause 19 vide a letter dated 13 September 2016. Upon receipt of the termination notice, the contractor issued an invoice of Kshs. 13,350,000 for works done and and a claim for Kshs. 1,025,904,000 on account of loss of revenue on the remaining 24 rig moves for which management has disputed. Subsequently and pursuant to dispute resolution mechanism in the contract, the management convened a meeting with the contractor with the aim of reaching an amicable solution. Under the

circumstances, it has however not been possible to ascertain the extent of the liability that may arise because of the contractor's claim on termination of the contract.

Management Response

The Managing Director informed the Committee that:

i. GDC on 13 September 2016 issued a notice of termination to M/s Bonfide Clearing and Forwarding Company Ltd (the Contractor) of the contract for provision of rig move services.

ii. The Contractor through its lawyers M/s Kingori Kariuki Company & Advocates, in a letter dated 26 September 2016 responded to the notice of termination indicating they required payment owing for the works done as at the date of termination of the contract.

iii. GDC responded on 28 September 2016 indicating that on the record GDC had no outstanding payments however the contractor was advised to present any unpaid invoices in its possession for works done.

iv. On 14 October 2016, in response to the GDC letter above, the Contractor present a copy of one invoice No. 213/gdc/14 for KES 13,350,000.00. In addition, the contractor introduced a computation for loss of revenue on the remaining 24 moves for KES 1, 025,904,000.00

v. GDC responded on the 19 October 2016 indicating that it was looking into the invoices presented and will revert. On the same date GDC received a letter from the contractor dated 18 October 2016 seeking to refer the matter to a single arbitrator.

vi. On 3 November 2016, GDC affirmed that all sums payable to the Contractor under the provisions of the contract had been in full and in particular the contract had no provision for mobilisation and demobilization as invoiced by the Contractor. Payment was provided for a complete move. The computation on loss of revenue cannot be supported as the contractor did not provide the services and GDC had a right to terminate the contract.

vii. GDC has however in a bid to amicably settle the matter, invoked the provisions on dispute resolution under the contract and has requested the contractor to send its representatives to a meeting with a view to settle the matter or thereafter forward the matter for arbitration.

Committee Observations

The Committee observed that:-

i) This matter was handled in the 21st P.I.C report that was duly adopted.

ii) **GDC terminated the Rig Movement contract by a written notice in accordance with provision 19.1 of the Contract Agreement for GDC's convenience.**

iii) **Termination of the contract may result into protracted litigations that may eventually lead to loss of public funds.**

iv) **The matter of the controversial contract for rig move services was under investigations by Ethics and Anti-Corruption Commission and former Company officials are being investigated for irregular award of the contract and inflating the cost of rig move services.**

v) **GDC has since built its internal capacity and could be able to do the work at a cheaper price.**

Committee Recommendation

The Ethics and Anti-Corruption Commission (E.A.C.C) and Directorate of Criminal Investigations (D.C.I) should expedite investigations into the matter of the procurement of Rig move services and conclude within six months.

3) VESTING OF GEOTHERMAL WELLS DEVELOPED BY KENGEN

The Committee heard that as reported in the previous years, included in the statement of financial position in assets exploration and evaluation figure of Kshs. 24,853,442,000 were costs totaling Ksh. 8,377,275,157 in regard to drilling of 26 wells out of the total 59 sunk using funds from the Government of Kenya. In the year under review, GDC sold steam worth Kshs.3,160,664,000 (2015 Kshs. 2,534, 774,000) from the 59 wells of Olkaria to KENGEN and recognized as revenue. However as at 30th June 2016, only the cost of 26 out of the 59 wells had been recognized in these financial statements.

The Government had authorized the recognition of 26 wells drilled in Olkaria as assets in GDC books of account pending completion of government vesting procedures.

Management response

Management informed the committee that GDC requested for an update from KENGEN on the status of obtaining consent from its lenders to vest wells in GDC through a letter dated 27th October 2017. The Ministry of Energy & Petroleum (as it then was) advised both GDC and KENGEN to urgently expedite the vesting process through its letter dated 13th November 2017.

KENGEN on the other hand asked GDC to provide a legal brief to French Development Agency (AFD) on the implications of vesting of wells and also request AFD to adjust their security. GDC had provided a legal brief to AFD and was waiting a response from AFD on the same.

Committee Observations

(i) GDC had provided a legal brief to Agence Francaise De Development (AFD) through a letter dated 9th February 2018. Vesting could be concluded within 6 months of getting a response from AFD.

(ii) The land in Olkaria that initially belonged to Kenya Forestry Services had since been transferred to GDC.

Committee Recommendations

(i) The Principal Secretary for the National Treasury should issue vesting orders within 6 months.

(ii) The audit assignment of Geothermal Development Company should be done by the Office of the Auditor General and not outsourced going forward.

2.3 KENYA ELECTRICITY TRANSMISSION COMPANY (FY 2013/2014 TO 2015/2016)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE KENYA ELECTRICITY TRANSMISSON COMPANY (KETRACO) FOR THE FINANCIAL YEARs 2013/2014 TO 2015/2016

On 22nd March 2018, FCPA Fernandes Barasa, the Managing Director of the Kenya Electricity Transmission company accompanied by Dr. (Eng) Joseph Siror (GM, Transmission), Dr. (Eng) John Maliro, and CPA Richard Tobiko appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the company for the financial year 2013/14 to 2015/2016.

Financial Year 2013/14

Examination of KETRACO Accounts for the FY 2013/14: The Committee heard that KETRACO had unqualified report.

Financial Year 2014/2015 FY

Examination of KETRACO Accounts for the FY 2014/15: The Committee heard that KETRACO had unqualified report.

Financial Year 2015/2016

1) OTHER MATTER: PROJECT PERFORMANCE

The Committee heard that significant delays were noted in the implementation of three (3) of the seven (7) Projects namely EXIM Bank of India, Nile Equatorial Lakes Countries (NELSAP) and Nairobi Ring Transmission Line donor funded projects due to contractor non-performance. Consequently, some of the contracts were terminated during the year under review and procurement of replacement contractors initiated.

In those circumstances, the completion of the three projects within the approved budgets and timelines could not be confirmed. This opinion was not qualified

Management Response

Management informed the Committee as follows:

(i) The Exim Bank of India funded project

The Exim Bank of India funded project was a cluster of various transmission lines and substations divided into two sub-projects namely Turkwel - Ortum - Kitale and Machakos – Isinya - Namanga. Turkwel – Ortum - Kitale was in two lots; Lot 1B was a 38Km transmission line traversing two counties, Trans-Nzoia and West Pokot. Lot 1A comprises of two substations; one at Kitale in Trans-Nzoia County and one at Ortum in West Pokot County. KEC

International Ltd was the contractor for the transmission line and Ms. Jyoti Structures Ltd was the contractor for substations. The progress was at 87% and 70% respectively.

The transmission line completion had delayed mainly due to right of way challenges and inadequate budgetary allocation for wayleave compensation. Most of the land in West Pokot was community land; the community and group ranch members had not agreed whether compensation should be made to either the County Government or to individual members. This had taken long to settle.

The contractor for substations had financial challenges in the recent past resulting in restructuring of the company thereby affecting the progress of the project. However, their performance had improved after restructuring.

Machakos – Konza - Isinya – Namanga project was in two lots: Lot 3A was a transmission line traversing two counties, namely Machakos and Kajiado. The Machakos - Konza Section was complete and energized. Isinya - Namanga section was behind schedule due to wayleave challenges. Some land owners had demanded exorbitant compensation in order to allow works to proceed. Secondly, inadequate budgetary allocation had hampered timely payout of compensation to Persons Affected by the Project (PAPs).

Lot 3B comprised of 4 substations. Three (3) substations, namely; Machakos, Konza and Namanga substations were complete and energized. Isinya substation was expected to be completed in April 2018.

(ii) <u>Lessos – Tororo (part of NELSAP Project)</u>

Lessos- Tororo was a NELSAP project comprising 132Km transmission line traversing Uasin Gishu, Kakamega, Bungoma and Busia counties. African Development Bank and the Government of Kenya jointly funded the project. The contractor was Inabensa of Spain and was terminated because of non-performance in April 2016. Subsequently, the contractor obtained Court Orders stopping KETRACO from accessing the site and hiring a new contractor until a final settlement was reached. To avoid an expensive protracted arbitration process, the Attorney General advised that the dispute be settled amicably. KETRACO required Euro 22 million to settle certified works done by Inabensa; this would allow the court to dispense with case and enable KETRACO to procure a new contractor to complete the work.

(iii) <u>Nairobi Ring Project</u>

Nairobi Ring Project comprised of a 102km of transmission line traversing Kajiado County and four (4) substations at Isinya and Kimuka in Kajiado County, Athi River substation in Machakos County and Komarock substation in Nairobi County. The transmission line was complete and energized. The substations were behind schedule due to the long process of procuring another contractor after the Ms Iberdrolla of Spain was terminated. KETRACO had since procured a new contractor, Ms Consolidated Power Projects of South Africa, to

complete the project and it was expected to be completed in January 2019. The dispute between Iberdrolla and KETRACO was ongoing at the Arbitration Court in the UK.

Committee Observations

(i) **All the contractors were not Kenyan companies. This arose due to international tender floatation in which international companies won the tenders. However, the Exim bank of India funded projects had a provision that only Indian firms were eligible to bid. All the contractors had no local agents. This was against Section 2(f) of the Public Procurement and Asset Disposal Act (2005) that obligates government to promote local industries.**

(ii) **It was specified in the tender documents that tenderers could bid using any currency of their choice; this explains why most of the contracts were in Euros as they were awarded to European firms.**

(iii) **The National Treasury through its external resource mobilization department negotiates all the loans that finance the KETRACO projects.**

(iv) **The ongoing arbitration cases will be financed by the exchequer.**

(v) **Though Management assured the Committee that due diligence was done before awarding of the contracts, the veracity of that statement could not be ascertained considering that some contracts were terminated due to non-performance onthe part of the contractors and inadequate funds.**

Committee Recommendations

(i) **The Office of the Auditor General should conduct a performance audit to establish whether the process of procuring the Nairobi Ring Project delivered value for money. Those found to have caused any losses arising from the procurement process should be investigated by the EACC and DCI.**

(ii) **On the implementation of Lessos-Tororo part of NELSAP Project, the Office of the Auditor General should conduct a performance audit to establish whether there was value for money in the procurement and award of contract to Inabensa of Spain. The audit shoud determine among others, whether the entity conducted due diligence on the capacity of Inabensa to complete the project and whether the entire procurement process was conducted in accordance with the Public Procurement and Disposal Act, 2005. The performance audit should also establish the amount of money that the country has lost for all power generated without capacity for storage.**

(iii) **The EACC and DCI should conduct an investigation to establish whether there was a breach of law under section 68 of the Pubic Finance Management Act, 2012 with respect to incurring expenditure for the Government without lawful**

authority. If a breach of law is established, those culpable should be prosecuted.

(iv) Going forward, State Corporations that float tenders in the international market should ensure that all future arbitrations are undertaken at the Nairobi Centre for International Arbitration in the event of any contractual dispute.

(v) State Corporations should always undertake due diligence on capacity before awarding any contract to avoid project non-performance.

(vi) The Arbitration process between Inabensa and KETRACO should be expedited to avoid further delays in implementation of the Lessos- Tororo Project

(vii) The National Treasury should always endeavour to release funds meant for projects when due to avoid delays and variations pursuant section of the PFM,2012.

(viii) Audit assignments for KETRACO should be undertaken by the Office of the Auditor General and NOT be outsourced going forward.

2.4 COMPETITION AUTHORITY OF KENYA (FY 2014/2015 – 2016/2017)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE COMPETITION AUTHORITY OF KENYA FOR THE FINANCIAL YEARS 2014/2015 TO 2016/2017

On 29th May 2018, Mr. Wang'ombe Kariuki, the Director General of Competition Authority accompanied by Mr. Protus Sigei (Alt. Director, National Treasury), Mr. Henry Mutwiri (Chief Investment Officer), Mr. Boniface Makongo (Manager, Legal), Mr. Ambrose Agenga (Manager, Finance), Ms. Ninette Mwarania (Manager, Policy & Research), Ms. Elizabeth Shungula (Senior Investment Officer, National Treasury), and Ms. Hakima Mohammed (Finance Officer) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Authority for the financial year 2014/15 to financial year 2016/2017.

(i) **Examination of Competition Authority's Accounts for the FY 2014/2015:** The Committee heard that Competition Authority's account for the financial year 2014/2015 was unqualified.

(ii) **Examination of Competition Authority's Accounts for the FY 2015/2016:** The Committee heard that Competition Authority's account for the financial year 2015/2016 was unqualified.

(iii) **Examination of Competition Authority's Accounts for the FY 2016/2017:** The Committee heard that Competition Authority's account for the financial year 2016/2017 was unqualified.

Committee Observation

The Competition Authority was issued with unqualified report for the Financial Years 2014/2015 through to 2016/2017.

Committee Recommendations

The Authority should continue with the sound financial management practices.

2.5 NAIROBI CENTRE FOR INTERNATIONAL ARBITRATON (FY 2016/2017)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE NAIROBI CENTRE FOR INTERNATIONAL ARBITRATION FOR THE FINANCIAL YEAR 2016/2017

On 30th May 2018, Mr. Lawrence Muiruri Ngugi, the Chief Executive Officer of the Nairobi Center for International Arbitration accompanied by Mr. Lawrence Waigi Kamau (Director) and Mr. Victor Amos Ochieng Ogunyo (Manager, Corporate Support Services) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Center for the financial year 2016/2017.

The Committee heard that, the Auditor General issued the Nairobi Centre for International Arbitration with an unqualified audit opinion for the accounts of FY 2016/2017.

Committee Observation

The Nairobi Centre for International Arbitration was issued with unqualified report for the Financial Year 2016/2017.

Committee Recommendations

(i) The Centre should continue upholding sound financial management.

(ii) Going forward, all State Corporations that float tenders in the international market should ensure that any arbitrations are undertaken at the Nairobi Centre for International Arbitration in the event of any contractual dispute.

2.6 PRIVATIZATION COMMISSION (FY 2007/2008 TO 2016/2017)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE PRIVATIZATION COMMISSION FOR THE FINANCIAL YEARS 2007/2008 TO 2016/2017

On 30th May 2018, Ms. Jacqueline Muindi, the Ag. Executive Director of the Privatization Commission accompanied by Hon. Henry Obwocha (Commisson Chairman), Mr. Robert Mbarani (Chief Manager, Finance and Administration), Ms. Virginiah Kariuki (Finance Manager), Ms. Janerose Omondi (Transactions Manager) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Commission for the financial year 2007/08 to financial year 2015/2016.

(i) **Examination of Privatization Commission's Accounts for the FY 2007/2008:** The Committee heard that Privatization Commission's account for the financial year 2007/2008 was unqualified.

(ii) **Examination of Privatization Commission's Accounts for the FY 2008/2009:** The Committee heard that Privatization Commission's account for the financial year 2008/2009 was unqualified.

(iii) **Examination of Privatization Commission's Accounts for the FY 2009/2010:** The Committee heard that Privatization Commission's account for the financial year 2009/2010 was unqualified.

(iv) **Examination of Privatization Commission's Accounts for the FY 2010/2011:** The Committee heard that Privatization Commission's account for the financial year 2010/2011 was unqualified.

(v) **Examination of Privatization Commission's Accounts for the FY 2011/2012:** The Committee heard that Privatization Commission's account for the financial year 2011/2012 was unqualified.

(vi) **Examination of Privatization Commission's Accounts for the FY 2012/2013:** The Committee heard that Privatization Commission's account for the financial year 2012/2013 was unqualified.

(vii) **Examination of Privatization Commission's Accounts for the FY 2013/2014:** The Committee heard that Privatization Commission's account for the financial year 2013/2014 was unqualified.

(viii) **Examination of Privatization Commission's Accounts for the FY 2014/2015:** The Committee heard that Privatization Commission's account for the financial year 2014/2015 was unqualified.

(ix) **Examination of Privatization Commission's Accounts for the FY 2015/2016:** The Committee heard that Privatization Commission's account for the financial year 2015/2016 was unqualified.

(x) **Examination of Privatization Commission's Accounts for the FY 2016/2017:** The Committee heard that Privatization Commission's account for the financial year 2016/2017 was unqualified.

Committee Observation

The Privatization Commission was issued with unqualified report for the financial years 2007/2008 through to 2016/2017.

Committee Recommendation

The Commission should continue to uphold financial prudence.

2.7 KENYA SCHOOL OF LAW (KSL) (FY 2014/2015 TO 2016/2017)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE KENYA SCHOOL OF LAW FOR THE FINANCIAL YEARS 2014/2015 TO 2016/2017

On 24th May 2018, Dr. Henry Mutai, the Chief Executive Officer of the Kenya School of Law accompanied by Ms. Brenda Kaberenge (Legal counsel) and Mr. Patrick Gachuhi, (Finance Manager) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Kenya School of Law for the financial year 2014/15 to 2016/2017.

1) LOSS OF KENYA SCHOOL OF LAW PROPERTY ON PLOT NO. LR 2009/6238-HG613 OFFICIAL RESIDENCE OF THE SCHOOL PRINCIPAL IN KILIMANI AREA (FY 2014/15, 2015/16 AND 2016/17

The Committee heard that evidence available indicated that Plot No. LR 209/6238 measuring 0.3890 hectares along Bishops Road – Kilimani area had an institutional house No. HG/613 which was reserved by the Government as the official residence of the School Principal. However, on 3 November 1997, a grant of lease was purportedly issued to M/s Rockville Limited, whose Directors included a former Principal of the School, by the Commissioner of Lands, vide allotment Ref. No. 34250. Thereafter, a title deed was issued and registered as Grant No. LR. 74856. The property was later sold to M/s Standard assurance (K) Ltd on 12 June 2002 at a consideration of Kshs. 50,000,000.00 who then charged it to Diamond Trust Kenya Ltd. The matter was reported to the then Kenya Anti-Corruption Commission who on 26 January 2007 made an application to the High Court under Order 56 of the Anti-Corruption and Economic Crimes Act, 2003.

The Committee further heard that the Court ordered the preservation of the property and restrained the respondents from selling, disposing off, wasting or in any other way dealing with the property for six months. This matter had been pending before the High Court in Nairobi under miscellaneous application No. 42 of 2007 awaiting determination. No effort appeared to have been made by the School to have the case expeditiously dispensed with and the property reverted to the School.

Management Response

The Management informed the Committee that the plot was reportedly allocated to Rockville Ltd in 1997 who later transferred the property to Standard Assurance (K) Ltd in July 2002 for a consideration of Kshs. 50Million who in turn took a loan of Kshs.10 million from Diamond Trust Bank against the title. The property was charged to the bank in June 2003 and the matter was referred to the former Kenya Anti-Corruption Commission and court action taken in 2003.

In 2007 a court order was issued in line with section 56 of the Anti-Corruption and Economics Crimes Act No. 3 of 2003 preserving the property and restraining respondents from selling, disposing off, wasting or in any other way dealing with the aforesaid for a period of six months. Visits to the Ethics and Anti-Corruption Commission in March, 2014 established that M/s Standard Assurance (K) Ltd was under statutory management and that the matter had stalled pending the fate of the Insurance Company, in the event that the said Company would come back into full operation the matter would be revived. The matter was in court on stay of Execution.

Committee Observations

The Committee made the following observations:

i) **Though the 20th PIC report had made the following recommendations, they have not yet been implemented:**

   a. **The former Director, Mr. Leornard Njagi, should be held accountable and barred from holding public office for misuse of the institution's property.**

   b. **The letter by the Deputy Solicitor General Ms. Muthoni Kimani dated 1st November 2006 advising KSL to consider the property lost, needs to be revisited as the matter is a clear case of fraud on the part of the former Director, Mr Njagi.**

   c. **The Director, KSL should follow up the matter and ensure that the Bishop's Road Plot (Principal's House) is registered in the name of the Kenya School of Law.**

ii) **Mr. Leonard Njagi was eventually appointed and served as judge of the High Court of Kenya and therefore, continued to hold public office despite PIC's recommendations.**

Committee Recommendations

(i) **The PIC's 20th report recommendations with respect to Mr. Leonard Njagi should be implemented fully within six months.**

(ii) **Mr. Leonard Njagi should be barred from holding public office pursuant to the provisions of section 66 of the Public Audit Act.**

2) 6.8 HECTARES PLOT IN EMBAKASI AREA (FY 2014/15 & FY 2015/2016)

The Committee heard that in a letter dated 9 April 1991, the Commission of Lands forwarded an approved plan No. 268 for a plot in Embakasi near the School of Aviation measuring 6.18 hectares under departmental reference No. 42/14/90/1 of 3 January 1990 which was reserved for future development of the Kenya School of Law. Although all the fees and

charges amounting to Kshs. 6, 122.00 were paid vide cheque No. 019198 dated 8 September 1999, no title deed was issued despite numerous reminders which were not responded to.

In a turn of events, there was communication between the Director/Chief Executive and Secretary, Council for Legal Education and the former Permanent Secretary Ministry of Lands, that the Council for Legal Education had resolved to relinquish its interest in the property and that the plot should revert to the Commissioner of Lands for reallocation. The Council further sought a refund of fees and charges paid in the process of acquiring title to the property.

An audit physical inspection carried out on 12 April 2002 revealed that the Plot was still intact but a small portion had been alienated and fenced off by third parties. Despite informing the Commissioner of Lands that the plot was in the process of being grabbed through Management Letter Ref. CLE/201/1999/2000/(5) dated 12 April, 2002, no action was taken. The School was said to have been subsequently allocated another plot in Karen where it now sits.

The Committee further heard that despite the resolution to relinquish its interest on the property which was referred to as LR No. 29/5651 in the correspondences, the School again changed the decision to relinquish interest and wrote to the National Land Commission requesting a review of the matter. In a letter referenced KSL/PR/CONF/IC/VOLIII (257), the School requested the National Land Commission to cancel title deeds of plot No. LR. 209/5651 – Embakasi". There was no evidence of any action that has been taken by the National Land Commission on the School's request. It was not clear why the Council for Legal education resolved to relinquish its rights to the plot instead of pursuing and safeguarding public property.

Further, the identity of the third parties now occupying the land measuring 6.18 hectares had not been disclosed nor had the School disclosed the size of the land in its books of accounts.

Management Response

The Management informed the Committee that the land at Embakasi, the "Council/Kenya School of Law" did not have reliable information on the alleged allocation of land to enable it pursue the process of obtaining relevant documents including the Title document. The "Council/Kenya School of Law" therefore visited the National Lands Commission on 31st March 2014 and held a meeting with Commissioner Emma Njogu. Ms. Njogu requested the School to write to the National Lands Commission requesting for a review of the matter and that she be copied all the correspondence in our file after which the Commission promised to carry out investigation and advise on the way forward.

Management further informed the Committee that the School vide its letter reference No. KSL/F&A/Vol. (188) dated 3rd April, 2014 requested for a review of the matter and enclosed copies of correspondences accordingly. Further, the School vide their letter reference No.

KSL/PR/CONF/1C/VOL III (257) dated 25th September, 2014 communicated the School Board Resolution that management wrote to the National Land Commission requesting the cancellation of the Title Deed of the said plot. National Land Commission vide their letter reference NLC/CHIARMAN/VOL.VII/68 dated 17th October 2014 advised that the matter was being handled and that they shall respond to the school soonest. No correspondence had been received from the NLC since then.

The School vide their letter reference CLE/201/1999/2000(5) dated 12th April,2002, had informed the then Commissioner of Lands that the land in Embakasi was in the process of being grabbed, citing the long journey the School has travelled in securing the parcel of land without meaningful results, the School wrote vide their letter reference No. KSL/PR/CONF./1C/VOL.III/257 to the National Land Commission with an intention to relinquish interest in the land.

Committee Observation

(i) **It was grossly negligent for the company secretary of the Kenya School of Law not to establish who the third parties were in the impugned property.**

(ii) **The Company Secretary of the Kenya School of Law showed indecisiveness with regard to their interests in owning the property.**

(iii) **The Ministry of Lands and the National Land Commission had been negligent by not addressing the matter when it was brought to their attention.**

Committee recommendation

(i) **The National Land Commission should urgently issue the requested title deed to the Kenya School of Law of the full acreage of the said piece of land within three months. Failure to achieve this, the persons responsible should be held accountable.**

(ii) **The National Land Commission and the Ministry of Lands should identify and reveal the identity of the third party to the land.**

(iii) **The School Board should take disciplinary action against the Company Secretary.**

3) STALLED CONSTRUCTION PROJECT OF AN ULTRA-MODERN LIBRARY AND MOOT COURTS (FY 2016/17)

The Committee heard that a contract for construction of an ultra-modern library and moot courts was awarded to M/S Resjos Contractors at a cost of Kshs. 488, 704, 449 and commenced on 24 June 2013. The construction period was three years and was expected to be completed by September 2016. At the time of audit, Kshs. 68, 092, 974 had been paid to the contractor and the project had stalled at 20% stage of completion. Consequently, it had

not been possible to confirm that the School has obtained value for money from the expenditure of Kshs. 68, 092, 974 incurred on the project as at 30 June 2017.

Management Response

While concurring that the Ultra-Modern library project had stalled due to consistent budget cuts from the Exchequer, the Kenya School of Law management averred that in the financial year 2016/2017, the School was not allocated any development funds. In the financial 2017/2018, the School was allocated Kshs. 60M, and up to date, the funds had not been released to the School.

However, the expenditure of Kshs.68,092,973 was reflected in the financial statement under the Work In progress in the Prior Financial years. Correspondence shown clearly demonstrates that the Kenya School of Law had consistently requested the Exchequer through the Office of the Attorney General to release funds to facilitate completion of the Ultra-Modern Library Project whose construction commenced in the year 2013.

Committee Observations

(i) **The delayed implementation of the project would lead to variations and more expenses to the tax payers.**

(ii) **It is wrong for a government entity to initiate a project and fail to finance its implementation.**

Committee Recommendations

(i) **The National Treasury allocates the required resources to the Kenya School of Law to be able to complete the stalled project.**

(ii) **The Kenya School of Law should prioritize completion of this project.**

(iii) **The National Treasury must prioritise supplying funds for ongoing projects over financing new projects.**

2.8 NATIONAL COUNCIL FOR POPULATION DEVELOPMENT (NCPD) (FY 2014/2015 TO 2015/2016)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE NATIONAL COUNCIL FOR POPULATION DEVELOPMENT FOR THE FINANCIAL YEARS 2014/2015 TO 2015/2016

On 23rd May 2018, Dr. Josephine Kibaru Mbae, the Director General of the National Council for Population Development accompanied by Mr. Peter Arisi Nyakwara (Director, Technical Services) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of NCPD for the Financial Year 2014/15 to FY 2015/2016.

1) PROPERTY, PLANT AND EQUIPMENT – FY 2014/15 & FY 2015/16

The Committee heard that as previously reported, the property, plant and equipment balance of Ksh. 52,758,781 as at 30 June, 2016 excluded undetermined values of land situated at Upper Hill Nairobi, Murang'a and Kisii counties without ownership documents. In consequence of the exclusion, the property, plant and equipment balance was not fairly stated.

Information available indicated that land in Upper Hill Nairobi (LR No. 209/13332-Plan No. 93637/11/724) measuring 0.63 hectares which had been reserved to the Council in 1989 to construct its offices was subsequently allocated to a private developer. Although the Council attempted to take possession of the property on 12 November 2016 following the Public Investment Committee recommendation, this did not however materialize. Additional information indicated that the National Lands Commission made a ruling on 8 March 2016 granting the land to the private developer without making reference to the Council. According to the ruling, the Commission determined that allocation of the land to the private developer was irregular but ordered the title to be re-issued in the name of developer on grounds of public interest since the land had already been charged with a collapsed bank and the depositors in the bank needed not lose out. Further, although the National Land Commission indicated in the ruling that it could assist the National Council for Population and Development to acquire alternative land, this has not been done to date.

Management Response

a) Land in Upper Hill, Nairobi (LR No. 209/13332-Plan No. 93637/11/724)

Management informed the Committee that the Ndung'u Commission Report recommended that the land reverted to NCPD and that the plot was located in a prime area and big enough to accommodate the needs of NCPD.

The Commissioner of Lands, vide his letter Ref. No. 93637/11/74 of 22nd June, 1989, confirmed to the Ministry of Home Affairs that he had reserved land Plan No. 93637/11/724 measuring 0.63 hectares for NCPD HQ building. The plot was located next to prisons Headquarters along Ngong Road, Nairobi. As soon as land was identified, the process of construction commenced, starting with design works, drawings and other preparatory activities. Subsequently, pre-qualification of contractors was carried out through International Competitive Bidding and nineteen contractors were shortlisted. The process was put on hold in 1992 as it was about to go to tender and suspended in 1993, at the request of the then Head of Public Service, in order to allocate the funds towards urgent drug procurements for Ministry of Health.

In October 1996, the land was registered as LR. No. 209/13332 and title issued in the name of Rosestar Properties Limited private developer who used it as security for a loan from Trust Bank. Since then, NCPD and the parent Ministry have pursued return of the land, initially with the Public Accounts Committee, and with Ministry of Lands. NCPD (NCAPD) through the parent Ministry made written submission to the Commission of Inquiry into Illegal/Irregular Allocation of Public Land. The Report of the Commission of Inquiry recommended that re-allocation to the Private Developer done in 1996 be revoked and the land revert to NCPD in the Ministry of Planning and National Development.

Since the landmark verdict by the Commission of Inquiry, there has been a number of correspondences from the Permanent Secretary Ministry of Planning as well as from the Chief Executive Officer (NCAPD now NCPD) to the Commissioner of Lands and the Permanent Secretary Ministry of Lands requesting that the said piece of land be given back to NCPD as recommended by the Commission. In his letter of 5th June 2005, the Permanent Secretary Ministry of Planning reminded the Commissioner of Lands of their earlier assurance that the matter was to await the outcome of the Commission. No response has been received to-date.

There are several correspondences on the piece of land and one of them is the letter from NCAPD to Permanent Secretary Ministry of Lands dated 13th July 2010 pleading with the PS to intervene to have the plot revert back to NCAPD. NCAPD Board of Directors' during its meeting on 27th January 2010 deliberated on the matter and asked Management to bring it to the attention of the Hon. Minister of State for Planning, National Development & Vision 2030 so that Hon. Minister can take it up with the Minister of Lands.

In the year 2010, the title to Rosseter was revoked and a new title issued under the PS Treasury. However it was brought to the Council's attention that the recommendation the Ndungu report was partially implemented and though the title reverted back to government, it was irregularly allocated to the Ministry of Immigration.

A petition was tabled in parliament on Thursday 13th September 2012 on Irregular allocation of land and the then Minister for Land Hon. James Orengo informed members that the interests of NCPD had been taken care of.

A letter Ref. MPD/1/4/5 from PS Devolution & Planning to PS National Treasury requesting NCPD to be facilitated to access the plot for development purposes. On 14th January 2014, an advertisement appeared in the Daily Nation Newspaper under Public Notice. NCPD Board together with management attended and made both verbal and written submissions to the commissioners. Another advertisement appeared on the local dialies on 14th August 2014 under public Notice on matters that were partially heard. NCPD management once again appeared and presented both oral and written submissions

NCPD management wrote to the Chairman of the National Land commission on 24th October 2014 requesting for a feedback on the outcome of the Public hearings. The National Treasury was also enjoined as an interested party and requested to appear as an interested party on 25th November, 2015. The information was received late and they wrote to the NLC on 29th January, 2015 informing them that they were only a custodian of government property and that the property belonged to NCPD.

NCPD had appeared before the Public Investments Committee in 2016 and was advised to fence the land; which NCPD did.

In March 2016, the National Land Commission and without reference to NCPD, made a ruling granting the land to the Private Developer indicating that, although the allocation was irregular, the Developer had taken a loan with a bank and the property had been charged. The Commission indicated that this was done on public interest as the depositors interests had to be considered. The Commission further indicated in the ruling that NCPD would be assisted with alternative land. Though the Council had made follow ups with the Commission, the alternative land has not been provided.

Committee Observations

(i) **The Council had made attempts to recover the land but the National Land Commission ruled against its claim. The Commission claimed that the Developer had taken a loan with a bank and the property had been charged hence there was a need to protect public interest.**

(ii) **The National Land Commission appears to have regularized an illegality when ruling in favor of the private developer as the latter had acquired the land through fraudulent means. The Report of the Commission of Inquiry (Ndungu Report) as well as the 19th Report of the Public Investment Committee all recognized the Council as the rightful owner of the land. The claim of public interest cited by the Commission does not supersede the law.**

(iii) **The National Land Commission did not provide the alternative land to the Council as they undertook during the ruling in favour of the private developer.**

(iv) **The National Land Commission acknowledged that the allocation of the land to Rosestar Ltd. was irregular.**

Committee Recommendations

(i) **Within 60 days of the adoption of this Report, the EACC and the DCI should investigate the circumstances under which the parcel of land in Upper Hill Nairobi (LR No. 209/13332) was irregularly transferred to Rosester Properties limited and prosecute any person found culpable for any criminal offence disclosed.**

(ii) **The Directors of Rosester Properties should be disclosed.**

(iii) **The Committee is of the opinion that the land belongs to NCPD and subject to the outcome of the investigations under paragraph (i) the NLC should revert the title to the Council.**

b) KISII LAND

The NCPD land in Kisii County is located within the Kisii Sub County Government offices, next to the Deputy County Commissioner's office. The plot is approximately 0.07Ha and was reserved for the NCPD (formerly NCAPD) in 1990 and a Part Development Plan was prepared by the then District Physical Planning Officer. In 2007, the District Physical Planning Officer carried out a re-planning of the land and a Part Development Plan was prepared. However, this Part Development Plan was yet to be approved by the Director of Physical Planning.

Committee Observations

(i) **The Council had failed to ensure registration of the land since it was allocated to the Council 28 years ago.**

(ii) **The Council does not have a Company Secretary.**

Committee Recommendations

(i) **The Council should expedite the process of acquiring the title by starting the process at the County level.**

(ii) **The National Land Commission and the Ministry of lands should issue the title deeds to the Council within six weeks.**

(iii) **The Council must employ a legal officer within six months. Further, the Cabinet Secretary, National Treasury should compel the accounting officer to provide within three months after adoption of this report, reasons on either the failure to appoint a company secretary or secure the property of the Council.**

(iv) **Where no satisfactory explanation is provided to the CS National Treasury and Auditor General within the stipulated time, the accounting officer should be prosecuted for financial misconduct relating to failure to manage an asset of that entity contrary to section 197(1)(k) of the Public Finance Management Act, 2012.**

c) MURANGA LAND

The NCPD land measuring 0.10 Ha in Muranga was located in Murang'a town near the County Headquarters offices. It was allocated to NCPD vide the Commissioner of Land's letter Ref. 209163/A/V/24 dated 10th June 2011. NCPD accepted the allotment and paid the required fee of Kshs. 6,872/= (six thousand eight hundred and seventy two) on 3rd May 2012.

NCPD had intensified its efforts to have the Land registered under its name. A surveyor, (Africa Spatial Information Centre) had been contracted to undertake the survey work of the land and processing of title deed.

Committee Observations

(i) **The Council had taken inordinately long to secure the title deed for the piece of land.**

(ii) **The Council is currently awaiting a title deed from the National Lands Commission.**

Committee Recommendations

(i) **The Council should expedite the process of securing the title deed. It should initiate the process at the county government.**

(ii) **The National Land Commission and the Ministry of Lands should issue the title deeds within six weeks.**

(iii) **The Council should employ a legal officer within six months. Further, the Cabinet Secretary, National Treasury should compel the accounting officer to provide within three months after adoption of this report, reasons on either the failure to appoint a company secretary or secure the property of the Council.**

(iv) **Where no satisfactory explanation is provided to the CS National Treasury and Auditor General within the stipulated time, the accounting officer should be prosecuted for financial misconduct relating to failure to manage an asset of that entity contrary to section 197(1)(k) of the Public Finance Management Act, 2012.**

2) CHANGE OF OWNERSHIP OF NCPD VEHICLES- GK T925 AND GK U206 (NISSAN PATROL) – FY 2014/15 & FY 2015/16

The Committee heard that ownership of a motor vehicle GK T925 whose original cost was unknown could not be verified as the vehicle was registered in the name of Ministry of Planning as of 30 June, 2016. As a result, it had not been possible to confirm whether the Council's motor vehicles with the net book value of Kshs. 33, 179 762 as disclosed in Note 7 to the financial statements were fairly stated.

Management Response

Management informed the Committee that the Nissan Patrol vehicles were donated by JICA to the National Council for Population and Development (NCPD). At the time, NCPD was a department in the then Ministry of Home Affairs. With the restructuring of Government, NCPD was later moved to the Ministry of Planning, National Development and Vision 2030. The original logbooks of the vehicles continued to indicate ownership of the vehicles as the Ministry of Home Affairs.

With the establishment of NCPD as a semi-autonomous Government Agency, it was required that the ownership of the vehicles as indicated in the logbooks be changed to reflect ownership as NCPD and subsequently acquisition of the blue registration number plates. The process entailed changing ownership from Ministry of Home Affairs to the Ministry of Devolution and planning and finally to NCPD.

The council had managed to process the change of ownership from the Ministry of Home Affairs to the Ministry of Devolution and Planning and obtained new logbooks for the vehicles indicating the ownership as the Ministry of Devolution and Planning. The Council was in the process of processing transfer of ownership from the Ministry of Devolution and Planning to NCPD through the following steps:

- Obtained a letter from the Principal Secretary, Ministry of Devolution and Planning confirming the ownership of the vehicles and authorizing the change of ownership.
- Obtained and filled the necessary forms from the Kenya Revenue Authority and attached the necessary documents.
- Undertaken a verification process (Tape lift) at the Criminal Investigations Department and obtained a report for the same.
- Procured a KRA registered clearing agent to register and process the payment of customs duty for the two vehicles as is required by KRA.
- Paid customs duty to KRA for the two vehicles.
- The Council through the contracted clearing agent had cleared the customs duty for the vehicles at KRA and the customs clearance documents and other necessary documents were forwarded to the Registrar of Motor Vehicles to conclude the process of change of ownership.
- The Log book and the Number plates were availed for GK T 206.
- NCPD has paid a fee of Kshs 18,808 for processing the log books and the Number Plates

Committee Observation

This process has taken inordinately long time, though there was indication that it was at its tail end.

Committee Recommendations

(i) The Council should expedite the process of acquiring the vehicle registration numbers and have it within three months of the adoption of this Report.

(ii) Accounting Officer should ensure that all applicable accounting and financial controls, systems, standards, laws and procedures are followed when procuring or disposing of goods and services and that, in the case of goods, adequate arrangements are made for their custody, safeguarding and maintenance pursuant to the the provisions of section 68(2)(d) of the Public Finance Management Act, 2012.

3) RECEIVABLES – FY 2015/2016

The Committee heard that receivables from exchange transactions balance of Kshs. 5,802,573 reflected in the financial statements as at 30th June, 2016 included outstanding imprests totaling Kshs. 5,641,507. It was noted that an officer whose personal number was 20130004 had accumulated more than 15 imprests. The officer resigned from the Council on 16th May 2016 leaving an outstanding imprest of Kshs. 3, 767, 697. Information provided revealed that the amount was obtained fraudulently by the officer. No provision had been made in the financial statements to cover the uncertainty in recovery of the amount of Kshs. 3,767,967.

Management Response

The Management informed the Committee that this matter had been reported to the Criminal Investigations Department (CID) and subsequently been taken to court. A provision for the debt was provided for in the year 2016-2017.

Committee Observations

(i) The imprest holder in question was charged in court. The officer was the Director of Finance at the Council who forged documents to acquire the amount.

(ii) The officer was charged together with the Manager, Accounts as an accomplice.The case on this matter was ongoing.

(iii) The Council has since strengthened its Internal Audit department to avoid a recurrence of such an incident. The Council has further incorporated the use of internet banking to be able to track financial transactions in real time.

Committee Recommendation

The Council should pursue the matter to its logical conclusion and ensure that those imprest holders are surcharged.

4) CASH AND CASH EQUIVALENTS – FY 2015/2016

The statement of financial position, as further disclosed in Note 13 the financial statements, reflected a cash-and-cash equivalents balance of Kshs. 30,031,686 as at 30 June 2016, which was net of overdraft balances of Kshs. 6,831,769 and Kshs. 1,854,806 in the recurrent and development accounts, respectively. In addition, the bank reconciliation statement for the development account included stale cheques of Kshs. 1,215,096. No satisfactory reason had been provided for failure to reverse the cheque in the books of account.

Management Response

The cheques were reversed and have since cleared.

Committee Observation

The Audit query had been resolved.

Committee Recommendation

The Council should ensure that its records and books are balanced, updated and audited in good time to avoid raising such audit queries.

5) EMPHASIS OF OPINION

The Committee heard that the statement of financial performance reflected an operating loss of Kshs. 21, 466,160 for year ended 30th June 2016 (2014/2015 – an operating loss of Kshs. 24,795,931). This resulted to a decline in the Council's accumulated surplus for Kshs. 27, 187,021 as at 30 June 2015 to Kshs. 5,733,922 as at 30th June 2016. This state of affairs needed to be addressed to ensure that the Council continued with its operations as expected.

Management Response

The council's budget was enhanced in the revised estimates for the financial year 2017/2018 and in the proposed budget for the financial year 2018/2019 in order to effectively carry out its mandate.

Committee Observations

(i) **The Council was grossly underfunded and was therefore unable to effectively undertake its mandate.**

(ii) The Board of NCPD was not properly constituted as it lacked a Chairperson since February, 2017.

Committee Recommendation

(i) The National Treasury should endeavour to always provide adequate funds to enable the Council achieve its mandate

(ii) The appointing authority should expeditiously appoint the Chairperson of the Board.

2.9 NATIONAL AIDS CONTROL COUNCIL (NACC) (FY 2012/2013 TO 2016/2017)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE NATIONAL AIDS CONTROL COUNCIL FOR THE FINANCIAL YEARS 2012/2013 TO 2016/2017

Dr. Nduku Kilonzo, the Chief Executive Officer of the National Aids Control Council accompanied by CPA Ken Nyamoko (Head of Finance), Mr. Eric Aluoch (Accountant) and Mr. Martin Mwenda (Accountant) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Council for the financial year 2012/13 to financial year 2016/2017

TRADE AND OTHER RECEIVABLES FY 2012/13

The Committee heard that the reported expenditure of Kshs. 2,041,044,654 by June 2013 and Kshs. 512,797,070 by June 2014 had not been audited contrary to TOWA financing agreement.

Management Response

Management informed the Committee that as required by the TOWA project financing agreement, the NACC procured private audit firms to undertake the audit of expenses reported by the Project Sub-Implementers (PSIs). For the FY 12/13, 42.8% of the CSOs funded were audited. The sample size was agreed with the World Bank and copied to KENAO for concurrence at 30% of the funded organization in any one Financial Year. The NACC raised the 30% sample size to 40% for FY 2012/2013 in order to obtain reasonable assurance that Financial statements were fairly stated.

The TOWA project officially closed in June 2014 and was rated as satisfactory in the World Bank's Implementation Completion Report (ICR). A project closure audit was undertaken by OAG. The project was successfully audited and closed.

Committee Observation

The Audit query had been resolved.

TRADE AND OTHER RECIEVABLES – FY 2012/13

The Committee heard that Trade and other receivables balance of Ksh 277,103,535 included:

- District AIDS Coordinating Committees (DACC) Ksh 19,613,358
- Constituency AIDS Coordinating Committees (CACCs) Ksh 34,556,158
- AIDS Control Units (ACU) Ksh 3,697,926
- Field Offices (FO) Ksh 13,778,904

- Kenya Long Distance Truck Drivers Association (KLDTDA) Ksh 105,985
- Ministry of Health Division of Malaria Control Ksh 14,139,186
- Turkana County Ksh 310,378
- Staff Imprest and advances to former staff Ksh 1,660,879 and Ksh 78,258.

No recoveries had been made by 30 June, 2013, as required by the Government Financial Regulations and Procedures. In the circumstances, it was not possible to confirm the recoverability of trade and other receivables balance of Kshs. 277,103,535.

Management Response

Management informed the Committee that advances to DTCs, ACUs World AIDS Day advance and the cited imprest and advances to former staff were all issued during the formative years before proper systems were put in place for accountability purposes.

The NACC wrote to the Ministry of Interior and Coordination, the then Ministry of State for National Planning and Inspector General -Corporations seeking details of the officers who were serving as DCs and DDOs in office at the time of disbursements without success. A number of these officers had since either retired, died or left the service in one way or another. Efforts from the Registrar of births and deaths have also not yielded much.

The Committee further heard that these were funds advanced to the Field Offices during the year for activities and office operations. The cited balances were as at the end of Financial year and were fully accounted for in the subsequent year.

The Kenya Long Distance long truck Drivers have since fully accounted for the resources by making cheque deposits to the NACC for Ksh 105,985.

Ministry of Health Division of Malaria Control Ksh 14,139,186 were advances for the Division of Malaria Control under the TOWA Project and were subsequently accounted for in the Financial Year. The TOWA Project has since closed successfully.

The Amounts from DMOH Turkana were fully recovered from him through payroll by the Ministry of Health.

On staff Imprest and advances to former staff Ksh 1,660,879 and Ksh 78,258, recoveries had been made from the staff who left NACC and deductions from their terminal dues effected. There were however some older imprest like those given to the former CEO Margaret Gachara among others.

On advice by the Office of the Auditor General, the NACC had made a provision of Ksh 81.3 Million in FY 2016/17 for bad and doubtful debts. A request had been made to the National Treasury to write off the unrecoverable amount had been recurring in the NACC's Financials.

The National Treasury had since advised the NACC on the way forward towards clearance of the same.

The FMA-Pricewaterhousecoopers finally accounted and documented all their accountabilities before the project closure as per their contract of services.

Committee Observations

(i) **The Council had taken several steps to improve their financial systems including automation of financial processes through adoption of ERP, posting regional accountants to handle the Council's finances and use of mobile money for financial trail where disbursements were made.**

(ii) **Some of the funds had been due for more than six years and the Statute of Limitation applies in such cases. The Council had sought and received the Board's approval to write off such debts.**

Committee Recommendations

(i) **The Council should write off the debts to resolve this audit query.**

(ii) **The Council should take steps to ensure accountability of funds disbursed especially in cases where it enters into partnership with different agencies.**

FINANCIAL YEAR 2013/2014

1. Community Initiative Expenses

The Committee heard that a Statement of financial performance for the year ended 30 June 2014 reflected community initiative expenses of Kshs.512,797,070. However, the expenditure on community initiative activities had not been audited by this office which contravenes the Financing Agreement Schedule I, Section 11(B)(4) and Section IV (B)(6). As a result, the propriety of the particular expenditure amounting to Kshs.512,797,070 for the year ended 30 June 2014 could not be ascertained.

Management Response

The TOWA Project was Audited and successfully closed in 2015 with an ICR issued as Satisfactory.

Committee Observations

The issue has been resolved with the issuance of Implementation Completion Report

Receivables from Non-exchange transactions

The Committee heard that as disclosed in Note 18 to the financial statements, the receivables from non-exchange transactions balance of Kshs.241,754,426 as at 30 June 2014 comprised advances to various committee organizations. Notable among these were advances to District Technical Committee (DTC), Constituency Aids Control Committees' (CACC's), World Aids Day and Aids Control Unit (ACU) amounting to Kshs.19,613,358. Kshs.40,198,287, Kshs.2,161,700 and Kshs.3,697,925 respectively which had been outstanding for a considerably long period of time.

Similarly, included in advances to CBOs pre-testing/support advance of Kshs.9,914,397 were advances to Field Officers (FO), Kenya Long Distance Truck Drivers Association (KLDTD), District Medical Officer of Health – Turkana and Kenya Consortium to Fight Aids, Tuberculosis and Malaria (KECOFATUMA) amounting to Kshs.24,097,966, Kshs.105,985, Kshs.310,378 and Kshs.84,350 respectively, which had not been accounted for as at 30 June 2014.

Further, the receivables from non-exchange transactions balance of Kshs.241,754,426 included staff imprests and staff advances of Kshs.4,589,511 out of which Kshs.2,113,579 is owing from former staff of the Council and which has been outstanding for a considerably long period of time. Also, included in the receivables from non-exchange transactions balance were advances of Kshs.109,752,890 to Financial Management Agency (FMA) but whose breakdown had not been availed for audit review.

Also, the balance of receivables from non-exchange transactions of Kshs.241,754,426 as at 30 June 2014 included other advances balance of Kshs.27,728,392. According to information available, these were expenses incurred by the two projects, but whose payments were made for GOK development account. As at 30 June 2014, these expenditures had not been reimbursed by the two projects. The management has however indicated that, efforts are under way to have all the outstanding advances and imprests recovered.

Consequently, the accuracy and full recovery of the receivables from non-exchange transactions balance of Kshs.241,754,426 as at 30 June 2014 could not be ascertained.

Management Response

Management informed the Committee that advances to DTCs, ACUs World AIDS Day advance and the cited imprest and advances to former staff were all issued during the formative years before proper systems were put in place for accountability purposes. The NACC wrote to the Ministry of Interior Coordination, the then Ministry of State for National Planning and Inspector General –Corporations seeking details of the officers who were serving as DCs and DDOs in office at the time of disbursements without success. A number of these officers have since either retired, died or left the service in one way or another. Efforts from the Registrar of births and deaths have also not yielded much.

On advice by the Office of the Auditor General the NACC had made a provision of Ksh 81.3 Million in FY 2016/17 for bad and doubtful debts.

On advances to CBOs pre-testing/support of Kshs.9,914,397, these were funds advanced to the Field Offices during the year for activities and office operations. The cited balances were as at the end of Financial year and were fully accounted for in the subsequent year.

The Kenya Long Distance long truck Drivers had fully accounted for the resources by making cheque deposits to the NACC for Ksh 105,985.

These were advances for the Division of Malaria Control under the TOWA Project and were subsequently accounted for in the Financial Year. The TOWA Project has since closed successfully.

The Amounts from DMOH Turkana were fully recovered from him through payroll by the Ministry of Health as per attached pay slips.

With regard to KECOFATUMA the NACC through the NGOs coordinating Board was able to establish that KECOFATUMA had closed its offices and Prof. Edward Karanja, who was the Coordinator of KECOFATUMA was no longer resident in Kenya. The NACC then wrote to Ministry of Foreign Affairs to assist in tracing him. The amounts have been included in the schedule of debt that the NACC has sought for authority for write-off from the National Treasury

Recoveries have been made from the staff who left NACC and deductions from their terminal dues effected. There are however some older imprests like those given to the former CEO Margaret Gachara among others.

On advice by the Office of the Auditor General the NACC has made a provision of Ksh 81.3 Million in FY 2016/17 for bad and doubtful debts. A request has been made to the National Treasury to write off the unrecoverable amount that recur in the NACC's Financials

The FMA-Pricewaterhousecoopers finally accounted and documented all their accountabilities before the project closure as per their contract of services.

Committee observations

i) **The committee noted the following issues have been resolved – District Technical Committees (Kshs.19,613,358), Constituency AIDS Control Committees (Kshs.40,198,287), World Aids Day (Kshs.2,161,700), AIDS Control Units (Kshs.3,697,925), Field Offices Kshs.24,097,966, KECOFATUMA Kshs.84,350 and Staff imprests and Advances Kshs.2,113,579. Other include KLDTDA Kshs.105,985, District Medical Officer of Health, Turkana Kshs.310,378 and other advances from GOK Development Account Kshs.27,728,392.**

ii) **The breakdown of Financial Management Agency of Kshs.109,752,890 was availed**

iii) **The NACC has made a provision for bad and doubtful debts of Kshs.81,308,806 in FY 2016/17.**

iv) **The paragraph however was not fully resolved.**

Committee Recommendations

i) **Accounting officers should ensure that in the event that an imprest holder fails to account for or surrender the imprest on the due date, the Accounting Officer shall take immediate action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank Rate pursuant to the provsions of regulation 93(6) of Public Finance Management(National Government)Regulations, 2015**

ii) **The National Aids Control Council should proceed to recover surrendered imprest from existing and former officers including that held by the former CEO Margaret Gachara.**

FINANCIAL YEAR 2014/2015

1. Receivables from Non-exchange transactions

The Committee heard that as previously reported and as disclosed in note 18 to the financial statements, the receivables from non-exchange transactions balance of Kshs.217,761,358 as at 30 June 2015 comprised of advances to various committee organizations. Notable among these are advances to District Technical Committee, Constituency Aids Control Committees and World Aids Day and Aids Control Unit amounting to Kshs.31,133,444, Kshs.2,161,700 and Kshs.3,697,926 respectively which have been outstanding for considerably long period of time.

Similarly, included in advances to CBOs pre-testing/support advance of kshs.12,559,476 were advances to District Medical Officer of Health–Turkana, and Kenya Consortium to Fight Aids, Tuberculosis and Malaria (KECOFATUMA) amounting to Kshs.310,378 and Kshs.84,350 respectively which had not been accounted for or surrendered as at 30 June 2015.

Further, the receivables from non-exchange transactions balance of Kshs.217,761,358 included advances to field officers of Kshs.21,947,595 and staff imprests and staff advances of Kshs.9,304,361 out of which Kshs.2,113,579 was owing from former staff of the Council and which had been outstanding for a considerably long period of time. Also, included in the receivables from non-exchange transactions balance, were advances of Kshs.68,057,873 to

Financial Management Agency (FMA) but whose breakdown has not been availed for audit review.

Also, the balance of receivables from non-exchange transactions of Kshs.217,761,358 as at 30 June 2015 included other advances amounting to Kshs.49,285,625. According to information available, these were expenses incurred by the two projects but whose payments were made from GOK development account. As at 30 June 2015, these expenditures had not been reimbursed by the two projects.

Consequently, the accuracy and full recoverability of the receivables from non exchange transactions balance of Kshs.217,761,358 as at 30 June 2015 could not be ascertained.

Management Response

On paragraphs 1.1, 1.2 and 1.3, Management informed the Committee that these were funds advanced to the Field Offices during the year for activities and office operations. The cited balances were as at the end of Financial year and were fully accounted for in the subsequent year. These were part of the TOWA CBOs that were eventually accounted for before project closure.

Recoveries have been made from the staff who left NACC and deductions from their terminal dues effected.

The FMA-Pricewaterhousecoopers finally accounted and documented all their accountabilities before the project closure as per their contract of services.

This was inter Project borrowing from GOK D to Global fund due to funds flow delays which was eventually refunded and cleared.

FINANCIAL YEAR 2015/16

1.0 Receivables from Non-exchange transactions

1.1 Advances to various committees

The Committee heard that as previously reported and as disclosed in note 19 to the financial statements, the receivables from non-exchange transactions balance of Kshs.89,408,840 as at 30 June 2016 comprised advances to various committee organizations. This item included advances to District Technical Committee (DTC) Kshs.19,613,358, Constituency Aids Control Committees' (CACC's Kshs.8,335,532, World Aids Day Kshs.2,161,700, and Aids Control Unit (ACU) Kshs.3,697,926 which had been outstanding for considerably long period of time.

1.2 Direct Advances to Implementers

Similarly, included in direct advances to implementers of Kshs.4,143,508 in note 19 to the financial statements were advances to District Medical Officer of Health–Turkana Kshs.310,378 and Kenya Consortium to Fight Aids, Tuberculosis and Malaria (KECOFATUMA) Kshs.84,350 which had not been accounted for or surrendered as at 30 June 2016.

1.3 Advances to Field Officers

Further, the receivables from non exchange transactions balance of Kshs.89,408,841 includes advances to field officers of Kshs.16,831,195 and staff imprests and staff advances of Kshs.2,721,876 out of which Kshs.2,366,978.30 was owing from former staff of the Council and which had been outstanding for a considerably long period of time. Also, included in the receivables from non exchange transactions balance were advances of Kshs.53,088,338 to Financial Management Agency (FMA) whose breakdown/analysis had not been availed for audit review.

1.4 Other Advances

Balance of receivables from non-exchange transactions of Kshs.89,408,841 as at 30 June 2016 included other advances amounting to Kshs.7,036,475. According to information available, these were expenses incurred by the two projects but whose payments were made from GOK development account. As at 30 June 2016, these expenditures had not been reimbursed by the two projects. The management had, however, indicated that efforts were under way to have all the outstanding advances and imprests recovered.

Consequently, the accuracy and full recoverability of the receivables from non exchange transactions balance of Kshs.89,408,841 as at 30 June 2016 could not be determined.

Management Response

Management informed the Committee that these were funds advanced to the Field Offices during the year for activities and office operations. The cited balances were as at the end of Financial year and were fully accounted for in the subsequent year. The other matters had been addressed in the following ways:

a. Imprest advanced to staff had been fully recovered

b. Recoveries have been made and request for write off made to National Treasury.

c. The FMA-Pricewaterhousecoopers finally accounted and documented all their accountabilities before the project closure as per their contract of services

d. On advances amounting to Kshs.7,036,475, these were inter projects salaries paid by GOK on behalf of Global Fund for the M&E Officers under Global Fund. This has since been reimbursed and cleared.

FINANCIAL YEAR 2016/2017

Disbursement to Constituency Aids Control Coordinators (CACCs)

The Committee heard that Management disbursed a total of Kshs.34,053,439 to the Constituency Aids Control Coordinators during the year to finance their operations. The management had stated that the amount was charged to various items in the statement of financial performance for the year ended 30 June, 2017. However, the management had not provided explanation as to why the funds were sent directly to the Constituency Aids Control Coordinators and not through the County Governments who are the employers of the Constituency Aids Control Coordinators. The direct disbursement might have lead to duplication since the County Government may have incurred similar expense towards the AIDS related activities.

In the circumstance, it was not possible to confirm the propriety of the disbursement to Constituency Aids Control Coordinators during the year of Kshs.34,053,439.

Management Response

The CACC have been part of the NACC structures since NACC's inception. The role of CACC committees included mobilizing community support for the fight against HIV and AIDs and dissemination of appropriate national policies, guidelines and strategies on HIV and AIDS. CACCs also played a central role in the successfully implementation of the TOWA project by vetting community groups to be funded and monitoring implementation.

The NACC had also been actively engaging with County Governments directly and through the Council of Governors. Out of these engagements the NACC had provided technical support to all 47 counties to develop county specific HIV and AIDS strategic plans. During FY 2016/17 the NACC's engagement with Counties resulted in Kshs.170 Million being set aside for

HIV/AIDS activities in 13 counties while 24 counties had proposed combined HIV/AIDS budgets of Kshs.2 Billion for FY 2018/19 growing to Ksh2.3 Billion for the FY 2020/21.

The NACC had been disbursing funds to CACC bank accounts to support their office operation on quarterly basis. This amount was used to facilitate the operations of the CACC committees. This role was not supported by County Governments.

Committee Observations

(i) **The role of coordinating NGOs in collection and collation of data on HIV across the country is a National Government function undertaken by the NACC. This data is shared with county government for use in health service delivery to HIV/AIDs affected and infected people. This is not duplication of work but synergistic in nature.**

(ii) **The query was resolved going by Management's explanation.**

2.10 KENYA INDUSTRIAL RESEARCH AND DEVELOPMENT INSTITUTE (FY 2012/2013 – 2015/2016)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE KENYA INDUSTRIAL RESEARCH DEVELOPMENT INSTITUTE (KIRDI) FOR THE FINANCIAL YEARS 2012/2013 TO 2015/2016

On 24th May 2018, Eng. Joseph K. Kamau, the Ag. Director of the Kenya Industrial Research and Development Institute, accompanied by Mr. John Bichanga (Ag. Director, Finance), Mr. Mark Sichangi (Ag. Head of Procurement), Mr. William Waweru (Deputy Director, Finance and Human Resource), Mr. Nicodemus Mutinda, (Deputy Director, Corporate Services), Ms. Florence Mumbi (Corporation Secreary), Ms. Eunice Bolo (Ag. Internal Auditor), Dr. Kenneth Chelule (Deputy Director, Research, Technology and Innovation) and Mr. Stephen Odua (Alternate Director, State Department of Industrialization) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Institute for the financial year 2012/13 to 2015/2016.

1) DEVELOPMENT GRANTS FY 2012/2013

The Committee heard that the Institute received capital development grants of Kshs. 646,000,000 from the Ministry of Industrialization during 2012/2013. However, out of this amount, Kshs.224,324,144 was treated as recurrent income as reflected under note 21. The Institute did not avail any authority to reallocate development grants to recurrent grants and consequently, was in breach of law.

Management Response

Management informed the Committee that the Institute received Development grants amounting Kshs. 646,000,000 from the exchequer to finance both capital expenditure and research and development activities. The amount of development grants applied to the income statement of Kshs. 224,324,144 related to costs charged to the development vote that were non-capital in nature and hence expensed.

Essentially Research, Technology and Innovation (RTI) activities related to facilitation expenses for feasibilities studies, project preparations, supervision, pilot plants and material. These were captured in the development budget-line. However, the treatment of RTI expenses had the direct effect of lowering the net surplus since they were non-capital costs thus an equivalent amount of receipts and expenditure charged to the income statement.

Committee Observations

(i) **There was a mismatch in the entry of the Institute's budget with regards to their recurrent and development expenditure. Re-adjustment was made on the matching principal so that the amount was utilized as development expenditure instead of recurrent expenditure. However, no funds were lost in the process.**

(ii) **The Institute did not seek approval to utilize the funds under development expenditure from the relevant authorities contrary to the provisions of section 43 of the Public Finance Management Act, 2012.**

(iii) **The audit query was still outstanding as the proper procedure was not followed in transferring the amount to recurrent expenditure.**

Committee Recommendations

(i) **The Management should always follow PFM guidelines in preparation of budget estimates pursuant to the provision of the Public Finance Management Act, 2012.**

(ii) **The Management should always ensure approval is granted by the Board and the National Treasury before any reallocation of funds is undertaken.**

2) FINANCIAL PERFORMANCE FY 2012/2013

The Committee heard that the Institute recorded a loss Kshs. 101,629,256 against a loss of Kshs. 33,923,910 during the previous period which translated to a substantial decline of Kshs. 67,345,346 or about 198.52% drop in financial performance for the year ended 30 June 2014. Further, the current liabilities of Kshs. 456,784,985 exceeded the current assets of Kshs. 212,081,168 leading to a negative working capital of Kshs. 244,703,817 (2013 negative working capital of Kshs. 33,914,085). The Institute's going concern status was doubtful and its continued existence was dependent on Government and creditors' support.

Current position

The Institute recorded a deficit of Kshs. 86,702,325 in 2014/2015, a surplus of Kshs. 8,581,186 in 2015/2016 and a deficit of Kshs. 121,520,785 in 2016/2017. The Institute's existence was still dependent on Government support.

Management Response

Management informed the Committee that the Institute recorded a deficit of Kshs. 101,629,256 in the year against a deficit of Kshs. 33,923,910 in the previous year. Out of a total deficit of Kshs. 101,629,256, which was a book loss, depreciation and decrease in stock included in expenditure were non-budget items. This left a net cash deficit of Kshs. 49,137,632 being financed by creditors as shown below:

	ITEM	AMOUNT (Kshs.)
1	Depreciation expenses	47,981,340.00
2	Decrease in stock	4,150,284.00
3	General Creditor (payables)	49,137,632.00
	TOTALS	**101,269,256.00**

The current liabilities recorded was Kshs. 456,784,985 against current assets of Kshs. 212,081,168. Looking at the make-up of these obligations, it was indicative that the Institute's debt portfolio was within manageable level considering that the budgetary allocation for the financial year was reduced by Kshs. 145,275,000. Despite the reduction, there was need to sustain normal operations and in particular the continuity of on-going project activities upon which financial commitments had been undertaken. This gave rise to an increase in payables.

There was a substantial increase of retention money held by the institute for the on-going construction works in Nairobi and Kisumu totaling Kshs, 151,548,354.

The remaining portion from the initial amount totaling Kshs. 305,236,631 included provisions of Ksh. 1,230,000 and unused donor funds of Kshs. 16,793,764 which were not due in the short term. The unused donor funds shown as liabilities was a book classification and not part of the payables that were due. These funds would be utilized in the long term to finance intended projects as shown below:

CURRENT LIABILITIES	**AMOUNT (KShs.)**	**DETAILS**
Retention	151,548,354.00	Mandatory retention monies for on-going construction
General Creditors	283,904,237.00	Various balances due for suppliers and creditors
Payroll deductions	3,308,540.00	Balance of payroll deductions due
Unused project funds	16,793,764.00	Balance in donor funds accounts to support projects
Provision for audit fees	1,230,000.00	Provision for audit fees

The remaining portion of Kshs. 287,212,867 which was due had been projected to be settled in the following financial year upon receipt of unreleased grants from exchequer of Kshs. 178,255,000 which would cater for balance roll-over amounting to Kshs. 108,957,867.

Current status

It was anticipated that the institute would not be facing major financial constraints after the completion of construction in South B as the Institute would generate some income in form of rent.

Committee Observations

(i) **The 19th PIC report observed the Institute's financial position and negative working capital and recommended diversification of income generating activities.**

(ii) **The construction in Kisumu was complete. The Institute was equipping the building on a year-by-year basis due to financial constraints.**

(iii) **The development of the building in South B, Nairobi, was still ongoing despite the contract period lapsing in 2015. The building was 64% complete.**

(iv) **The Institute signed the contract for the building in South B having sought concurrence from the relevant authorities including the Attorney General's office.**

(v) **The initial cost for the South B building was Kshs. 4.3 Billion but the figure was revised to Kshs. 4.8 Billion upon appraisal.**

(vi) **The Institute has so far made payments worth Kshs. 2.4 Billion based on certificates issued. The Institute anticipates that the project will cost an additional Kshs. 3.1 Billion to completed.**

(vii) **The Budget and Appropriation Committee and Trade and Cooperatives Committee visited the construction site with a view to allocating funds for completion of the project.**

(viii) **The contractor was demanding interest on delayed completion of the project amounting to Kshs. 50 million. The Institute had since sought the intervention of the State Department of Public Works to agree on the amount due to the contractor.**

Committee Recommendations

(i) **The National Treasury should allocate funds to KIRDI to facilitate the completion of the project within the 2019/2020 financial year**

(ii) **Contractors should only be paid for the work done, based on the recommendations of the Ministry of Public works.**

3) PROPERTY, PLANT AND EQUIPMENT FY 2015/2016

The Committee heard that the statement of financial position reflected a balance of Kshs.4,040,355,420 under property, plant and equipment as at 30th June 2016. However, the last valuation for these assets was conducted in 1980, over 37 years ago, and this contravenes International Accounting Standard No.16 which stipulates that property, plant and equipment be revalued after every five years.

Consequently, it was not possible to confirm that the property, plant and equipment balance of Kshs. 4,040,355,420 as at 30 June 2016 is fairly stated.

Management Response

Mnagement informed the Committee that in the past few years, the Institute was not in a position to undertake the valuation of assets due to budgetary constraints since much funding was channeled to construction works in Kisumu and Nairobi. The emphasis to undertake a valuation of property came about in 2017 and the concern was taken up by Management as a priority for a budgetary provision in subsequent budget circle.

The property in Nairobi South B comprising land and construction work in progress were revalued in 2017.

Committee Observations

(i) **The Institute had neglected the valuation of the property for the last 37 years.**

(ii) **The Board resolved to prioritize valuation of the Institute's property in FY 2018/19 in order to address the audit query.**

Committee Recommendations

(i) **Going forward, KIRDI should follow international accounting standards in so far as asset valuation is concerned.**

(ii) **Accounting officers should ensure that all contracts entered into by their respective entities are lawful and comply with the provisions of section 68(2)(d) of the Public Finance Management Act, 2012.**

4) ACCOUNTS RECEIVABLES – LONG OUTSTANDING BALANCES -FY 2015/2016

The Committee heard that the account receivable balance of Kshs.12,539,941 included an amount of Kshs.2,460,000 being the Institute's reimbursement claims lodged with the National Industrial Training Authority (NITA) in respect of industrial attachment services

rendered for the Authority. The claims had been outstanding for a considerable long time without evidence of effort initiated to recover them. The Institute was likely to lose funds unless proper debt collection mechanisms were put in place.

Management Response

Management informed the Committee that the Institute had sent various reminders to the National Industrial Training Agency requesting for release of the amounts owed to the Institute with little results. The Institute undertook to continue with efforts to address the same and conclude the matter.

Committee Observations

(i) **The Institute has been following up with NITA for the last three years. The amount has been outstanding for the last five years.**

(ii) **There was no written agreement between KIRDI and NITA with regards to the services rendered and the amount due to the Institute.**

(iii) **The service provided by KIRDI was internship programme on Industrial training of students forwarded to the Institute by NITA.**

Committee Recommendations

(i) **KIRDI should write-off these debts since it was a transaction between two government agencies.**

(ii) **Any agreement between two government agencies should be put down in writing to clear any ambiguity that may result in audit queries or legal action.**

5) ACCOUNTS RECEIVABLES – NON RECOVERY OF THE EXCESS MEDICAL EXPENDITURE - FY 2015/2016

The Committee heard that included in the account receivables figure of Kshs.12,539,941 was an amount of Kshs.2,877,953 being excess medical expenditure which was supposed to be recovered from the concerned staff. Out of this balance, an amount of Kshs.1,581,599 related to officers who had passed on.

The accounting policies disclosed in the financial statements did not give clear guidance on provisions to be made in case of death staff members. In addition, it was noted that in some instances, the rate of recovery of the expenditure was very low compared to the outstanding amounts with some having not been recovered at all. In the circumstances, the recoverability of the account receivables balances of Kshs.12,539,941 was doubtful.

Management Response

Management informed the Committee that the Non-recovery of excess medical from staff members was largely informed by the financial regulations that prohibited deduction to staff

salaries to less than a third of their salary. The management was still exploring other ways of recovery bearing in mind that excess medical costs was an issue beyond the control of staff members. At the time the staff members' salary obligations reduce, management would endeavor to recover the excess medical from the affected staff members.

In cases where staff members were completely unable to repay the excess medical, a request would be made to the Board of Directors to write off the excess medical (Ref to BP/BOD/06/2012 and minutes 117 of Board of Directors meeting)

Management was further exploring ways of improving the staff medical scheme so that less staff were affected by excess medical costs. For the staff members who had passed on with excess medical balances, the Institute policy was to recover the same from their life insurance benefits as has been done in particular cases.

Committee Observations

(i) **The medical insurance cover taken by the Institute gives an undertaking to the Insurance company to cover excess medical costs which are then recovered from the staff member's salary.**

(ii) **The excess medical expense stood at Kshs. 3,374,390 as at 30 June 2017.**

Committee Recommendations

(i) **Debts arising from medical expenses should be written off incase of death of the beneficiary;**

(ii) **There is a need for the Institute to enhance the medical cover to ensure that staff are adequately covered and minimize excess medical costs that may arise.**

6) ACCOUNTS RECEIVABLES – PROCUREMENT OF LEATHER PROCESSING AND PRODUCTION EQUIPMENT -FY 2015/2016

The Committee heard that during the year under review, the Institute entered into a contract agreement with a local company for the supply, installation, training and commissioning of leather processing and production machinery. Review of the procurement process revealed that that company had partnered with another company of Italy in a joint venture to execute the contract but contrary to Section 2.1.3(i) of the contract agreement only the first company signed the contract on 27 March 2015.

Further, contrary to Section 2.1.3 (ii) of the contract agreement, both companies did not submit audited accounts for the previous three (3) years as required by bidding requirements on financial capability. In particular, the first company did not meet that mandatory requirement considering it was registered on 9 May 2012 and therefore was at the time of tendering yet to attain three years old since it was incorporated.

Non-adherence to procurement procedures may lead to unnecessary legal challenges by dissatisfied bidders leading to delays in project implementation.

Whereas the leather equipments were destined for the Kisumu regional offices, an audit verification at the station in October 2016, revealed that some of these machines though delivered, were yet to be installed and commissioned mainly due to lack of appropriate space. It was not clear why the Institute went ahead to procure and purchase the machines without having arranged for adequate and appropriate space for their installation. Failure to have the machinery installed in a secure place could result to vandalism and breakdowns in addition to withholding vital services envisaged at the time of the project inception

Management's Response

Management informed the Committee that Section 2.1.3 (iii) of the contract stated that one of the partner shall be nominated as the lead contractor and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners. This was done and submitted alongside the tender.

Section 2.1.3 (iv) of the contract stated that the lead contractor shall be authorized to incur liability and receive instructions for and on behalf of any and or of all the partners of the joint venture.

As per the Treasury Circular No.1/2015 dated 15th January, 2015 on the implementation of the 30 % Public Procurement Reservations and Preferences for Youth, Women and Persons with Disability, the procuring entities were instructed not to subject the AGPO target group to any further prequalification once registered under the National Treasury. To that end, MS Precision Civil Engineering Ltd was registered under National Treasury with registration certificate No. NT/PPD/YP/802/B. Further, Legal Notice No. 58 of the Public Procurement and Disposal Act 2005 allowed target groups to benefit from Preferences and Reservations as defined under Part 4 of the Legal Notice.

Regarding the issue of inadequate space for the equipment, the initial plan was to set up a pilot plant for training. Government priority changed along the way to have a facility that would serve the western sub-region in value addition to leather. A budget was then provided to upscale the project that included construction of extra space.

Committee Observations

(i) Installation of the machines had taken inordinately long time after delivery by the contractor.

(ii) The award of the contract was in line with the Treasury Circular No.1/2015 dated 15th January, 2015 on the implementation of the 30% Public Procurement Reservations and Preferences for Youth, Women and Persons with Disability.

(iii) The Accounting Officer was negligent and did not exercise due diligence in the procurement process by purchasing goods which have never been utilized and are subject to depreciation and vandalism.

Committee Recommendations

(i) The Cabinet Secretary for the National Treasury should compel the Accounting Officer, within three months of adoption of this report, to provide an explanation for failing to excercise due diligence in the usage of the Leather Processing and Production Equipment.

(ii) Where the Accounting Officer fails to offer an explanation, the Accounting Officer should be prosecuted for incurring wasteful expenditure contrary to section 197(1)(i) of the PFM Act.

2.11 NATIONAL SOCIAL SECURITY FUND (FY 2012/2013 – 2014/2015)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE NATIONAL SOCIAL SECURITY FUND FOR THE FINANCIAL YEARS 2012/2013 TO 2015/2016

Mr. Anthony Omerikwa, the Ag. Managing Trustee of the National Social Security Fund accompanied by Mr. Moses Cheseto (Ag. General Manager, Finance and Investment), Ms. Nancy Mwangi (Ag. General Manager, Social Security), Mr. Evans Motori (Ag. General Manager, Finance) and Mr. Peter Muiruri (Manager, Procurement) 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 2012/13 to 2015/2016.

1) UNQUALIFIED REPORT - FINANCIAL YEAR 2012/2013

The Committee heard that the Fund received unqualified report in the 2012/2013 Financial Year.

2) MEMBERS CONTRIBUTIONS HELD IN SUSPENSE ACCOUNT FY 2013/14

The Committee heard that Member's contribution in the year under review were Kshs.8, 405,813,000 as at 30 June 2014. However, Note 34 to the financial statements indicated that contributions totaling Kshs.2.4 billion were held in a suspense account as at 30 June 2014. The suspense account balance was explained as relating to contributions received with improper members' details stated by their employers in the returns to NSSF. Although management had reduced the suspense from Kshs.2.6 Billion as at 30 June 2013, the suspense account should have been brought to zero.

Management Response

Management informed the Committee that these were funds which had been held by employers and remitted to NSSF without details of the employees. The fund had initiated measures to reduce the suspense accounts and that the balance had been reducing with time but an amount of Kshs 764 million remained uncleared.

3) MEMBERS CONTRIBUTIONS HELD IN SUSPENSE ACCOUNT FY 2014/2015 AND 2015/2016

The Committee heard that Note 34 to the financial statements as at 30 June 2015 reflected a suspense account balance of Kshs.748,000,000.00 and Kshs.764,000,000 at the end of the 2014/2015 and 2015/2016 Financial Years respectively. However, as previously stated, the suspense account balance related to contributions received without proper details of the members being provided by their employers.

Management Response

Management informed the Committee that the balance had been reducing with time but still a substantial amount remained uncleared. These were funds which had been held by employers and remitted to NSSF without details of the employees. The fund had initiated measures to reduce the suspense accounts.

Committee Observations

(i) **This matter on membership contributions appears in both 2013/2014 and 2014/2015 Financial years though with different amounts. It was dealt in the PIC's 19th Report in which it was recommended that the Fund identifies the contributors and clears the suspense account by 30th June 2015. It was further recommended that the Fund institutes measures to ensure all contributions received from members had the requisite data.**

(ii) **However, the recommendation did not prescribe the procedure that NSSF should employ in locating the said contributors**

(iii) **Management had instituted measures to avoid recurring of this query by making it clear to employers that it will not accept any contributions from members whose details are not properly captured.**

(iv) **The figures attributed to members' contributions in suspense accounts have been reducing over the years.**

Committee Recommendations

(i) **The recommendations of the 19th PIC report should be duly implemented.**

(ii) **NSSF should liaise with employers to identify the contributors/beneficiaries.**

4) ILLEGAL TRANSFER OF NATIONAL SOCIAL SECURITY LAND IN UPPER HILL NAIROBI - LR NO. 209/11642 FY 2014/15 and 2015/2016

The Committee heard that the statement of net assets available for benefits reflected undeveloped land balance of Kshs.9,432,128,000 as at 30 June 2015. Included in this balance was Kshs.115,000,000 in respect of undeveloped parcel of land LR. 209/11642 measuring (approximately) 0.2100 hectares located at Upper Hill, Nairobi – next to Milimani Law Courts. The parcel of land was purchased by the Fund on 20 April 1996 from M/s Le-Kuna Company Limited at a cost of Kshs.20,000,000. However, information available indicated that the title to this land was on 1 April 2010 revoked vide Gazette Notice number 3460 and allegedly on 12 March 2010 allocated to the Permanent Secretary Treasury to hold as trustee for the Judiciary for use as Courts and offices. However, scrutiny of transactions revealed that the alleged revocation was done on 1 April 2010 whereas the said allocation to the Judiciary was made on 12 March 2010 indicating that the land was allocated earlier than the revocation.

In the same year (2010), independent searches were conducted by the NSSF on 6 and 22 September 2010 and the Registrar of Lands confirmed that the Board of Trustees of NSSF were the registered owners as at the last date of last entry of 20 April 1995. Consequently, the NSSF CEO/Managing Trustee on 21 August 2014 wrote to the Chairman, National Land Commission (NLC) demanding reinstatement of their title but the NLC on 18 April 2016 notified the Fund that reinstatement was not possible since the land had already been allocated. The legality of the transfer could not be confirmed. The Fund risked losing workers' pension funds invested in the property worth Kshs.115, 000,000.00 through fraudulent activities if the land was not reinstated to NSSF.

In view of the foregoing, the accuracy and completeness of the undeveloped land balance of Kshs.9, 432,128,000 could not be ascertained.

Management response

Management informed the Committee that the Fund purchased the property in March 1995 from a private entity.The title was allegedly revoked on 1st April 2010 and irregularly allocated to Permanent Secretary, The National Treasury as a Trustee to Judiciary on 12th March 2010 on grounds that the land had been reserved for public purposes under the Constitution, the Government Land Act and the Trust Land Act (Appendix2.2 revocation of title).

Due to the manner in which the revocation was done, the Fund demanded the National Land Commission to reinstate the title. The Fund pursued the matter of reinstatement of the title with the Chairman of the National Land Commission through numerous correspondences and follow up meetings at his office but the same was not successful. The National Land Commission declined to reinstate the title on the basis that the subject land was allocated to the Principal Secretary, The National Treasury.

The Fund had no alternative but to file suit against the Government (through the Attorney General) for breach of the Fund's right to a fair hearing arising from the revocation without notice. The Fund still held the original title to date and at no point in time was the same recalled for cancellation.

Further, the Fund had also filed suit against the Chief Land Registrar and the private entity (Le-Kuna Company Limited) that sold the property to the Fund for alleged illegal and unlawful misrepresentation to the Fund that they had a valid and proper title which they sold to the Fund.

In the suit, the Fund was seeking from the three defendants, the purchase price of Kshs. 20,000,000 with interest at commercial rates from the date of purchase of the property to the date of filing the suit. The Fund was also seeking damages amounting to the difference between the purchase price and the prevailing market value for the land.

Committee Observations

(i) **The National Lands Commission revoked the title held by NSSF via a gazette notice on 1st April 2010 and did not directly inform the Fund about the revocation. The reasons for revocation were given to neither the NSSF nor the Committee at the time of allocation.**

(ii) **The allocation of the land to the Judiciary predated the revocation of the title held by NSSF which meant that two valid titles existed for the same piece of land before revocation of NSSF's title.**

(iii) **The matter was still pending in the court.**

Committee Recommendations

(i) **NSSF should continue to engage the National Land Commission and the Ministry of Lands to ascertain the ownership of the land.**

(ii) **The NSSF should urge its legal representatives to fast track the completion of the court case.**

(iii) **The EACC and DCI should investigate the irregular revocation of title LR NO. 209/11642 with a view to prosecuting any person that is found to have committed a criminal offense in line with said revocation.**

5) STALLED PROJECTS

a) COMPLETION OF HAZINA TRADE CENTRE 2014/2015 AND 2015/2016

The Committee heard that the statement of net assets available for benefits as at 30 June 2015 reflected a balance of Kshs.4, 473,072,000 under the Non- Current Assets, representing assets under construction. Included in this figure is Kshs.1, 678,194,000.00 in respect to completion of the Hazina Trade centre, Nairobi paid during the year 2014/2015.

Completion of the building was approved by the Board on 31 August 2010 to include an additional 36 floors and the contract was competitively awarded on 26 February 2013 to M/s China Jiangxi International Kenya Ltd at a contract sum of Kshs.6, 715,218,188.00. Further, Construction commenced on 17 June 2013 and was to be undertaken in 155 weeks with an expected completion date of July 2016.

However, an audit inspection carried out on 14 January 2016 revealed that the work had stalled after reaching 15th floor or at 38 %. The reasons given for the stalling of the project was that some columns inside Nakumatt Lifestyle Supermarket needed to be reinforced and strengthened for other floors to be added but Nakumatt holdings limited, the tenants, had denied the contractor access to the basement floors contrary to the provisions in the lease agreement signed in 2003. At the time of stoppage of builders works, a total of Kshs.1,912,043,004.00 had been paid to the contractor. Further, the continued stalemate may

lead to escalation of costs due to legal suits filed by Nakumatt Holdings Limited and possible claims for compensation by the contractor.

In view of the foregoing, NSSF should take legal action against the tenant to secure completion of the building and members' contributions.

Management Response

Management informed the Committee that on 10th February 2017, Lady Justice Gacheru delivered her ruling on Nakumatt's Notice of Motion dated 28th August 2014 for injunction to stop the project wherein she dismissed Nakumatt's application for an injunction to stop the project.

The Fund had on numerous occasions put Nakumatt on notice that they would be liable for the delays and any contractual claims that may arise. On 29th September 2015, the Fund wrote to Nakumatt Holdings Limited issuing it with a notice of Breach of Clause 5(A) of the Lease for refusing the Fund's contractor access to the 3 No. columns in Basements 1 & 3 which lie at the edge of their store for strengthening .The notice gave Nakumatt 21 days whereupon if they did not comply the lease dated 12 August 2003 would absolutely determine and the Fund would be free to re-enter and re-possess the entire premises.

The twenty-one days' notice ran from the date of service and lapsed on 22 October 2015. The letter also put Nakumatt on notice that the Fund would claim indemnity and damages from them for any financial loss, penalties and interest that may be levied by the contractor on account of their non-compliance with the Fund's earlier notices. The Fund additionally lodged its counterclaim in the suit filed by Nakumatt. On 22nd December 2017 the Fund repossessed the property from Nakumatt. The contractor and consultants were on site and the project had resumed.

Committee Observations

The Committee made the following observations:

(i) **The award of the contract and the issue of court cases were discussed in the PIC's 19th Report. The said report recommended that the Auditor General undertakes a forensic audit on the procurement and completion of the project.**

(ii) **The Committee inspected the Project on 21st March 2018 and found that the contractor was still on site and that construction work was ongoing albeit slowly.**

(iii) **Evidence from the State Department of Public works indicated that the litigation between NSSF and Nakumatt was unnecessary as the available pillars would support the additional 36 floors that were being built. The NSSF therefore incurred unnecessary losses in legal fees, delay in implementation of the project, variation from the contractors and opportunity cost associated with business loss if the building was complete and in use.**

(iv) **The NSSF did not seek advice from the State Department of Public Works at the time of commencement of the project; public works only came in as project managers in June 2017. Had NSSF sought the services of State Department of Public Works at the onset of the project, NSSF would have been advised that for additional 36 floors to be built, a provision for car parking was mandatory in the building.**

(v) **The claim of KES 20M per week from the contractor arising from the delays was too high. The penalty of KES 20M per week had just been communicated from NSSF to the officers from the State Department of Public Works through a letter dated 20th March 2018 and signed by Mr. Peter Muiruri. The contractor had claimed a total of KES 6.8 billion arising from the delays; a figure that had been revised downward to KES 1.89 billion by the project consultants.**

(vi) **It was inconceivable that scaling down of the scope of the works from 36 floors to 15 floors had no proportional decrease in cost.**

(vii) **NSSF had not sought any legal advice on the ramifications of termination of the contract.**

Committee Recommendations

(i) **The NSSF should only pay the amount that was recommended by the State Department of Public Works.**

(ii) **The Office of the Auditor General should conduct a value for money and forensic audit.**

(iii) **Depending on the outcome of the audit, the EACC and DCI should conduct an investigation of the Management and the Board of NSSF that were in place during period under review with a view to establish whether there was fraud relating to the contract of works on the completion of Hazina Trade Centre and the subsequent prosecution of any person found culpable.**

b) NYAYO ESTATE EMBAKASI PHASE SIX CONTRACT NO. 18/2012 – 2013 (FY 2014/2015 AND 2015/2016)

The Committee heard that the Fund entered into a contract agreement with M/s China Jiangxi International Kenya Limited on 21 February 2013 for construction of 324 units at Nyayo Embakasi at a total cost of Kshs.2,155,407,742. The construction works were to take seventy-eight (78) weeks from 2 June 2013 to 30 November 2014. However, audit inspection carried out on 14 January 2016 revealed that the construction work had stalled and the contractor was not on site while only fifty-two (52) units had been constructed. The main reason for the stoppage of the works was due to failure by the Nairobi City County to grant

relevant approvals to enable construction of the remaining two hundred and seventy two (272) units. By the time of stoppage, the contractor had been paid an advance fee of Kshs.215,540,744.22 against a bank guarantee from the Standard Chartered Bank which expired on 30 September 2015. The contract period had also expired on 30 November 2014.

In the circumstances, the fund stood a risk of losing the Kshs.215,540,744.22 already paid and additional losses on delayed completion of the project.

Management response

Management informed the Committee that by the time of stoppage of the project, the contractor had been paid an advance fee of Kshs. 215,540,744.22 against a bank guarantee from the Standard Chartered Bank, which expired on 30 September 2015. The contract period had also expired on 30 November 2014. The Fund wrote to the contractor M/S China Jiangxi International to renew the advance payment guarantee. The guarantee was only renewable if the contract period was extended.

The Board of Trustees at its 174th meeting resolved to terminate the project. The final account was still being processed jointly with the project consultants. It should take into account the advance of Kshs. 215,540,744.00 to establish the exact balance to be refunded, if any, subject to final assessment and verification by the state department of public works.

Committee Observations

(i) The Nairobi City Council did not provide approvals that the NSSF belatedly sought.

(ii) The contract period expired on 30 November 2014 and it was not renewed.

(iii) The contract was not fully executed and the contractor was not on site.

(iv) The NSSF did not seek all the requisite approvals before commencing the project thus discrediting the Fund's capacity in project planning and implementation.

(v) The State Department of Public Works was not involved in the project from the onset.

(vi) The Fund risked losing Kshs. 215,540,744 that was made as advanced payment for the project.

Committee Recommendations

i) The NSSF Managing Trustee should seek for a legal opinion from the Attorney General on whether the NSSF can utilize the bank guarantee elsewhere .

ii) In the event of loss of Kshs. 215,540,744, all the officers that failed to seek approvals from the Nairobi City County should be individually held responsible.

iii) The Fund should ensure all the necessary approvals are sought and acquired before commencement of capital projects.

c) OTHER MATTERS: FINANCIAL YEAR (2014/2015 and 2015/2016)

i. Composition of the Board

The Committee heard that Section 6 of the NSSF Act, No. 45 of 2013 stipulates that membership to the board shall comprise of nine members. However, between the period 25 February 2015 to 16 September 2015, approximately six and half (6 ½) months), there were only four members of the board, thus raising legal questions on the validity and legality of managerial investments decisions.

Management response

Management informed the Committee that although the Board of trustees was incapacitated from February to June 2015 due to court cases surrounding the retirement of some of the Trustees and appointment of new ones, including an injunction against holding of board meetings in one of the cases, the Fund continued to carry out its mandate as per NSSF Act 2013. There was no vacuum as the Cabinet Secretary for Labour, Social Security and Services stepped in to ensure that the fund's operations continued uninterrupted, as the government is the guarantor of public interest in the Fund by virtue of section 70 of NSSF Act No. 45 of 2013. All the issues that were being contested in court had since been resolved. In the year 2015/2016, The Board of Trustees was restored to capacity with all the Board positions filled. The Cabinet Secretary revoked the appointment of the trustees whose appointments were in contention and appointed others to the Board of Trustees.

Committee Observations

(i) **Management made non-substantive decisions based on the board's approved budget such as payment of salaries and small suppliers.**

(ii) **Currently, the NSSF Board has seven members out of ten.**

(iii) **It was not a good management practice for Board Members to take the NSSF to court rather than solve their issues within the Board.**

(iv) **The matter is still in court and as a result, the Board is not able to sit and offer policy guidelines to the management.**

(v) **Absence of a fully constituted Board has led to decreased remittances. This was due to certain Board members advising the Unions they represent not to remit the due statutory deductions.**

(vi) **The Cabinet Secretary cited frustration with the rigidity of reconstituting the Board due to the provisions of the NSSF Act on membership to the Board.**

Committee Recommendations

(i) **All the stakeholders should pursue out of court settlements. This will reduce both the cost and time of considering the matter.**

(ii) **The Cabinet Secretary for Labour should always follow the law and the laid down guidelines whenever he/she appoints members to NSSF Board.**

(iii) **The National Assembly should amend the NSSF Act with a view to reducing the rigidity in Board Composition at the Fund.**

ii. Failure to hold meetings

The Committee heard that Section 11(1) requires the Board to hold not less than four (4) meetings in every financial year for the conduct of its business and not more than four months shall elapse between the date one (1) meeting and the date of the next. However, no meetings were held by the Board between the periods 1st February, 2015 to 16 September, 2015 contrary to Section 11(1) of the Act. The failure to have meetings was attributed to lack of two thirds (2/3) quorum as a result of court injunctions filed on the 25th February, 2015 and 10th March, 2015 which affected full composition of the board.

Management Response

It was not possible to hold board meetings due to court cases surrounding board appointments. This led to lack of quorum. However, the situation has since changed after the CS Labour, Social Security and Services appointed the remaining board members.

Committee Observation

This query was resolved.

6) UNSATISFACTORY BUDGET CONTROL AND PERFORMANCE

a. Income

(FINANCIAL YEAR 2014/2015)

The Committee heard that the National Social Security Fund (NSSF) reflected approved budgeted income of Kshs.35, 925,581,000.00. However, the actual income collected was Kshs.19, 318,641,000.00 resulting in an under collection of Kshs.16, 606,940,000.00 or 46%. The failure to realise the targeted income had been attributed largely to failure to implement the NSSF Act, 2013 due to a court injunction challenging implementation of the new contribution rates in a case jointly filed by the Central Organization of Trade Unions (COTU) and the Federation of Kenya Employers (FKE) and others. The management further attributed poor performance at the Nairobi Stock Exchange (NSE) for the overall deficit of Kshs.16, 606,940,000.00.

Management response

Management informed the Committee that adverse variance was caused by the suspension of NSSF Act No 45 of 2013 specifically sections 19(2) on registration and section 20 on raised

rates of contribution. The case was still pending in court. In as much as the matter was still in court, the board of trustees was exploring alternative dispute resolution mechanisms through stakeholder engagements.

(FINANCIAL YEAR 2015/2016)

The Fund had budgeted to collect income totalling Kshs.44,086,349,000 during the year ended 30 June 2016 as follows:

Item	**Budget Kshs. '000'**	**Actual Kshs. '000'**	**Excess/(Shortfall) Kshs. '000'**	**Excess/ (Shortfall)%**
Contribution Receivable	23,317,132	12,874,685	(10,442,447)	(45%)
Benefits Payable	(3,407,504)	(3,121,006)	286,498	8%
Investment Income	13,125,035	13,048,067	(76,968)	(0%)
Realised gain on sale of Investment	651,913	(18,038)	(669,951)	(102%)
Unrealised gain on sale of investment	10,750,273	(11,785,920)	(22,536,193)	(210%)
Investment management expenses	(358,000)	(279,468)	78,532	22%
Other Income	37,500	63,233	25,733	69%
Total	**44,086,349**	**10,781,553**	**(33,334,796)**	**(76%)**

However, the actual income realized amounted to Kshs.10,781,553,000 resulting to under collection of Kshs.33,334,796,000 or 76%. The shortfall was mainly attributed to decline in net return on investment from the budgeted Kshs.10,750,273,000 to a negative of Kshs.11,785,920,000 or Kshs.22,536,193,000 (210%) shortfall occasioned by poor performance of equities at the Nairobi Stock Exchange and non-implementation of the NSSF Act, No. 45 of 2013 which had introduced new contribution rates by between 12% and 180% leading to a shortfall of Kshs.10,442,447,000 or 45%. The non-implementation of the Act was due filing of court cases objecting to the increases.

The fund further realized a shortfall of Kshs.669,951,000 in sale of investment instead of the budgeted Kshs.651,913,000 thus performed negatively by Kshs.18,038,000 also attributed mainly to the poor performance at the Nairobi stock exchange.

Management Response

The major variance in income was caused by the shortfall in member contribution received of Kshs. 12,874,685,000 as compared with budget of Kshs. 23,317,132,000. The basis for budget was full implementation of the strategic plan which was anchored on the NSSF Act 2013. Cases filed in court have hampered full implementation of the Act. However, contribution has been on the upward trend as indicated below:

Year	2012/2013	2013/2014	2014/2015	2015/2016
Amount in Billions	7.8	8.4	11.7	12.9

The other major cause of variance was the fair gain on revaluation of investments which declined from a budget of Kshs. 10,750,237,000 to a negative of Kshs. 11,785,920,000. The decline in market value is affected by market dynamics in the operating environment especially the Nairobi Securities Exchange. The Fund's investments are valued at market value in compliance with International Accounting Standards (IAS) 40 and International Financial Reporting Standard (IFRS) 13.

The change in market dynamics were beyond management control. However, there was no actual loss despite the fluctuating market values. Investments have been diversified to facilitate efficient investment portfolios which cannot be adversely be affected by changes in market dynamics.

Committee Observation

The shortfall in income existed due to suspension of the NSSF Act, 2013.

Committee Recommendations

(i) The conflicting parties within the NSSF Board should always endeavor to settle their disputes out of court to avoid affecting operations of the Fund.

(ii) In the event of a dispute, NSSF Board Members' should explore arbitration to resolve the matter rather than going to court.

b. Expenditure - Financial Year 2014/2015

The Committee heard that the Fund's expenditure was budgeted for at Kshs. 5,502,485,000.00 but actual expenditure was Kshs. 6,169,284,000.00 resulting in an excess expenditure of Kshs.666,799,000.00 or 12%. The excess expenditure was mainly attributed to a provision made in the financial statement in respect of a disputed corporation tax refund claimed from Kenya Revenue Authority (KRA) for assessment period between 1996 and

1997 totaling Kshs.904,904,000.00. In the circumstances, the Fund had not fully operated within its approved budget estimates.

Management response

Management informed the Committee that the adverse variance was due to the provisioning of a debt of Kshs. 904,904,000 due from Kenya Revenue Authority (KRA) which related to taxes overpaid prior to the exemption date (1996 &1997).The provision was done in the 2014/2015 Annual Accounts in compliance with the International Accounting Standard 37.

Further, the Fund had been following the debt from KRA for many years without success. However, on 20th May 2014 KRA approved a refund of Kes.425, 518,277.00 claiming that Kshs, 479,385,440.00 was disallowed. The refund was subject to availability of funds and that the amount might have been applied to offset any other taxes due to KRA. The fund was delayed by a counter tax claim by KRA of Kes.2, 155,859,151.00. Income tax appeal No.7 of 2014 NSSF Vs KRA judged in favour of the fund on 29 June 2016. The Fund was still pursuing the refund of Kshs 904,903,717.00. The Commissioner of Domestic Taxes approved the filing of the amended tax return for the year 1997 in August 2017 to pave way for the refund of Kshs. 411,646,389

Committee Observations

(i) It was not clear why KRA was demanding corporate tax from NSSF whereas it should be clear to them that the NSSF was exempted from paying corporation tax.

(ii) The tax refund held by KRA should have been attracting interest the same way KRA charges interest on any unpaid tax.

Committee Recommendations

The KRA should refund NSSF the overpaid tax of Kshs. 904,904,000 within six months.

c. Expenditure - Financial Year 2015/2016

The actual expenditure for the year amounted to Kshs.5,509,264,000 against the approved budget of Kshs.8,251,255,000 thus resulting to an under expenditure of Kshs.2,741,991,000 or 33% as follows:

Item	Budget Kshs.'000'	Actual Kshs.'000'	(Over)/Under Kshs.'000'	(Over)/Under %
Staff Costs	3,352,545	3,420,644	(68,099)	(2%)
General Administrative Costs	1,498,710	1,647,568	(148,858)	(10%)
Provisions	3,400,000	441,052	2,958,948	87%

Total	8,251,255	5,509,264	2,741,991	33%

The under expenditure of Kshs.2,741,991,000 was largely attributed to provision of unrecoverable assets where Kshs.3,400,000,000 was budgeted for against actual provisioning of Kshs.441,052,000 resulting to overprovision by 2,958,948,000 or 87%. The actual provision was attributed to less claims by contractors than expected with regard to stalled projects.

An over expenditure of Kshs.148,858,000 or 10% also occurred under general administrative costs of which Kshs.1,498,710,000 was budgeted but actual expenditure amounted to Kshs.1,647,568,000. No explanation had been provided for the over expenditure of Kshs.148,858,000 as required.

Management Response

The under expenditure of Kes.2,741,991,000.00 was due to a provision of Kes2.5 billion budgeted for staff rationalisation, Kshs.400 million for the NSSF Act 2013 implementation activities and Kes. 250 million for contingent liabilities arising from pending court cases which did not crystallise during the year.

Committee Observation

The under expenditure persisted in the succeeding years.

Committee Recommendation

The Fund should ensure proper financial planning, budgeting and prudence when undertaking its mandate.

7) UNREMITTED MEMBERS CONTRIBUTIONS (FINANCIAL YEAR 2015/2016)

The Committee heard that employers are required under Section 8(a) of the NSSF Act, 2013 to remit into the Fund contributions deducted from members in full and in time. However, examination of twenty (20) sampled employer files maintained in nine (9) NSSF branches disclosed that contributions totalling Kshs.754,995,366.55 had not been remitted in the stipulated time period. Management had however taken action by issuing demand letters and making alternative payment arrangements with employers such as instalment payments before considering legal action. In view of the foregoing, demand letters should be sent to all the other defaulters not included in the sample taken in order to enforce compliance.

Management response

The Fund had made an effort to collect the amounts under question through courts and alternative dispute resolution mechanisms. Further the Fund issues demand letters to all defaulters on a continuous basis

Committee Observations

(i) A total of Kshs 3.5 billion remained unremitted. This amount was mainly in defunct corporations such as the Nairobi City Council and Postal corporations.

(ii) The 20 employers files sampled for the purpose of audit was too small in a sample size of more than 226,000 files.

Committee Recommendations

(i) The Fund should put in place robust collection strategies including legal mechanisms to avoid undercollection and resultant losses.

(ii) The OAG should increase the sample size of files for audit exercise to have a fairly accurate representation.

(iii) The National Assembly should increase financial allocation to the OAG to acquire additional human resource that will assist in effectively undertaking the mandate of the Office.

8) IRREGULAR DISPOSAL OF UNDEVELOPED LAND (FINANCIAL YEAR 2015/2016)

The Committee heard that Note 27 to the financial statements reflected disposal proceeds figure of Kshs.126,000,000 in respect of sale of undeveloped land in Mavoko Municipality. Information available indicated that land measuring 69.16 acres was subdivided into seven (7) plots measuring 9.88 acres and disposed-off at Kshs.18,000,000 each. According to documents availed for audit in support of the sale, the plots were sold to AMS Properties Limited on the basis of an agreement dated 21 November, 2011 at a total cost of Kshs.126,000,000. However, only Kshs.12,600,000 or 10% was paid vide Miscellaneous Receipt M010022315 dated 23 August, 2011. The balance of Kshs.113,400,000 which was to be paid within 90 days from the date of execution of the agreement had not been settled more than five (5) years later.

No reasons had been provided for the failure to terminate the sale agreement upon the expiry of the 90 days execution period provided for in the contract agreement. The Fund risked loss of the land and additional claim on the paid 10% Deposit.

Management response

In December 1995, the Fund bought LR No.s 20181, 20183, 20184, 20101, 20201, 20205, 20206 & 20207 – in Mavoko Municipality. Despite the Fund constantly checking on the status and security of its properties, during the sale it came to light the existence of LR No. 26817,

deed plan No. 246214 which was issued on 26 February 2003 also purportedly owning above stated parcels of land.

Upon further investigation, it emerged that LR No. 26817 had been superimposed or overlapped on the Fund's existing titles. The Office of Directorate of Surveys after persistent follow ups vide its letter of 12th September 2013 confirmed existence of the plans and advised on Cancellation of Grant No. I.R. 91466 (LR No. 26817).

The Fund took up the matter with the person(s) who had been issued with LR. No. 26817, Messrs Karsan Ramji & Sons Limited and brought to their attention the overlap between the Fund properties and the title in their possession. Messrs Karsan Ramji & Sons Limited did on their own volition surrender the title in its possession to the Fund on the understanding that the Fund would surrender the same to the National Land Commission.

The Chairman of the National Land Commission acknowledged receipt of the Fund's Letter and the surrendered documents and directed the Director of Surveys to cancel the grant. However, despite the Chairman of the National Land Commission directive and the Fund's numerous follow ups and correspondences on the matter, the same has not been done to date making it difficult for the Fund to conclude the sale to the purchaser AMS properties.

Due to this contractual frustration, the Fund instructed its lawyers to cancel the sale. The Fund's lawyers had written to the purchaser's lawyer initiating the cancellation and refund of the deposit received.

Committee Observations

(i) The Ministry of Land had taken inordinately long time to cancel the fake title deeds.

(ii) There is a likelihood that M/S AMS Properties will sue the NSSF for breach of contract.

(iii) The matter had taken inordinately long time to conclude (7 years).

Committee recommendation

(i) The National Land Commission and the Ministry of Lands should resolve the matter within six months.

(ii) The EACC and the DCI should investigate Director of Surveys, the Registrar of Titles and Messrs Karsan Ramji & Sons with respect to the acquisition and Grant No. I.R. 91466 (LR No. 26817) and prosecute where any of the parties is found culpable.

9) HAZINA PLAZA MOMBASA LEASE - LR.NO.MSA/BLK XX/328 & 329 (FY 2015/2016)

The Committee heard that Hazina Plaza, formerly known as Polana Hotel, was located at the Heart of Mombasa Island and was purchased by the Fund at a cost of Kshs.450 Million from M/s Cannon Investments Ltd in 1994. However, the sale agreement and details of the actual payments were not provided for audit review. The Plaza was built on land measuring ninety thousand square feet (90,000). On it stood a nine storey building with a plinth area of approximately 115,589 sq ft.

The plaza was leased to M/s Azania Hotels Ltd on 1 November 1994 and operated as a four star hotel at an annual rent of Kshs.60 Million. The hotel has however reportedly remained partially closed since 2001 due to failure by the then tenant to meet rent obligations. Correspondences availed indicated that the building was later advertised for sale on 3 September 2009 at a reserved price of Kshs.300 million. However the bids received were below the reserve price.

On 25 May 2010, during the 11 meeting of the Operations and Investment Committee of the Board, it was agreed that the premises be leased to M/s Techno Holdings Ltd at a monthly rent of Kshs.2.25 million or 27 million annually net of all taxes with an escalation cost of 10% after every two (2) years.

According to the lease agreement entered between the Fund and M/s Techno Holdings Ltd, the lessee was to pay a total of Kshs.164,837,000 to the fund for the hire of the building as a hotel for a period of ten (10) years from 1 August 2010 to 30 July 2020.

Although the building was handed over to M/s Techno Holdings Ltd on 29 April 2014, later on 27 January, 2016 during the 169th Board of Trustees meeting, the firm was granted a two year grace period commencing 2 May, 2014 when they formerly got vacant possession. Rent payment was therefore effective from 1 May 2016 which was also extended by a further six (6) months to 31 December 2016 by the Board of Trustees to allegedly enable the firm complete the undocumented buildings repairs. Further, the lease did not engage any contract variations in terms of grace period or cost of repairs.

Audit inspection at the site carried out in September, 2016 confirmed that the building had rent due of Kshs.323,585,144 between 1 November 1994 and 30 October 2014 and only Kshs.66,500,000 had been paid leaving a balance of Kshs.239,500,000 outstanding. No reasons have been provided for the failure to demand and collect the outstanding rent of Kshs.239,500,000

In view of the forgoing, the fund had not realised value for money from the investment of Kshs.450 million in Hazina Plaza Mombasa since 1994 nor had prudent financial management been exercised in the contract.

Management Response

Background

Hazina Plaza formerly Polana Hotel was a 13 storey commercial building situated along Muungano Street at the Junction of Msanifu Kombo and Haille Selasie Avenue in Mombasa Island. The above property was purchased by the Board of Trustees in 1992 at Kes 450,000,000. The hotel had been earlier leased to M/S Azania Hotels which was closed down on account of distress to recover accumulated rent arrears. Before closure, it operated a four star hotel comprising of 122 rooms, 3 conference rooms amongst other facilities. Azania was distressed and Kshs. 66 million recovered. The Fund sued the directors of Azania Ltd for recovery of the outstanding balance of Kshs. 239 million. The case was still pending in court.

Lease to M/s techno holdings/grace period

State of repairs and maintenance

The property continued to depreciate in value owing to long spells of vacancy and disuse. The defunct Municipal Council of Mombasa previously raised adverse notices declaring the building unfit for human habitation and compelling the Fund to renovate. We also note that the property continued to receive negative press coverage owing to its state of disrepair.

The Board approved lease of the above premises to M/S Techno Holdings for a period of 10 years. The commencement date for lease was from 1st August 2010 at annual rent of Kshs. 27,000,000 and an escalation clause of 10 % after every 2 years. The lease was registered against the ground titles. The tenant was granted a grace period of 2 years to carry out renovations. Further, clause 5(g) of the lease give M/S Techno Holdings a first priority in case the property was put on sale during their lease period in line with the Board decision dated 13th July 2010. The rent as per clause 3(1) was waived for the sole purpose of enabling the lessee to carry out the renovations at own cost. The tenant made deposit rent payment as per lease.

Lease frustration by ground floor tenants

M/S Techno Holdings Ltd intention to take physical possession of the property to carry out the intended renovations were frustrated by the ground floor tenants who went ahead and filed case Nos. 258 and 273 before the rent tribunal on account of controlled tenancy who were finally evicted. The renovations works and work programs have been availed. The Fund distressed M/s Techno Holdings Ltd on 4th October 2017, the matter was taken to court and ruled in favour of the Fund.

Committee Observations

The Fund did not involve the State Department of Public Works when contracting M/s Techno Holdings Ltd to renovate the building. The scope of renovations was not documented and agreed anywhere thus opening a loophole for the tenant to arm-twist the Fund on the cost of renovations.

The drafting of the lease agreement with M/s Techno Holdings Ltd was poorly done thus exposing the Fund to loss of money i.e two and half year rent free.

The lease that was provided by the management had missing pages.

NSSF won the court case relating to the ownership of Hazina Towers.

Committee Recommendation

The Auditor General should carry out a forensic audit and a 'value for money audit' to establish whether the transaction under this matter was marred in fraud.

10) MILIMANI PLOTS – KISUMU (FINANCIAL YEAR 2015/2016)

The Committee heard that the financial statements for the year ended 30 June 2016 reflected Kshs.19,908,756,000 as the total value of developed land under statement of net assets available for benefits. Included in this figure was Kshs.178,000,000 being value for LR.KISUMU/MUN/8/258 in Milimani Estate, Kisumu County. The land originally belonged to the Municipal Council of Kisumu and was on 26 November 2012 swapped to offset a debt of Kshs.150 million owed to the Fund.

The land was situated in Milimani estate in Kisumu Municipality and measured 0.7740 Ha. in size. Within the land was a flat comprising of eight two bedroom apartments and three separate maissonettes of three bedrooms each with a servant quarter.

Audit inspection of the NSSF plots carried out in September 2016 revealed that the houses were fully occupied by NSSF staff and information obtained indicated that only Kshs.66,000 was being received as rental income from the houses but no documents were provided to support this figure. Despite lack of rental income from these houses over the years, the fund continued to provide security and other services.

No explanation had been given for the failure to review the rent payable since taking over the property. Consequently, value for money had not been realised since the year 2012 from the investment worth Kshs.178,000,000.

Management response

Management informed the Committee that Kisumu Municipal Council owed NSSF contribution arrears. The Fund took Kisumu Municipal Council to Court for recovery of outstanding contributions. The matter was settled out of court and consent registered in court. Consequently the Board of Trustees approved a swap deal to offset the outstanding amount of Kshs. 150 million. The land that originally belonged to Municipal Council of Kisumu, was on 26 November 2012 swapped to offset a debt of contribution arrears of Kshs.150 million owed to the Fund by Kisumu Municipal Council. The main objective of the swap was to acquire the land for investment development.

The Fund was the registered owner of the property. Due to the threat of invasion by alleged former council workers, the Fund reinforced security by hiring security officers and also allowed staff members to reside in the old houses to safeguard the houses from encroachment until the property was ready for development. So far, the security situation had improved and the number of security officers had been reduced drastically. However, the members of staff acting as caretakers of the land and houses were still residing in the houses but paying rent.

So far Kshs. 199,500.00 had been received as rent income and continued to be recovered from the payroll on monthly basis. The Fund did not envisage any long-term leases to warrant escalation of rent as the property was earmarked for redevelopment. The Fund had commissioned a feasibility study to guide development for the property. As at 30th June 2017, the property was valued at Kshs. 190 million.

Committee Observation

The matter was resolved

2.12 NATIONAL HOSPITAL INSURANCE FUND (FY 2015/16- 2016/2017)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE NATIONAL HOSPITAL INSURANCE FUND (NHIF) FOR THE FINANCIAL YEARS 2015/2013 TO 2016/2017

Mr. Geoffrey Mwangi, the Chief Executive Officer of the National Hospital Insurance Fund accompanied by Mr. Joseph Mbuvi (Ag. Director, Finance and Investment), Mr. Hilbert Kurgat (Ag. Manager, Finance), Ms. Ruth Makallah (Ag. Corporation Secretary) and Ms. Irene Rono (Director, Finance and 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 2015/2016 and 2016/2017.

1) CONSTRUCTION OF MULTI-STOREY CAR PARK (FY 2015/16 and 2016/17)

The Committee heard that as reported in the 2014/2015, National Hospital Insurance Fund entered into an agreement with local construction firm for construction and completion of a Multi-Storey Car Park at a contract sum of Kshs.909,709,305. According to information available, the project commenced in May 2002 and was scheduled for completion in August 2003. Records available however indicate that the contract sum was later revised upwards to Kshs.1,179,611,756 representing approximately 30% above the original contract sum of Kshs.909,709,305.

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 2013/2014, the escalation of costs of the car park by 337% over and above the original cost had not been justified.

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

Management Response

The Management informed the Committee that the car park was a seven storey-building with basement floors, which was designed to accommodate 780 cars. The project commenced in May 2002 and was scheduled for completion in August 2003. The original cost of the project was Kshs. 909,709,305.40 over a contract period of 65 weeks.

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

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

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

The multi-storey car park was completed in July 2008. Payments totaling Kshs. 626,635,998.00 incurred in 2009/10 and Kshs. 4,706,521 incurred in 2010/11 were related to pending claims which were payable to the contractor after completion of the project.

The building however was complete and provided rental income of above Kshs. 65 Million per annum. Some of the organizations that were occupying the building were government institutions such as Ministry of Environment, NACAA, Catering & Tourism Development Levy Trustee, Ministry of Lands, Housing and Urban Development, Kenya Roads Board and other small private firms as well as NHIF's Nairobi branch.

Committee Observations

(i) This matter had been dealt with by the previous PIC reports, that is the 13th, 16th, 19th and 21st, wherein the Committee observed the unprofessional manner in which the project was executed. The previous PICs recommended that the EACC investigates the procurement process of the project and comes up with appropriate recommendations regarding any breach of law.

(ii) The Ethics and Anti-Corruption Commission had not initiated investigations into the matter as per the recommendations of the 21st PIC Report.

Committee Recommendations

(i) The recommendations of the previous PIC in the 21st report should be implemented within six months.

(ii) The DCI should be enjoined in the investigations.

2) PROPERTY, PLANT AND EQUIPMENT FY 2015/16 & FY 2016/17

a. Land Situated at Karen – 10 Hectares

The Committee heard that included in the property, plant and equipment balance of Kshs.12,841,519,701 in the statement of financial position as at 30 June, 2016 is land valued at Kshs.298,589,665 which includes an amount of Kshs.93,712,675 for land Ref. No.LR 24968/2 measuring 10 hectares situated at Karen. However, and as previously reported, the ownership of this particular parcel of land was in dispute and the matter was in court.

Although the issue had been discussed by the Public Investment Committee, no action appear to have been taken on the PIC recommendations as per the 19th report that the National Land Commission conducts further investigations on the issue of the land within six months after adoption of the Report.

Management Response

The Committee heard that the Board of management of NHIF purchased land from KASKAZI TRADERS LTD, title L.R. NO. 24968/2 KAREN and duly registered to NHIF. It came to the attention of the Fund in September 2004 that a contractor had been commissioned by a third party (Crown line Freighters Ltd) to develop the said plot claiming ownership. The Fund instructed M/S Rachier and Amollo Advocates to protect the interests of the fund by pursuing appropriate action to restrain the third party from interfering with the property.

The Advocates moved to court under HCCC NO. 1071 OF 2004 and sought the following orders which had been granted:

- A declaration that the Fund had the sole proprietary rights and interest over the said parcel of land
- An injunction against the third party from continuing with construction on the said parcel of land

The Fund was pursuing the matter and had already taken the necessary steps to ensure the matter is determined in its favor. In pursuit of this, the Fund was relying on the evidence from the Commissioner of Lands confirming that the land was registered under the Fund's Board of Management.

The Commissioner of Lands in his letter referenced 186267/T.C/17 dated 22nd August 2007 addressed to the Attorney General stated categorically that the suit property L.R. NO. 209/24968/2/R 87345 was registered in favor of the NHIF board of management.

The Permanent Secretary Ministry of Medical Services on 6th March, 2009 wrote to the Attorney General asking the A.G to amend their defense to be in line with the Commissioner of Lands instructions.

The Attorney General's office in their letter referenced AG/MLS/292/04 dated 9th November 2009 confirmed receipt of the instructions from the Commissioner of Lands to amend the defense on record as the land is legally owned by the NHIF board of Management and that they were going to amend the defense accordingly to safeguard the suit property. The matter was moved to the Environment and Land Division and assigned the case a new number HCCC.ELC NO. 691 of 2011. This was in a bid to ensure the matter was expedited. The matter was set down for hearing on 11th April, 2018.

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

The Commission pronounced itself and observed that the issue of ownership of the said parcel of Land was in Court. The Commission guided that the issue of ownership of the subject land be determined in the pending suit being ELC 691 of 2011.

Committee Observations

(i) **The National Land Commission met the Fund and stated that the Commission could not confirm the ownership of impugned land as the matter is in court;**

(ii) **The Fund had obtained a court order to fence the land but had been unable to do so due to interference from squatters;**

(iii) **The Fund had tried to secure the land by placing security guards at the site but the Fund's security officers were arrested;**

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

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

(vi) **The Nairobi Deputy County Commissioner, in a letter to the National Lands Commission dated 26th August, 2016 indicated that the allotment letter and title deed used by Kaskazi Traders was unlawful and invalid and also indicated that the IR No. used (No. 87345) was also obtained unlawfully since the IR's location was not in Karen. The Attorney General's office further stated the title which Kaskazi Traders Limited used to sell the land to the National Health**

Insurance Fund (NHIF) was unlawful, invalid and should be cancelled. This puts in doubt the claim to the land by NHIF.

(vii) The Matter had been discussed in the PIC's 21st report with the recommendations that the Chief Justice fast tracks the hearing and determination of case no. HCCC.ELC NO. 691 of 2011; and the Fund secures the disputed parcel of land through fencing and hire a competent security firm to guard the property until the case is fully determined.

(viii) There is subsisting court order confirming ownership status of the ownership of the land in favour of NHIF. The matter is currently under appeal.

Committee Recommendations

(i) The recommendations of the 21st PIC report should be implemented.

(ii) NHIF should proceed to secure the land by fencing the said property to secure the interests of NHIF

(iii) The parties should engage the Court and the National Land Commission to pursue legal remedies to its logical conclusion.

(iv) The EACC and DCI should undertake an investigation with a view to establishing whether there was any fraud with respect to the transfer of ownership of the land and prosecute any person who may have been identified as having breached the law.

b. Proposed Resource Centre at Karen Land

The Committee heard that the property, plant and equipment balance of Kshs.12,841,519,701 as at 30 June 2016 (Kshs.13,103,788,341 as at 30 June 2017) was Work in Progress balance of Kshs.1,634,578,339 out of which Kshs.1,444,687,484 was in respect of payments for drawings and designs for the proposed Resource Centre and whose construction had not yet commenced since acquisition of land fourteen years ago. Management explained , as in the previous year, construction of the Resource Centre had not yet commenced because of lack of approval from parent Ministry.

In the circumstances, it was not possible to ascertain the ownership status of the parcel of land in dispute and whether the property, plant and equipment balance of Kshs.12,841,519,701 as at 30 June 2016 was fairly stated.

Management Response

Management informed the Committee that it was true that as at 30 June 2016 was work in progress of Kshs.1,444,687,484 in respect of payments for the proposed Resource Centre on the Karen Land whose construction has not yet commenced. The amount comprised arbitration award to Architects and further payments to other consultants and professionals

that had been engaged. They included quantity surveys, business plans and financial analysis consultancy, legal fees, architectural design services fees and feasibility study.

In the year 2001/2002 the Fund planned to build a Resource Centre on the land acquired in Karen at a cost of Kshs.93,712,675. The establishment and implementation of a Resource Centre on the land was approved by the board in 2002. The then Chief Executive commissioned consultants in accordance with the Architects and Quantity Surveyors Act Cap 525 of the Laws of Kenya to carry out a feasibility study on the development of a recreational facility.

Arbitration by Architects and Quantity Surveyors on the Proposed Resource Centre

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

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

The Karen Medical Centre of Excellence

The Original Project was revised to a Medical Center of Excellence and a Vision 2030 flagship project for the Ministry of Health. The Karen Medical center of excellence project led to litigations from the consultants.

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

The following are the pending legal proceedings commenced by the Consultants in respect to the Karen Medical Centre of Excellence.

- *Rebman Ambalo Malala T/A Ujenzi Consultants Vs NHIF HCCC No. 25 of 2016*

Ujenzi Consultants were engaged as the Project's Quantity Surveyors. They filed a civil suit in the High Court on 20 January 2016 for alleged unpaid fees together with penalties and interest allegedly accruing on the alleged unpaid fees. The suit is pending in Court.

- *Comm Case No. 255 of 2016 - NHIF Vs. Eng. Peter Scott and Manga and Associates*

NHIF moved to the High Court and filed an application to set aside the Arbitrator's preliminary ruling and further challenged his jurisdiction. The Court granted a stay and allowed the Court to determine the issue of jurisdiction. The matter was still pending in Court.

- *High Court Civil Suit No. 504 of 2016: National Hospital Insurance Fund Vs. Baseline Architects Ltd*

The Fund filed an Application in the High Court to set aside the Arbitral Award dated 16th November, 2017. The Ruling on the matter was delivered on 17th July, 2017. The Fund Succeeded in the matter. The Court set aside the Arbitral Award.

- *Civil Suit No. 176 Of 2017 – Professional Consultants Ltd –Vs- NHIF*

The Plaintiffs moved to court and filed a claim on 26th April 2017 for alleged provision of Civil, Geo – technical and Mechanical engineering Services.

Following the ruling on the matter of the Architects, the Court set a precedent on the issue of protecting public funds and public interest and it is likely that all the above matters will be ruled in favour of the Fund.

Committee Observations

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

(ii) **By the time the Fund changed the project from a proposed Resource Center to a Medical Center of Excellence, the land was already in dispute. This exposed the Fund to further litigation arising from the Medical Center project.**

(iii) **The Fund made the decision to engage the same Architects and Consultants for the Medical Center project without opening the contract to competitive bidding despite the fact that the scope and specification of the project was different to the proposed Resource Center.**

(iv) **The land was undeveloped when the Committee visited the site on 25th July 2018.**

Committee Recommendations

(i) **The NHIF should pursue the expeditious prosecution and conclusion of the case to its logical conclusion with a view to safeguarding the ownership interest in the land.**

(ii) **The Auditor General should conduct a forensic audit with a view to establish whether there was fraud, corruption or other financial improprieties in the construction of the proposed resource centre.**

(iii) **The Auditor General should conduct a procurement audit to establish whether procurements were done lawfully and in an effective way.**

(iv) **The Auditor General should conduct a performance audit to establish whether there was value for money in the project and submit the report to the National Assembly.**

3) SHORT TERM INVESTMENTS FY 2015/16

The Committee heard that as previously reported, included in the cash and cash equivalent balance of Kshs.16,230,036,846 in the statement of financial position as at 30 June 2016 was short term investments balance of Kshs.15,275,768,478 which was net of provision for impaired investments of Kshs.1,304,410,609 under note 22 to the financial statements. The provision included an amount of Kshs.49.5 million which had been deposited by the Fund on 26 June 2001 at the Consolidated Bank Ltd in Nairobi. However, available information indicated that the entire deposit of Kshs.49.5 million was off-set by the Bank against a guarantee executed by the former Fund Chief Executive Officer, on behalf of Euro Bank Ltd. It was not clear and the management has not explained the circumstances under which the Fund's deposit was used as a guarantee by the then Chief Executive Officer.

Although the previous Public Investment Committee recommended that the Chief Executive Officer should ensure that any future investments of the Fund were made in accordance with the Treasury circulars and were based on prudent commercial practices, no explanation was provided for failing to recover the Kshs.49.5 million lost from the then Chief Executive Officer.

In the circumstances, it was not possible to confirm whether the short term investment balance of Kshs.15,275,768,478 was fairly stated.

Management Response

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

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

The investments were listed as non-performing and had been provided for with other non-performing investments in the fund's financial statement. As per the recommendations of the Inspector General, NHIF had since written to Consolidated Bank of Kenya seeking re-payment of Kshs.49.5 million. NHIF had also approached Consolidated Bank with a view of finding ways on how to make outstanding amount good.

The PIC's 21st report recommended that the query should be excluded from subsequent Reports of the Auditor General, provided that the management makes full disclosure of this unresolved matter in its financial statements as required by the International Accounting Standard no. 37.

Further Action by Management

NHIF had since reviewed its investment policy guidelines to conform to Treasury circulars and NHIF Act among other Government Regulations. The Management ensures strict adherence by all staff in order to achieve the overall objective of the Fund and mitigate future audit queries. The Fund ensures that appropriate recognition criteria are applied to contingent liabilities and assets. They are disclosed when a possible obligation depending on whether some uncertain future event occurs or when there is a present obligation but payment is not probable or amount cannot be measured reliably. Contingent assets are only disclosed where an inflow of economic benefits is probable as guided by IAS 37.

The Fund had made Provisions in the financial statements for the bad and doubtful debt in the Audited Report and Financial statements as per IAS 37.

Current Status

The Fund had not recovered Kshs.49.5 million from the then Chief Executive Officer/ Consolidated Bank as recommended in the 21st Public Investment Committee report.

Committee Observations

(i) This Matter had been discussed in PIC's 21st report.

(ii) The decision to invest the Kshs. 600 Million in Consolidated Bank was arrived at by the entire board of management.

(iii) The Fund had made Provisions in the financial statements for the bad and doubtful debt in the Audited Report and Financial statements as per IAS 37.

Committee Recommendation

The EACC and DCI extend the investigation to the entire Board during the period under review.

4) TRADE AND OTHER RECEIVABLES FY 2015/16

The Committee heard that as similarly reported in 2014/2015, the trade and other receivables balance of Kshs.3,926,313,543 in the statement of financial position as at 30 June 2016 includes Hospital surcharges of Kshs.5,722,635, outstanding contributions of Kshs.1,247,669,690, R.D cheques of Kshs.1,150,561, staff receivables of Kshs.2,104,123, supplier advances of Kshs.4,660,314 and revenue holding account of Kshs.11,934,574 all totaling Kshs.1,273,241,897. These balances had been outstanding for a considerably long period of time and only provisions for bad and doubtful debts of Kshs.180,587,538 have been made in the accounts. Although the management had indicated that efforts were underway to pursue the debts, the seriousness of the management on this issue is doubtful as the matter has been long outstanding as indicated in the previous reports. Further, the Public Investment Committee recommendation in the 19th report that the Chief Executive Officer puts in place financial control and debts collection immediately they fall due did not address the issue raised on the long outstanding debts.

In the circumstances it was not possible to confirm the accuracy and recoverability of the trade and other receivables balance of Kshs.3,926,313,543 included in the statement of financial position as at 30 June 2016.

Management Response

Management informed the Committee that Trade and other receivables are recognised at fair values less allowances for any uncollectible amounts. An estimate is made of doubtful receivables based on a review of all outstanding amounts at the year-end.

The trade and other receivable balances were historical balances dating back to 2001/2002 financials years. It was true as reported by the Auditor General that Hospital receivables of Kshs.5,722,635, outstanding contributions of Kshs.1,247,669,690, R.D cheques of Kshs.1,150,561, staff receivables of Kshs.2,104,123, supplier advances of Kshs.4,660,314 and revenue holding account of Kshs.11,934,574 were long outstanding unrecoverable debts as at June 30 2016 except for outstanding contributions where Kshs.1, 210,679,942 was recovered in the year 2015/2016 FY.

The Fund had since put in place cashless revenue collection mechanisms to curb stealing by staff. This has been achieved through banking revenues directly at contracted banks by the contributors; introduction of online revenue collection; use of mobile money transfers and collection by contracted agents. The Fund makes Provisions in the financial statements for any bad and doubtful debts as per IAS 37.

The 21st PIC Report recommended that the Fund ensures that, the gains made in improving revenue collection and sealing revenue leakages were sustained.

Further Action by Management

The Fund made reconciliation on the accounts since the debts arose due to reconciliation issue and the outstanding debts were referred to an advocate of the high court who was engaged in order to recover the long outstanding debts. The advocate sent demand letters to the debtors. Some demand letters were honoured and debt paid, however some were declined.

Committee Observation

The Fund has put in place cashless revenue collection mechanisms to deter theft by staff.

Committee Recommendation

The Fund should follow up and recover the outstanding amounts.

2.13 KENYA RAILWAYS CORPORATION (2012/2013-2016/2017)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE KENYA RAILWAYS CORPORATION FOR THE FINANCIAL YEARS 2015/16.

Mr. Atanas Maina, the Managing Director of the Kenya Railways Corporation (KRC) accompanied by three of his officers appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the corporation for the financial year 2015/2016.

1) ILLEGAL ALLOCATIONS OF LAND (FINANCIAL YEAR 2015/2016)

The Committee heard that the statement of financial position as at 30th June 2016 reflected a balance of kshs. 22,571,735,017 in respect of property, plant and equipment. However, and as reported in the previous year, various parcels of land have been allocated to private developers by either the Commissioner of Lands or Local Authorities without the consent of the Corporation. Land measuring approximately 3 acres within Limuru Railway Station, constituting industrial plots No.7882/2 – 10 was allocated to private developers. Similarly, private buildings had been put up on another piece of land measuring approximately 2 acres within Kikuyu Railway Station. While in Mombasa, parcels of land measuring approximately 1 and 0.75 acres adjacent to Mombasa Railway Station had been allocated to private developers, without the Corporation's consent.

Consequently, the accuracy of the property, plant and equipment balance of kshs. 22,571,735,017 as at 30th June 2016 could not be confirmed.

Management Comments

Management informed the Committee that the Corporation was in the process of carrying out Survey and Registration of all its operational land and Marshalling Yards for purposes of acquiring ownership documents. It was working closely with the National Land Commission to speed up the process of registration to obtain title deeds and official communication had been forwarded.

To achieve this, the Corporation had engaged four surveying consultants to undertake countrywide surveys and registration of all operational land. This would see the survey of a total of 150 Railway Stations and marshalling yards measuring 2700 acres approximately finalized. It would further ensure that land irregularly allocated to third parties was identified, illegal surveys cancelled and titles revoked and the same registered under the Corporation. This exercise was expected to be completed by the end of the 2018/19 year.

The Corporation was also working closely with the Ethics and Anti-Corruption Commission in conducting investigations into land irregularly allocated to third parties with an aim of recovering the same. It had identified around 500 cases countrywide of parcels irregularly

and illegally acquired and the same submitted to the Ethics and Anti-Corruption Commission for further investigations.

The corporation had also requested the Ministry of Lands to revoke titles of all the land that was irregularly allocated by the Commissioner of Lands. Letter to the NLC was availed.

Committee Observations

(i) The Corporation had written to the EACC and NLC several times with a view to addressing the matter but progress towards recovery of the land has been very slow.

(ii) This particular matter had been observed in PIC's 21st report. It is inconceivable that the value of the land continues to remain the same presently.

Committee Recommendations

(i) The recommendations of the PIC's 21st report on valuation of land should be implemented within six months.

(ii) The EACC and DCI should expedite investigations on irregular allocation of 500 parcels of land by the Commissioner of Lands with a view to recovery of the land and facilitate prosecution of any person found criminally liable.

2) CURRENT ASSETS (FINANCIAL YEAR 2015/2016)

Short term Deposits

The Committee heard that included in current assets balance of kshs 79,497,740,347 as at 30th June 2016 was short term deposits amounting to kshs 2,725,000,000 out of which Kshs 800,000,000 was held as a fixed deposit with Chase Bank Limited at a rate of 12.5% p.a. However, Chase Bank Ltd was placed under receivership and Kenya Deposit Insurance Corporation (KDIC) appointed to assume the management and control of the bank on 7 April 2016. In the circumstances, the recoverability of the total Kshs. 800.000.000 was doubtful.

Management response

Management informed the Committee that the Central Bank of Kenya (CBK) and Kenya Deposit Insurance Corporation (KDIC) announced the signing of an agreement between SBM Bank (Kenya) Limited (SBM Kenya), and KDIC for the acquisition by SBM Kenya of certain assets and assumption of certain deposits with respect to Chase Bank (Kenya) Limited (In Receivership) (CBLR).

The agreement provided that there would be a transfer of 75 percent of the value of deposits currently under moratorium at CBLR, and the transfer of the majority of staff and branches of the existing CBLR operations. 25 percent of the value of moratorium deposits would remain in CBLR.

For the 75 percent of moratorium deposits to be transferred to SBM, the terms of these transferred deposits are to be as follows:

a. 25 percent of each transferred deposit is to be held in a current account with SBM Kenya, with unrestricted usage and without interest being payable thereon; and

b. A further 25 percent of each transferred deposit will be held in a savings account with SBM Kenya at an interest rate of 6.65 percent per annum, with unrestricted usage; and

c. the remainder of each transferred deposit will be held on fixed term deposit with SBM Kenya at an interest rate of 6.65 percent per annum , such deposits (together with the interest thereon) to mature, as to one-third of such remainder, on the first, second and third anniversaries of the transfer respectively.

The customary conditions that applied to current and savings accounts, and term deposits, respectively, would apply to these deposits. The interest rates in (b) and (c) above will be aligned to the interest rates as prescribed by law.

The date these deposits would be available, and the details under which the customer accounts would be managed was yet to be announced.

Committee Observations

(i) There was no correspondence between Chase Bank and the Kenya Railways Corporation to ascertain the above management response;

(ii) The investment had been approved by the Investment Secretary at the National Treasury.

Committee Recommendation

Kenya Railways should ensure that it adheres to prudent financial management of public resources pursuant to section 68(2)(a) of the Public Finance Management Act, 2012.

Inventories

The Committee heard that the current assets balance of Kshs. 79,497,740,346 also included stores inventories amounting to Kshs. 3,471,628,460. However, no stock taking was carried out as at 30 June 2016. In the circumstances, it was not possible to confirm the correctness of the total inventories balance of Kshs. 3,471,628,460 included in the current assets as at 30th June 2016.

Management response

Management concurred with the audit observation on the Corporation's inability to carry out stock-takes. This was as a result of cash flow constraints and staff inadequacies vis-à-vis the complexity and expansiveness of the Corporation's stores system. The Corporation therefore

adjusts the stock values at the end of each financial year to take into account the movements within the year. The Corporation was however finalizing on a 100% stock take for its capital stores - an exercise that had taken 11 months.

Committee Observations

(i) In the absence of a stock take, the accuracy of the assets was in doubt.

(ii) Despite the PIC's 21st report pointing out this, the problem largely remained unresolved.

Committee recommendations

(i) Kenya Railways Corporation should always undertake stock take to ensure accuracy of its assets pursuant to the provisions of section 68(2)(e) of the Public Finance Management Act, 2012.

(ii) Going forward, Kenya Railways Corporation should reflect a record of stocks that have been accurately verified.

(iii) The Corporation is in the process of finalizing on a 100% stock take for its capital stores - an exercise that had taken 11 months so far.

(iv) The Committee anticipates that the matter will have been resolved during the following financial year.

3) PAYABLES AND ACCRUED CHARGES (FY 2015/2016)

The Committee heard that included in payables and accrued charges balance of kshs. 2,197,081,570 as at 30 June 2016 was an amount of Kshs. 742,224,851 relating to payables which had been outstanding for over a year. No satisfactory explanation was provided as to why the same had remained outstanding for over a year.

Management response

Most of the creditors listed are legacy creditors some of whom lack supporting documents to back up their claims, while others were in court.

Committee Observation

Some of the creditors have huge balances that had been outstanding for a number of years.

Committee Recommendation

The Accounting Officer of the Kenya Railways Corporation should continue pursuing the matter and ensure payment. In the event of failure, the accounting officer should consider suing those entities that owe the Corporation.

4) UNACCOUNTED FOR CASH (FY 2015/2016)

a. Staff travel advance surrendered, but not banked

The Committee heard that evidence available indicated that an amount of kshs 4,873,766 was surrendered by officers to the Corporation cashier, but the same was not banked as summarized below:-

Month	Cash returned	Cash banked	Cash un-accounted
Jul-15	990,238.00	82,988.00	907,250.00
Aug-15	605,233.00	424,832.00	180,401.00
Sep-15	1,076,129.00	68,200.00	1,007,929.00
Oct-15	477,151.00	-	477,151.00
Nov-15	247,520.00	-	247,520.00
Dec-15	106,159.00	32,300.00	73,859.00
Jan-16	269,404.00	-	269,404.00
Feb-16	286,512.00	-	286,512.00
Mar-16	415,151.00	114,900.00	300,251.00
Apr-16	438,937.00	48,900.00	390,037.00
May-16	270,563.00	-	270,563.00
Jun-16	442,889.00	-	442,889.00
TOTAL	**5,445,485.00**	**591,719.00**	**4,853,766.00**

In the circumstances, the total cash of kshs 4,853,766 has not been accounted for.

Management response

Staff submitted Kshs. 4,853,766 through cash office and receipts provided but the same was not banked nor proof of banking provided. This was attributed to isolated cash office malpractices by some employees.

Since theft is a criminal offence, the matter was reported to the Criminal Investigation (CID). In addition, disciplinary measures were taken on staff who were alleged to have failed in their duties in respect of the matter.

Further to the above actions, the management had put in additional controls to mitigate recurrence of cash malpractices by resulting to electronic funds transfer(EFT) and re-

banking of surrenders by staff and provision of a banking slip for a KR official receipt to be offered.

Committee Observations

(i) The matter has been reported to the DCI.

(ii) The management reported that disciplinary measures were taken on staff who were alleged to have failed in their duties in respect of the matter.

(iii) The officers involved in the malpractice are known to the management.

Committee Recommedations

(i) The Cabinet Secretary National Treasury should compel all officers identified to have failed to bank surrendered imprest to provide within three months after adoption of this report, an explanation for the failure to bank the said imprest .

(ii) Where no satisfactory explanation is not provided to the CS National Treasury and Auditor General within the stipulated time, the identified officers should be prosecuted for financial misconduct relating to failure to pay into a government bank account any public money entrusted to the officer contrary to section 197(1)(g) of the Public Finance Management Act, 2012.

b. Museum Revenue Unaccounted for

The Committee heard that a scrutiny of the Corporation's records revealed that during the year under audit, a total of kshs 1,981,920 was collected as museum revenue and surrendered to the Corporation cashier for banking. However, no banking slips were availed to confirm the total amount of kshs 1,981,910 was banked and the same had not been accounted for.

Management Response

This was attributed to isolated cash office malpractices by an employee. The matter had been reported to the police for prosecution.

Committee Observation

(i) The matter had been dealt with in a manner that it should. However, no conviction has been made so far.

Committee Recommendation

(i) The Management should establish other ways of revenue generating like setting up of restaurants and shops to let within the facility and reduce the entry fees to increase public accessibility to the Museum.

2.14 NATIONAL CEREALS AND PRODUCE BOARD (FY 2015/2016-2016/2017)

EXAMINATION OF AUDITED ACCOUNTS OF THE NATIONAL CEREALS AND PRODUCE BOARD FOR THE FY 2015/16 AND 2016/17

Mr. Albin Sang, the Ag. Managing Director of the National Cereals and Produce Board (NCPB) accompanied by Mr. John K. Ngetich (Company Secretary), Mr. Ernest Ogwora (Manager M& E), Mr. Japheth Gitua (ICT Manager) and Mr. Richard K. Limo (Ag. Finance Manager) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Board for the financial year 2015/2016 and 2016/2017.

1) PROCUREMENT OF 40,000 METRIC TONS OF MAIZE - FY 2015/2016

The Committee head that the NCPB entered into a fixed sum contract sum of Kshs.730,968,000 for procurement of 40,000 MT of maize at USD 229 per MT on 26 November 2004but this contract was not executed. The supplier sought arbitration in July 2009 which awarded USD 3,106,000,an equivalent of Kshs.552,667,382. Thereafter the NCPB appealed but the award was increased to USD 6,140,859 equivalent to Kshs. 552,667,382 out of which Kshs.264,864,285 has been settled leaving the balance of Kshs.251,499,614. Although the case is pending in court, it was not possible to ascertain the liability that may result from the claim in question.

Management response

This matter was still pending in the Supreme Court.

Committee Observations

(i) This matter had been pending in court for inordinately long period of time.

(ii) The PIC Committee of the 12th Parliament tabled a Report on the matter of Erad Suppliers & General Contracts recommending investigations and prosecution of a number of individuals.

(iii) This matter had been addressed in the 21st PIC report in which the Committee recommended that the Managing Director ensures that the Board applies for speedy conclusion of the case on the amount payable if any, or the amount due to the Board if the award is set aside.

(iv) The recommendations of the 21st PIC report regarding the matter have been partially implemented.

(v) The case challenging arbitral award to Erald Suppliers Ltd is in Court

(vi) NCPB has proceeded to the Supreme Court to challenge the award.

Committee Recommendation

The Committee recommends the fastracking of the implementation of the Previous PIC reports which provided that the Managing Director ensures the Board applies for speedy conclusion of the case on the amount payable if any, or the amount due to the Board if the award is set aside.

2) CURRENT LIABILITIES FY 2015/2016 & 2016/2017

The Committee heard that as reported in the previous year, included in the current liabilities balance of Kshs. 10,826,182,855 as at 30th June 2016 was an amount of Kshs. 964,765,588 in respect of Value Added Tax arrears payable to Kenya Revenue Authority on provision of agencies services to the government. This figure included Kshs. 410,092,367 tax that had remained outstanding since 2002. This amount continued to attract penalties and interest that had not been assessed and incorporated in the financial statements.

Similarly, as previously reported, the Creditors and provisions balance of Kshs. 6,753,703,604 as disclosed under Note 13 to the financial statements included an amount of Kshs. 202,291,356 relating to trade creditors that had been outstanding since July 2012. No satisfactory reason had been given for the failure to settle the liabilities.

Further, the statement of financial position reflectd an amount of Kshs. 299,070,750 under Bank Overdraft. A review of bank reconciliation statement for the account maintained at KCB Kencom Branch A/C No. 1107-165-679 revealed amounts of Kshs. 4,169,757 and Kshs. 1,490,672 described as payments in bank not in cash book and receipts in the bank not in cash book respectively, that had been outstanding since June 2015. No explanation has been provided for the amounts. Consequently, the accuracy of the overdraft amount of Kshs. 299,940,489 as at 30th June 2016 could not be confirmed.

Management Response

- **Taxation**

Management concurred that an amount of Kshs. 410,092,367 included as current liabilities related to a long outstanding matter on the taxation of GoK agency services. During their routine tax audits, Kenya Revenue Authority (KRA) indicated that GoK agency services rendered by NCPB were subject to Value Added Tax (VAT) and the SGR Trustees were advised to either seek exemption from Treasury or budgetary provision to pay the tax amount.

Several attempts were made to seek exemption from Treasury and eventually the National Treasury through letter ref. DFN 415/411/01 dated 7th February 2013 clarified that agency services were subject to VAT and therefore NCPB should comply with the law. The parent ministry was advised to seek budgetary provision to cover the VAT arrears which amounted to Kshs.464,430,643.61 based on the tax audit conducted by KRA in 2012.

KRA subsequently demanded VAT arrears on GOK Agency services for the period 2002 to 2012 plus penalties and interest as follows:-

Tax Period	Principal	Proposed
	Kshs	Kshs
2002 to 2006	258,300,806.00	2016/2017
2007 to 2009	399,393,901.00	2017/2018
2010 to 2012	307,070,880.97	2018/2019
Total	**964,765,587.97**	

Following several appeals by NCPB for the matter to be resolved on one hand and efforts by KRA to enforce correction measures on the other hand that resulted into a Notice of distress detraining goods and chattels, the National Assembly Departmental Committee on Agriculture Livestock and Cooperatives seized the matter to find an amicable solution. The Committee in its sitting on 14th June 2016 directed the CS MOALF and CS the National Treasury to meet and find a solution to the matter. They reported back to the Committee on 30th June 2016 where it was agreed that the best option was abandonment of the tax due to difficulty in paying as the budget provision for SFR had reduced substantially.

As guided by Commissioner General (KRA), NCPB made a formal request for abandonment vide letter Ref: NCPB/CONF/1/2 dated 5th July 2016 to KRA. A follow up letter was done by PS MOALF vide letter Ref. MOA/LCD/9/4/2/VOL.1V dated 6th October 2016. Follow up letters have been done by the Board i.e. Ref: NCPB/C.31/1 dated 10th May 2017 and Ref: C.12/11 5th January 2018. NCPB has however not yet received the approval.

- **Trade Creditors – Kshs 443,536,381**

Management concurred with the Audit report that trade creditors that had been outstanding since July 2012 amounted to Kshs 202,291,*356.* These creditors arose from trading activities and were being reconciled in order to confirm those that were payable and appropriate action taken.

Committee Recommendation

The Accounting Officer should employ an external accounting firm to assist with internal reconciliation of the bills of Kshs 202,291,356.

- **Bank Overdraft – KShs. 299,070,750**

As at 30th June 2017, the bank reconciliation for KCB Kencom Branch A/c No. 1107165679 included KShs.4,169,757.90 as payments in bank statement not in cash book and KShs.1,490,672 as receipts in bank statement not in cash book. The Board could not include

these amounts in the bank balances because they were foreign entries in the bank statements that had been outstanding since 2005. The Board had been pursuing this matter with the bank with a view of clearing these pending items. The matter had been taken to the highest level at KCB with the Chief Executive giving his commitment vide letter dated 3rd January 2013 but to-date this has not been done.

Some of the issues have been sorted out while others were still being pursued. Correspondences on this matter are as per the attached were available such as a NCPB's last letter to KCB Ref. C.1/6 dated 20th February 2017 emails dated 11th September 2017, 6th November 2017 and 16th April 2018.

Committee Recommendations

(i) **The management should put internal control tools to limit as to the amount that can be incurred in terms of an overdraft that will limit.**

(ii) **KCB should resolve the matter within 90 days or be surcharged for the difference in the amount on the cash book.**

- **Payments In Bank Statement not in Cash Book of Kshs. 4,169,757.90**

The following are still outstanding and are being followed:-

DATE	DETAILS	BS NO.	KShs.	REMARKS
28.04.05	CHQ NO.....(no cheque number)	4098	3,005,400.00	KCB Issue
28.04.05	CHQ NO.....(no cheque number)	4098	201,400.00	KCB Issue
28.04.05	CHQ NO.241521-paid Twice-(BS.4083 & 4098)	4098	30,445.60	KCB Issue
07.03.06	CHQ NO.246818-paid Twice-(BS.4449)	4449	6,462.30	KCB Issue
11.05.06	Remittance	4520	926,050.00	KCB Issue
	Total		**4,169,757.90**	

- **Receipts in Bank Statement Not In Cash Book Kshs. 1,490,672.70**

An amount of Kshs.1,490,672.70 was still being followed with the bank to provide further clarification. They have since provided the details of **KShs 768,642.00** which has since been receipted while **KShs. 1,053,422.90** is being followed up. The details are as follows:-

(a) Resolved Cases

Date	Details	Amount (KShs)	Remarks
05.12.16	Cash deposit -Issack Abdullahi Ibrahim	85,392.00	Received during 2017/2018 FY vide MR no. 52A4073318
16.03.17	Cash deposit Fosca Osimbo	180,000.00	Received during 2017/2018 FY vide MR no. 52A4073310
06.06.17	Transfer	66,000.00	Received during 2017/2018 FY vide MR no. 52A4092360
30.06.2017	Cash deposit	437,250.00	Received during 2016/2017 FY vide MR no. 52A4088013
	Total	**768,642.00**	

Copies of receipts and bank statement were available

(b) Items being followed up with KCB Bank

Date	Details	B/S NO	Amount (KShs)	Remarks
06.08.03	Error corrected	3815	334,410.00	KCB Issue
12.08.04	Standing order	4205	416,522.20	KCB Issue
05.08.05	Misc.Credit	4208	200.00	KCB Issue
10.08.05	Misc.Credit	4211	209,435.00	KCB Issue
11.08.05	Misc.Credit	5257	66,030.00	KCB Issue
21.08.08	cheque pay in	5289	26,145.70	KCB Issue
31.01.09	Inward clearing credit	410	680.00	KCB Issue
			1,053,422.90	

Committee Observations

(i) On the VAT due to KRA, this should have been provided for in the budget before the NCPB undertook any project because that was what the law required. NCPB was negligent in their budget preparation on this matter. Further, the National Treasury has taken inordinately long time to grant a waiver of VAT to NCPB despite NCPB making several requests.

(ii) **On the matter of reconciliation, it was noted with concern that there was laxity by the Kenya Commercial Bank in reconciling the financial statement of NCPB leading to reported audit queries. Reconciliation should ordinarily be done on a monthly basis to avoid unnecessary queries.**

(iii) **The matter has been pending for inordinately long, which could be an indication of malpractices internally.**

(iv) **The current accounting system of the corporation seems to be inefficient.**

Committee Recommendations

(i) **The Kenya Revenue Authority should grant the NCPB waiver on taxes within 90 days.**

(ii) **The Accounting Officer should employ an external accounting firm to assist with internal reconciliation of the bills of Kshs 202,291,356.**

(iii) **The management should put internal control tools to limit as to the amount that can be incurred in terms of an overdraft.**

(iv) **KCB should resolve the matter within 90 days or be surcharged for the difference in the amount on the cash book.**

(v) **The Management needs to adopt a more effective accounting system as the current approach appears to be inefficient.**

3) CURRENT ASSETS

a. **Debtors and Prepayments**

The Committee heard that Debtors and prepayments balance of Kshs. 545,036,971 as disclosed under Note 6 to the financial statements included trade debtors totaling Kshs. 1,046,873,031. However, included in the amount were debtors totaling to Kshs.753,589,267 representing 72% of trade debtors that have been outstanding for more than four (4)years. Although a cumulative bad debts provision of Kshs. 943,557,914 has been provided for in the financial statements, it has not been possible to confirm whether, and if so, when the Board will be able to recover the amounts. No action appears to have been taken to ensure recovery of these debts.

Management response

Management informed the Committee that the accounts receivable as at 30th June 2016 included debts totaling to KShs. 753,589,267.00 that were more than four (4) years old. Some of the debts were statutory barred that makes any chance of recovery remote. Notwithstanding this, NCPB had vigorously pursued payments of all debts including taking legal action against defaulters in which cases involving Kshs. 199 million were under litigation. In some instances goods and properties belonging to defaulters had been

confiscated and the same would be sold to defray the arrears. So far Kshs 204.7 million had been recovered as shown itemized below:

CATEGORY OF DEBTORS	AMOUNT 30:06:2016 KSHS	AMOUNT MORE THAN 4 YEARS 30:06:2016 KSHS	RECOVERIES	AMOUNT 30:04:2018 KSHS
Trade Debtors	505,480,791.55	212,197,028.66	204,706,539.75	300,774,251.85
Export Debtors	53,663,363.25	53,663,363.25	-	53,663,363.25
Swap Debtors	360,483,433.05	360,483,433.05	-	360,483,433.05
Gunny Bags Debtors	127,245,443.15	127,245,443.15	-	127,245,443.15
TOTAL	**1,016,873,031.00**	**753,589,267.00**	**204,706,539.75**	**842,166,491.25**

The management had taken remedial action to ensure that the debt portfolio did not escalate. These include re-constitution of the Credit Committee and putting in place new guideline on issuance of credit. The Credit Policy that was approved by the Board of Directors in the year 2008 was under review to realign the same with friendly commercial business practices and at the same time safeguard the interest of the Board. The management was developing the corporate write off policy for approval by the Board of Directors and once approved it will be used to process debts that were un-recoverable. However as a prudent measure, NCPB had provided Kshs.943 million as provision for doubtful debts.

Committee Observations

i) **A provision of Kshs. 943 million for doubtful debts is a very huge figure indicating that debt recoverability policy of the NCPB has a problem.**

ii) **It was not clear on how the debt swap of Kshs 360,483,433.5 came about more than 15 years ago.**

iii) **The lawyers representing the NCPB on the two cases involving matters of gunny bags debtors had already been paid all their legal fees despite two cases pending in court.**

Committee Recommendation

The Auditor General should undertake a forensic audit of the 943,557,914, the debt swap of Kshs 360,483,433.5 and the payment the lawyers to establish whether there has been fraud, corruption or other financial improprieties.

b. Government Debtors Agency Account

The Committee heard that as previously reported, Government Agency Account balance of Kshs. 2,961,873,689 as at 30th June 2016 included brought forward figures of Kshs. 342,341,936 and Kshs. 191,916,638 relating to Strategic Grain Reserve Programme – old account and GOK 17 selected depots for old account Femine Relieve respectively, both of which had remained unpaid for 17 years. It had not been possible to confirm whether and is so, the Board will be able to recover the amounts. No provision for bad debts has been made in this regard.

Management Response

Management informed the Committee that outstanding debts are old debts amounting to Kshs.534.26 million as shown below.

	Old Debts	**Kshs**
i)	Cost of Reserved Capacity & Wheat Market Intervention Account on SGR	342,341,936
ii)	17 G.O.K Depots reserved for Famine Relief Programme	191,916,638
	Total	**534,258,574**

A Committee was constituted comprising officers from MOALF, MOD&P, Treasury and NCPB who went through all NCPB claim. However the final report was not issued to allow implementation of the recommendations. A proposal for formation of a joint committee to validate the claims had been communicated to MOALF vide NCPB's Letter Ref. C.12/11 Dated 5th January, 2018. The matter will be finalized once a committee to relook at the claims is reconstituted. However as a prudent measure the management had provided Kshs 328.5 million as provision for doubtful debts.

Committee Observation

(i) The debt was still outstanding.

(ii) Management has formed a multiagency committee to resolve the matters relating to bad debts.

Committee Recommendation

The multiagency team formed by Management should resolve the matter of bad debts within three months of the adoption of this Report.

2.15 KENYA MEDICAL SUPPLIES AGENCY (2012/2013-2016/2017)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE KENYA MEDICAL SUPPLIES AGENCY FOR THE FINANCIAL YEARS 2012/2013 TO 2016/2017.

Mr. Fredrick Wanyonyi (Ag. Chief Executive Officer, Kenya Medical Supplies Agency) accompanied by Mr. John Aduda (Quality Assurance Manager), Ms. Elizabeth Mwau (Public Relations and Communication Manager), Mr. Waiganjo Karanja (Ag. Director, Corporate Services), Mr. Eliud Muriithi (Director, Commercial), Mr. Samuel Okanda (Ag. Director, Operations) and F.K Musyimi (Secretary Administration, Ministry of Health) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Agency for the financial year 2012/2013 to financial year 2016/2017.

1) PROPERTY, PLANT & EQUIPMENT (FY 2012/13 TO FY 2016/17)

As previously reported, the property, plant and equipment balance of Kshs.1,033,597,506 as at 30 June 2013 includes various parcels of land valued at Kshs.403,000,000 for which the Authority does not possess ownership documents. According to information available, the parcels of land are spread across the country and include depots situated at Embakasi – Nairobi, Mombasa, Eldoret, Kisumu, Nakuru, Kakamega, Nyeri and Garissa. Further, the property, plant and equipment balance of Kshs.1,033,597,506 (Kshs.1,043,521,200 as at 30 June 2015) excludes the unspecified value of parcel of land in Meru also belonging to the Authority.

In the circumstance, it has not been possible to confirm the validity and accuracy of the property, plant and equipment balance of Kshs.1,033,597,506 as at 30 June 2013 (Kshs.1,043,521,200 as at 30 June 2015).

Management Response

It is true that KEMSA had no Titles Deeds to prove ownership of the parcels of land spread across the country in Mombasa, Eldoret, Kisumu, Nakuru, Kakamega, Nyeri and Garissa.

At the time of the Gazzetement of KEMSA in February 2000, KEMSA was a department of the Ministry of Health and all parcels of land on which KEMSA depots existed were owned by the Ministry of Health.

A committee concerning land was set up by the Permanent Secretary, Ministry of Health to look at the issue of all the assets at KEMSA with an intension of vesting the ownership to KEMSA which culminated into the above valuation report of land bequeathed to KEMSA by the Ministry of Health.

The process of acquiring documents of ownership has been on going up to the current financial year. Progress on the obtaining of the title deeds for the various parcels of land has been made by KEMSA as follows:

S/No	ASSET	STATUS
1.	KEMSA Supply Chain Centre (Embakasi)	KEMSA has Title Deeds for the Supply Chain Centre at Embakasi.
2.	Eldoret Depot (Block 10/155 & 10/156)	KEMSA was allocated land where the depot is situated by the Commissioner of Lands vide an allotment letter dated 28th October 2005, Ref. No. 209163/IX. Two leases awaiting registration of titles comprised in Eldoret of blocks 10/155 and 156 were conferred to KEMSA by the Commissioner of Lands. KEMSA through KTK Advocates is following up on the title deed with the County Lands Ministry.
3.	Kakamega Depot (Block 4/168)	KEMSA was allocated land where the depot is situated by the Commissioner of Lands vide an allotment letter dated 7th October 2002, Ref. No. 209163/AII. A lease awaiting registration of titles comprised in Kakamega of block 4/168 was conferred to KEMSA by the Commissioner of lands. A Resurveying and confirmation of Beacons had also been done. However, the county has begun the construction of a new Referral hospital on the piece of land. The County has expressed willingness to allocate KEMSA an alternative piece of land. The process is progressing well and we are waiting communication from the County Land Management Board.
4.	Nyeri Depot (Block 3/173 & 3/174	KEMSA was allocated land where the depot is situated by the Commissioner of Lands vide an allotment letter dated 7th October 2002, Ref. No. 209163/AII. Two leases awaiting registration of title comprised in Nyeri of blocks 3/173 and 174 have was conferred to KEMSA by the Commissioner of Lands.

		KEMSA through KTK Advocates is following up on the title deed with the County Lands Ministry.
5.	Nakuru Depot Block 20/287	Title for the land Block 20/287 was issued on 14th November 2017.
6.	Kisumu Depot PDP N9/74/7	KEMSA was allocated land where the depot is situated by the Commissioner of Lands vide allotment letter Ref. No. 209163/IX dated 26th October 2005. The process of re-surveying and Beacon placement is ongoing to facilitate the obtainance of the Lease. KEMSA through KTK Advocates is following up on the title deed with the County Lands Ministry.
7.	Mombasa Depot PDP 12/3/CT/2/99	KEMSA was allocated the land by the Commissioner of lands through allotment letter Ref. No. 209163/a dated 17th August 2010. The Part Development Plan (PDP) is also in place. KEMSA through KTK Advocates is following up on the title deed with the County Lands Ministry.
8.	Garissa	KEMSA has obtained a PDP for the property. The re-Surveying and Beacons placement has been done to facilitate obtainance of the lease. KEMSA through KTK Advocates is following up on the title deed with the County Lands Ministry.
9.	Meru Depot Ntima/Igoki 1/1753	KEMSA was allocated land where the depot is situated vide allotment letter Ref. No. 209163/AII dated 7th October 2002. KEMSA received a letter from the Commissioner of Lands to carry out a survey of the land.

The Property, Plant and Equipment balance in the financial statements for the three years excluded unspecified value of parcel of land in Meru Municipality Measuring 0.3 Ha, which belongs to the Authority.

KEMSA was allotted the land on 7th October 2002. Later third parties i.e. Ministry of Public Works and Kenya National Highways Authority occupied a section of the Land. This made it difficult to accurately apportion the values between KEMSA and Ministry of Public Works/Kenya National Highways Authority. The process of resolving the ownership is ongoing.

KEMSA through KTK Advocates is following up on the matter with the County Lands Ministry, National Land Commission and the Ministry of Land. Once this is finalized, we shall carry out a valuation and include the value of the land in the Financial Statements in line with the Public Sector Accounting Standards (IPSAS).

Committee Observations

(i) **The Agency had taken an inordinate amount of time to register the title deeds despite having the necessary documentation in place.**

(ii) **The lawyers contracted to register the leases and title deeds of lands belonging to the KEMSA had been paid approximately Kshs. 2,000,000 for the titles registered.**

(iii) **KEMSA had not sought the intervention of the parent ministry, the Ministry of Health, to address the delay in issuance of titles.**

(iv) **As pertains to the Eldoret land, KEMSA stated that part of the land is occupied by the Kenya National Highways Authority.**

(v) **As pertains to the Nakuru land, the Auditors denied having received the title for this piece of land from KEMSA.**

Committee Recommendations

(i) **KEMSA should expedite acquisition of ownership documents for the aforementioned pieces of land within six months.**

(ii) **The County Government of Kakamega should expedite the process of allocating KEMSA alternative land.**

2) RECEIVABLES FROM EXCHANGE TRANSACTIONS (FY 2015/16 TO FY 2016/17)

The receivables from exchange transactions balance of Kshs.3,740,340,113 reflected in the statement of financial position as at 30 June 2016 includes long outstanding receivables balance totaling to Kshs.1,708,524,634 whose recovery is doubtful. No explanation has been provided for the failure to recover these long outstanding debts. In the circumstance, the accuracy and validity of the exchange transactions balance of Kshs.3,740,340,113 reflected in the statement of financial position as at 30 June 2016 cannot be confirmed.

Management Response

It is true that there were debts amounting to a total of Kshs.1,708,524,634 owed to KEMSA by County governments for Supply of commodities to Health facilities, and by Strategic Partners and the Ministry of Health for provision of supply chain services.

KEMSA has made efforts aimed at overall debt management and ensuring timely collection of amounts owing from our various Customers and Strategic partners. These include:

Strengthening of the Credit Control function within Finance Department to continuously ensure timely billing, receipting, allocation of receipts and submission of account statements,

Involvement of Senior Management in debt collection through County visits and stakeholders' forums.

Negotiation of Structured payment plans with Counties having cash flow challenges e.g. Daily standing orders, weekly and monthly remittances.

Requesting for payment Commitment letters from counties with outstanding debts before honouring their LPOs.

Suspending of overdue County and Facilities accounts until the outstanding amounts are cleared in full.

Entering into Memorandum of Understanding (MOUs) with all strategic partners with clear payment conditions and timelines.

The debt status as at 30th June 2016 was as below:

DEBTORS AS AT 30-06-2016					
Category	**Invoiced Amount**	**Current 0-30 Days**	**31-60 Days**	**61-90 Days**	**Over 91 Days**
COUNTIES	1,707,125,424.54	652,289,686.28	182,494,813.93	329,341,923.00	542,999,001.33
DEVELOPMENT PARTNERS	291,113,065.42	77,854,996.82	104,217,624.41	17,469,029.72	91,571,414.47
G.O.K FACILITIES	86,111,215.98	37,587,666.48	11,724,090.00	485,828.00	36,313,631.50
MINISTRY OF HEALTH - PARALLEL PROGRAMS	1,622,962,103.69	561,604,058.61	19,673,138.45	9,025,728.00	1,032,659,178.63
SSD CUSTOMERS	11,144,000.53	1,692,757.00	4,203,563.00	394,772.00	4,852,908.53
OPERATIONS - CIC INSURANCE	128,500.00	-	-	-	128,500.00
Grand Total	**3,718,584,310.16**	**1,331,029,165.19**	**322,313,229.79**	**356,717,280.72**	**1,708,524,634.46**

However, the overdue amount of Kshs.1,708,524,364, included an amount totaling to Kshs.1,024,800,765.77 related to billing for supply chain services for National Health programs managed by the Ministry of Health. Some amounts in the figure relate to prior financial years and have been treated as pending bills. The Agency has a written assurance from the office of the Principal Secretary that the outstanding has been captured as pending bill and factored for settlement during the financial year 2018/2019.

Other debts from Strategic Partners and County governments have since then been paid with the exception of Muranga County debts whose debt has remained to date.

The Agency continuously engaged the Parent Ministry to have the amounts settled.

Committee Observation

The National government had spent approximately Kshs. 600,000,000 to procure drugs from KEMSA in a period of 90 days during the 2016/17 financial year. This is despite the national government having no role in purchase of drugs (for counties) as per the fourth schedule of the constitution which delimits the roles to be performed by the two levels of government.

Committee Recommendations

(i) **The National Government should limit itself to those functions earmarked for it in the Fourth Schedule of the Constitution.**

(ii) **The relevant house committee should investigate whether the purchase of drugs was in accordance with the law.**

(iii) **The Principal Secretary for Health and the National Treasury should provide budgetary allocation for purchase of drugs within six months.**

(iv) **County governments should provide proof of budgetary allocation for drugs before placing orders for drugs from KEMSA .**

3) STAFF COSTS (FY 2016/2017)

The Committee heard that staff costs of Kshs 695,779,767 in the statement of financial performance for the year ended 30th June 2017 includes Kshs 25,891,540 paid to forty-seven (47) officers employed during the year about eight (8) promoted during the same period whose supporting recruitment /promotion documents including approval by the board were not availed for audit review. Further, the Authority had six hundred and ninety-five (695) employees against the approved establishment of three hundred and forty-one (341) resulting to an unapproved over employment of three hundred and fifty-four officers. No explanation had been provided for the excess employment. Consequently, the propriety of the staff cost of Kshs 695,779,767 for the year ended 30th June 2017.

Management response

Management concurred with the auditors that KEMSA recruited the 47 staff and promoted 8 members of staff. The 47 members were contracted as program employees. The 8 members promoted were KEMSA staff and were within the approved staff establishment. Due to the bulkiness and sensitivity nature of the supporting documents involved, they could not be attached. The documents were available and the Auditors could make arrangement to verify.

KEMSA had a staff establishment of 341 which was approved by the Board of Directors meeting held on the 15th October 2013 (Appendix 15*) - BOD minutes MIN 44/B/2013 IX and approved staff establishment*). The current in-post is at 329, which was approved vide the letter from the Permanent Secretary Ministry of Health (Ref: MMS/ADM/1/17) dated 13th May 2010 as recommended by the Joint Ministerial Committee (Appendix 16*).*

There was a variance of 13 positions that was to be filled in due course. Currently KEMSA is in the process of recruiting the Finance Director, Human Resource Director, Human Resource Manager and Administration Manager. This would increase the staff establishment to 333 which will still be within the approved establishment of 341.

Due to the need for proper management, KEMSA was planning to conduct Corporate wide review on Human Resource based on the current programs and we are in the process of acquiring approvals from the Ministry to increase the current workforce from 341 to 371 in order to support the devolved healthcare.

The 695 employees indicated was the total number of staff both KEMSA staff (329 in-post) and Program staff (366). The 366 were contracted staff by KEMSA to render services to the various programs that KEMSA has with its Strategic Partners. Despite the massive changes within the organization due to adoption of the new business model which was implemented to support the devolved healthcare system, the management has adhered to the approved establishment by limiting the recruitment of new staff to be within the approved establishment of 341.

However, after adoption of the new business model to support the devolved county health facilities necessitated that KEMSA comes up with a new business architecture and organizational structure that supports devolved healthcare system, creation of a commercial division with a sale & marketing, and customer service departments, planning unit and other appropriate structures and systems.

The nature of the new business model requires that KEMSA responds to the workload/ demand as and when necessary as opposed to the old centralized system where workload was predictable. Counties make orders as per their requirements as and when they want. KEMSA is obligated by the service level agreement in the MOU to service those orders within the timelines specified.

While approving the new business model, the KEMSA 35th board meeting held on October 2013, under minute No.44/FB/2013 gave authority to the management for the recruitment of short term /contract staff based on the new business model needs. This authority was given to enable the management effectively manage the unpredictable workload from the county health facilities and also the strategic partners' projects within the Approved Personnel Emoluments budget.

In addition, KEMSA has Contractual Partnerships with thirteen strategic partners to whom KEMSA offers supply chain services with variable and unpredictable workload. The various projects under the different strategic partners have different contract durations ranging from one year to five years and hence the need for short term contract staff to cater for their specific needs.

Given the above scenario, the short term contract staff are inevitable but do not form part of the approved staff in the establishment since they are required for specific period of time tied to the life of the Project. An Example is the KEMSA-USAID Medical Commodity Program which was to run for an initial 3-year period with an extension of 2 year. The technical staff recruited to manage the project have 5-year employment contracts.

These contracted staffs for the projects are meant to ensure meeting performance target as set by the development partners and guard against taking on board staff on permanent terms for tasks/assignments that are not of long-term in nature/whose lifespan is period-specific. (Appendix 16*)*

Engagement of contract staff is duly provided for in the KEMSA HR policies and the contracts are reviewed each year – based on exigency of service and KEMSA's operational and business requirements.

Under the new business model, KEMSA operates 24-hours a day and 7 days a week. This means that to efficiently manage the work load from both the projects and counties the, work schedule is structured on day and night shift model.

During the period KEMSA employed contracted staff in line with business needs/work load requirements and as approved by the Board and hence there was no unapproved/overemployment of staff.

Committee Observations

(i) There existed approval from the Board allowing management to employ staff on contractual terms as and when need arises (MIN/44/FB/2013 of the meeting held on 15th October 2013).

(ii) All the contracted staff are always paid off and leave upon expiry of their contracts.

(iii) This query was resolved

4) EXPIRED/DAMAGED DRUGS (FY 2016/17)

The Committee had that as explained in note 3 of the financial statements for the year ended 30th June 2017, the net sales of Kshs 900,094,880 is arrived at after deducting cost of sales for pharmaceuticals of Kshs 2,693,328,090. The Cost of sales figure included an amount of Kshs 92,392,937 for commodities/expired drugs that were unsaleable due to expiry or damage. In the previous year, the expired drugs amounted to Kshs 259,741,614.

No explanation had been provided for stocking expired/damaged drugs thereby causing unnecessary loss to the Authority when the country's hospitals were short of drugs. In the circumstance, it was not possible to determine the propriety of the inventory balance of Kshs 11,776,786,528 included in the statement of financial position as at 30th June 2017 as well as the net sales of Kshs 900,094,880 included in the statement of financial performance for the year ended 30th June 2017. Further in the two financial years, public money on purchase of drugs worth Kshs 352,134,551 have not been applied in an effective way.

Management Response

Management acknowledged expiry of drugs but attributed it to:

1. In the Financial Year 2012/2013, in response to devolution of HealthCare in line with the Constitution, KEMSA adopted a new business model. Medical stocks that previously belonged to the Ministry of Health, became KEMSA's Capital Stocks. The Inherited stocks were under the "PUSH" system where quantification of health commodities needs for the over 5,000 public health facilities was determined by the Ministry of Health. KEMSA's mandate then was to procure as per the specifications given by the Ministry of Health, warehouse and distribute the commodities as per the given distribution list to the public health facilities. After devolution of Health care, the new business model was adopted under a "PULL" system where counties determine what they require and buy the same from KEMSA. Some commodities attracted little or no demand from the counties. These commodities have over time exhausted their shelf life and hence becoming obsolete.
2. Change of treatment regimen due to drug resistance e.g. Drugs for Malaria treatment where a new drug with higher efficacy is introduced and therefore the drug under the old treatment regimen becomes obsolete.
3. Change Technology from analogue to Digital: As a result of the Initiative by the National Government of equipping 2 hospitals in each County and 4 National Referral hospitals with outsourced specialized state-of-the-art medical equipment. This has reduced the demand for commodities specifically X-Ray films and Dialyzers. The stocks X-Ray films and Dialyzers that KEMSA was holding were therefore rendered obsolete.

4. Damages: This has been minimal and KEMSA has realized damage of Kshs 40 only in the financial year 2016/2017.

REASON FOR EXPIRY	FINANCIAL YEAR 2015/2016	FINANCIAL YEAR 2016/2017	TOTAL
Change of treatment regimen/Change of preference due to drug resistance	91,928,472.00	29,362,742.45	121,291,214.45
Change Technology from analogue to Digital	-	20,373,050.25	20,373,050.25
Change from Push to Pull	167,813,142.24	42,657,104.08	210,470,246.32
Damages		40.00	40.00
TOTAL	259,741,614.24	92,392,936.78	352,134,551.02

Other Factors that contributed to expiries in the financial year 2016/2017:

(i) Strikes by the Medical Service Providers -Doctors, Nurses and Clinical Officers in the Public Health Facilities during and before the financial year 2016/2017 also contributed to low demand for commodities hence the expiries.

(ii) Decreased demand of commodities from the county governments as a result of leadership transitions occasioned by the General Elections. This was mostly in counties where the Chief Officers of Health and Directors left office to seek elective posts and therefore orders for Medical commodities from KEMSA could not be placed promptly.

The KEMSA management has also been proactive in management of Near-Expiry commodities (Those with less than 6 Months to Expiry) by:

a) Ensuring that all commodities received in our warehouses have a minimum of 75% of their shelf life. The KEMSA Warehouse Management System (WMS) in the ERP cannot accept new receipts of less than 75% shelf life. The KEMSA Warehouse

Management System (WMS) cannot release a product with less than 6 months to shelf life.

b) Donations to County Health Facilities and Free Medical Camps. See attached sample of correspondences between county health facilities and KEMSA.

c) Participation in various health camps across the country through donation of the short expiry commodities that are good for human use.

d) Adoption of a First Expiry First Out strategy in commodities management at the warehouse.

In the event of commodities expiring at any KEMSA warehouses, they are disposed using procured service providers accredited by the National Environment Management Authority (NEMA).

The service providers are recruited through a competitive procurement process and are expected to strictly adhere to the disposal guidelines issued by NEMA and also in line with the expectations of the Pharmacy and Poisons Board.

Once a commodity expires, the Warehouse Management System (WMS) automatically isolates and places it in an expiries/Damages Virtual warehouse where it cannot be picked for issue to customers. It is thereafter manually picked and separated from the other stocks, awaiting disposal through incineration.

KEMSA's stock valuation of Kshs 11,776,786,528 as presented in the Financial Statements does not include the expired commodities of Kshs 92,392,937.

Committee Observation

(i) The expiry of drugs was not due to breach of contractual terms. The expiry was due to change in drug regimen indicating poor planning by KEMSA. The Agency should ordinarily know which drugs are obsolete and which drugs are going to be introduced into the market.

(ii) KEMSA has devised strategies to determine the demand of drugs from across the counties. These include constantly engaging and collecting data to avoid expiry of drugs as well as other strategies such as prioritizing on shelf life of drugs.

(iii) There was change in Government leadership after the 2017 elections and many of the new office holders refrained from purchasing drugs.

(iv) Previously, there was a push system in which districts were required to absorb medicines and medical equipment purchased by the Ministry of Health through KEMSA.

(v) **After devolution, Counties were purchasing medicines and medical equipment based on needs tailored to the Counties requirements and as a result there is efficient use of public resources.**

Committee Recommendations

(i) **Arbitrations should be encouraged to resolve disputes without resolving to court cases.**

(ii) **Medical camps by KEMSA and civil society groups should utilize drugs with a short shelf life to avoid expiry of drugs.**

(iii) **KEMSA should ensure that it puts in place strategies that will prevent wastage such as the use of anticipatory patterns to predict demand of drugs from the Counties.**

2.16 CENTRE FOR MATHEMATICS, SCIENCE AND TECHNOLOGY EDUCATION IN AFRICA (CEMESTEA) (FY 2015/2016-2016/2017)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE CENTRE FOR MATHEMATICS, SCIENCE AND TECHNOLOGY EDUCATION IN AFRICA (CEMESTEA) FOR THE FINANCIAL YEARS 2015/2016 TO 2016/2017.

EXAMINATION OF AUDITED ACCOUNTS OF CEMESTEA FOR THE FY 2015/16

The Committee heard that the Auditor General issued the Center for Mathematics, Science and Technology Education in Africa with unqualified opinion for the financial year 2015/2016.

EXAMINATION OF AUDITED ACCOUNTS OF CEMESTEA FOR THE FY 2016/17

The Committee heard that the Auditor General issued the Center for Mathematics, Science and Technology Education in Africa with unqualified opinion for the financial year 2016/2017.

Committee Observation

CEMESTEA was issued with unqualified report for the Financial Year 2015/2016 and 2016/2017.

Committee Recommendation

The Centre for Mathematics, Science and Technology Education in Africa should continue to uphold financial prudence.

2.17 UNCLAIMED FINANCIAL ASSETS AUTHORITY (FY 2014/2015 - 2016/2017)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE UNCLAIMED FINANCIAL ASSETS AUTHORITY AND THE UNCLAIMED FINANCIAL ASSETS AUTHORITY TRUST FUND FOR THE FINANCIAL YEARS 2014/2015-2016/2017

Mrs. Kellen Kariuki, Managing Director of the unclaimed financial assets authority accompanied by John Kisegu (Assistant Inspector General Corporations); Daniel Mutua (Alt. Treasury), John Mwangi (Manager), Pius Kimutai (Manager Internal audit) and Leonard Langat (Senior Accountant) appeared before the Committee on 5th September, 2018 to adduce evidence on the Reports of the Auditor General on the Financial Statements of the Authority and the Unclaimed Financial Authority Trust Fund for the financial years 2014/2015 through to 2016/2017.

Financial Year 2014/2015

The Committee heard that both the accounts of the Unclaimed Financial Assets authority and that of the Unclaimed Financial Assets Trust Fund for the Financial Years 2014/2015 were unqualified.

Financial Year 2015/2016

The Committee heard that both the accounts of the Unclaimed Financial Assets authority and that of the Unclaimed Financial Assets Trust Fund for the Financial Years 2015/2016 were unqualified.

Financial Year 2016/2017

The Committee heard that both the accounts of the Unclaimed Financial Assets authority and that of the Unclaimed Financial Assets Trust Fund for the Financial Years 2016/2017 were unqualified.

Committee Recommendation

The Authority should continue being prudent in financial management.

2.18 KENYA NATIONAL LIBRARY SERVICES (FINANCIAL YEAR 2013/2014-2016/2017)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE KENYA NATIONAL LIBRARY SERVICES FOR THE FINANCIAL YEARS 2013/14 TO 2016/17

Mr. Richard Atuti, Chief Executive Officer accompanied by J M Kariuki (Ag. Principal Accountant); Wanjiku Mwangi(Principal Internal Auditor), Joice Wafula (Deputy Director F&D); and Jane Nzau (Board Member) appeared before the Committee to adduce evidence on the Reports of the Auditor General on the Financial Statements of the Kenya National Library Service (KNLS) for the financial years 2013/2014 through to 2016/2017. The Committee heard that:

1) PROPERTY, PLANT AND EQUIPMENT FY 2013-2014

As reported in 2012/2013, the property, plant and equipment balance of ksh 1,207,514,766.00 reflected in the financial statements as at 30th June 2014 excluded ten (10) parcels of land valued at kshs 7,540,000.00 and three (3) other parcels of land whose value was undetermined and without title deeds donated to the service by local communities for construction of libraries. In the circumstances, it was not possible to confirm whether the carrying value stated in the financial statements reflect the fair values of the properties as at 30th June 2014.

Further, the property, plant and equipment balance net book value disclosed under fixed assets movement schedule Note 21 moved from kshs 438,885,000.00 in 2012/2013 to kshs 430,250,000.00 in the year under this audit review, resulting into a difference of kshs 8,635,000.00. The downward movement in the net book value of land was attributed to two (2) parcels of land i.e. Kisii Municipality Block / 2/231 and Wundanyi LR No. 28243 disclosed in the books and included kshs 10,215,000.00 in respect of the value of the building and one (1) parcel of land in Mombasa Island No 209 and 210 was undervalued then by Kshs 1,580,000.00.

However, from the records provided auditors were unable to confirm and verify how the adjustments were done in the books without raising a journal voucher to correct the errors. In addition, it was not satisfactory why the error took eight (8) years since the time of valuation in 2007 to be corrected and why the figures were netted off from the books without disclosing a revaluation gain or loss in the financial statement.

In the circumstances the accuracy and ownership of the plant, property and equipment of kshs 1,207,514,766 could not be confirmed.

Financial Year 2016-2017

As previously reported, the value of property, plant and equipment figure of Kshs. 1,278,390,069 in 2016/2017 excluded Kshs. 12,500,000 in respect of estimated value of thirty-five (35) parcels of land with partial or no ownership documents as observed during the audit of records availed for audit review.

In the circumstances, it was not possible to confirm the accuracy, custody, and security of the property, plant and equipment balance of Kshs. 1,278,390,069 as at 30 June 2017.

Management Response

Management informed the Committee the said (35) parcels of land included land donated by the community to KNLS while for others the entity is in possession of allotment letters from the defunct local authorities awaiting formalization and issuance of title deeds. IPSAS 16 requires that an entity can only include/declare any property in the Financial Statements if it is in possession of the ownership documentation. In this case KNLS were pursuing with the relevant authorities the ownership documentation and have the same included as Property, Plant & Equipment in the Financial Statements.

The registration of ownership documents for these parcels of land is in different stages as summarized below.

(i) 13 Parcels of land with letters of allotment from the defunct local authorities

(ii) 20 Free hold parcels of land owned by communities with operational library buildings

(iii) 1 Free hold undeveloped parcel of land in Sabatia (Vihiga County)

(iv) 1 Undeveloped parcel of land in Awendo (with library services currently being provided from Sony Sugar Primary School compound)

The omission of the thirty-five (35) parcels of land valued at approximately **Kshs.12, 500,000** was because the Board had not yet obtained the ownership documents for these parcels. KNLS Board has continued to consult with the relevant Government agencies, to facilitate processing and registration of ownership documents for parcels above so as to secure them.

Further KNLS management embarked on revaluation of all Board's properties and assets in July 2017. The aim of the exercise was to enable the Board update its assets inventory and reflect the current and fair value in its books of accounts.

The exercise was undertaken jointly by officers from Ministry of Land and Physical Planning, Ministry of Transport, Infrastructure, Housing & Urban Development (State Department of Housing and Urban Development) and KNLS staff drawn from Finance, Planning and Audit Departments.

By the end 30th June 2018, the evaluation had been completed awaiting the comprehensive valuation report from the team. This will facilitate updating of the books of account.

Committee Observations

(i) **Securing ownership documents has taken KNLS (indicate the duration of time). 45 parcels of land had no titles as at 30th June 2018.**

(ii) **Despite lacking titles deeds for the majority of the 77 pieces of land owned by the KNLS across the country, there has not been any encroachment into the said land.**

(iii) **KNLS is currently undertaking valuation of all its properties across the country.**

Committee Recommendations

(i) **The KNLS should hand over the pieces of land to the respective county governments to process the titles.**

(ii) **The KNLS should work closely with Council of Governors to come up with a mechanism of handing over the libraries to counties expeditiously, in accordance to the Constitution.**

(iii) **The National Treasury should always ensure that there is a timely disbursement of funds to avoid incurring extra costs through variation of designs.**

(iv) **Library Services are devolved functions and therefore in the fullness of time, all these properties owned by KLS will be transferred to counties. It is therefore necessary that KNLS expedites securing title deeds of the said properties under the name of the KNLS pending such transfer.**

2) **CONSTRUCTION OF THE NATIONAL LIBRARY AND KENYA NATIONAL LIBRARY SERVICE HEADQUARTERS.**

Financial Year 2013-2014

On 2nd March 2012, the Kenya National Library Service Board entered into a contract with a local construction company to construct the National Library and Headquarters at a sum of kshs. 2,055,200,200.00. The work was to take 208 weeks commencing on 10th April 2012 with expected completion date on 19th January 2016. As at 15th December 2014, the amount of work certified was only kshs 750,884,096.33 or 37 % while 148 weeks or 72% of the period had lapsed by 20th January 2015 with only 53% of work done. There is a likelihood of the contract not being completed on the scheduled date due to delays in the anticipated funding from the Government through the Ministry of Sports Culture and the Arts. The delayed funding had resulted to claims for interest on delayed payments

amounting to kshs 11,925,099.81 as at 16th September 2014. Management of the entity has not given measures to put in place to ensure that there are no further claims of interest due to delayed funding.

As a result, the project may cost more than planned and delay completion.

Current Status

Audit inspection carried out in February 2018 revealed that the Project had not been completed and handed over due to various extension of time period awarded on contractor's request. The period was extended by additional sixty-five (65) weeks to 3 July 2017. Additional extension of 72 weeks was also made from 3 July 2017 to 19 November 2018. Since the commencement of the project in April 2012 there had been a 127.88%-time lapse. Further as noted by the Board in their meeting dated 29 June 2017, cost for some of the project works had notably escalated due to delays resulting to price increase, technological changes rendering the proposed ones almost obsolete for appropriate benchmarking thus the need to install high level of technology. At the point of production of tender document, the Audio Visual component was valued at Kshs.11Million but at the time of appraisal, the cost was estimated at Kshs. 73,940,904.

Initial contract sum of the Project was Kshs. 2,055,200,200 but the appraised sum was recorded at Kshs. 2,409,876,499 and thus registering an increase of Kshs. 354,676,299 or 17.26% but revised Bill of Quantities had not been availed for audit review. Further, the continued extensions of time had led to payment of avoidable interests and penalties of Kshs. 18,907,162.

It is not clear why these major changes to the Atrium Roof, Alterations at exhibition area on ground floor, relocations and technological changes were not foreseen by the consultants mainly the Architect, Structural Engineer and Quantity Surveyor.

In the circumstances, it was not possible to confirm that expenditure occasioned by several extension of time totaling Kshs. 354,676,299 was a proper charge against public resources. It was also not explained as to why the consultants' fees were not quantified and included in the main contract. The continued delay in completing the project is also likely to lead to further escalation of costs.

Management response

The National Library of Kenya/KNLS Headquarters project was conceived and conceptualized by the knls Board as a Vision 2030 Flagship project. This was a four-year multi-tier project whose construction commenced on 10th April 2012 with an expected completion date of 19th January 2017.

The contract sum of Kshs. 2,055,200,200 is exclusive of the consultants' fees since conceptualization. The project began with identification of relevant service providers namely;

Consultants

a) Architectural services - Aaki Consultants

b) Quantity surveying -Procost Ltd

c) Electrical and civil engineers - Mecoy Consultants Ltd

d) Structural engineering services -Professional Consultants

The teams were to work with the knls Board to develop the building designs, bill of quantities/ tender documents and estimates for tendering purposes and contract documents for main contractor and subcontractors.The fee payable to the consulting firms was determined and awarded independently and prior to the determination of the actual tender sum of all contractors for builders works and specialized services.

The totality of the project cost would in effect comprise of the tender sum of kshs 2,055,200,200 plus consultant's fees as is normally the practice in the industry. The knls Board and the parties involved in the implementation of the contract had signed a fluctuating contract in line with Government regulation. In addition, the consultants had been paid as per the guidelines of JPC price index alongside the interim certificates from the main contractor for work done.

Challenges in Implementation of the Project

The project had faced a number of challenges resulting in time and cost overruns that have consequentially resulted into variations in scope.

Initial contract sum of the project was Kshs 2,055,200,200 but the appraised sum is Kshs 2,409,876,499 thus registering an increase of kshs 354,676,299 or 17.26%. The revised bill of quantities incorporating the variations was an addendum to the financial appraisal No. 3. The document was not availed in time to the auditors for audit review. However, the document was available for audit review and verification and to support the financial appraisal No. 3 as approved by the Board. The challenges faced by the project include but not limited to:

i) **Unfavorable ground conditions** – Existence of black trap rock which was very difficult to excavate resulting to escalation of cost of substructures. The contractor had to do the excavation at night as NEMA would not allow it during the day

ii) **Cash flow not commensurate with level of completed works** – This has resulted to delayed payments which attract interest pursuant to clause 34.6. This

also leads to slow progress of work and therefore extension of time which results to further cost escalations in extended preliminaries

iii) **Change in technology** – This project was designed in 2011. Most of the services installations since then have been rendered obsolete by emerging new technologies. The new installations come with cost escalations.

iv) **Price of Material escalations** – The cost of materials has been affected by inflation since the works were tendered in 2012. There has also been escalations on the exchange rates which have affected the prices of imported components of the works, more so in electrical and mechanical installations

In the circumstances, upon presentation of the financial appraisal, the Board approved kshs 354,676,299.71 or 17.26% variation to the project on 29th June 2017 summarized as under:

Project Cost Data

Item	**Amount (KES)**
Original Contract sum	2,055,200,200.20
Appraised amount	2,409,876,499.91
Variation	354,676,299.71
Percentage variation	17.26%
Projected professional payments to Consultants (20% of contract sum)	481,975,299.98
Projected total project cost	**2,891,851,799.80**
Payment Breakdown as at 30th June 2017	
Construction Costs	1,326,224,952.34
Professional Fees for consultants	348,371,545.04
Other direct payments to the project (approvals etc)	24,184,672.62
Total Incurred by the Project as at 30th June 2017	**1,698,781,170.00**
Allocation for FY 2017/18	445,666,000.00
TOTAL	**2,144,447,170.00**
Amount required to complete the Project as	**747,404,609.80**

at 30th June 2018	

Summary of variations

	Item	Amount (KES)
a	Extended preliminaries	23,974,298.60
b	Partitioning and refurbishment of knls Buruburu	3,132,549.92
c	Main Works – Builders work	116,689,577.42
d	External works	2,041,390.20
e	Electrical Services Installations	80,595,913.42
f	Mechanical services Installations	13,300,349.00
g	General PC & provisional sums	13,322,080.00
h	Contractual entitlements	101,620,141.15
	Total	**354,676,299.71**

The funding model of the project was purely by the Government of Kenya. Funds are allocated to the project at the beginning of each financial year and within the ceilings of the sector and for the Parent Ministry.

The funding levels to the project had not been commensurate with the projected program of works thus causing delays in project completion and payment for work done, and in some instances attracting penalties in form of interest in delayed payments.

In the circumstances, the project completion period had been extended twice by 65 and 72 weeks to November 2018. Since the commencement of the project in April 2012, there had been a 127.88%-time lapse.

The appraisal indicates a cost coding for main construction cost, breakdown of pricing document (initial contract sum), amount awarded, appraisal amounts, difference, comments on difference, approved variations and variations to be approved at each stage of project implementation.

The Board remained positive that it will be able to receive adequate funding from Government towards completion of the project.

The Board also concured that various changes had been made to the project due to technological changes. It should be noted that the project commenced over five years ago

and technological changes and other emerging issues may be inevitable and adjustments of project works as and when they arise will be handled accordingly.

Committee Observations

(i) **The Project had taken inordinately long time to complete. This was attributed to delayed release of funds by the National Treasury.**

(ii) **The Financial Appraisal report on the project has not been availed to the auditors for audit review so far despite its availability.**

(iii) **Board minutes approving variations had not been availed to the Committee**

(iv) **The variation of 17.6% was within the allowed limit in the Public Procurement and Disposal Act of 2005.**

Committee Recommendation

National Treasury to ensure timely disbursement of funds to avoid further cost escalations.

2.19 JOMO KENYATTA FOUDATION (FY 2010/2011 - 2016/2017)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF JOMO KENYATTA FOUNDATION FOR THE FINANCIAL YEARS 2010/2011 TO 2016/2017

Mr. Rosemary Barasa, Chief Executive Officer accompanied by H.S. Abdi (Board Member); Sammy Motanya (Manager Finance); Elsie Oyoo (Deputy Company Secretary) and Alex Wagacha (GM, Internal audit) appeared before the Committee to adduce evidence on the Reports of the Auditor General on the Financial Statements of the Jomo Kenyatta Foundation (JKF) for the financial years 2010/2011 through to 2016/2017. The Committee heard that:

1) FINANCIAL YEAR 2010/2011

The Committee heard that the accounts of Jomo Kenyatta Foundation for the Financial Years 2010/2011 were unqualified.

2) FINANCIAL PERFORMANCE

The Committee heard that during the Year under review, the Foundation reported a loss of Kshs. 16,093,000 (2011 profit was Kshs.46,631,000). Although the management had explained that strategies had been put in place to reverse the trend. The Foundation may face challenges in the event the devised strategies fail to work.

Management Response

Management informed the Committee that the decrease in profit was mainly because of low sales due to reduced spending by the Government on textbooks. To mitigate on the loss, the Foundation formulated the 2012/2017 strategic plan and strategies were put in place to reverse the trend. In the subsequent years, the foundation reported profits as follows:

- 2012/2013 - Ksha 48,290,000
- 2013/2014 - Kshs. 62,335,000
- 2014/2015 - Kshs. 85,705,000
- 2015/2016 - Kshs. 87,600,000
- 2016/2017 - Kshs. 11,535,000

Committee Observations

(i) **Development of the Strategic Plan 2012/2017 was instrumental in turning around the profit margins of the Foundation in the subsequent years.**

(ii) **The low profit margins witnessed in the 2016/2017 was occasioned by the low sales arising from change of government policy on curriculum.**

(iii) **The query was dropped from the subsequent financial years**

Committee Recommendations

The matter was resolved.

3) TRADE AND OTHER RECEIVABLES

Note 11 of the financial statements reflected net trade receivables of Kshs. 76,921,000 which had been arrived at after deducting provision for doubtful debts of Kshs. 16,030,000 described as impaired balances which management considered doubtful. The Management had not provided satisfactory explanations as to the measures it intended to take to improve recovery of such debts.

Management Response

The provision for doubtful debts of Kshs. 16,030,000 was deducted before arriving at the net figure of Kshs. 76,921,000 as required by the IFRS 9 on impairment of financial assets. To improve the recoverability of the long outstanding debts, the Foundation reviewed its credit policy terms. Other customers are required to pay cash or by postdated cheques for their transactions. In addition the management engaged the services of external debt collector who followed up on these long outstanding debts. The Foundation had not received any litigation cases as other measures like requirement of bank guarantee reduces the credit risk

Committee Observations

Measures had been put in place to avoid future recurrence of the matter. The committee further noted with commendation that the matter does not occur in the subsequent financial years.

Committtee Recommendation

The matter was resolved.

4) TRADE AND OTHER PAYABLES

The trade and other payables balance of Kshs.205,224,000 included trade payables of Kshs.163,280,000 out of which Kshs. 1,288,605 were debtors with credit balances which had not been reconciled. In the circumstances, it had not been possible to confirm that the trade and other payables balance of Kshs.205,244,000 as at 30 June 2012 as fairly stated.

Management Response

Some repetitive customers pay with postdated cheques in advance of books collection so as to enjoy the quantity discounts. During collection the sale value may slightly differ with the advance amount paid. This results to a credit to the customer which is first utilized in the subsequent orders. For a long time customers always comes back to utilize the credit and no refunds have been requested/claimed. An amount of Ksh. 1,288,605 being the total credit balance to the customers was not a reconciliation issue could be accounted to specific customers. The Foundation agrees as per IAS 1 on presentation of financial statements as it was a wrong classification which we subsequently corrected.

Committee Observation

The management subsequently addressed this matter

Committee Recommendation

The Issue was resolved

5) FINANCIAL YEAR 2012/2013

The Committee heard that the Foundation's accounts for the Financial Year 2012/2013 were unqualified.

6) TRADE AND OTHER RECEIVABLES F Y 2013/2014

The Committee heard that Trade and other receivables balance of Kshs.95,522,000 under note 14 of the financial statements included a VAT receivable balance of Kshs. 21,312,000 which was at variance with VAT 3 returns filed with the KRA figure of Kshs.26,028,000. Although management had explained the resultant difference of Kshs.4,716,000 was a write off not included in VAT 3 returns, authority for write off was not provided for audit review. In the circumstances, the accuracy of trade and other receivables balance of Kshs.95,522,000 as at 30 June 2014 could not be confirmed.

Management response

VAT Act 2013 introduced taxation of books. Prior to this period the Foundation was only claiming input VAT for supplies from KRA. Some claims were paid and others disallowed by KRA. The resultant difference as at June 2014 of Ksh.4, 716,000 related to the difference between the Foundation's ledger and KRA VAT 3 which arose due to disallowed expenses by KRA. The Foundation adjusted the VAT ledger in its books but this adjustment was not effected from the KRA VAT 3 ledger. The Foundation engaged a consultant to carry out the VAT reconciliation and report was given but this could not be adjusted from KRA I-tax platform.

Committee Observation

The variance had been reconciled by the consultant, verified by the OAG and the matter was closed.

Committtee Recommendations

The matter was resolved.

7) FINANCIAL YEAR 2014/2015

The Committee heard that the Foundation's accounts for the Financial Year 2014/2015 were unqualified.

8) FINANCIAL YEAR 2015/'2016

The Committee heard that the Foundation's accounts for the Financial Year 2012/2013 were unqualified.

9) FINANCIAL YEAR 2016/2017

The Committee heard that the Foundation's accounts for the Financial Year 2012/2013 were unqualified.

Committee Recommendation

The corporation should continue to uphold financial prudence.

2.20 KENYA COPYRIGHT BOARD (2014/2015-2016/2017)

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE KENYA COPYRIGHT BOARD FOR THE FINANCIAL YEARS 2014/15 TO 2016/17

Mr. Edward Sigei, the Executive Director of the Kenya Copyright Board accompanied by Mr. George Kiogora (Senior Assistant), Mr. George Nyakweba (Chief Legal Officer) and Mr. Cyrus Kinyunju (Senior Public Communications Officer) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Board for the financial year 2014/15 to financial year 2016/2017.

EXAMINATION OF AUDITED ACCOUNTS OF KENYA COPYRIGHT BOARD FOR THE FY 2014/15: The Committee heard that the Board's accounts for the financial year 2014/2015 was unqualified.

EXAMINATION OF AUDITED ACCOUNTS OF KENYA COPYRIGHT BOARD FOR THE FY 2015/16: The Committee heard that the Board's account for the financial year 2015/2016 was unqualified.

EXAMINATION OF AUDITED ACCOUNTS OF KENYA COPYRIGHT BOARD FOR THE FY 2016/17: The Committee heard that the Board's account for the financial year 2016/2017 was unqualified.

Committee Recommendation

The Committee Board should continue upholding prudent financial management.

2.21 TECHNICAL AND VOCATIONAL EDUCATION TRAINING AUTHORITY

EVIDENCE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE TECHNICAL AND VOCATIONAL EDUCATION AND TRAINING AUTHORITY

Dr. Kipkirui Langat, the Director General of the Technical and Vocational Education and Training Authority (TVETA) accompanied by Mr. Anthony Masinde (Alternate Director, Ministry of Education) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Authority for the financial year 2015/16 to financial year 2016/2017.

CASH AND CASH EQUIVALENT FY 2015/16

Note 11 to the financial statements reflect Kenya Commercial Bank balance of Kshs. 23,816,820. However, the respective bank reconciliation statement as at 30 June 2016 indicate unpresented cheques totaling Kshs. 2,531,245 and whose subsequent clearance by the bank had not been known by the time of the audit. Further, one of the unpresented cheques of Kshs. 163,537 had become stale as at 10 March, 2017 and had not been reversed in the cashbook as at the same date. In the circumstance, it has not been possible to confirm the accuracy of cash and cash equivalents balance of Kshs. 23,817,820 as at 30 June, 2016.

Management Response

On various dates towards the end of the 2015/16 FY, amounts paid to various clients remained outstanding under unpresented cheques up to and after 31st December 2017 when they should have been reversed in the cashbook. The payments relate to various suppliers and KRA. There was a challenge in filling of KRA returns in activating PIN numbers of suppliers and individuals in the KRA portal and no training had been done to the officers involved in making payments. This led to the various KRA recoveries that remained outstanding in the bank reconciliation. The KRA visited the TVET office and trained staff on filing of returns. These amounts were all reversed from 26th to 28th April, 2017 as shown in the schedule provided.

On 17th June, 2016, P.V No. 513, Payee: Director Dr. Ahmed Ferej was erroneously posted as Kshs. 163,537.00 instead of Kshs. 90,437.00. The difference of Kshs. 73,100 was amount for air ticket processed by the SCMO. Kshs. 90,437 was correctly posted on 26th August, 2016 but Kshs. 163,537 was not reversed and remained outstanding as payment in cashbook, not in bank statement (unpresented cheque). It was reversed on 26th April, 2017 after the audit.

Committee Observations

(i) The Authority had provided reconciliation for the cheques totaling Kshs. 2,531,245.
(ii) The audit query has been resolved.
(iii) The TVET Funding Board was yet to be operationalized.
(iv) The matter has been resolved.

Committee Recommendations

(i) The audit query was resolved.
(ii) Funds meant for vocational training should be sent to the TVET funding board.

Signed: .....

Date: 06/11/2018

HON. ABDULLSWAMAD SHARRIF NASSIR, MP

CHAIRPERSON

PUBLIC INVESTMENTS COMMITTEE

ADOPTION LIST

PUBLIC INVESTMENTS COMMITTEE

ADOPTION LIST

THE TWENTY SECOND REPORT OF THE PUBLIC INVESTMENTS COMMITTEE ON THE AUDITED ACCOUNTS OF STATE CORPORATIONS

We the undersigned, Members of the Public Investments Committee, hereby affix our signatures to this report to affirm our approval.

DATE: 31/10/2018 **VENUE:** ENGLISH POINT-MARINA

NO.	NAME	SIGNATURE
1.	The Hon. Abdullswamad Shariff Nassir, MP *(Chairman)*	
2.	The Hon. Ahmed Abdisalan Ibrahim, MP *(Vice-Chairman)*	
3.	The Hon. Chrisantus Wamalwa Wakhungu, MP	
4.	The Hon. John Muchiri Nyaga, M.P	
5.	The Hon. Raphael Bitta Sauti Wanjala, MP	
6.	The Hon. Gladys Wanga, MP	
7.	The Hon. (Prof.) Mohamud Sheikh Mohammed, MP	
8.	The Hon. Mary Wamaua Njoroge, MP	
9.	The Hon. Purity Wangui Ngirici, MP	
10.	The Hon. Rashid Kassim Amin, MP	
11.	The Hon. Thuku Zachary Kwenya, M.P	
12.	The Hon. Omar Mohamed Maalim Hassan, MP	
13.	The Hon. Justus Kizito, MP	
14.	The Hon. Ahmed Kolosh Mohamed, MP	
15.	The Hon. James Kamau Githua Wamacukuru, M.P	
16.	The Hon. Joash Nyamache Nyamoko, MP	
17.	The Hon. Babu Owino Paul Ongili, MP	
18.	The Hon. Paul Kahindi Katana, MP	
19.	The Hon. Mohamed Hire Garane, M.P.	

MINUTES

MINUTES OF THE 9TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 12TH MARCH 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 2:30PM.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
5. The Hon. Ahmed Kolosh Mohamed, MP
6. The Hon. James Kamau Githua Wamacukuru, M.P
7. The Hon. John Muchiri Nyaga, M.P
8. The Hon. Mohamed Hire Garane, M.P.
9. The Hon. Omar Mohamed Maalim Hassan, MP
10. The Hon. Thuku Zachary Kwenya, M.P

ABSENT WITH APOLOGY

1. The Hon. Raphael Bitta Sauti Wanjala, MP
2. The Hon. Babu Owino Paul Ongili, MP
3. The Hon. Gideon Mutemi Mulyungi, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. Mary Wamaua Waithira Njoroge, MP
6. The Hon. Nicholas Scott Tindi Mwale, MP
7. The Hon. Paul Kahindi Katana, MP
8. The Hon. Purity Wangui Ngirici, MP
9. The Hon. Rashid Kassim Amin, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Clerk Assistant I
2. Mr. Mohamed Boru	-	Clerk Assistant III
3. Ms. Mugure Gituto	-	Legal Counsel
4. Mr. Thomas Ogwell	-	Fiscal Analyst

IN ATTENDANCE

1. Mr. Joshiah Oyuko	-	Manager, Audit
2. Ms. Mercy Mukiiri	-	Manager, OAG
3. Mr. Isaac Odek	-	Manager, OAG
4. Mr. Alex Ndungu	-	Inspector, Inspectorate of State Corporations

MIN/PIC/043/2018: PRELIMINARIES

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

MIN/PIC/044/2018: EVIDENCE BY GEOTHERMAL DEVELOPMENT AUTHORITY (GDC)

Eng. Johnson Nchoe- Chief Executive Officer of Geothermal Development Company accompanied by Mssers. Beatrice Kosgei - company secretary; Timothy Gihaka - PS for energy alternate; Stephen Busieney - General Manage finance; and Jackyline Wakhungu - Chief Accountant appeared before the Committee to adduce evidence on the evidence on the report of the Auditor General on the financial statements of Geothermal Development Company for the financial year 2015/2016.

a. Procurement of Rig Move Services

This matter had been dealt with in the previous meeting the Committee had with the Management of GDC. Further to the observations made then, the Committee noted that the 21st report of the PIC did not recommend termination of the contract and that the works have never been subsequently awarded to any company. To conclude the matter, the Committee asked the GDC management to provide the following information:

- The identity of the lawyers that acted for the Bonafide Clearing and Forwarding Company limited indicating whether they were legally procured;
- The total amount that has been spent in legal fees
- Whether there was value for money in cancelling the tender

b. Vesting of Geothermal wells developed by KENGEN

The Committee heard that as reported in the previous years, included in the statement of financial position in assets exploration and evaluation figure of Kshs. 24,853,442,000 are costs totaling Ksh. 8,377,275,157 in regard to drilling of 26 wells out of the total 59 sunk using funds from the Government of Kenya. GDC in the year under review sold steam worth Kshs.3,160,664,000 (2015 Kshs. 2,534, 774,000) from the 59 wells of Olkaria to KENGEN and recognized as revenue. However as at 30th June 2016, only the cost of 26 out of the 59 wells had been recognized in these financial statements. The Government had authorized the recognition of 26 wells drilled in Olkaria as assets in GDC books of account pending completion of government vesting procedures.

Management response

Management informed the committee that GDC requested for an update from KENGEN on the status of obtaining consent from its lenders to vest wells in GDC through a letter dated 27th October 2017. The Ministry of Energy & Petroleum (as it then was) advised both GDC and KENGEN to urgently expedite the vesting process through its letter dated 13th November 2017. KENGEN on the other hand asked GDC to provide a legal brief to French Development Agency (AFD) on the implications of vesting of

wells and also request AFD to adjust their security. GDC had provided a legal brief to AFD and is currently awaiting a response from AFD on the same.

Committee Observations

The Committee made the following observations:

1. GDC had provided a legal brief to Agence Francaise De Development (AFD) through a letter dated 9th February 2018. Once the post response comes from AFD, the vesting can be concluded within 6 months.
2. The land in Olkaria that initially belonged to Kenya Forestry Services has since been transferred to GDC.

MIN/PIC/045/2018: ANY OTHER BUSINESS

1. On foreign trips/capacity building for members, the Committee asked the secretariat to come up with the destinations that the Committee may visit. Members further suggested visiting Government Accountability Office in the USA.
2. On Committee retreat scheduled between 22nd and 25th March 2018, the Committee resolved to postpone due to other emerging issues beyond the control of the Committee. It was resolved that the retreat be held between 5th and 8th March 2018.

MIN/PIC/046/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at 1525hrs. The next meeting will be held on 13th March 2018 at 10:00am.

Signed..... Date..13/03/2018.

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 12TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 15TH MARCH 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 AM.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. Ahmed Kolosh Mohamed, 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. Thuku Zachary Kwenya, M.P
9. The Hon. Gideon Mutemi Mulyungi, MP
10. The Hon. Raphael Bitta Sauti Wanjala, MP
11. The Hon. Rashid Kassim Amin, MP
12. The Hon. Paul Kahindi Katana, MP
13. The Hon. Mary Wamaua Waithira Njoroge, MP
14. The Hon. Mohamed Hire Garane, M.P

ABSENT WITH APOLOGY

1. The Hon. Babu Owino Paul Ongili, MP
2. The Hon. Joash Nyamache Nyamoko, MP
3. The Hon. Purity Wangui Ngirici, MP
4. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
5. The Hon. Nicholas Scott Tindi Mwale, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Clerk Assistant I
2. Mr. Mohamed Boru	-	Clerk Assistant III
3. Ms. Mugure Gituto	-	Legal Counsel
4. Mr. Thomas Ogwell	-	Fiscal Analyst

IN ATTENDANCE

1. Mr. Joshiah Oyuko (Appearing under NSSF)	-	Manager, Audit
2. Mr. Isaac Ngayai	-	Manager, Audit
3. Ms. Anne Wachira	-	Manager, Audit
4. Mr. James Sitieney (Appearing under NHIF)	-	Inspector, Inspectorate of State Corporations
5. Mr. Samuel Bollo	-	Manager, Audit
6. Mr. Reuben Kamuruchi	-	Manager, Audit
7. Mr. Peter Waweru	-	Deputy Inspector General, State Corporations

MIN/PIC/058/2018: PRELIMINARIES

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

MIN/PIC/059/2018: CONFIRMATION OF MINUTES

Confirmation of previous Minutes was deferred to the next meeting.

MIN/PIC/060/2018: EVIDENCE BY NATIONAL SOCIAL SECURITY FUND

Mr. Anthony Omerikwa, the Managing Trustee of the National Social Security Fund accompanied by Mr. Moses Cheseto (Ag. General Manager, Finance and Investment), Ms. Nancy Mwangi (Ag. General Manager, Social Security), Mr. Evans Motori (Ag. General Manager, Finance) and Mr. Peter Muiruri (Manager, Procurement) 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 2012/13 to 2015/2016.

MIN/PIC/061/2018: FY 2012/13

The Committee heard that the Fund received a clean report in the Financial Year under consideration.

MIN/PIC/062/2018: PRELIMINARY OBSERVATIONS

The Committee heard that the current Ag. Managing trustee has been acting since May 2015 and that the Fund has no substantive chairman.

MIN/PIC/063/2018: MEMBERS CONTRIBUTIONS HELD IN SUSPENSE ACCOUNT FY 2013/14

The Committee heard that Member's contribution in the year under review were Kshs.8, 405,813,000 as at 30 June 2014. However, Note 34 to the financial statements indicated that contributions totaling Kshs.2.4 billion were held in a suspense account as at 30 June 2014. The suspense account balance was explained as relating to contributions received with improper members' details stated by their employers in the returns to NSSF. Although management had reduced the suspense from Kshs.2.6 Billion as at 30 June 2013, the suspense account should have been brought to zero.

Management Response

Management informed the Committee that these were funds which had been held by employers and remitted to NSSF without details of the employees. The fund had initiated measures to reduce the suspense accounts and that the balance had been reducing with time but an amount of Kshs 764 million remained uncleared.

Committee Observations

- This matter on membership contributions appears in 2014/2015 Financial though with a different amount
- Management had instituted measures to avoid recurring of this query by making it clear to employers that it will not accept any contributions from members whose details are not clearly captured

Committee Resolutions

The Committee made the following resolutions:

1. Management should automate the Fund's records and reconcile the Members' account details with their current status of employment.
2. In instances where Management cannot reconcile the details, the contributions should be transferred to the Unclaimed Assets Authority and not held indefinitely in Suspense Accounts.
3. The fund should not accept membership contributions that are not accompanied with proper details of the contributors

MIN/PIC/064/2018: MEMBERS CONTRIBUTIONS HELD IN SUSPENSE ACCOUNT FY 2014/15

The Committee heard that Note 34 to the financial statements as at 30 June 2015 reflected a suspense account balance of Kshs.748,000,000.00 (2014: Kshs.2,400,000,000). However, as previously stated, the suspense account balance related to contributions received without proper details of the members being provided by their employers.

Management Response

The management informed the Committee that the balance had been reducing with time but still a substantial amount remained uncleared. These were funds which had been held by employers and remitted to NSSF without details of the employees. The fund had initiated measures to reduce the suspense accounts.

MIN/PIC/065/2018: ILLEGAL TRANSFER OF NATIONAL SOCIAL SECURITY LAND IN UPPER HILL NAIROBI - LR NO. 209/11642 FY 2014/15

The Committee heard that the statement of net assets available for benefits reflected undeveloped land balance of Kshs.9,432,128,000 as at 30 June 2015. Included in this balance was Kshs.115,000,000 in respect of undeveloped parcel of land LR. 209/11642 measuring (approximately) 0.2100 hectares located at Upper Hill, Nairobi - next to Milimani Law Courts. The parcel of land was purchased by the Fund on 20 April 1996 from M/s Le-Kuna Company Limited at a cost of Kshs.20,000,000. However, information available indicated that the title to this land was on 1 April 2010 revoked

vide Gazette Notice number 3460 and allegedly on 12 March 2010 allocated to the Permanent Secretary Treasury to hold as trustee for the Judiciary for use as Courts and offices. However, scrutiny of transactions revealed that the alleged revocation was done on 1 April 2010 whereas the said allocation to the Judiciary was made on 12 March 2010 indicating that the land was allocated earlier than the revocation.

In the same year (2010), independent searches were conducted by the NSSF on 6 and 22 September 2010 and the Registrar of Lands confirmed that the Board of Trustees of NSSF were the registered owners as at the last date of last entry of 20 April 1995. Consequently, the NSSF CEO/Managing Trustee on 21 August 2014 wrote to the Chairman, National Land Commission (NLC) demanding reinstatement of their title but the NLC on 18 April 2016 notified the Fund that reinstatement was not possible since the land had already been allocated. The legality of the transfer could not be confirmed.The Fund risked losing workers' pension funds invested in the property worth Kshs.115, 000,000.00 through fraudulent activities if the land is not reinstated to NSSF.

In view of the foregoing, the accuracy and completeness of the undeveloped land balance of Kshs.9, 432,128,000 could not be ascertained.

Management response

The Management informed the Committee that the Fund purchased the property in March 1995 from a private entity (Appendix 2.1 purchase documents). The title was allegedly revoked on 1st April 2010 and irregularly allocated to Permanent Secretary, The National Treasury as a Trustee to Judiciary on 12th March 2010 on grounds that the land had been reserved for public purposes under the Constitution, the Government Land Act and the Trust Land Act (Appendix2.2 revocation of title).

Due to the manner in which the revocation was done, the Fund demanded the National Land Commission to reinstate the title. The Fund pursued the matter of reinstatement of the title with the Chairman of the National Land Commission through numerous correspondences and follow up meetings at his office but the same was not successful (Appendix 2.3 correspondence with NLC). The National Land Commission declined to reinstate the title on the basis that the subject land was allocated to the Principal Secretary, The National Treasury.

The Fund had no alternative but to file suit against the Government (through the Attorney General) for breach of the Fund's right to a fair hearing arising from the revocation without notice (Appendix 2.4 court case documents). The Fund still held the original title to date and at no point in time was the same recalled for cancellation (Appendix 2.5 copy of original title).

Further, the Fund had also filed suit against the Chief Land Registrar and the private entity (Le-Kuna Company Limited) that sold the property to the Fund for alleged

illegal and unlawful misrepresentation to the Fund that they had a valid and proper title which they sold to the Fund.

In the suit, the Fund is seeking from the three defendants, the purchase price of Kshs. 20,000,000 with interest at commercial rates from the date of purchase of the property to the date of filing the suit. The Fund is also seeking damages amounting to the difference between the purchase price and the prevailing market value for the land.

Committee Observations

The Committee made the following observations:

1. The National Lands Commission revoked the title held by NSSF via a gazette notice and did not directly inform the Fund about the revocation.
2. The allocation of the land to the Judiciary predated the revocation of the title held by NSSF which meant that two valid titles existed for the same piece of land before revocation of NSSF's title.
3. No measure had been taken by the Fund to protect the land since purchase. The Fund did not put up a perimeter fence nor report the matter of the renovation to the police

Committee Resolutions

The Committee made the following resolutions:

1. The Fund should provide Board Minutes that approved the purchase of the piece of land under LR NO. 209/11642.
2. The Fund should also provide the identity of the Directors of Le-Kuna Company Limited who sold the land to NSSF as well as the lawyers who were involved in the transaction.
3. The National Land Commission should appear before the Committee to respond to the matters raised by the Fund.

MIN/PIC/066/2018: STALLED PROJECTS FY 2014/15

Completion of Hazina Trade Centre

The Committee heard that the statement of net assets available for benefits as at 30 June 2015 reflected a balance of Kshs.4, 473,072,000 under the Non- Current Assets, representing assets under construction. Included in this figure is Kshs.1, 678,194,000.00 in respect to completion of the Hazina Trade centre, Nairobi paid during the year 2014/2015.

Completion of the building was approved by the Board on 31 August 2010 to include an additional 36 floors and the contract was competitively awarded on 26 February 2013 to M/s China Jiangxi International Kenya Ltd at a contract sum of Kshs.6,

715,218,188.00. Further, Construction commenced on 17 June 2013 and was to be undertaken in 155 weeks with an expected completion date of July 2016.

However, an audit inspection carried out on 14 January 2016 revealed that the builders work had stalled after reaching 15th floor or at 38 %. The reasons given for the stalling of the project was that some columns inside Nakumatt Lifestyle Supermarket needed to be reinforced and strengthened for other floors to be added but Nakumatt holdings limited, the tenants, had denied the contractor access to the basement floors contrary to the provisions in the lease agreement signed in 2003. At the time of stoppage of builders works, a total of Kshs.1,912,043,004.00 had been paid to the contractor. Further, the continued stalemate may lead to escalation of costs due to legal suits filed by Nakumatt Holdings Limited and possible claims for compensation by the contractor.

In view of the foregoing, NSSF should take legal action against the tenant to secure completion of the building and members' contributions.

Management Response

Management informed the Committee that on 10th February 2017, Lady Justice Gacheru delivered her ruling on Nakumatt's Notice of Motion dated 28th August 2014 for injunction to stop the project wherein she dismissed Nakumatt's application for an injunction to stop the project (Appendix 3.1).

The Fund had on numerous occasions put Nakumatt on notice that they would be liable for the delays and any contractual claims that may arise. On 29th September 2015, the Fund wrote to Nakumatt Holdings Limited issuing it with a notice of Breach of Clause 5(A) of the Lease for refusing the Fund's contractor access to the 3 No. columns in Basements 1 & 3 which lie at the edge of their store for strengthening (Appendix 3.2 notice of breach). The notice gave Nakumatt 21 days whereupon if they did not comply the lease dated 12 August 2003 would absolutely determine and the Fund would be free to re-enter and re-possess the entire premises.

The Twenty One days' notice ran from the date of service and lapsed on 22nd October 2015. The letter also put Nakumatt on notice that the Fund would claim indemnity and damages from them for any financial loss, penalties and interest that may be levied by the contractor on account of their non-compliance with the Fund's earlier notices. The Fund additionally lodged its counterclaim in the suit filed by Nakumatt. On 22nd December 2017 the Fund repossessed the property from Nakumatt.

The contractor and consultants are on site and the project has resumed.

Committee Observations

The Committee made the following observations:

1. The contract for the project lapsed on 16th July, 2016.

2. The contractor resumed works on the project despite lack of consultations with the Fund regarding variation to the contract given the delay occasioned by the dispute with Nakumatt.
3. The Fund has not been able to establish the variation in cost of the contract given the delay in completion of the project.
4. The Fund could not ascertain whether there was any variation, or whether such variation was approved by the Tender Committee or the Board.
5. The State Department of Public Works assessed the building and gave the go-ahead for the project to continue.

Committee Resolutions

The Committee made the following resolutions:

1. The Committee requested the Fund to provide a status report on the project to include the following information:
    a. Whether the project had a fixed price contract;
    b. The revised sum of the contract (if any);
    c. Any approval by the Tender Committee or the Board approving revision of the contract;
    d. A financial appraisal of the contract;
    e. Payments made to date based on the certificates issued by the Consultants for the project;
    f. Payments made to the consultants to date;
    g. All correspondence made with regards to variation of the scope of the contract;
2. The Committee further resolved to carry out a site visit to the project.
3. The Auditors and the Fund should indicate the validity of the contract given it lapsed in July, 2016.

MIN/PIC/067/2018: EVIDENCE BY NATIONAL HOSPITAL INSURANCE FUND

Mr. Geoffrey Mwangi, the Chief Executive Officer of the National Hospital Insurance Fund accompanied by Mr. Joseph Mbuvi (Ag. Director, Finance and Investment), Mr. Hilbert Kurgat (Ag. Manager, Finance), Ms. Ruth Makallah (Ag. Corporation Secretary) and Ms. Irene Rono (Director, Finance and 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 2015/2016.

MIN/PIC/065/2018: CONSTRUCTION OF MULTI-STOREY CAR PARK

The Committee heard that as reported in the 2014/2015, National Hospital Insurance Fund entered into an agreement with local construction firm for construction and

completion of a Multi-Storey Car Park at a contract sum of Kshs.909,709,305. According to information available, the project commenced in May 2002 and was scheduled for completion in August 2003. Records available however indicate that the contract sum was later revised upwards to Kshs.1,179,611,756 representing approximately 30% above the original contract sum of Kshs.909,709,305.

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 2013/2014, the escalation of costs of the car park by 337% over and above the original cost had not been justified.

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

Management Response

The Management informed the Committee that the car park was a seven storey-building with basement floors, which was designed to accommodate 780 cars. The project commenced in May 2002 and was scheduled for completion in August 2003. The original cost of the project was Kshs. 909,709,305.40 over a contract period of 65 weeks. (Appendix A - Documentation on commissioning and awarding of the contract).

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

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

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

The multi-storey car park was completed in July 2008. Payments totaling Kshs. 626,635,998.00 incurred in 2009/10 and Kshs. 4,706,521 incurred in 2010/11 were related to pending claims which were payable to the contractor after completion of the project.

The building however was complete and provided rental income of above Kshs. 65 Million per annum. Some of the organizations that were occupying the building were government institutions such as Ministry of Environment, NACAA, Catering & Tourism Development Levy Trustee, Ministry of Lands, Housing and Urban Development, Kenya Roads Board and other small private firms as well as NHIF's Nairobi branch.

21st PIC REPORT RECOMMENDATIONS

This matter was addressed by the previous PIC reports, where it was recommended that the Ethics and Anti-Corruption Commission should fast track investigations into the procurement process of the project, with a view of preferring charges against all those found culpable of defrauding the Fund on page 304 of the 21st PIC Report.

The Fund is yet to receive a report from the Ethics and Anti-Corruption Commission.

Committee Observations

The Committee made the following observations:

1. The Hon. Gideon Mulyungi, MP, a Member of the Committee, declared his interest in the matter as per Standing Order 90 of the National Assembly. He stated that he was involved in the design of the project as a professional architect for a private firm. The Member later supervised the project in his capacity as Permanent Secretary in the Ministry of Public Works.
2. This matter had been dealt with by the Previous PIC reports of 13th, 16th , 19th and 21st wherein the Committee observed the unprofessional manner in which the project was executed and recommended that, the EACC should investigate the procurement process of the project and come up with appropriate recommendations regarding any breach of law.
3. The Ethics and Anti-Corruption Commission had not initiated investigations into the matter as per the recommendations of the 21st PIC Report.

Committee Resolutions

The Committee made the following resolutions:

4. That the Hon. Gideon Mulyungi, MP should recuse himself from sittings to consider the matter of the audit query on the construction of the car park due to his interest in the matter.
5. The Chief Executive Officer should provide a summary of his career progression at NHIF from employment to date.
6. The Committee will carry out an inspection visit to the site of the car park.

MIN/PIC/068/2018: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/069/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at twenty minutes to two O'clock.

Signed..... **Date**.....21/12/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 14TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 21ST MARCH 2018 IN THE BOARD ROOM, 4TH FLOOR, HAZINA TRADE CENTER AT 11:25 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. Chrisantus Wamalwa Wakhungu, MP
5. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
6. The Hon. Ahmed Kolosh Mohamed, MP
7. The Hon. James Kamau Githua Wamacukuru, M.P
8. The Hon. Paul Kahindi Katana, MP
9. The Hon. Thuku Zachary Kwenya, M.P
10. The Hon. Joash Nyamache Nyamoko, MP

ABSENT WITH APOLOGY

1. The Hon. Rashid Kassim Amin, MP
2. The Hon. Babu Owino Paul Ongili, MP
3. The Hon. Gideon Mutemi Mulyungi, MP
4. The Hon. Mary Wamaua Waithira Njoroge, MP
5. The Hon. Purity Wangui Ngirici, MP
6. The Hon. John Muchiri Nyaga, M.P
7. The Hon. Mohamed Hire Garane, M.P.
8. The Hon. Nicholas Scott Tindi Mwale, MP
9. The Hon. Omar Mohamed Maalim Hassan, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Clerk Assistant I
2. Ms. Noel Chelagat	-	Media Relations Officer
3. Mr. Alex Mutuku	-	SAA

IN ATTENDANCE

1. Dr. Antony Omerikwa	-	NSSF
2. Ms. Grace Atila	-	Manager, Audit
3. Mr. James Sitienei	-	Inspectorate of state Corporations
4. Mr. Nashon Otieno	-	Deputy Director & Manager, Audit
5. Mr. Anad Wachira	-	OAG
6. Mr. Andrew K. Kariuki	-	OAG

7.	Mr. Isaac Nyaga	-	OAG
8.	Qs. A.N.Okweto	-	State Department of Public Works
9.	Arch. S.K. Muli	-	State Department of Public Works
10.	Qs. F.M. King'ori	-	State Department of Public Works
11.	Jiyong Chen	-	CJIC
12.	Misura Sheh	-	state department of public works
13.	Justus M. Kanake	-	Metroy Consultants
14.	Antony Mutuga	-	Tana & Associates Ltd
15.	Dickson Kasina	-	Abdol Mullick Associates
16.	Patrick Tana	-	Tana and associates limited
17.	David Guliano	-	Metroy consultants
18.	Margaret Muthoni Kiboi	-	Mururu Salmann associates
19.	Gideon Mutula	-	State Department of Public works
20.	Eng. David Muganda	-	Abdol Mullick Associates
21.	Anne Kannie	-	//
22.	Moses Cheset	-	NSSF
23.	Peter Muiruri	-	NSSF

MIN/PIC/076/2018: PRELIMINARIES

The Chairperson called the meeting to order at twenty five minutes past eleven O'clock followed by a word of prayer. After an application from the officials from the State Department of Public works that the Contractors and their consultants to recuse themselves from the meeting, the Committee obliged and asked the two to leave the meeting.

MIN/PIC/077/2018: EVIDENCE BY NSSF ON HAZINA TRADE CENTER

The Managing trustee of NSSF tabled his response to issues raised by the Committee when the Committee last met the NHIF. The Committee heard that:

Status of the contract

The contract was awarded at a contract sum of KES 6,715,218,188 for 36 floors and was supposed to be completed within 155 weeks. It was however interrupted by a "force majeure" event beyond the client and contractors control once the tenant of the lower floors went to court. The Contact had provisions allowing for extension under such circumstances.

The Contractor had since requested and obtained the requisite extensions of time until such a time as the issues would have been resolved. The most recent request for extension of time was undergoing evaluation by the project managers to allow for full up to the revised scope.

Impact of inflation on the contract and whether it was a fixed price contract

The contract allows for variation of amounts in line with the applicable procurement

laws where the contractor can demonstrate indisputable need for such a variation. However, such variations should be guided by unit prices quoted in the bid submission by the contractor which are fixed.

Status of statutory approvals

All mandatory statutory approvals have been granted save for the National Construction Authority approvals (NCA). The project has applied for NCA approvals. At the time the project was starting, the NCA was not in place hence not could not grant such approvals at that time.

Revised Contract period

The contactor had submitted a revised project period which was being evaluated by the consultants. They had however given an undertaking that the project should be completed by June 2018.

Financial Appraisal

The project was based on the agreed bill of quantities (BQ) with measured quantities for each piece of work. The actual cost evaluation would be based on the prices and quantities agreed in the BQ for the revised project scope. Any costs not incurred to build the omitted scope would be omitted from the financial evaluation. Due to some significant fixed coasts, some of which had already been incurred, reduction was unlikely to be directly proportional to the number of floors omitted. In the lead up to the scaling down of the project, which was necessitated by frustrations being experienced, an estimate was prepared which placed the potential omissions at approximately KES 2.7 Billion, placing the final cost of the revised scope at approximately KES 4 Billion. The project consultants and project managers had been tasked to refine those numbers: which would be completed once the scope of the internal finishes was fully agreed. The delay in project implementation attracts a penalty of approximately KES 20 million per week.

Payments made to consultants and contractors so to date

The contractor had been paid a total of KES 2,506,005,355.52 including KES 671,521,811.80 as a secured advance payment of which KES 204,447,774.42 had already recovered. A further KES 167,880,454.70 of certified payments had been retained as security. This meant that 55% of the advance payments had already been consumed. The consultants had been paid a total of KES 627,985,662.48.

Potential project claims

The actual quantum of the project claims would be fully determined once the project was fully completed to the revised, agreed scope after a careful evaluation and determination by the project consultants, project managers, the fund project steering Committee and the Board of Trustees. Should the fund and the contractor not arrive at an agreed position, the claim should be subjected process starting with

arbitration as provided for in the contract. The claims submitted so far were being evaluated by the project managers from the State Department of Public Works. The claim that was being evaluated was KES 1,890,648,193.62 which would accumulate at the rate of KES 20M per week if the project was to stall again. Publicly stating the quantum of that claim at that moment while it was still under evaluation could prove to be prejudicial to the judicious determination of the claim in future.

Whether the contract should have been terminated and retendered

The singed contract was running and could not be terminated without triggering litigation and incurring penalties as the delay was not due to the contractor. If the fund was to terminate the contract and retender it, the new would be based on the current pricing and would be higher than the prices in the measured bill of quantities. The Fund would have to commission new consultants to supervise the works incurring further costs. The time delay would mean that the Fund would be foregoing the expected return from the building for the duration of the delay.

Committee observations

1. The Committee noted that the current Managing Trustee has been acting for almost three years and that the Board has no substantive chairman.
2. Evidence from the State Department of Public works indicated that the litigation between NSSF and Nakumatt was unnecessary as the available pillars would support the additional 36 floors that were being built. The NSSF therefore incurred unnecessary losses in legal fees, delay in implementation of the project, variation from the contractors and opportunity cost associated with business loss if the building was complete and in use.
3. The NSSF did not seek advice from the State Department of Public Works at the time of commencement of the project; public works only came in as project managers in June 2017. Had NSSF sought the services of State Department of Public Works, NSSF would have been advised that for additional 36 floors to be built, a provision for car parking was mandatory in the building.
4. The claim of KES 20M per week from the contractor arising from the delays was too high and that the same information had not been disclosed to the Committee when it last met with NSSF. The Committee further learned that the penalty of KES 20M per week had just been communicated from NSSF to the officers from the State Department of Public Works through a letter dated 20th March 2018 and signed Peter Muiruri. The contractor had claimed a total of KES 6.8 billion arising from the delays; a figure that had been revised downward to KES 1.89 billion by the project consultants. Officers from the State department of Public works were working on these claims and should report their findings within two weeks.
5. The scaling down of the scope of the works from 36 floors to 15 floors had no proportional decrease in cost.

6. NSSF had not sought any legal advice on the ramifications of termination of the contract.

Committee resolutions

1. NSSF should scale down the construction works to minimum levels as it awaits the reports from the State Department of Public works on the evaluation of the claims from contractor and also seek a legal opinion on the termination of the contract.
2. NSSF to provide the following documents:
    - Tender documents as to how the consultants and project managers were procured
    - Amount so far expended in legal fees

MIN/PIC/078/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at 1248hrs.

Signed..... Date..27/03/2018.....

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 15TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 22ND MARCH 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 AM.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. Raphael Bitta Sauti Wanjala, MP
5. The Hon. Ahmed Kolosh Mohamed, MP
6. The Hon. James Kamau Githua Wamacukuru, M.P
7. The Hon. Joash Nyamache Nyamoko, MP
8. The Hon. John Muchiri Nyaga, M.P
9. The Hon. Mary Wamaua Waithira Njoroge, MP
10. The Hon. Mohamed Hire Garane, M.P
11. The Hon. Paul Kahindi Katana, MP
12. The Hon. Thuku Zachary Kwenya, M.P

ABSENT WITH APOLOGY

1. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
2. The Hon. Babu Owino Paul Ongili, MP
3. The Hon. Gideon Mutemi Mulyungi, MP
4. The Hon. Nicholas Scott Tindi Mwale, MP
5. The Hon. Omar Mohamed Maalim Hassan, MP
6. The Hon. Purity Wangui Ngirici, MP
7. The Hon. Rashid Kassim Amin, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Mr. Evans Oanda	-	Clerk Assistant I
2.	Ms. Mugure Gituto	-	Legal Counsel
3.	Ms. Noel Chelagat	-	Media Relations Officer

IN ATTENDANCE

1.	Mr. Boniface Muli	-	Director, Audit
2.	Mr. Joshiah Oyuko	-	Manager, Audit
3.	Mr. J. M Njuru	-	Manager, OAG
4.	Mr. Boniface Ngira	-	Manage, OAG
5.	Ms. Mercy Mukiiri	-	OAG
6.	Mr. Lawence Okudo	-	Inspector, Inspectorate of State Corporations
7.	Mr. Henry Mutwiri	-	The National Treasury

8. Mr. Mark Ngesso - The National Treasury
9. Mr. Francis W. Kabui - Manager, Audit

MIN/PIC/079/2018: PRELIMINARIES

The Chairperson called the meeting to order at five minutes past ten O'clock followed by a word of prayer. It was noted that a punch of document that the KAA had tabled had not been verified by the auditors.

MIN/PIC/080/2018: EVIDENCE BY KENYA AIRPORTS AUTHORITY (KAA)

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

Status of missing title deeds

- Kisumu Airports title deed had been found after searching through the KAA offices
- Wilson and Eldoret Airports title deeds were still with the EACC. KAA had written to the EACC asking for the same title deed through a letter dated 14th March 2018 and obtained a response through an email that the requested title was in Mombasa and that it would be provided on 16th March 2018.
- The Manda Airport Land (CR35447, Portion 21, Manda Airstrip) had gotten lost and that the authority had reported the loss to the Commandant of the Kenya Airports Police Station through a letter dated 14th March 2018 and obtained an subtract as directed by the Committee.

Committee observations on status of missing title deeds

The Committee noted the following on the whereabouts of the five title deeds for the KAA that the Committee had sought their status when it met with the KAA on 13th March 2013:

1. The Wlison and Eldoret Airports title deeds had been recalled from the lawyers and were in possession of the Authority. Evidence of the letters from lawyers to KAA forwarding the titles was produced.
2. The Kwale/Diani Beach /Block 675 (Ukunda) was in the possession of EACC. EACC had taken the title when it was investigation irregular excision of the said

land. Evidence of KAA's letter to EACC was produced.

3. It was not clear of the correct title deed number for the Manda Airstrip. The number reported to the Police for abstract was different from the number that is was in the provided police abstract. Management however, clarified that it was a typographical error and that the correct title deed number was (CR35447, Portion 21, Manda Airstrip).

   The KAA had not placed a caveat with the National Land Commission on the Manda Airstrip land despite the Committee advising the Authority to do so when the two last met.

Committee Resolutions

1. The Auditors should confirm authenticity of the titles provided and report back to the committee
2. The loss and found of the Kisumu Airports Title deed indicated laxity in KAA's record keeping
3. The Wilison and Airport Airports titles had been recalled from the lawyers and were in possession of the Authority. Evidence of the letters from lawyers to KAA forwarding the titles was produced.
4. The Committee would write to EACC asking it the reasons as to why it had been holding the Kwale/Diani Beach /Block 675 (Ukunda) title deed.
5. The KAA should immediately write to the National Land Commission and place a caveat on Manda Airstrip land and ask for reallocation of the title.
6. The Committee will visit the queried properties in both Wilson and JKIA on Wednesday 28th March 2018.

MIN/PIC/081/2018: EVIDENCE BY KENYA ELECTRICITY TRANSMISSION COMPANY (KETRACO)

FCPA.Fernandes Barasa, the Managing Director of the Kenya Electricity Transmission company accompanied by Dr. (Eng) Joseph Siror (GM, Transmission), Dr. (Eng) John Maliro, and CPA Richard Tobiko appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the company for the financial year 2013/14 to 2015/2016.

2013/2014 FY

The Committee heard that Ketraco had unqualified report.

2014/2015 FY

The Committee heard that Ketraco had unqualified report.

2015/2016 FY

OTHER MATTER

PROJECT CONTRACTORS' PERFORMANCE

The Committee heard that significant delays were noted in the implementation of three (3) of the seven (7) Projects namely EXIM Bank of India, Nile Equatorial Lakes Countries (NELSAP) and Nairobi Ring Transmission Line donor funded projects due to contractor non-performance. It was also true that some of the contracts were terminated during the year under review and procurement of replacement contractors initiated. In those circumstances, the completion of the three projects within the approved budgets and timelines could not be confirmed.

MANAGEMENT RESPONSE

Management agreed with auditors' observations and stated as follows:

1. The Exim Bank of India funded project

The Exim Bank of India funded project was a cluster of various transmission lines and substations divided into two sub-projects namely Turkwel - Ortum - Kitale and Machakos - Isinya - Namanga.

Turkwel - Ortum - Kitale was in two lots; Lot 1B was a 38Km transmission line traversing two counties, Trans-Nzoia and West Pokot. Lot 1A comprises of two substations; one at Kitale in Trans-Nzoia County and one at Ortum in West Pokot County.

KEC International Ltd was the contractor for the transmission line and Ms. Jyoti Structures Ltd was the contractor for substations. The progress was at 87% and 70% respectively.

The transmission line completion had delayed mainly due to right of way challenges and inadequate budgetary allocation for wayleave compensation. Most of the land in West Pokot was community land; the community and group ranch members had not agreed whether compensation should be made to either the County Government or to individual members. This had taken long to settle.

The contractor for substations had financial challenges in the recent past resulting in restructuring of the company thereby affecting the progress of the project. However, their performance had improved after restructuring.

Machakos - Konza - Isinya - Namanga project was in two lots: Lot 3A is a transmission line traversing two counties, namely Machakos and Kajiado. The Machakos - Konza

Section was complete and energized. Isinya - Namanga section was behind schedule due to wayleave challenges. Some land owners had demanded exorbitant compensation in order to allow works to proceed. Secondly, inadequate budgetary allocation had hampered timely payout of compensation to Persons Affected by the Project (PAPs).

Lot 3B comprises of 4 substations. Three (3) substations, namely; Machakos, Konza and Namanga substations were complete and energized. Isinya substation was expected to be completed in April 2018.

2. Lessos - Tororo (part of NELSAP Project)

Lessos- Tororo was a NELSAP project comprising 132Km transmission line traversing Uasin Gishu, Kakamega, Bungoma and Busia counties. The project was funded by African Development Bank and the Government of Kenya. The contractor was Inabensa of Spain and was terminated on the basis of non-performance in April 2016. Subsequently, the contractor obtained Court Orders stopping KETRACO from accessing the site and hiring a new contractor until a final settlement was reached. The Attorney General had advised that the dispute be settled amicably to avoid a protracted and expensive arbitration process. KETRACO required Euro 22 million to settle certified works done by Inabensa; this would allow the court to dispense with case and enable KETRACO to procure a new contractor to complete the work.

3. Nairobi Ring Project

Nairobi Ring Project comprised of a 102km of transmission line traversing Kajiado County and four (4) substations at Isinya and Kimuka in Kajiado County, Athi River substation in Machakos County and Komarock substation in Nairobi County. The transmission line was complete and energized. The substations were behind schedule due to the long process of procuring another contractor after the Ms Iberdrolla of Spain was terminated. KETRACO had since procured a new contractor, Ms Consolidated Power Projects of South Africa, to complete the project and it was expected to be completed in January 2019. The dispute between Iberdrolla and KETRACO was ongoing at the Arbitration Court in the UK.

Committee observations

1. All the contractors were not Kenyan companies. This arose due to international tender floatation in which international companies won the tenders. However, the Exim bank of india funded projects had a provision that only Indian firms were eligible to bid.

   This was against Section 2(f) of the Public Procurement and Asset Disposal Act that obligates government to promote local industries
2. It was specified in the tender documents that tenderers could bid using any currency of their choice; this explains why most of the contracts were in Euros as they were awarded to European firms.
3. All the contractors had no local agents.

4. All the loans that finance the KETRACO projects are negotiated by the National Treasury through its external resource mobilization department.
5. The arbitration cases going on will have to be financed by the exchequer
6. Though Management assured the Committee that due diligence was done before awarding of the contracts, veracity of that statement could not be ascertained considering that some contracts were terminated due to none performance from the part of the contractors and inadequate funds.
7. Foreigners working for the companies that had been awarded the contracts were expatriates whose entry to the Kenya was approved by KETRACO.

Committee resolutions

KETRACO should avail the following to the Committee:

1. Certified copies of the contracts
2. Confirmation of the number of foreigners working for the companies
3. A letter from KEC international limited confirming that it will complete its contract in June 2018
4. Amount paid to contractors so far
5. Purchase documentation relating to Maliakani Land itemizing the acreage and the amount paid for it

MIN/PIC/082/2018: ANY OTHER BUSINESS

1. Capacity building for the Committee: The Committee resolved to postpone its retreat from 5th -8th March 2018 to 12th - 15th March 2018.
2. Business for the week commencing 2th March 2018:
    - Tuesday 27th March 2018: Meeting with officers from the OAG
    - Wednesday 28th March 2018 and subject to the Speaker's approval: Inspection visit to NHIF's Multi Storey Car Park
    - Thursday 29th March 2018: Meeting with the KRA to examine the 2014/15 and 2015/16 audited accounts of KRA; Examine the Special Audit Report on EGMS and the revenue collection arising from the ruling on petition No. 72 of 2011 regarding returnable bottles

MIN/PIC/083/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at forty six minutes past twelve O'clock.

Signed..... Date.....27/03/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 17TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 28TH MARCH 2018 IN THE BOARD ROOM, 10TH FLOOR, NHIF BUILDING AT 10:50 AM.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Ahmed Kolosh Mohamed, MP
4. The Hon. John Muchiri Nyaga, M.P
5. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
6. The Hon. Mohamed Hire Garane, M.P
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. Rashid Kassim Amin, MP
9. The Hon. Paul Kahindi Katana, MP

ABSENT WITH APOLOGY

1. The Hon. Chrisantus Wamalwa Wakhungu, MP
2. The Hon. Raphael Bitta Sauti Wanjala, MP
3. The Hon. Gideon Mutemi Mulyungi, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. Babu Owino Paul Ongili, MP
6. The Hon. Omar Mohamed Maalim Hassan, MP
7. The Hon. James Kamau Githua Wamacukuru, M.P
8. The Hon. Mary Wamaua Waithira Njoroge, MP
9. The Hon. Nicholas Scott Tindi Mwale, MP
10. The Hon. Purity Wangui Ngirici, MP

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Clerk Assistant I
2. Ms. Noel Chelagat	-	Media Relations Officer
3. Mr. Alex Mutuku	-	SAA

IN ATTENDANCE

1. Mr. Geoffrey Mwangi	-	CEO, NHIF
2. Mr. Joseph Mbuvi	-	Ag. Director Finance, NHIF
3. Mr. Nilbert Kulgat	-	NHIF
4. Mr. Joshiah Oyuko	-	Manager, Audit

MIN/PIC/089/2018: PRELIMINARIES

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

MIN/PIC/090/2018: NHIF'S MULTI-STOREY CAR PARK

The Committee heard that:

1. The Multi-Storey Car Park had been completed and a certificate of completion issued by the State Department of Public Works in 2014.
2. The basis for a variation captured in the audit reports was as a result of the change of scope to include the lift and also delayed payment to the contractor arising from the election of the new government into office and its subsequent directive suspending all payments.

Committee Observation

After hearing from the CEO of NHIF and going round the Multi-Storey Car Park, the Committee observed that indeed the Multi-Storey Car Park was complete and in use.

Committee directive

The Office of the Auditor General should confirm the availability and authenticity of the issued certificate of completion and report back to the Committee.

MIN/PIC/091/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at twenty minutes past eleven O'clock.

Signed..... **Date**.....12/04/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 21ST SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 17TH APRIL 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 AM.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. Ahmed Kolosh Mohamed, MP
5. The Hon. Gideon Mutemi Mulyungi, MP
6. The Hon. John Muchiri Nyaga, M.P
7. The Hon. Omar Mohamed Maalim Hassan, MP
8. The Hon. Mary Wamaua Waithira Njoroge, MP
9. The Hon. Rashid Kassim Amin, MP
10. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
11. The Hon. Babu Owino Paul Ongili, MP
12. The Hon. James Kamau Githua Wamacukuru, M.P
13. The Hon. Mohamed Hire Garane, M.P
14. The Hon. Joash Nyamache Nyamoko, MP
15. The Hon. Paul Kahindi Katana, MP
16. The Hon. Thuku Zachary Kwenya, M.P

ABSENT WITH APOLOGY

1. The Hon. Raphael Bitta Sauti Wanjala, MP
2. The Hon. Nicholas Scott Tindi Mwale, MP
3. The Hon. Purity Wangui Ngirici, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Mohamed Boru	-	Third Clerk Assistant
2. Ms. Mugure Gituto	-	Legal Counsel
3. Mr. Thomas Ogwel	-	Fiscal Analyst
4. Ms. Noel Chelagat	-	Media Relations Officer
5. Ms. Christine Maeri	-	Audio Recording Officer

IN ATTENDANCE

1. Mr. Joshiah Oyuko	-	Manager, Audit
2. Mr. Isaac Ngayai	-	Manager, Audit
3. Ms. Anne Wachira	-	Manager, Audit
4. Mr. James Sitieney	-	Inspector, Inspectorate of State Corporations

MIN/PIC/108/2018: PRELIMINARIES

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

MIN/PIC/109/2018: EVIDENCE BY NATIONAL SOCIAL SECURITY FUND BOARD

Ms. Teresa Maina, Board Member of the National Social Security Fund, accompanied by fellow Board Members, Mr. Mutua Kilaka, Mr. Fancis Atwoli, Mr. Mark Obuya, Mr. Anthony Munyiri, Ms. Jacqueline Mugo, Ms. Khadija Kassachoon (Principal Secretary, State Department of Labour and Social Services) and Mr. Anthony Omerikwa (Ag. Managing Trustee, National Social Security Fund) appeared before the Committee to adduce evidence on the matter of NSSF's Hazina Towers project.

The Committee made the following preliminary observations:

1. The Fund did not have a properly constituted Board since there was no Board Chairman appointed at present. The Committee expressed concern that such an important State Corporation lacks a Board Chairman despite the important decisions to be made the Board including the matter of Hazina Towers project.
2. The Committee further observed that the Fund had presented two separate submissions and resolved to use the submission that was delivered first.

The Board submitted to the Committee as follows:

BACKGROUND

1. In 1994, the Fund conceived and initiated the development of a 28 floor commercial property consisting of 4 basements, 3 retail and 1 podium plus 24 floor officer tower. This was on approximately 1.121 acres within the city centre between Monrovia and Moktar Daddah streets.
2. In 1998, due to financial constraints the Fund restructured the project by omitting the tower. The contractor then proceeded and completed four basements, the ground floor, two mezzanines and one podium floor.
3. In 2003 the project was partially completed after construction of the basements, retail and podium levels. The total project cost was approximately KES 3.252 Billion inclusive of construction cost, contractors claim, consultants' fees and cost of land.
4. The partially completed building was leased to Nakumatt Holdings Ltd for a period of 20 years with effect from 1st January 2004 and to expire in December 2023 with an express provision for Nakumatt to allow full access as and when the Fund restarts the construction process.
5. In 2009, the Fund decided to complete the outstanding office tower as originally designed to enhance returns. However, upon reviewing the design, a decision was made by the then management to increase the letteable space by 65%. This was to be achieved by widening the tower and adding a further 8 office floors, a helipad, communication tower and service levels.

6. The resulting 36 levels tower was expected to be the tallest building in the Nairobi Central Business District.

7. On 29th October 2010, the Fund Tender Committee deliberated on the proposal to retain the original project design team for completion of the tower as approved by the Board of Trustees. They approved retention of the following to prepare all the technical drawings and tender documents:-

a.	Project Architect	-	Mruttu Salmann and Associates
b.	Quantity Surveyors	-	Tana and Associates
c.	Structural/Civil Engineers	-	Abdul Mullick and Associates
d.	M&E Consulting Engineers	-	Kisa & Partners

8. The Public Investment Committee of the 11th Parliament in its special report on enquiry on the completion of the Hazina Trade Centre office tower recommended that the Ethics and Anti-Corruption Commission (EACC) investigates the conduct of Mr. Alex Kazongo, the then Managing Trustee for possible contravention of Section 74 of the Public Procurement and Disposal Act 2005 and the Public Procurement and Disposal Regulations 2006 in the reappointment of the project consultants for the reviewed Hazina Trade Centre Office Tower project. This reappointment of consultants is tantamount to direct procurement. The EACC was to report to the National Assembly the status of this recommendation not later than 6 months after the adoption of the report.

9. A tender was issued for a contractor through an open tender process which was awarded to Cementers Limited who were the lowest evaluated bidder at **KES 5,997,711,380.00** and for a contract period of **170 weeks**. However, two bidders, China Wuyi Co. Ltd and China Jiangxi Int (K) Ltd appealed to the Public Procurement Appeals Board (PPAB) who directed that the tender should be repeated. This was challenged at the High Court which upheld the decision of PPAB.

10. The tender was repeated in late 2012 and was awarded in February 2013 to China Jiangxi Limited at a contract sum of **KES 6,715,218,188.00** for a construction period of 155 weeks.

11. The additional weight occasioned by the extension necessitated strengthening of the supporting structure. Some of these columns were in spaces already occupied by Nakumatt. The tenant raised concerns and denied the contractor access to some of the columns.

12. On 2nd January 2014, the Fund partially handed over the site to the contractor and works commenced after the consultants had obtained all the necessary statuary approvals.

13. On 1st September 2014, Nakumatt Holdings, obtained an ex-parte interim injunction against the continued construction, stalling the construction. However, after inter-partes hearing ten (10) days after, the interim injunction was lifted. Despite the orders being lifted, Nakumatt Holdings did not co-operate in granting access to the contractor until 22nd December 2017 when the Fund finally took possession of the premises.

14. It noteworthy, that Clause 5 of the Lease between Nakumatt and the Fund allowed access to the building to complete construction.

15. In March 2016, the Board of Trustees invited the State Department of Public Works (SDPW) to review the project and advise accordingly in view of the challenges facing the project. Wherein the SDPW performed an appraisal of the structural, technical, financial and compliance issues related to the project.

16. The action by Nakumatt and partial cancellation of approvals by the Nairobi County led to the project stalling at the 15th floor level leading to delays totalling to 94 weeks as at 31st December 2017.

17. The stalling triggered a contractor claim of KES **6,884,521.260.48** which was reviewed downwards by the Project Consultants to KES **1,890,648,193.62** for up to 31st December 2017. The State Department of Public Works, in a report dated 12th April 2018, further vetted the claim and arrived at a figure of KES **871,697,124.10. This shall be subjected to further processing internally.**

18. On 9th April 2017, during the 174th Meeting of the Board of Trustees, the Board resolved that Hazina Trade Centre be finalized at the 15th floor level where it had stalled with a projected completion date of 30th June 2019. Preliminary cost estimates indicated that the reduced scope will lead to reduction in cost by approximately **KES 2.7 Billion** bringing the cost of construction to approximately **KES 4.0 Billion.** In restructuring the project, the Board took into account the reports from the State Department of Public Works which highlighted:

    a. **Financial Viability** - The high development cost per square metre of letteable space was higher than that of similar high end developments.

    b. **Technical Viability** - There was a difference of opinion between the Project Consultants and the State Department of Public Works on the whether the supporting structure needed to be reinforced; and

    c. **Legal Viability** - The Nairobi City County Government was demanding for an additional 640 parking spaces before granting occupation certificate

The above issues should have been anticipated and adequately covered by the Project Consultants.

- As at 16th April 2018, the Contractor had been paid a total of KES **2,506,005,355.52**, comprised of KES **1,834,483,543.72** for works done and

an advance payment of **KES 671,521,811.80** which has been secured with a Bank Guarantee. The works completed had been valued and certified at **KES 2,357,970,147.20** as at the last valuation dated 25th March 2015. The various Consultants have been also paid a total of **KES 627,985,662.48**. The estimated total fees should be around 15% of the project construction costs.

CURRENT STATUS

1. On 7th November 2017, Nairobi City County Government renewed approvals for the designs.
2. In January 2018, the contractor resumed works after the renewal of approvals and granting of site access.
3. The project is targeted for completion on 30th June 2019
4. The State Department of Public Works has established that the cost of completing the building to the 15th Floor shall be **KES 4,095,862,434.00** in a report dated 12th of April 2018 received on 13th of the same month.
5. On 3rd April 2018, at a Special meeting of the Board of Trustees, the Board resolved that:-
   (i) Request the State Department of Public Works to:- (a) expedite the review of any pending contractor claims, (b) review and advise on the revised cost estimates and (c) propose a way forward on the contract.
   (ii) Action be taken against the Project Consultants and any members of staff who may be responsible for the project mishaps including referring to the relevant professional bodies (ERB/BORAQS). On further advice, The Fund has since referred the matter to the Office of the Attorney General seeking a legal opinion on how best to deal with issue of apportionment of liability in the project and contractual claims. This was done vide a letter dated 5th April 2018.
   (iii) The Board has referred the matter to the Ethics and Anti-corruption Commission to further investigations and prosecution of anyone found culpable for any misdeeds during the project. This was done vide a letter dated 4th April 2018.
6. The Fund has put in place a number of interventions to avert recurrence of similar events in future. These include:
   i. preparation of a robust property strategy to guide future development projects;
   ii. Involvement of Fund Managers at all stages of property development from inception, implementation, management and exit or closure of the

project. This position has also been supported by the Retirements Benefits Authority. and

iii. Performance of robust feasibility studies for any future projects.

The Committee made the following observations:

1. The Board approved the resumption of works by the contractors after a 24 month delay due to the court case between the Fund and Nakumatt Holdings.
2. The Board was aware of the claim put forward by the contractor of Kshs. 6.884 billion and the counter-offer of Kshs. 1.89 billion by the project consultants arising from the delay in completion of the contract. The Board had sought the advise of the State Department of Public Works on how to settle the claim.
3. The Board's approval downscaled the scope of the project to 15 floors after taking into consideration the advise of the State Department of Public Works.
4. The contract for the project had a clause that accounted for instances where construction is halted due to reasons beyond the contractor or the client's control. This clause allows for extension of the contract period where such 'force majeure' instances occur.
5. The Board had sought the advise of the Attorney General on the viability of re-tendering the project and was awaiting response on the matter.

The Committee made the following resolution:

1. The Office of the Auditor General should carry out a forensic audit of the NSSF Hazina Towers project with a view to determining any malpractices committed and the individuals culpable for any such malpractice.

MIN/PIC/110/2018: EVIDENCE BY CABINET SECRETARY, LABOUR AND SOCIAL SERVICES

Hon. (Amb.) Ukur Yattani, the Cabinet Secretary, Labour and Social Services accompanied by Ms. Khadija Kassachoon (Principal Secretary, State Department of Labour and Social Services) and Mr. Anthony Omerikwa (Ag. Managing Trustee, National Social Security Fund) appeared before the Committee to adduce evidence on the matter of NSSF's Hazina Towers project.

BACKGROUND

1. In 1994, the Fund conceived and initiated the development of a 28 floor commercial property consisting of 4 basements, 3 retail and 1 podium plus 24 floor officer tower. This was on approximately 1.121 acres within the city centre between Monrovia and Moktar Daddah streets.

2. In 1998, due to financial constraints the Fund restructured the project by omitting the tower. The contractor then proceeded and completed four basements, the ground floor, two mezzanines and one podium floor.

3. In 2003 the project was partially completed after construction of the basements, retail and podium levels. The total project cost was approximately **KES 3.252 Billion inclusive of construction cost, contractors claim, consultants' fees and cost of land.**

4. The partially completed building was leased to Nakumatt Holdings Ltd for a period of 20 years with effect from 1st January 2004 and to expire in December 2023 with an express provision for Nakumatt to allow full access as and when the Fund restarts the construction process.

5. In 2009, the Fund decided to complete the outstanding office tower as originally designed to enhance returns. However, upon reviewing the design, a decision was made by the then management to increase the letteable space by 65%. This was to be achieved by widening the tower and adding a further 8 office floors, a helipad, communication tower and service levels.

6. The resulting 36 levels tower was expected to be the tallest building in the Nairobi Central Business District.

7. On 29th October 2010, the Fund Tender Committee deliberated on the proposal to retain the original project design team for completion of the tower as approved by the Board of Trustees. They approved retention of the following to prepare all the technical drawings and tender documents:-

    a. Project Architect - Mruttu Salmann and Associates
    b. Quantity Surveyors - Tana and Associates
    c. Structural/Civil Engineers - Abdul Mullick and Associates
    d. M&E Consulting Engineers - Kisa & Partners

8. The Public Investment Committee of the 11th Parliament in its special report on enquiry on the completion of the Hazina Trade Centre office tower recommended that the Ethics and Anti-Corruption Commission (EACC) investigates the conduct of Mr. Alex Kazongo, the then Managing Trustee for possible contravention of Section 74 of the Public Procurement and Disposal Act 2005 and the Public Procurement and Disposal Regulations 2006 in the reappointment of the project consultants for the reviewed Hazina Trade Centre Office Tower project. This reappointment of consultants is tantamount to direct procurement. The EACC was to report to the National Assembly the status of this recommendation not later than 6 months after the adoption of the report.

9. A tender was issued for a contractor through an open tender process which was awarded to Cementers Limited who were the lowest evaluated bidder at KES 5,997,711,380.00 and for a contract period of 170 weeks. However, two bidders, China Wuyi Co. Ltd and China Jiangxi Int (K) Ltd appealed to the Public Procurement Appeals Board (PPAB) who directed that the tender should be

repeated. This was challenged at the High Court which upheld the decision of PPAB.

10. The tender was repeated in late 2012 and was awarded in February 2013 to China Jiangxi Limited at a contract sum of KES **6,715,218,188.00** for a construction period of 155 weeks.

11. The additional weight occasioned by the extension necessitated strengthening of the supporting structure. Some of these columns were in spaces already occupied by Nakumatt. The tenant raised concerns and denied the contractor access to some of the columns.

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KES 4.0 Billion. In restructuring the project, the Board took into account the reports from the State Department of Public Works which highlighted:

i. **Financial Viability** - The high development cost per square metre of letteable space was higher than that of similar high end developments.

ii. **Technical Viability** - There was a difference of opinion between the Project Consultants and the State Department of Public Works on the whether the supporting structure needed to be reinforced; and

iii. **Legal Viability** - The Nairobi City County Government was demanding for an additional 640 parking spaces before granting occupation certificate

The above issues should have been anticipated and adequately covered by the Project Consultants.

19. As at 16th April 2018, the Contractor had been paid a total of **KES 2,506,005,355.52**, comprised of **KES 1,834,483,543.72** for works done and an advance payment of **KES 671,521,811.80** which has been secured with a Bank Guarantee. The works completed had been valued and certified at **KES 2,357,970,147.20** as at the last valuation dated 25th March 2015. The various Consultants have been also paid a total of **KES 627,985,662.48**. The estimated total fees should be around 15% of the project construction costs.

CURRENT STATUS

1. On 7th November 2017, Nairobi City County Government renewed approvals for the designs.
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4. The State Department of Public Works has established that the cost of completing the building to the 15th Floor shall be **KES 4,095,862,434.00** in a report dated 12th of April 2018 received on 13th of the same month.
5. On 3rd April 2018, at a Special meeting of the Board of Trustees, the Board resolved that:-

   i. Request the State Department of Public Works to:- (a) expedite the review of any pending contractor claims, (b) review and advise on the revised cost estimates and (c) propose a way forward on the contract.

   ii. Action be taken against the Project Consultants and any members of staff who may be responsible for the project mishaps including referring to the relevant professional bodies (ERB/BORAQS). On further advice, The Fund has since referred the matter to the Office of the Attorney General seeking a legal opinion on how best to deal with issue of apportionment of liability

in the project and contractual claims. This was done vide a letter dated 5th April 2018.

iii. The Board has referred the matter to the Ethics and Anti-corruption Commission to further investigations and prosecution of anyone found culpable for any misdeeds during the project. This was done vide a letter dated 4th April 2018.

6. The Fund has put in place a number of interventions to avert recurrence of similar events in future. These include:

   i. preparation of a robust property strategy to guide future development projects;

   ii. Involvement of Fund Managers at all stages of property development from inception, implementation, management and exit or closure of the project. This position has also been supported by the Retirements Benefits Authority. and

   iii. Performance of robust feasibility studies for any future projects.

The Committee made the following observations:

1. The Cabinet Secretary expressed concern on how NSSF was being managed. He cited the high turnover in management as a cause of the many scandals and image problems facing the Fund.
2. The Cabinet Secretary had set up a unit within the Ministry of Labour to investigate the matter and the preliminary results were not pleasant viewing.
3. The Cabinet Secretary pointed out several things he found to be strange when reviewing the chronology of the Hazina Towers project. He questioned why there was no competitive bidding to procure the services of consultants for supervision of the new contract. The Fund decided to use the same consultants who had supervised the construction up to the podium floor from 1998 to 2003.
4. Further, the Cabinet Secretary questioned why the same consultants were supervising all NSSF projects.
5. The Cabinet Secretary also wondered why the State Department of Public Works was not involved in the project from the beginning.
6. The decision to lease part of the Hazina Towers to Nakumatt for 20 years when construction was supposed to continue at the site was also questioned by the Cabinet Secretary.
7. Negotiations between the Fund and the contractor on settling the claim put forward by the latter had not started. The Cabinet Secretary observed that the matter might have to be settled through arbitration.
8. The Cabinet Secretary can only appoint two members of the NSSF Board as per the provision of the Act establishing the Fund. The rest are set aside for

representatives of Employers, Trade Unions and representatives of various Ministries.

9. The Cabinet Secretary called for re-evaluation of NSSF's investment plan so as to reduce administrative costs and other overheads and ensure value for money in investments undertaken.

The Committee made the following resolutions:

1. The project consultants for the Hazina Towers Project as well as former NSSF Managing Directors involved in the project will be invited by the Committee to adduce evidence on the matter.
2. The Auditors should review the clause of the contract for the project that allows for extension due to unforeseen circumstances.
3. The Registrar of Societies should provide Directorship details of the consulting firm that is supervising the Hazina Towers project.

MIN/PIC/111/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at fourty minutes past one O'clock.

Signed..... Date.....26/07/2018.

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 22ND SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 19TH APRIL 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 AM

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. Ahmed Kolosh Mohamed, MP
5. The Hon. James Kamau Githua Wamacukuru, M.P
6. The Hon. Thuku Zachary Kwenya, M.P
7. The Hon. Gideon Mutemi Mulyungi, MP
8. The Hon. Raphael Bitta Sauti Wanjala, MP
9. The Hon. Rashid Kassim Amin, MP
10. The Hon. Paul Kahindi Katana, MP
11. The Hon. Mohamed Hire Garane, M.P

ABSENT WITH APOLOGY

1. The Hon. Babu Owino Paul Ongili, MP
2. The Hon. Joash Nyamache Nyamoko, MP
3. The Hon. Purity Wangui Ngirici, MP
4. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
5. The Hon. Nicholas Scott Tindi Mwale, MP
6. The Hon. John Muchiri Nyaga, M.P
7. The Hon. Omar Mohamed Maalim Hassan, MP
8. The Hon. Mary Wamaua Waithira Njoroge, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Clerk Assistant I
2. Mr. Mohamed Boru	-	Clerk Assistant III
3. Ms. Mugure Gituto	-	Legal Counsel
4. Mr. Thomas Ogwell	-	Fiscal Analyst
5. Ms. Noelle Chelagat	-	Media Relations Officer
6. Ms. Christine Maeri	-	Audio Recording Officer

IN ATTENDANCE

1. Mr. Joshiah Oyuko	-	Manager, Audit
2. Mr. Samuel Bollo	-	Manager, Audit
3. Mr. John Wagura	-	Manager, Audit

MIN/PIC/112/2018: PRELIMINARIES

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

followed by a word of prayer.

MIN/PIC/113/2018: CONFIRMATION OF MINUTES

Confirmation of previous Minutes was deferred to the next meeting.

MIN/PIC/114/2018: EVIDENCE BY KENYA MEDICAL SUPPLIES AGENCY

Mr. Fredrick Wanyonyi (Ag. Chief Executive Officer, Kenya Medical Supplies Agency) accompanied by Mr. John Aduda (Quality Assurance Manager), Ms. Elizabeth Mwau (Public Relations and Communication Manager), Mr. Waiganjo Karanja (Ag. Director, Corporate Services), Mr. Eliud Muriithi (Director, Commercial), Mr. Samuel Okanda (Ag. Director, Operations) and F.K Musyimi (Secretary Administration, Ministry of Health) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Agency for the financial year 2012/2013 to financial year 2015/2016.

MIN/PIC/115/2018: PROPERTY, PLANT & EQUIPMENT (FY 2012/13 TO FY 2014/15)

As previously reported, the property, plant and equipment balance of Kshs.1,033,597,506 as at 30 June 2013 includes various parcels of land valued at Kshs.403,000,000 for which the Authority does not possess ownership documents. According to information available, the parcels of land are spread across the country and include depots situated at Embakasi - Nairobi, Mombasa, Eldoret, Kisumu, Nakuru, Kakamega, Nyeri and Garissa. Further, the property, plant and equipment balance of Kshs.1,033,597,506 (Kshs.1,043,521,200 as at 30 June 2015) excludes the unspecified value of parcel of land in Meru also belonging to the Authority.

In the circumstance, it has not been possible to confirm the validity and accuracy of the property, plant and equipment balance of Kshs.1,033,597,506 as at 30 June 2013 (Kshs.1,043,521,200 as at 30 June 2015).

Management Response

It's true that KEMSA had no Titles Deeds to prove ownership of the parcels of land spread across the country in Mombasa, Eldoret, Kisumu, Nakuru, Kakamega, Nyeri and Garissa.

At the time of the Gazzetement of KEMSA in February 2000, KEMSA was a department of the Ministry of Health and all parcels of land on which KEMSA depots existed were owned by the Ministry of Health.

A committee concerning land was set up by the Permanent Secretary, Ministry of Health to look at the issue of all the assets at KEMSA with an intension of vesting the ownership to KEMSA which culminated into the above valuation report of land bequeathed to KEMSA by the Ministry of Health.

The process of acquiring documents of ownership has been on going up to the current financial year. Progress on the obtaining of the title deeds for the various parcels of land has been made by KEMSA as follows:

S/No	ASSET	STATUS
1.	KEMSA Supply Chain Centre (Embakasi)	KEMSA has Title Deeds for the Supply Chain Centre at Embakasi.
2.	Eldoret Depot (Block 10/155 & 10/156)	KEMSA was allocated land where the depot is situated by the Commissioner of Lands vide an allotment letter dated 28th October 2005, Ref. No. 209163/IX. Two leases awaiting registration of titles comprised in Eldoret of blocks 10/155 and 156 were conferred to KEMSA by the Commissioner of Lands. KEMSA through KTK Advocates is following up on the title deed with the County Lands Ministry.
3.	Kakamega Depot (Block 4/168)	KEMSA was allocated land where the depot is situated by the Commissioner of Lands vide an allotment letter dated 7th October 2002, Ref. No. 209163/All. A lease awaiting registration of titles comprised in Kakamega of block 4/168 was conferred to KEMSA by the Commissioner of lands. A Resurveying and confirmation of Beacons had also been done. However, the county has begun the construction of a new Referral hospital on the piece of land. The County has expressed willingness to allocate KEMSA an alternative piece of land. The process is progressing well and we are waiting communication from the County Land Management Board.
4.	Nyeri Depot (Block 3/173	KEMSA was allocated land where the depot is situated by the Commissioner of Lands vide an allotment letter dated 7th

	& 3/174	October 2002, Ref. No. 209163/All. Two leases awaiting registration of title comprised in Nyeri of blocks 3/173 and 174 have was conferred to KEMSA by the Commissioner of Lands. KEMSA through KTK Advocates is following up on the title deed with the County Lands Ministry.
5.	Nakuru Depot Block 20/287	Title for the land Block 20/287 was issued on 14th November 2017.
6.	Kisumu Depot PDP N9/74/7	KEMSA was allocated land where the depot is situated by the Commissioner of Lands vide allotment letter Ref. No. 209163/IX dated 26th October 2005. The process of re-surveying and Beacon placement is ongoing to facilitate the obtainance of the Lease. KEMSA through KTK Advocates is following up on the title deed with the County Lands Ministry.
7.	Mombasa Depot PDP 12/3/CT/2/99	KEMSA was allocated the land by the Commissioner of lands through allotment letter Ref. No. 209163/a dated 17th August 2010. The Part Development Plan (PDP) is also in place. KEMSA through KTK Advocates is following up on the title deed with the County Lands Ministry.
8.	Garissa	KEMSA has obtained a PDP for the property. The re-Surveying and Beacons placement has been done to facilitate obtainance of the lease. KEMSA through KTK Advocates is following up on the title deed with the County Lands Ministry.

9.	Meru Depot Ntima/Igoki 1/1753	KEMSA was allocated land where the depot is situated vide allotment letter Ref. No. 209163/All dated 7th October 2002. KEMSA received a letter from the Commissioner of Lands to carry out a survey of the land.

It's true that the Property, Plant and Equipment balance in the financial statements for the three years excluded unspecified value of parcel of land in Meru Municipality Measuring 0.3 Ha which belongs to the Authority.

KEMSA was allotted the land on 7th October 2002. Later third parties i.e. Ministry of Public Works and Kenya National Highways Authority occupied a section of the Land. This made it difficult to accurately apportion the values between KEMSA and Ministry of Public Works/Kenya National Highways Authority. The process of resolving the ownership is ongoing.

KEMSA through KTK Advocates is following up on the matter with the County Lands Ministry, National Land Commission and the Ministry of Land. Once this is finalized, we shall carry out a valuation and include the value of the land in the Financial Statements in line with the Public Sector Accounting Standards (IPSAS).

Committee Observations

The Committee made the following observations:

1. The Agency had taken an inordinate amount of time to register the title deeds despite having the necessary documentation in place.
2. The lawyers contracted to register the leases and title deeds of lands belonging to the KEMSA had been paid approximately Kshs. 2,000,000 for the titles registered.
3. KEMSA had not sought the intervention of the parent ministry, the Ministry of Health, to address the delay in issuance of titles.
4. Eldoret land: KEMSA stated that the part of the land is occupied by the Kenya National Highways Auhority.
5. Nakuru land: The Auditors denied having received the title for this piece of land from KEMSA.

Committee Resolutions

The Committee made the following resolutions:

1. That KEMSA submits a copy of the contract with KTK law firm for the service of registering the title deeds.

2. That KEMSA provides a chronology of how the legal services from KTK law firm were procured including details of the tender process.
3. That the Auditor verifies if they received the title deeds for the Nakuru piece of land as alleged by the Agency.
4. That the audit query has not been resolved.

MIN/PIC/116/2018: RECIEVABLES FROM EXCHANGE TRANSACTIONS (FY 2015/16 TO FY 2016/17)

The receivables from exchange transactions balance of Kshs.3,740,340,113 reflected in the statement of financial position as at 30 June 2016 includes long outstanding receivables balance totaling to Kshs.1,708,524,634 whose recovery is doubtful. No explanation has been provided for the failure to recover these long outstanding debts. In the circumstance, the accuracy and validity of the exchange transactions balance of Kshs.3,740,340,113 reflected in the statement of financial position as at 30 June 2016 cannot be confirmed.

Management Response

It is true that there was were debts amounting to a total of Kshs.1,708,524,634 owed to KEMSA by County governments for Supply of commodities to Health facilities, and by Strategic Partners and the Ministry of Health for provision of supply chain services.

KEMSA has made efforts aimed at overall debt management and ensuring timely collection of amounts owing from our various Customers and Strategic partners. These include:

1) Strengthening of the Credit Control function within Finance Department to continuously ensure timely billing, receipting, allocation of receipts and submission of account statements,
2) Involvement of Senior Management in debt collection through County visits and stakeholders' forums.
3) Negotiation of Structured payment plans with Counties having cash flow challenges e.g. Daily standing orders, weekly and monthly remittances.
4) Requesting for payment Commitment letters from counties with outstanding debts before honouring their LPOs.
5) Suspending of overdue County and Facilities accounts until the outstanding amounts are cleared in full.
6) Entering into Memorandum of Understanding (MOUs) with all strategic partners with clear payment conditions and timelines.

The debt status as at 30th June 2016 was as below:

DEBTORS AS AT 30-06-2016					
Category	**Invoiced Amount**	**Current 0-30 Days**	**31-60 Days**	**61-90 Days**	**Over 91 Days**
COUNTIES	1,707,125,424.54	652,289,686.28	182,494,813.93	329,341,923.00	542,999,001.33
DEVELOPMENT PARTNERS	291,113,065.42	77,854,996.82	104,217,624.41	17,469,029.72	91,571,414.47
G.O.K FACILITIES	86,111,215.98	37,587,666.48	11,724,090.00	485,828.00	36,313,631.50
MINISTRY OF HEALTH - PARALLEL PROGRAMS	1,622,962,103.69	561,604,058.61	19,673,138.45	9,025,728.00	1,032,659,178.63
SSD CUSTOMERS	11,144,000.53	1,692,757.00	4,203,563.00	394,772.00	4,852,908.53
OPERATIONS - CIC INSURANCE	128,500.00	-	-	-	128,500.00
Grand Total	**3,718,584,310.16**	**1,331,029,165.19**	**322,313,229.79**	**356,717,280.72**	**1,708,524,634.46**

However, the overdue amount of **Kshs.1,708,524,364**, included an amount totaling to **Kshs.1,024,800,765.77** related to billing for supply chain services for National Health programs managed by the Ministry of Health. Some amounts in the figure relate to prior financial years and have been treated as pending bills. The Agency has a written assurance from the office of the Principal Secretary that the outstanding has been captured as pending bill and factored for settlement during the financial year 2018/2019.

Other debts from Strategic Partners and County governments have since then been paid with the exception of Muranga County debts whose debt has remained to date.

The Agency continuously engaged the Parent Ministry to have the amounts settled.

Committee Observations

The Committee made the following observations:

1. The National government had spent approximately Kshs. 600,000,000 to procure drugs from KEMSA in a period of 90 days during the 2016/17 financial year. This is despite the national government having no role in purchase of drugs as per the fourth schedule of the constitution which delimits the roles to be performed by the two levels of government.

Committee Resolutions

The Committee made the following resolutions:

1. The Committee resolved to share the matter of the Ministry's expenditure with the Public Accounts Committee which considers the audited accounts of the Ministry of Health for follow up.
2. The audit query was still outstanding as details of the debts paid/recovered have not been availed for audit verification.

MIN/PIC/117/2018: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/118/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at twenty two minutes past one O'clock.

Signed..... **Date**.....26/04/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 26TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 15TH MAY 2018 IN 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. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. John Muchiri Nyaga, M.P
6. The Hon. Paul Kahindi Katana, MP
7. The Hon. Purity Wangui Ngirici, MP
8. The Hon. Rashid Kassim Amin, MP

ABSENT WITH APOLOGY

1. The Hon. Raphael Bitta Sauti Wanjala, MP
2. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
3. The Hon. Ahmed Kolosh Mohamed, MP
4. The Hon. Gideon Mutemi Mulyungi, MP
5. The Hon. James Kamau Githua Wamacukuru, M.P
6. The Hon. Mary Wamaua Waithira Njoroge, MP
7. The Hon. Mohamed Hire Garane, M.P.
8. The Hon. Nicholas Scott Tindi Mwale, MP
9. The Hon. Omar Mohamed Maalim Hassan, MP
10. The Hon. Thuku Zachary Kwenya, M.P
11. The Hon. Babu Owino Paul Ongili, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Clerk Assistant I
2. Mr. Charles Atamba	-	Research Officer
3. Ms. Noel Chelagat	-	Media Relations Officer
4. Ms. Christine Maeri	-	Audio Recording Officer

IN ATTENDANCE

1. Mr. Edwin Kamar	-	Manager, Audit
2. Mercy Mukiiri	-	Manager, Audit
3. Jared Nyasani	-	OAG
4. John Kisegu	-	OAG
5. Joshiah Oyuko	-	OAG

MIN/PIC/134/2018: PRELIMINARIES

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

MIN/PIC/135/2018: EVIDENCE BY KENYA POWER AND LIGHTING COMPANY

Dr. Ken Tarus, the Managing Director of the Kenya Power and Lighting Company accompanied by Mr. Harun Karisa (Ag. General Manager, Finance), Mr. Daniel Tare (General manager), Mr. Peter Mwichigi (General Manager), Mr. Samuel Ndirangu (General Manager ICT), and Johnstone Ole Turana (Corprate communications) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the KPLC for the financial year 2012/13 to 2016/2017.

MIN/PIC/136/2018: EXAMINATION OF KPLC'S ACCOUNT FOR THE FY 2012/13

The Committee heard that KPLC's account for the financial year 2012/2013 was unqualified.

MIN/PIC/137/2018: EXAMINATION OF KPLC'S ACCOUNT FOR THE FY 2013/14

The Committee heard that KPLC's account for the financial year 2013/2014 was unqualified.

MIN/PIC/138/2018: EXAMINATION OF KPLC'S ACCOUNT FOR THE FY 2014/15

The Committee heard that KPLC's account for the financial year 2014/2015 was unqualified.

MIN/PIC/139/2018: EXAMINATION OF KPLC'S ACCOUNT FOR THE FY 2015/16

The Committee heard that KPLC's account for the financial year 2015/2016 was unqualified.

MIN/PIC/140/2018: EXAMINATION OF KPLC'S ACCOUNT FOR THE FY 2016/17

The Committee heard that KPLC's account for the financial year 2016/2017 was unqualified.

Committee Observations

1. All the accounts of the KPLC were unqualified for years under review.
2. The audit exercise was outsourced from PWC pursuant to section 23 of the Public Audit Act 2015 despite the 19th report of the PIC had recommending that audit of strategic government corporations be done by the OAG alone.
3. Audit exercise for most of the corporations within the energy sector was outsourced.

Committee Resolution

The Committee would request for explanation from the Auditor General as to the reasons behind disregarding the 19th PIC recommendations on outsourcing of audit services on KPLC and other strategic government corporations.

MIN/PIC/141/2018: ANY OTHER BUSINESS

The Procurement of KPLC agents and high cost of electricity bills was raised. The Committee learned that out of need in 2009, KPLC duly procured 15 agents to sell and contracted were signed in 2010. Currently, KPLC sells 65% of its power while agents do the rest. Some of the agents have aggressively marketed their companies hence the reason why they get more recognition.

Committee Resolution

1. The Committee requested for documentation for procurement of the whole process for the agents; the names and ownership of the agents that were contracted; the volumes/turnover each of the agents have done so far. The KPLC undertook to provide the same in two weeks.

MIN/PIC/142/2018: ADJOURNMENT

The meeting was adjourned at 16:37hrs.

Signed.....

Date.....23/05/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 27TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 16TH MAY 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:30 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Chrisantus Wamalwa Wakhungu, MP
3. The Hon. Joash Nyamache Nyamoko, MP
4. The Hon. John Muchiri Nyaga, M.P
5. The Hon. Paul Kahindi Katana, MP
6. The Hon. Purity Wangui Ngirici, MP
7. The Hon. Rashid Kassim Amin, MP
8. The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Raphael Bitta Sauti Wanjala, MP
3. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
4. The Hon. Ahmed Kolosh Mohamed, MP
5. The Hon. Gideon Mutemi Mulyungi, MP
6. The Hon. Mary Wamaua Waithira Njoroge, MP
7. The Hon. Mohamed Hire Garane, M.P.
8. The Hon. Nicholas Scott Tindi Mwale, MP
9. The Hon. Omar Mohamed Maalim Hassan, MP
10. The Hon. Thuku Zachary Kwenya, M.P
11. The Hon. Babu Owino Paul Ongili, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Clerk Assistant I
2. Mr. Mohamed Boru	-	Clerk Assistant III
3. Mr. Charles Atamba	-	Research Officer
4. Mr. Thomas Ogwel	-	Fiscal Analyst
5. Ms. Noel Chelagat	-	Media Relations Officer
6. Ms. Christine MAeri	-	Audio Recording Officer

IN ATTENDANCE

1. Mr. Joshiah Oyuko	-	Manager, Audit
2. Mr. Isaac Ngayai	-	Manager, Audit
3. Ms. Anne Wachira	-	Manager, Audit
4. Mr. James Sitieney	-	Inspector, Inspectorate of State Corporations

MIN/PIC/143/2018: PRELIMINARIES

The Chairperson called the meeting to order at eight minutes to eleven O'clock followed by a word of prayer and introductions.

MIN/PIC/144/2018: EVIDENCE BY KENYA NATIONAL SOCIAL SECURITY FUND (NSSF)

Mr. Anthony Omerikwa, the Ag. Managing Trustee of the National Social Security Fund accompanied by Mr. Moses Cheseto (Ag. General Manager, Finance and Investment), Ms. Nancy Mwangi (Ag. General Manager, Social Security), Mr. Evans Moturi (Ag. General Manager, Finance); Mr. Austin Ouko (Ag. Company Secretary) and Mr. Peter Muiruri (Manager, Procurement) 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 2012/13 to 2015/2016.

MIN/PIC/145/2018: NYAYO ESTATE EMBAKASI PHASE SIX CONTRACT NO. 18/2012 - 2013 (FY 2014/2015 Paragraph 3.3.2)

The Committee heard that The Fund entered into a contract agreement with M/s China Jiangxi International Kenya Limited on 21 February 2013 for construction of 324 units at Nyayo Embakasi at a total cost of Kshs.2,155,407,742. The construction works were to take seventy eight (78) weeks from 2 June 2013 to 30 November 2014. However, audit inspection carried out on 14 January 2016 revealed that the construction work had stalled and the contractor was not on site while only fifty two (52) units had been constructed. The main reason for the stoppage of the works was due to failure by the Nairobi City County to grant relevant approvals to enable construction of the remaining two hundred and seventy two (272) units. By the time of stoppage, the contractor had been paid an advance fee of Kshs.215,540,744.22 against a bank guarantee from the Standard Chartered Bank which expired on 30 September 2015. The contract period had also expired on 30 November 2014.

In the circumstances, the fund stood a risk of losing the Kshs.215,540,744.22 already paid and additional losses on delayed completion of the project.

Management response

Management informed the Committee that by the time of stoppage of the project, the contractor had been paid an advance fee of Kshs. 215,540,744.22 against a bank guarantee from the Standard Chartered Bank, which expired on 30 September 2015. The contract period had also expired on 30 November 2014. The Fund wrote to the contractor M/S China Jiangxi International to renew the advance payment guarantee. The guarantee was only renewable if the contract period was extended.

The Board of Trustees at its 174th meeting resolved to terminate the project. The final account was still being processed jointly with the project consultants. It should take into account the advance of Kshs. 215,540,744.00 to establish the exact balance

to be refunded, if any, subject to final assessment and verification by the state department of public works.

Committee observations

The Committee made the following observations:

1. The Nairobi city council did not provide approvals that the NSSF belatedly sought.
2. The contract period expired on 30 November 2014 and it was not renewed.
3. The contract was not fully executed and the contractor was not on site.
4. The NSSF did not seek for all the requisite approvals before commencing the project thus discrediting the Fund's capacity in project planning and implementation
5. The State Department of Public Works was involved in he project from the onset .
6. The Fund risked losing Kshs. 215,540,744.

Committee resolutions

The NSSF to furnish the Committee with details on when the Fund wrote to the contractor asking for a refund of the money for the works that had not been done; minutes of the Board resolution to terminate the contract and the letter from the Fund to the Attorney General requesting for a legal opinion on termination of the contract.

MIN/PIC/146/2018: OTHER MATTER FY (2014/2015)

1. Composition of the Board (paragraph 3.4.1.1)

The Committee heard that Section 6 of the NSSF Act, No. 45 of 2013 stipulates that membership to the board shall comprise of nine members. However, between the period 25 February 2015 to 16 September 2015, approximately six and half (6 ½) months), there were only four members of the board, thus raising legal questions on the validity and legality of managerial investments decisions.

Management response

Management informed the Committee that although the Board of trustees was incapacitated from February to June 2015 due to court cases surrounding the retirement of some of the Trustees and appointment of new ones, including an injunction against holding of board meetings in one of the cases, the Fund continued to carry out its mandate as per NSSF Act 2013. There was no vacuum as the Cabinet Secretary for Labour, Social Security and Services stepped in to ensure that the fund's operations continued uninterrupted, as the government is the guarantor of public interest in the Fund by virtue of section 70 of NSSF Act No. 45 of 2013. All the issues

that were being contested in court had since been resolved. In the year 2015/2016, The Board of Trustees was restored to capacity with all the Board positions filled. The Cabinet Secretary revoked the appointment of the trustees whose appointments were in contention and appointed others to the Board of Trustees.

Committee Observations

1. Management made non-substantive decisions based on the board's approved budget such as payment of salaries and small suppliers
2. Currently, the Board has seven members out of ten hence collate
3. It was not a good management practice for Board Members to take the NSSF to court rather than solve their issues within the Board

2. Failure to hold meetings (paragraph 3.4.1.2)

The Committee heard that Section 11(1) requires the Board to hold not less than four (4) meetings in every financial year for the conduct of its business and not more than four months shall elapse between the date one (1) meeting and the date of the next. However, no meetings were held by the Board between the periods 1st February 2015 to 16 September 2015 contrary to Section 11(1) of the Act. The failure to have meetings was attributed to lack of two thirds (2/3) quorum as a result of court injunctions filed on the 25 February 2015 and 10 March 2015 which affected full composition of the board.

Management Response

It was not possible to hold board meetings due to court cases surrounding board appointments. This led to lack of quorum. However, the situation has since changed after the CS Labour, Social Security and Services appointed the remaining board members.

3. Unsatisfactory budget control and performance (paragraph 3.4.1.2)

i. Income (3.4.3.1)

The Committee heard that the National Social Security Fund (NSSF) reflected approved budgeted income of Kshs.35, 925,581,000.00. However, the actual income collected was Kshs.19, 318,641,000.00 resulting in an under collection of Kshs.16, 606,940,000.00 or 46%. The failure to realise the targeted income had been attributed largely to failure to implement the NSSF Act, 2013 due to a court injunction challenging implementation of the new contribution rates in a case jointly filed by the Central Organization of Trade Unions (COTU) and the Federation of Kenya Employers (FKE) and others. The management further attributed poor performance at the Nairobi Stock Exchange (NSE) for the overall deficit of Kshs.16, 606,940,000.00.

Management response

Management informed the Committee that adverse variance was caused by the suspension of NSSF Act No 45 of 2013 specifically sections 19(2) on registration and section 20 on raised rates of contribution. The case was still pending in court. In as much as the matter was still in court, the board of trustees was exploring alternative dispute resolution mechanisms through stakeholder engagements.

Committee Observations

Two of the Board Members took NSSF to court instead of solving the matter within the Board. The Committee would seek a session with the Board at an opportune time to find out why some members chose to sue the NSSF.

ii. Expenditure (3.4.3.2)

The Committee heard that the Fund's expenditure was budgeted for at Kshs.5,502,485,000.00 but actual expenditure was Kshs.6,169,284,000.00 resulting in an excess expenditure of Kshs.666,799,000.00 or 12%. The excess expenditure was mainly attributed to a provision made in the financial statement in respect of a disputed corporation tax refund claimed from Kenya Revenue Authority (KRA) for assessment period between 1996 and 1997 totaling Kshs.904,904,000.00. In the circumstances, the Fund had not fully operated within its approved budget estimates.

Management response

Management informed the Committee that the adverse variance was due to the provisioning of a debt of Kshs. 904,904,000 due from Kenya Revenue Authority (KRA) which related to taxes overpaid prior to the exemption date (1996 &1997).The provision was done in the 2014/2015 Annual Accounts in compliance with the International Accounting Standard 37.

Further, the Fund had been following the debt from KRA for many years without success. However, on 20th May 2014 KRA approved a refund of Kes.425, 518,277.00 claiming that Kshs, 479,385,440.00 was disallowed. The refund was subject to availability of funds and that the amount might have been applied to offset any other taxes due to KRA. The fund was delayed by a counter tax claim by KRA of Kes.2, 155,859,151.00. Income tax appeal No.7 of 2014 NSSF Vs KRA judged in favour of the fund on 29 June 2016. The Fund was still pursuing the refund of Kshs 904,903,717.00. The Commissioner of Domestic Taxes approved the filing of the amended tax return for the year 1997 in August 2017 to pave way for the refund of Kshs. 411,646,389

Committee Observations

1. It was not clear why KRA was demanding corporate tax from NSSF while knowing very well that NSSF was exempted from paying corporation tax.
2. The tax refund held by KRA should have been attracting interest the same way KRA charges interest on any unpaid tax.

Commission resolution

The NSSF to provide the Committee with details/circumstances under which the impugned tax refund arose. The response should be done within a week.

MIN/PIC/147/2018: ADJOURNMENT

The meeting was adjourned at 12:40 p.m. Next meeting will be held on 16th May 2018 at 2:30 p.m.

Signed..... Date.....23/05/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 28TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 16TH MAY 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 3:00 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Chrisantus Wamalwa Wakhungu, MP
3. The Hon. Joash Nyamache Nyamoko, MP
4. The Hon. John Muchiri Nyaga, M.P
5. The Hon. Paul Kahindi Katana, MP
6. The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Raphael Bitta Sauti Wanjala, MP
3. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
4. The Hon. Ahmed Kolosh Mohamed, MP
5. The Hon. Gideon Mutemi Mulyungi, MP
6. The Hon. Mary Wamaua Waithira Njoroge, MP
7. The Hon. Mohamed Hire Garane, M.P.
8. The Hon. Nicholas Scott Tindi Mwale, MP
9. The Hon. Omar Mohamed Maalim Hassan, MP
10. The Hon. Thuku Zachary Kwenya, M.P
11. The Hon. Babu Owino Paul Ongili, MP
12. The Hon. Rashid Kassim Amin, MP
13. The Hon. Purity Wangui Ngirici, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Clerk Assistant I
2. Mr. Mohamed Boru	-	Clerk Assistant III
3. Mr. Charles Atamba	-	Research Officer
4. Mr. Thomas Ogwel	-	Fiscal Analyst
5. Ms. Noel Chelagat	-	Media Relations Officer
6. Ms. Christine Maeri	-	Audio Recording Officer

IN ATTENDANCE

1. Mr. Joshiah Oyuko	-	Manager, Audit
2. Mr. Isaac Ngayai	-	Manager, Audit
3. Ms. Anne Wachira	-	Manager, Audit
4. Mr. James Sitieney	-	Inspector, Inspectorate of State Corporations

MIN/PIC/148/2018: PRELIMINARIES

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

MIN/PIC/149/2018: EVIDENCE BY KENYA NATIONAL SOCIAL SECURITY FUND (NSSF)

Mr. Anthony Omerikwa, the Ag. Managing Trustee of the National Social Security Fund accompanied by Mr. Moses Cheseto (Ag. General Manager, Finance and Investment), Ms. Nancy Mwangi (Ag. General Manager, Social Security), Mr. Evans Moturi (Ag. General Manager, Finance); Mr. Austin Ouko (Ag. Company Secretary) and Mr. Peter Muiruri (Manager, Procurement) 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 2012/13 to 2015/2016.

MIN/PIC/150/2018: UNREMITTED MEMBERS CONTRIBUTIONS (FY 2015/2016 Paragraph 4.1)

The Committee heard that employers are required under Section 8(a) of the NSSF Act, 2013 to remit into the Fund contributions deducted from members in full and in time. However, examination of twenty (20) sampled employer files maintained in nine (9) NSSF branches disclosed that contributions totalling Kshs.754,995,366.55 had not been remitted in the stipulated time period. Management had however taken action by issuing demand letters and making alternative payment arrangements with employers such as instalment payments before considering legal action. In view of the foregoing, demand letters should be sent to all the other defaulters not included in the sample taken in order to enforce compliance.

Management response

The Fund had made an effort to collect the amounts under question through courts and alternative dispute resolution mechanisms. Further the Fund issues demand letters to all defaulters on a continuous basis

Committee Observations

1. A total of Kshs 3.5 billion remained unremitted and that this amount was mainly in defunct corporations such as the Nairobi City Council and Postal corporations.
2. The 20 employers files sampled for the purpose of audit was too small in a sample size of more than 226,000 files.

MIN/PIC/151/2018: MEMBERS CONTRIBUTION HELD IN SUSPENSE ACCOUNT (FY 2015/2016 Pragraph 4.2)

Same query and response as in paragraph 2.1 of 2013/2014 financial year.

MIN/PIC/152/2018: IRREGULAR DISPOSAL OF UNDEVELOPED LAND (FY 2015/2016 Pragraph 4.3)

The Committee heard that Note 27 to the financial statements reflected disposal proceeds figure of Kshs.126,000,000 in respect of sale of undeveloped land in Mavoko Municipality. Information available indicated that land measuring 69.16 acres was subdivided into seven (7) plots measuring 9.88 acres and disposed-off at Kshs.18,000,000 each. According to documents availed for audit in support of the sale, the plots were sold to AMS Properties Limited on the basis of an agreement dated 21 November, 2011 at a total cost of Kshs.126,000,000. However, only Kshs.12,600,000 or 10% was paid vide Miscellaneous Receipt M010022315 dated 23 August, 2011. The balance of Kshs.113,400,000 which was to be paid within 90 days from the date of execution of the agreement has not been settled more than five (5) years later.

No reasons had been provided for the failure to terminate the sale agreement upon the expiry of the 90 days execution period provided for in the contract agreement. The Fund risked loss of the land and additional claim on the paid 10% Deposit.

Management response

In December 1995 the Fund bought LR No.s 20181, 20183, 20184, 20101, 20201, 20205, 20206 & 20207 - in Mavoko Municipality. Despite the Fund constantly checking on the status and security of its properties, during the sale it came to light the existence of LR No. 26817, deed plan No. 246214 which was issued on 26 February 2003 also purportedly owning above stated parcels of land.

Upon further investigation, it emerged that LR No. 26817 had been superimposed or overlapped on the Fund's existing titles. The Office of Directorate of Surveys after persistent follow ups vide its letter of 12th September 2013 confirmed existence of the plans and advised on Cancellation of Grant No. I.R. 91466 (LR No. 26817).

The Fund took up the matter with the person(s) who had been issued with LR. No. 26817, Messrs Karsan Ramji & Sons Limited and brought to their attention the overlap between the Fund properties and the title in their possession. Messrs Karsan Ramji & Sons Limited did on their own volition surrender the title in its possession to the Fund on the understanding that the Fund would surrender the same to the National Land Commission.

The Chairman of the National Land Commission acknowledged receipt of the Fund's Letter and the surrendered documents and directed the Director of Surveys to cancel the grant. However, despite the Chairman of the National Land Commission directive and the Fund's numerous follow ups and correspondence on the matter, the same has not been done to date making it difficult for the Fund to conclude the sale to the purchaser AMS properties.

Due to this contractual frustration, the Fund instructed its lawyers to cancel the sale. The Fund's lawyers had written to the purchaser's lawyer initiating the cancellation and refund of the deposit received.

Committee Observations

The Ministry of land had taken inordinately long time to council the fake title deeds. In the circumstances, the National Land Commission should provide information on the ownership status of the impugned pieces of land and why it has taken too long to correct the problem

Committee resolutions

The NSSF should provide the Committee with the following documentation on the impugned land including:

1. The sale agreement;
2. Details of the people that sold the land to NSSF;
3. The directors of AMS properties;
4. The directors of Messrs Karsan Ramji & Sons Limited;
5. Correspondences between the Fund and NLC regarding cancellation of the fake title;

MIN/PIC/153/2018: ADJOURNMENT

The meeting was adjourned at 4:33 p.m. Next meeting will be held on 17th May 2018 at 10:00 a.m.

Signed.....

Date.....23/05/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 30TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 17TH MAY 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 3:10 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. John Muchiri Nyaga, M.P
5. The Hon. Paul Kahindi Katana, MP
6. The Hon. Rashid Kassim Amin, MP
7. The Hon. Mohamed Hire Garane, M.P.

ABSENT WITH APOLOGY

1. The Hon. Raphael Bitta Sauti Wanjala, MP
2. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
3. The Hon. Ahmed Kolosh Mohamed, MP
4. The Hon. Gideon Mutemi Mulyungi, MP
5. The Hon. Mary Wamaua Waithira Njoroge, MP
6. The Hon. Nicholas Scott Tindi Mwale, MP
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. Babu Owino Paul Ongili, MP
9. The Hon. Joash Nyamache Nyamoko, MP
10. The Hon. Purity Wangui Ngirici, MP
11. The Hon. Omar Mohamed Maalim Hassan, MP
12. The Hon. James Kamau Githua Wamacukuru, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Clerk Assistant I
2. Mr. Mohamed Boru	-	Clerk Assistant III
3. Mr. Charles Atamba	-	Research Officer
4. Mr. Thomas Ogwel	-	Fiscal Analyst
5. Ms. Noel Chelagat	-	Media Relations Officer
6. Ms. Christine MAeri	-	Audio Recording Officer

IN ATTENDANCE

1. Mr. Joshiah Oyuko	-	Manager, Audit
2. Mr. Isaac Ngayai	-	Manager, Audit
3. Ms. Anne Wachira	-	Manager, Audit
4. Mr. James Sitieney	-	Inspector, Inspectorate of State Corporations

MIN/PIC/160/2018: PRELIMINARIES

The Chairperson called the meeting to order at ten minute past three O'clock

followed by a word of prayer from Hon. Rashid Kassim.

MIN/PIC/161/2018: EVIDENCE BY KENYA NATIONAL SOCIAL SECURITY FUND (NSSF)

Mr. Anthony Omerikwa, the Ag. Managing Trustee of the National Social Security Fund accompanied by Mr. Moses Cheseto (Ag. General Manager, Finance and Investment), Ms. Nancy Mwangi (Ag. General Manager, Social Security), Mr. Evans Moturi (Ag. General Manager, Finance); Mr. Austin Ouko (Ag. Company Secretary) and Mr. Peter Muiruri (Manager, Procurement) 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 2012/13 to 2015/2016.

1) **Irregular disposal of undeveloped land -Mavoko**

This matter was revisited with the NSSF tabling purchase documents that the Committee had requested. The Committee noted that the matter had taken inordinately long to conclude i.e seven years (since 2011).

2) **Hazina Plaza Mombasa Lease - LR. NO.MSA/BLK XX/328 & 329 (Paragraph 4.4)**

The Committee heard that Hazina Plaza formally known as Polana Hotel was located at the Heart of Mombasa Island and was purchased by the Fund at a cost of Kshs.450 Million from M/s Cannon Investments Ltd in 1994. However, the sale agreement and details of the actual payments were not provided for audit review. The Plaza was built on land measuring ninety thousand square feet (90,000). On it stood a nine storey building with a plinth area of approximately 115,589 sq ft.

The plaza was leased to M/s Azania Hotels Ltd on 1 November 1994 and operated as a four star hotel at an annual rent of Kshs.60 Million. The hotel has however reportedly remained partially closed since 2001 due to failure by the then tenant to meet rent obligations. Correspondences availed indicated that the building was later advertised for sale on 3 September 2009 at a reserved price of Kshs.300 million. However the bids received were below the reserve price.

On 25 May 2010, during the 11 meeting of the Operations and Investment Committee of the Board, it was agreed that the premises be leased to M/s Techno Holdings Ltd at a monthly rent of Kshs.2.25 million or 27 million annually net of all taxes with an escalation cost of 10% after every two (2) years.

According to the lease agreement entered between the Fund and M/s Techno Holdings Ltd, the lessee was to pay a total of Kshs.164,837,000 to the fund for the hire of the building as a hotel for a period of ten (10) years from 1 August 2010 to 30 July 2020.

Although the building was handed over to M/s Techno Holdings Ltd on 29 April 2014, later on 27 January, 2016 during the 169th Board of Trustees meeting, the firm was granted a two year grace period commencing 2 May, 2014 when they formerly got vacant possession. Rent payment was therefore effective from 1 May 2016 which was

also extended by a further six (6) months to 31 December 2016 by the Board of Trustees to allegedly enable the firm complete the undocumented buildings repairs. Further, the lease did not engage any contract variations in terms of grace period or cost of repairs.

Audit inspection at the site carried out in September, 2016 confirmed that the building had rent due of Kshs.323,585,144 between 1 November 1994 and 30 October 2014 and only Kshs.66,500,000 had been paid leaving a balance of Kshs.239,500,000 outstanding. No reasons have been provided for the failure to demand and collect the outstanding rent of Kshs.239,500,000

In view of the forgoing, the fund had not realised value for money from the investment of Kshs.450 million in Hazina Plaza Mombasa since 1994 nor had prudent financial management been exercised in the contract.

Management Response

Background

Hazina Plaza formerly Polana Hotel was a 13 storey commercial building situated along Muungano Street at the Junction of Msanifu Kombo and Haille Selasie Avenue in Mombasa Island. The above property was purchased by the Board of Trustees in 1992 at Kes 450,000,000. The hotel had been earlier leased to M/S Azania Hotels which was closed down on account of distress to recover accumulated rent arrears. Before closure, it operated a four star hotel comprising of 122 rooms, 3 conference rooms amongst other facilities. Azania was distressed and Kshs. 66 million recovered. The Fund sued the directors of Azania Ltd for recovery of the outstanding balance of Kshs. 239 million. The case was still pending in court.

Lease to M/s techno holdings/grace period

State of repairs and maintenance

The property continued to depreciate in value owing to long spells of vacancy and disuse. The defunct Municipal Council of Mombasa previously raised adverse notices declaring the building unfit for human habitation and compelling the Fund to renovate. We also note that the property continued to receive negative press coverage owing to its state of disrepair.

The Board approved lease of the above premises to M/S Techno Holdings for a period of 10 years. The commencement date for lease was from 1st August 2010 at annual rent of Kshs. 27,000,000 and an escalation clause of 10 % after every 2 years. The lease was registered against the ground titles. The tenant was granted a grace period of 2 years to carry out renovations. Further, clause 5(g) of the lease give M/S Techno Holdings a first priority in case the property was put on sale during their lease period in line with the Board decision dated 13th July 2010 .The rent as per clause 3(1) was

waived for the sole purpose of enabling the lessee to carry out the renovations at own cost. The tenant made deposit rent payment as per lease.

Lease frustration by ground floor tenants

M/S Techno Holdings Ltd intention to take physical possession of the property to carry out the intended renovations were frustrated by the ground floor tenants who went ahead and filed case Nos. 258 and 273 before the rent tribunal on account of controlled tenancy who were finally evicted. The renovations works and work programs have been availed. The Fund distressed M/s Techno Holdings Ltd on 4th October, 2017, the matter was taken to court and ruled in favour of the Fund.

Committee Observations

1. The Fund did not involve the State Department of Public Works when agreeing that the M/s Techno Holdings Ltd could do renovations. The scope of renovations was not documented and agreed anywhere thus opening a loophole for the tenant to arm-twist the Fund on the cost of renovations.
2. The drafting of the lease agreement with M/s Techno Holdings Ltd was poorly done thus exposing the Fund from loss of money i.e two and half year rent free.
3. The lease that was provided by the management lacked some pages.

Committee resolutions

The Committee will invite the people that signed the lease agreement at an opportune time to apprise the committee on the circumstances through which they approved such a document

3) Milimani Plots - Kisumu (Paragraph 4.5)

The Committee heard that the financial statements for the year ended 30 June 2016 reflected Kshs.19,908,756,000 as the total value of developed land under statement of net assets available for benefits. Included in this figure was Kshs.178,000,000 being value for LR.KISUMU/MUN/8/258 in Milimani Estate, Kisumu County. The land originally belonged to the Municipal Council of Kisumu and was on 26 November 2012 swapped to offset a debt of Kshs.150 million owed to the Fund.

The land was situated in Milimani estate in Kisumu Municipality and measured 0.7740 Ha. in size. Within the land was a flat comprising of eight two bedroom apartments and three separate maissonettes of three bedrooms each with a servant quarter.

Audit inspection of the NSSF plots carried out in September 2016 revealed that the houses were fully occupied by NSSF staff and information obtained indicated that only Kshs.66,000 was being received as rental income from the houses but no documents were provided to support this figure. Despite lack of rental income from these houses over the years, the fund continued to provide security and other services.

No explanation had been given for the failure to review the rent payable since taking over the property. Consequently, value for money had not been realised since the year 2012 from the investment worth Kshs.178,000,000.

Management response

Management informed the Committee that Kisumu Municipal Council owed NSSF contribution arrears. The Fund took Kisumu Municipal Council to Court for recovery of outstanding contributions. The matter was settled out of court and consent registered in court. Consequently the Board of Trustees approved a swap deal to offset the outstanding amount of Kshs. 150 million. The land that originally belonged to Municipal Council of Kisumu, was on 26 November 2012 swapped to offset a debt of contribution arrears of Kshs.150 million owed to the Fund by Kisumu Municipal Council. The main objective of the swap was to acquire the land for investment development.

The Fund was the registered owner of the property. Due to the threat of invasion by alleged former council workers, the Fund reinforced security by hiring security officers and also allowed staff members to reside in the old houses to safeguard the houses from encroachment until the property was ready for development. So far, the security situation had improved and the number of security officers had been reduced drastically. However, the members of staff acting as caretakers of the land and houses were still residing in the houses but paying rent.

So far Kshs. 199,500.00 had been received as rent income and continued to be recovered from the payroll on monthly basis. The Fund did not envisage any long-term leases to warrant escalation of rent as the property was earmarked for redevelopment. The Fund had commissioned a feasibility study to guide development for the property. As at 30th June 2017, the property was valued at Kshs. 190 million.

MIN/PIC/162/2018: ADJOURNMENT

The meeting was adjourned at 4:20 p.m. Next meeting will be held on 22nd May 2018 at 10:00 a.m.

Signed.....

Date.....23/05/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 32ND SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 22ND MAY 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 3:10 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. Paul Kahindi Katana, MP
5. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
6. The Hon. Gideon Mutemi Mulyungi, MP
7. The Hon. Thuku Zachary Kwenya, M.P

ABSENT WITH APOLOGY

1. The Hon. Raphael Bitta Sauti Wanjala, MP
2. The Hon. John Muchiri Nyaga, M.P
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. Mohamed Hire Garane, M.P.
5. The Hon. Ahmed Kolosh Mohamed, MP
6. The Hon. Mary Wamaua Waithira Njoroge, MP
7. The Hon. Nicholas Scott Tindi Mwale, MP
8. The Hon. Babu Owino Paul Ongili, MP
9. The Hon. Joash Nyamache Nyamoko, MP
10. The Hon. Purity Wangui Ngirici, MP
11. The Hon. Omar Mohamed Maalim Hassan, MP
12. The Hon. James Kamau Githua Wamacukuru, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Clerk Assistant I
2. Mr. Mohamed Boru	-	Clerk Assistant III
3. Mr. Charles Atamba	-	Research Officer
4. Mr. Thomas Ogwel	-	Fiscal Analyst
5. Ms. Noel Chelagat	-	Media Relations Officer
6. Ms. Winfred Atieno	-	Audio Recording Officer

IN ATTENDANCE

1. Mr. Joshiah Oyuko	-	Manager, Audit
2. Mr. Isaac Ngayai	-	Manager, Audit
3. Ms. Anne Wachira	-	Manager, Audit

MIN/PIC/168/2018: PRELIMINARIES

The Chairperson called the meeting to order at ten minute past three O'clock followed by a word of prayer from The Hon. Gideon Mulyungi, MP.

MIN/PIC/169/2018: EVIDENCE BY KENYA NATIONAL SOCIAL SECURITY FUND (NSSF)

Mr. Anthony Omerikwa, the Ag.Managing Trustee of the National Social Security Fund accompanied by Mr. Moses Cheseto (Ag. General Manager, Finance and Investment), Ms. Nancy Mwangi (Ag. General Manager, Social Security), Mr. Evans Moturi (Ag. General Manager, Finance); Mr. Evans Ombui; Mr. Austin Ouko (Ag. Crporation Secretary) and Mr. Peter Muiruri (Manager, Procurement) 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 2012/13 to 2015/2016.

MIN/PIC/170/2018: MILIMANI PLOTS - KISUMU

The financial statements for the year ended 30th June, 2016 reflects Kshs.19,908,756,000 as the total value of developed land under statement of net assets available for benefits. Included in this figure is Kshs.178,000,000 being value for LR.KISUMU/MUN/8/258 in Milimani Estate, Kisumu County. The land originally belonged to the Municipal Council of Kisumu and was on 26 November 2012 swapped to offset a debt of Kshs.150 million owed to the Fund.

The land is situated in Milimani estate in Kisumu Municipality and measures 0.7740 Ha. in size. Within the land is a flat comprising of eight two bedroom apartments and three separate maissonettes of three bedrooms each with a servant quarter.

Audit inspection of the NSSF plots carried out in September 2016 revealed, that the houses were fully occupied by NSSF staff and information obtained indicated that only Kshs.66,000 was being received as rental income from the houses but no documents were provided to support this figure. Despite lack of rental income from these houses over the years, the fund continues to provide security and other services.

No explanation has been given for the failure to review the rent payable since taking over the property. Consequently, value for money has not been realised since the year 2012 from the investment worth Kshs.178,000,000.

Management Response

Kisumu municipal council owed NSSF contribution arrears. The Fund took Kisumu municipal council to court for recovery of outstanding contributions. The matter was settled out of court and a consent registered in court. Consequently during the Board of Trustees approved a swap deal to offset the outstanding amount of Kshs. 150 million. The land that originally belonged to Municipal Council of Kisumu, was on 26 November 2012 swapped to offset a debt of contribution arrears of Kshs.150 million owed to the Fund by Kisumu Municipal Council. The main objective of the swap was to acquire the land for investment development.

The Fund is the registered owner of the property. Due to the threat of invasion by alleged former council workers, the Fund reinforced security by hiring security officers and also allowed staff members to reside in the old houses to safeguard the

houses from encroachment until the property is ready for development. So far, the security situation has improved and the number of security officers has been reduced drastically. However, the members of staff acting as caretakers of the land and houses are still residing in the houses but paying rent. So far Kshs. 199,500.00 has been received as rent income and continues to be recovered from the payroll on monthly basis. The Fund does not envisage any long term leases to warrant escalation of rent as the property is earmarked for redevelopment.

Committee Observations

1. The land is to be developed and security has been enhanced
2. The audit query has been resolved.

MIN/PIC/171/2018: OTHER MATTER - BUDGET CONTROL AND PERFORMANCE FY 2015/16

3.6.1.1 Income

The Fund had budgeted to collect income totalling Kshs.44,086,349,000 during the year ended 30 June 2016 as follows:

Item	Budget Kshs. '000'	Actual Kshs. '000'	Excess/(Shortfall) Kshs. '000'	Excess/ (Shortfall)%
Contribution Receivable	23,317,132	12,874,685	(10,442,447)	(45%)
Benefits Payable	(3,407,504)	(3,121,006)	286,498	8%
Investment Income	13,125,035	13,048,067	(76,968)	(0%)
Realised gain on sale of Investment	651,913	(18,038)	(669,951)	(102%)
Unrealised gain on sale of investment	10,750,273	(11,785,920)	(22,536,193)	(210%)
Investment management expenses	(358,000)	(279,468)	78,532	22%
Other Income	37,500	63,233	25,733	69%
Total	**44,086,349**	**10,781,553**	**(33,334,796)**	**(76%)**

However, the actual income realized amounted to Kshs.10,781,553,000 resulting to under collection of Kshs.33,334,796,000 or 76%. The shortfall was mainly attributed to decline in net return on investment from the budgeted Kshs.10,750,273,000 to a negative of Kshs.11,785,920,000 or Kshs.22,536,193,000 (210%) shortfall occasioned by poor performance of equities at the Nairobi Stock Exchange and non-implementation of the NSSF Act, No. 45 of 2013 which had introduced new

contribution rates by between 12% and 180% leading to a shortfall of Kshs.10,442,447,000 or 45%. The non-implementation of the Act was due filing of court cases objecting to the increases.

The fund further realized a shortfall of Kshs.669,951,000 in sale of investment instead of the budgeted Kshs.651,913,000 thus performed negatively by Kshs.18,038,000 also attributed mainly to the poor performance at the Nairobi stock exchange.

Management Response

The major variance in income was caused by the shortfall in member contribution received of Kshs. 12,874,685,000 as compared with budget of Kshs. 23,317,132,000. The basis for budget was full implementation of the strategic plan which was anchored on the NSSF Act 2013. Cases filed in court have hampered full implementation of the Act. However, contribution has been on the upward trend as indicated below:

Year	*2012/2013*	*2013/2014*	*2014/2015*	*2015/2016*
Amount in Billions	*7.8*	*8.4*	*11.7*	*12.9*

The other major cause of variance was the fair gain on revaluation of investments which declined from a budget of Kshs. 10,750,237,000 to a negative of Kshs. 11,785,920,000. The decline in market value is affected by market dynamics in the operating environment especially the Nairobi Securities Exchange. The Fund's investments are valued at market value in compliance with International Accounting Standards (IAS) 40 and International Financial Reporting Standard (IFRS) 13.

The change in market dynamics were beyond management control. However, there was no actual loss despite the fluctuating market values. Investments have been diversified to facilitate efficient investment portfolios which cannot be adversely be affected by changes in market dynamics (Appendix 10.2).

Committee Observations

1. There was a lack of clarity on the Fund's investment portfolio hence the 76% shortfall in income collected.
2. The Fund's investment portfolio at the Nairobi Stock Exchange stands at 31%.

4.6.1.2 Expenditure

The actual expenditure for the year amounted to Kshs.5,509,264,000 against the approved budget of Kshs.8,251,255,000 thus resulting to an under expenditure of Kshs.2,741,991,000 or 33% as follows:

Item	Budget Kshs.'000'	Actual Kshs.'000'	(Over)/Under Kshs.'000'	(Over)/Under %
Staff Costs	3,352,545	3,420,644	(68,099)	(2%)
General Administrative Costs	1,498,710	1,647,568	(148,858)	(10%)

Provisions	3,400,000	441,052	2,958,948	87%
Total	**8,251,255**	**5,509,264**	**2,741,991**	**33%**

The under expenditure of Kshs.2,741,991,000 was largely attributed to provision of unrecoverable assets where Kshs.3,400,000,000 was budgeted for against actual provisioning of Kshs.441,052,000 resulting to overprovision by 2,958,948,000 or 87%. The actual provision was attributed to less claims by contractors than expected with regard to stalled projects.

An over expenditure of Kshs.148,858,000 or 10% also occurred under general administrative costs of which Kshs.1,498,710,000 was budgeted but actual expenditure amounted to Kshs.1,647,568,000. No explanation has been provided for the over expenditure of Kshs.148,858,000 as required.

Management Response

The under expenditure of Kes.2,741,991,000.00 was due to a provision of Kes2.5 billion budgeted for staff rationalisation, Kshs.400 million for the NSSF Act 2013 implementation activities and Kshs. 250 million for contingent liabilities arising from pending court cases which did not crystallise during the year.

Committee Observations

1. The Fund should provide further information on the over expenditure of the Kshs. 148 Million.
2. The moratorium by Cabinet Secretary curtailed expenditure.

MIN/PIC/172/2018: UNRESOLVED PRIOR YEAR'S ISSUES FY 2015/16

1) Hazina Plaza Mombasa Lease - LR. NO.MSA/BLK XX/328 & 329

Hazina Plaza formally known as Polana Hotel was located at the Heart of Mombasa Island and was purchased by the Fund at a cost of Kshs.450 Million from M/s Cannon Investments Ltd in 1994. However, the sale agreement and details of the actual payments were not provided for audit review. The Plaza was built on land measuring ninety thousand square feet (90,000). On it stood a nine storey building with a plinth area of approximately 115,589 sq ft.

The plaza was leased to M/s Azania Hotels Ltd on 1 November 1994 and operated as a four star hotel at an annual rent of Kshs.60 Million. The hotel has however reportedly remained partially closed since 2001 due to failure by the then tenant to meet rent obligations. Correspondences availed indicated that the building was later advertised for sale on 3 September 2009 at a reserved price of Kshs.300 million. However the bids received were below the reserve price.

On 25 May 2010, during the 11 meeting of the Operations and Investment Committee of the Board, it was agreed that the premises be leased to M/s Techno Holdings Ltd at a monthly rent of Kshs.2.25 million or 27 million annually net of all taxes with an escalation cost of 10% after every two (2) years.

According to the lease agreement entered between the Fund and M/s Techno Holdings Ltd, the lessee was to pay a total of Kshs.164,837,000 to the fund for the hire of the building as a hotel for a period of ten (10) years from 1 August 2010 to 30 July 2020.

Although the building was handed over to M/s Techno Holdings Ltd on 29 April 2014, later on 27 January, 2016 during the 169th Board of Trustees meeting, the firm was granted a two year grace period commencing 2 May, 2014 when they formerly got vacant possession. Rent payment was therefore effective from 1 May 2016 which was also extended by a further six (6) months to 31 December 2016 by the Board of Trustees to allegedly enable the firm complete the undocumented buildings repairs. Further, the lease did not engage any contract variations in terms of grace period or cost of repairs.

Audit inspection at the site carried out in September, 2016 confirmed that the building had rent due of Kshs.323,585,144 between 1 November 1994 and 30 October 2014 and only Kshs.66,500,000 had been paid leaving a balance of Kshs.239,500,000 outstanding. No reasons have been provided for the failure to demand and collect the outstanding rent of Kshs.239,500,000

In view of the forgoing, the fund had not realised value for money from the investment of Kshs.450 million in Hazina Plaza Mombasa since 1994 nor had prudent financial management been exercised in the contract.

Management Response

Background

Hazina Plaza formerly Polana Hotel was a 13 storey commercial building situated along Muungano Street at the Junction of Msanifu Kombo and Haille Selasie Avenue in Mombasa Island. The above property was purchased by the Board of Trustees in 1992 at Kes 450,000,000. The hotel had been earlier leased to M/S Azania Hotels which was closed down on account of distress to recover accumulated rent arrears. Before closure, it operated a four star hotel comprising of 122 rooms, 3 conference rooms amongst other facilities. Azania was distressed and Kshs. 66 million recovered. The Fund sued the directors of Azania Ltd for recovery of the outstanding balance of Kshs. 239 million. The case was still pending in court.

Lease to M/s techno holdings/grace period

State of repairs and maintenance

The property continued to depreciate in value owing to long spells of vacancy and disuse. The defunct Municipal Council of Mombasa previously raised adverse notices

declaring the building unfit for human habitation and compelling the Fund to renovate. We also note that the property continued to receive negative press coverage owing to its state of disrepair.

The Board approved lease of the above premises to M/S Techno Holdings for a period of 10 years. The commencement date for lease was from 1st August 2010 at annual rent of Kshs. 27,000,000 and an escalation clause of 10 % after every 2 years. The lease was registered against the ground titles. The tenant was granted a grace period of 2 years to carry out renovations. Further, clause 5(g) of the lease give M/S Techno Holdings a first priority in case the property was put on sale during their lease period in line with the Board decision dated 13th July 2010 .The rent as per clause 3(1) was waived for the sole purpose of enabling the lessee to carry out the renovations at own cost. The tenant made deposit rent payment as per lease.

Lease frustration by ground floor tenants

M/S Techno Holdings Ltd intention to take physical possession of the property to carry out the intended renovations were frustrated by the ground floor tenants who went ahead and filed case Nos. 258 and 273 before the rent tribunal on account of controlled tenancy who were finally evicted. The renovations works and work programs have been availed. The Fund distressed M/s Techno Holdings Ltd on 4th October, 2017, the matter was taken to court and ruled in favour of the Fund.

Committee Observations

1. The matter is currently being heard in the Court of Appeal and judgement is expeted on 11th July, 2018.

MIN/PIC/173/2018: ANY OTHER BUSINESS

No other business arose

MIN/PIC/174/2018: ADJOURNMENT

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

Signed..... Date.....7th June 2018.

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 34TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 23RD MAY 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 2:30 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. John Muchiri Nyaga, M.P
5. The Hon. Paul Kahindi Katana, MP
6. The Hon. James Kamau Githua Wamacukuru, M.P
7. The Hon. Omar Mohamed Maalim Hassan, MP
8. The Hon. Ahmed Kolosh Mohamed, MP
9. The Hon. Thuku Zachary Kwenya, M.P
10. The Hon. Babu Owino Paul Ongili, MP

ABSENT WITH APOLOGY

1. The Hon. Raphael Bitta Sauti Wanjala, MP
2. The Hon. Joash Nyamache Nyamoko, MP
3. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
4. The Hon. Gideon Mutemi Mulyungi, MP
5. The Hon. Mary Wamaua Waithira Njoroge, MP
6. The Hon. Mohamed Hire Garane, M.P.
7. The Hon. Nicholas Scott Tindi Mwale, MP
8. The Hon. Rashid Kassim Amin, MP
9. The Hon. Purity Wangui Ngirici, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Clerk Assistant I
2. Mr. Mohamed Boru	-	Clerk Assistant III
3. Mr. Charles Atamba	-	Research Officer
4. Mr. Thomas Ogwel	-	Fiscal Analyst
5. Ms. Noel Chelagat	-	Media Relations Officer
6. Ms. Christine Maeri	-	Audio Recording Officer

IN ATTENDANCE

1. Mr. Joshiah Oyuko	-	Manager, Audit
2. Ms. Jane Kariuki	-	Manager, Audit
3. Ms. Irene Kaunda	-	Manager, Audit
4. Mr. Osman Mohamed	-	Inspector, Inspectorate of State Corporations
5. Ms. Beatrice Manyongo	-	Ministry of Planning

MIN/PIC/179/2018: PRELIMINARIES

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

MIN/PIC/180/2018: EVIDENCE BY NATIONAL COUNCIL FOR POPULATION DEVELOPMENT (NCPD)

Dr. Josephine Kibaru Mbae, the Director General of the National Council for Population Development accompanied by Mr. Peter Arisi Nyakwara (Director, Technical Services) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of NCPD for the Financial Year 2014/15 to FY 2015/2016.

MIN/PIC/181/2018: PROPERTY, PLANT AND EQUIPMENT - FY 2014/15 & FY 2015/16

The Committee heard that as previously reported, the property, plant and equipment balance of Ksh. 52,758,781 as at 30 June, 2016 still excluded undetermined values of land situated at Upper Hill Nairobi, Murang'a and Kisii counties without ownership documents. In consequence of the exclusion, the property, plant and equipment balance was not fairly stated.

The Committee further heard that the information available indicated that land in Upper Hill Nairobi (LR No. 209/13332-Plan No. 93637/11/724) measuring 0.63 hectares which had been reserved to the Council in 1989 to construct its offices was subsequently allocated to a private developer. Although the Council attempted to take possession of the property on 12 November 2016 following the Public Investment Committee recommendation, this did not however materialize. Additional information indicated that the National Lands Commission made a ruling on 8 March 2016 granting the land to the private developer without making reference to the Council. According to the ruling, the Commission determined that allocation of the land to the private developer was irregular but ordered the title to be re-issued in the name of developer on grounds of public interest since the land had already been charged with a collapsed bank and the depositors in the bank needed not lose out. Further, although the National Land Commission indicated in the ruling that it could assist the National Council for Population and Development to acquire alternative land, this has not been done to date.

Management Response

This brief is intended to provide a summary of actions relating to the allocation and subsequent re-allocation of the plot previously allocated to NCPD. The Ndung'u Commission Report recommended that the land reverts back to NCPD will be upheld and realized. The plot is located in a very prime area and is big enough to accommodate the needs of NCPD.

NCPD was established in 1982 under the then Office of the Vice President and Ministry of Home Affairs, Due to strong government commitment to the population programme, many development partners offered to support various activities. The World Bank, one of the partners, agreed to finance construction of the Headquarter Building for NCPD and the Ministry sought land for the purpose from the Ministry of Lands. NORAD was to finance construction of District Population Offices.

The Commissioner of Lands, vide his letter Ref. No. 93637/11/74 of 22nd June, 1989, confirmed to the Ministry of Home Affairs that he had reserved land Plan No. 93637/11/724 measuring 0.63 hectares for NCPD HQ building. The plot is located next to prisons Headquarters along Ngong Road, Nairobi. (Copy of Letter of Reservation and Part Development Plan provided as **Attachment 1**).

As soon as land was identified, the process of construction commenced, starting with design works, drawings and other preparatory activities. Subsequently, pre-qualification of contractors was carried out through International Competitive Bidding and nineteen contractors were shortlisted. The process was put on hold in 1992 as it was about to go to tender and suspended in 1993, at the request of the then Head of Public Service, in order to allocate the funds towards urgent drug procurements for Ministry of Health. (By this time, Government was experiencing difficulty meeting some of the World Bank conditionality's, and NORAD had since exited Kenya acrimoniously).

In October, 1996 the land was registered as LR. No. 209/13332 and title issued in the name of Rosestar Properties Limited private developer who used it as security for a loan from Trust Bank. Since then, NCPD and the parent Ministry have pursued return of the land, initially with the Public Accounts Committee, and with Ministry of Lands. NCPD (NCAPD) through the parent Ministry made written submission to the Commission of Inquiry into Illegal/Irregular Allocation of Public Land. The Report of the Commission of Inquiry (**Annex 47** on page 685) dated June 2004 recommended that re-allocation to the Private Developer done in 1996 be revoked and the land revert to NCPD in the Ministry of Planning and National Development. (Extract from the Report of Commission of Inquiry dated June 2004 is provided as **Attachment 2**).

Since the landmark verdict by the Commission of Inquiry, there has been a number of correspondences from the Permanent Secretary Ministry of Planning as well as from the Chief Executive Officer (NCAPD now NCPD) to the Commissioner of Lands and the Permanent Secretary Ministry of Lands requesting that the said piece of land be given back to NCPD as recommended by the Commission. In his letter of 5th June 2005, the Permanent Secretary Ministry of Planning reminded the Commissioner of Lands of their earlier assurance that the matter was to await the outcome of the Commission. No response has been received to-date.

There are several correspondences on the piece of land and one of them is the letter from NCAPD to Permanent Secretary Ministry of Lands dated 13th July 2010 pleading

with the PS to intervene on our behalf to have the plot revert back to NCAPD. This arose from a story in the Standard Newspaper of 12th February 2010, where the Minister for Lands and the Minister for Immigration were reported discussing the matter of repossession of plot No. LR 209/13332 located in community area which we noted was the same plot NCAPD is pursuing ownership. NCAPD Board of Directors' during its meeting on 27th January 2010 deliberated on the matter and asked Management to bring it to the attention of the Hon. Minister of State for Planning, National Development & Vision 2030 so that Hon. Minister can take it up with the Minister of Lands.

In the year 2010, the title to Rosseter was revoked and a new title issued under the PS Treasury. However it was brought to the Council's attention that the recommendation the Ndungu report was partially implemented and though the title reverted back to government, it was irregularly allocated to the Ministry of Immigration

A petition was tabled in parliament on Thursday 13th September 2012 on Irregular allocation of land and the then Minister for Land Hon. James Orengo informed members that the interests of NCPD had been taken care of.

A letter Ref. MPD/1/4/5 from PS Devolution & Planning to PS National Treasury requesting NCPD to be facilitated to access the plot for development purposes. On 14th January 2014, an advertisement appeared in the Daily Nation Newspaper under Public Notice. NCPD Board together with management attended and made both verbal and written submissions to the commissioners. Another advertisement appeared on the local dialies on 14th August 2014 under public Notice on matters that were partially heard. NCPD management once again appeared and presented both oral and written submissions

NCPD management wrote to the Chairman of the National Land commission on 24th October 2014 requesting for a feedback on the outcome of the Public hearings. The National treasury was also enjoined as an interested party and requested to appear as an interested party on 25th November, 2015. The information was received late and they wrote to the NLC on 29th January, 2015 informing them that they were only a custodian of government property and that the property belongs to NCPD.

NCPD was summoned by the Public Investment Committee in 2016 and the following were the recommendations:

- Get into contact with the registrar of companies for the names of Directors of Rosestar;

- Fence the Land;

The names were provided to PIC and NCPD went ahead to take possession by fencing on 12th November 2016. In March 2016, the Land Commission without reference to NCPD made a ruling granting the land to the Private Developer indicating that,

although the allocation was irregular, the Developer had taken a loan with a bank and the property had been charged. He cited that this was done on public interest as the depositors interests had to considered The Commissioner in the same ruling indicated that NCPD would be assisted with alternative land. Though the Council has made follow ups with the Commission, the alternative land has not been provided.

Committee Observations

The Committee made the following observations:

1. The Council had made attempts to recover the land but the National Land Commission had ruled against their claim. The Commission claimed that the Developer had taken a loan with a bank and the property had been charged hence there was a need to protect public interest.
2. The National Land Commission seemingly regularized an illegality when ruling in favor of the private developer as the latter had acquired the land through fraudulent means. The Report of the Commission of Inquiry (Ndungu Report) as well as the 19th Report of the Public Investment all recognized the Council as the rightful owner of the land. The claim of public interest cited by the Commission does not supersede the law.
3. The National Land Commission did not provide the alternative land to the Council as they undertook during the ruling in favour of the private developer.

Committee Resolutions

1. The National Land Commission should appear before the Committee to respond to the matter.

KISII LAND

The NCPD land in Kisii County is located within the Kisii Sub County Government offices, next to the Deputy County Commissioner's office. The plot is approximately 0.07Ha was reserved for the NCPD (formerly NCAPD) in 1990 and a Part Development Plan was prepared by the then District Physical Planning Officer. In 2007, the District Physical Planning Officer carried out a re-planning of the land and a Part Development Plan was prepared. The necessary steps were undertaken as required by the Physical Planning Act Cap 286.

However, this Part Development Plan is yet to be approved by the Director of Physical Planning. NCPD is currently following up on the same with the Director for Physical Planning at the Ministry of Land, Housing and Urban Development.

Committee Observations

The Committee made the following observations:

1. The Council had failed to ensure registration of the land since it was allocated to them 28 years ago.

2. The Council does not have a Company Secretary.

Committee Resolutions

1. The Council should expedite on the process of acquiring the title by starting the process at the County level.
2. The Council should report on the progress of acquiring the title in two weeks' time.

MURANGA LAND

The NCPD land in Muranga is located in Murang'a town near the County Headquarters offices. The land measures 0.10 Ha and was allocated to NCPD vide the Commissioner of Land's letter Ref. 209163/A/V/24 dated 10th June 2011.

NCPD accepted the allotment and paid the required fee of Kshs. 6,872/= (six thousand eight hundred and seventy two) on 3rd May 2012. NCPD has intensified its efforts to have the Land registered under its name and currently a surveyor, (Africa Spatial Information Centre) has been contracted to undertake the survey work of the land and processing of title deed.

Committee Observations

The Committee made the following observations:

1. The Council is currently awaiting a title from the National Lands Commission.

MIN/PIC/182/2018: CHANGE OF OWNERSHIP OF NCPD VEHICLES- GK T925 AND GK U206 (NISSAN PATROL) - FY 2014/15 & FY 2015/16

Further, ownership of a motor vehicle GK T925 whose original cost is unknown cannot be verified as the vehicle was registered in the name of Ministry of Planning as of 30 June, 2016. As a result, it has not been possible to confirm whether the Council's motor vehicles with the net book value of Kshs. 33, 179 762 as disclosed in Note 7 to the financial statements are fairly stated.

Management Response

The above mentioned Nissan Patrol vehicles were donated by JICA to the National Council for Population and Development (NCPD). At the time, NCPD was a department in the then Ministry of Home Affairs. With the restructuring of Government, NCPD was later moved to the Ministry of Planning, National Development and Vision 2030.The original logbooks of the vehicles continued to indicate ownership of the vehicles as the Ministry of Home Affairs.

With the establishment of NCPD as a semi-autonomous Government Agency, it was required that the ownership of the vehicles as indicated in the logbooks be changed to reflect ownership as NCPD and subsequently acquisition of the blue registration

number plates. The process entailed changing ownership from Ministry of Home Affairs to the Ministry of Devolution and planning and finally to NCPD.

So far, the Council has managed to process the change of ownership from the Ministry of Home Affairs to the Ministry of Devolution and Planning and obtained new logbooks for the vehicles indicating the ownership as the Ministry of Devolution and Planning.

The Council is currently in the process of processing transfer of ownership from the Ministry of Devolution and Planning to NCPD. The following steps have been undertaken towards this as required by the Registrar of Motor vehicles.

- Obtained a letter from the Principal Secretary, Ministry of Devolution and Planning confirming the ownership of the vehicles and authorizing the change of ownership.
- Obtained and filled the necessary forms from the Kenya Revenue Authority and attached the necessary documents.
- Undertaken a verification process (Tape lift) at the Criminal Investigations Department and obtained a report for the same.
- Procured a KRA registered clearing agent to register and process the payment of customs duty for the two vehicles as is required by KRA.
- Paid customs duty to KRA for the two vehicles.

On Going Process:

The Council through the contracted clearing agent has cleared the customs duty for the vehicles at KRA and the customs clearance documents and other necessary documents were forwarded to the Registrar of Motor Vehicles to conclude the process of change of ownership. The Log book and the Number plates were availed for GK T 206. NCPD has paid a fee of Kshs 18,808 for processing the log books and the Number Plates

Committee Resolutions

1. The Auditor was asked to follow up and confirm the status of registration for the two vehicles.

MIN/PIC/183/2018: RECIEVABLES - FY 2015/16

The Committee heard that receivables from exchange transactions balance of Kshs. 5,802,573 reflected in the financial statements as at 30th June 2016 include outstanding imprests totaling Kshs. 5,641,507. It had been noted that an officer whose personal number was 20130004 had accumulated more than 15 imprests. The officer resigned from the Council on 16th May 2016 leaving an outstanding imprest of Kshs. 3, 767, 697. Information provided revealed that the amount was obtained

fraudulently by the officer. No provision has been made in the financial statements to cover the uncertainty in recovery of the amount of Kshs. 3,767,967.

Management Response

Management informed the Committee that the matter was reported to the Criminal Investigations Department (CID) and is now in court. A provision for the debt was provide in the year 2016-2017.

Committee Observations

The Committee made the following observations:

1. The imprest holder in question was charged in court. The officer was the Director of Finance at the Council who had used forgery to acquire the amount.
2. The Officer was charged together with the Manager, Accounts as an accomplice.
3. The case is ongoing and the next hearing will be on 25th June, 2018.
4. The Council has since strengthened its Internal Audit department to avoid a recurrence of such an incident. The Council has further incorporated the use of internet banking to be able to track financial transactions in real time.

MIN/PIC/184/2018: CASH AND CASH EQUIVALENT - FY 2015/16

The Committee heard that the statement of financial position, as further disclosed in Note 13 the financial statements, reflected a cash-and-cash equivalents balance of Kshs. 30,031,686 as at 30 June 2016, which was net of overdraft balances of Kshs. 6,831,769 and Kshs. 1,854,806 in the recurrent and development accounts, respectively. In addition, the bank reconciliation statement for the development account included stale cheques of Kshs. 1,215,096. No satisfactory reason had been provided for failure to reverse the cheque in the books of account.

Management Response

The cheques were reversed and have since cleared.

Committee Observation

1. The Audit query has been resolved.

MIN/PIC/185/2018: EMPHASIS OF MATTER - FY 2015/16

The Committee heard that the statement of financial performance on page 1 which reflected an operating loss of Kshs. 21, 466,160 for year ended 30th June 2016 (2014/2015 - an operating loss of Kshs. 24,795,931). This resulted to a decline in the Council's accumulated surplus for Kshs. 27, 187,021 as at 30 June 2015 to Kshs. 5,733,922 as at 30th June 2016. This state of affairs needed to be addressed to

ensure that the Council continued with its operations as expected. The opinion was not qualified.

Management Response

Management informed the Committee that the the council's budget was enhanced in the revised estimates for the financial year 2017-2018 and in the proposed budget 2018-2019 in order to effectively carry out its mandate

Committee Observations

The Committee made the following observations:

1. The Council is underfunded.
2. The Board of NCPD is not properly constituted. The Board lacks a Chairperson since February, 2017.

MIN/PIC/186/2018: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/187/2018: ADJOURNMENT

The meeting was adjourned at 4:25 p.m. Next meeting will be held on 24th May 2018 at 10:00 a.m.

Signed..... Date.....19/06/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 35TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 24TH MAY 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 AM.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. Ahmed Kolosh Mohamed, MP
5. The Hon. Thuku Zachary Kwenya, M.P
6. The Hon. Gideon Mutemi Mulyungi, MP
7. The Hon. Paul Kahindi Katana, MP
8. The Hon. Purity Wangui Ngirici, MP
9. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
10. The Hon. James Kamau Githua Wamacukuru, M.P
11. The Hon. Omar Mohamed Maalim Hassan, MP

ABSENT WITH APOLOGY

1. The Hon. Babu Owino Paul Ongili, MP
2. The Hon. Joash Nyamache Nyamoko, MP
3. The Hon. Nicholas Scott Tindi Mwale, MP
4. The Hon. John Muchiri Nyaga, M.P
5. The Hon. Raphael Bitta Sauti Wanjala, MP
6. The Hon. Rashid Kassim Amin, MP
7. The Hon. Mary Wamaua Waithira Njoroge, MP
8. The Hon. Mohamed Hire Garane, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Clerk Assistant I
2. Mr. Mohamed Boru	-	Clerk Assistant III
3. Ms. Mugure Gituto	-	Legal Counsel
4. Mr. Thomas Ogwell	-	Fiscal Analyst
5. Ms. Noelle Chelagat	-	Media Relations Officer
6. Ms. Christine Maeri	-	Audio Recording Officer

IN ATTENDANCE

1. Mr. Daniel Ndungu	-	Ag. Deputy Director, Audit
2. Mr. Joshiah Oyuko	-	Manager, Audit
3. Mr. Geoffrey Irungu	-	Supervisor, Audit
4. Ms. Anne Wachira	-	Manager, Audit
5. Mr. James Wangombe	-	Deputy Inspector General, ISC

MIN/PIC/188/2018: PRELIMINARIES

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

MIN/PIC/189/2018: EVIDENCE BY KENYA INDUSTRIAL RESEARCH AND DEVELOPMENT INSTITUTE

Eng. Joseph K. Kamau, the Ag. Director of the Kenya Industrial Research and Development Institute, accompanied by Mr. John Bichanga (Ag. Director, Finance), Mr. Mark Sichangi (Ag. Head of Procurement), Mr. William Waweru (Deputy Director, Finance and Human Resource), Mr. Nicodemus Mutinda, (Deputy Director, Corporate Services), Ms. Florence Mumbi (Corporation Secreary), Ms. Eunice Bolo (Ag. Internal Auditor), Dr. Kenneth Chelule (Deputy Director, Research, Technology and Innivation) and Mr. Stephen Odua (Alternate Director, State Department of Industrialization) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Institute for the financial year 2012/13 to 2015/2016.

MIN/PIC/190/2018: DEVELOPMENT GRANTS FY 2012/13

The Committee heard that the Institute received capital development grants of Kshs. 646,000,000 from the Ministry of Industrialization during 2012/2013. However, out of this amount, Kshs.224,324,144 was treated as recurrent income as reflected under note 21. The Institute did not avail any authority to reallocate development grants to recurrent grants and consequently, was in breach of law.

Management Response

The Institute received Development grants amounting Kshs. 646,000,000 from the exchequer to finance both capital expenditure and research and development activities. The amount of development grants applied to the income statement of Kshs. 224,324,144 relates to costs charged to the development vote that are non-capital in nature and hence expensed.

Essentially Research, Technology and Innovation (RTI) activities relates to facilitation expenses for feasibilities studies, project preparations, supervision, pilot plants and material. These are captured in the development budget-line. However, the treatment of RTI expenses has the direct effect of lowering the net surplus since they are non-capital costs thus an equivalent amount of receipts and expenditure charged to the income statement.

Committee Observations

The Committee made the following observations:

1. There was a mismatch in the entry of the Institute's budget with regards to their recurrent and development expenditure. Re-adjustment was made on the matching principal so that the amount was utilized as development expenditure instead of recurrent expenditure.

2. The Institute did not seek approval to utilize the funds under development expenditure from the relevant authorities.
3. The audit query was still outstanding as the proper procedure was not followed in transferring the amount to development expenditure.

MIN/PIC/191/2018: FINANCIAL PERFORMANCE FY 2013/14 & FY 2014/15

The Institute recorded a loss Kshs. 101,629,256 against a loss of Kshs. 33,923,910 during the previous period which translates to a substantial decline of Kshs. 67,345,346 or about 198.52% drop in financial performance for the year ended 30 June 2014. Further, the current liabilities of Kshs. 456,784,985 exceeded the current assets of Kshs. 212,081,168 leading to a negative working capital of Kshs. 244,703,817 (2013 negative working capital of Kshs. 33,914,085). The Institute's going concern status is doubtful and its continued existence is dependent on Government and creditors support.

Current position

The Institute recorded a deficit of Kshs. 86,702,325 in 2014/2015, a surplus of Kshs. 8,581,186 in 2015/2016 and a deficit of Kshs. 121,520,785 in 2016/2017. The Institute's existence is still dependent on Government support.

Management's Response

The Institute recorded a deficit of Kshs. 101,629,256 in the year against a deficit of Kshs. 33,923,910 in the previous year. It should be noted that out of a total deficit of Kshs. 101,629,256 which is a book loss, depreciation and decrease in stock included in expenditure are non-budget items. This left a net cash deficit of Kshs. 49,137,632 being financed by creditors as shown below:

	ITEM	AMOUNT (Kshs.)
1	Depreciation expenses	47,981,340.00
2	Decrease in stock	4,150,284.00
3	General Creditor (payables)	49,137,632.00
	TOTALS	101,269,256.00

The deficit had been projected to be financed in the following year.

The current liabilities recorded was Kshs. 456,784,985 against current assets of Kshs. 212,081,168. Looking at the make-up of these obligations, it is indicative that the Institute's debt portfolio was within manageable level considering the following:

- The budgetary allocation for the financial year had been reduced during the year by Kshs. 145,275,000. Despite the reduction, there was need to sustain normal operations and in particular the continuity of on-going project activities

upon which financial commitments had been undertaken. This gave rise to an increase on payables.

- There was a substantial increase of retention money held by the institute for the on-going construction works in Nairobi and Kisumu totaling Kshs, 151,548,354.

The remaining portion from the initial amount totaling Kshs. 305,236,631 included provisions of Ksh. 1,230,000 and unused donor funds of Kshs. 16,793,764 which were not due in the short term. The unused donor funds shown as liabilities was a book classification and not part of the payables that were due. These funds would be utilized in the long term to finance intended projects as shown below:

CURRENT LIABILITIES	AMOUNT (KShs.)	DETAILS
Retention	151,548,354.00	Mandatory retention monies for on-going construction
General Creditors	283,904,237.00	Various balances due for suppliers and creditors
Payroll deductions	3,308,540.00	Balance of payroll deductions due
Unused project funds	16,793,764.00	Balance in donor funds accounts to support projects
Provision for audit fees	1,230,000.00	Provision for audit fees

The remaining portion of Kshs. 287,212,867 which was due had been projected to be settled in the following financial year upon receipt of unreleased grants from exchequer of Kshs. 178,255,000 which will cater for balance roll-over amounting to Kshs. 108,957,867.

Current status

It was anticipated that the institute will not be facing major financial constraints after the completion of construction in South B as the Institute will generate some income in form of rent.

Committee Observations

The Committee made the following observations:

1. The 19th PIC report observed the Institute's financial position and negative working capital and recommended diversification of income generating activities.
2. The construction in Kisumu is complete. The Institute is equipping the building on a year-by-year basis due to financial constraints.

3. The development of the building in South B, Nairobi is still ongoing despite the contract period lapsing in 2015. The building is 64% complete.
4. The Institute signed the contract for the building in South B having sought concurrence from the relevant authorities including the Attorney General's office.
5. The initial cost for the building was Kshs. 4.3 Billion but the figure was revised to Kshs. 4.8 Billion upon appraisal.
6. The Institute has so far made payments worth Kshs. 2.4 Billion based on certificates issued. The Institute anticipates that the project will cost an additional Kshs. 3.1 Billion to completed.
7. The Budget and Appropriation Committee and Trade and Cooperatives Committee visited the construction site with a view to allocating funds for completion of the project.
8. The contractor is demanding interest on delayed completion of the project amounting to Kshs. 50 million. The Institute has sought the intervention of the State Department of Public Works to agree on the amount due to the contractor.
9. The Institute has recruited a new Chief Executive Officer who will be reporting to office on 4th June, 2018.

Committee resolutions

The Committee made the following resolutions:

1. Management should provide a chronology on the project detailing the procurement process, breakdown on the amount spent so far, the details of the contractor and consultants.

MIN/PIC/192/2018: PROPERTY, PLANT AND EQUIPMENT - FY 2015/16

The Committee heard that the statement of financial position reflected a balance of Kshs.4,040,355,420 under property, plant and equipment as at 30th June 2016. However, the last valuation for these assets was conducted in 1980 over 37 years ago and this contravenes International Accounting Standard No.16 which stipulates that property, plant and equipment be revalued after every five years.

Consequently, it had not been possible to confirm that the property, plant and equipment balance of Kshs. 4,040,355,420 as at 30 June 2016 is fairly stated.

Management Response

In the past few years, the Institute was not in a position to undertake the valuation of assets due to budgetary constraints since much funding was channeled to construction works in Kisumu and Nairobi.

The emphasis to undertake a valuation of property came about in 2017 and the concern has been taken up by Management as a priority for a budgetary provision in subsequent budget circle.

The property in Nairobi South B comprising land and construction work in progress were revalued in 2017.

Committee Observations

The Committee made the following observations:

1. The audit query was raised and the Board resolved to prioritize valuation of the Institute's property I FY 2018/19.
2. The Institute had neglected the valuation of the property for the last 37 years.

MIN/PIC/193/2018: ACCOUNTS RECEIVABLES - LONG OUTSTANDING BALANCES - FY 2015/16

The Committee heard that the account receivable balance of Kshs.12,539,941 includes an amount of Kshs.2,460,000 being the Institute's reimbursement claims lodged with the National Industrial Training Authority (NITA) in respect of industrial attachment services rendered for the Authority. The claims have been outstanding for a considerable long time without evidence of effort initiated to recover them. The Institute was likely to lose funds unless proper debt collection mechanisms are put in place.

Management Response

Management informed the Committee that the Institute had sent various reminders to the National Industrial Training Agency requesting for release of the amounts owed to the Institute with little results. The Institute would continue with efforts to address the same and bring the matter to a speedy conclusion.

The Management had taken note of the Auditor General's recommendation to put in place a proper debt collection policy.

Committee Observations

The Committee made the following observations:

1. The Institute has been following up with NITA for the last three years. The amount has been outstanding for the last five years.
2. There was no written agreement between KIRDI and NITA with regards to the services rendered and the amount due the Institute.
3. The service provided by KIRDI was internship programme on Industrial training of students forwarded to the Institute by NITA.

Committee Resolutions

Management was asked to provide documentation showing attempts to recover the long outstanding balance.

MIN/PIC/194/2018: ACCOUNT RECIEVABLES - NON-RECOVERY OF EXCESS MEDICAL EXPENDITURE (FY 2015/16)

The Committee heard that included in the account receivables figure of Kshs.12,539,941 was an amount of Kshs.2,877,953 being excess medical expenditure which was supposed to be recovered from the concerned staff. Out of this balance, an amount of Kshs.1,581,599 related to officers who have passed away.

The accounting policies disclosed in the financial statements did not give clear guidance on provisions to be made in case of death of staff members. In addition, it was noted that in some instances, the rate of recovery of the expenditure was very low compared to the outstanding amounts with some having not been recovered at all. In the circumstances, the recoverability of the account receivables balances of Kshs.12,539,941 was doubtful.

Management Response

Management informed the Committee that non-recovery of excess medical from staff members was largely informed by the financial regulations that prohibit deduction to staff salaries to less than a third of their salary. The management was exploring other ways of recovery bearing in mind that excess medical costs was an issue beyond the control of staff members. At the time the staff members' salary obligations reduce, management would endeavor to recover the excess medical from the affected staff members.

In cases where staff members were completely unable to repay the excess medical, a request would be made to the Board of Directors to write off the excess medical (Ref to BP/BOD/06/2012 and minutes 117 of Board of Directors meeting)

Management was further exploring ways of improving the staff medical scheme so that less staff were affected by excess medical costs. For the staff members who had passed on with excess medical balances, the Institute policy was to recover the same from their life insurance benefits as has been done in particular cases.

Committee Observations

1. The cover taken by the Institute gives an undertaking to the Insurance company to cover excess medical costs which are then recovered from the staff member's salary.
2. The excess medical expense stood at Kshs. 3,374,390 as at 30 June 2017.

Committee Resolutions

The Institute was asked to provide a copy of their Medical policy.

MIN/PIC/195/2018: ACCOUNTS RECIEVABLE - PROCUREMENT OF LEATHER PROCESSING AND PRODUCTION EQUIPMENT (FY 2015/16)

The Committee heard that during the year under review, the Institute entered into a contract agreement with a local company for the supply, installation, training and commissioning of leather processing and production machinery. Review of the procurement process revealed that company had partnered with another company from of Italy in a joint venture to execute the contract but contrary to Section 2.1.3(i) of the contract agreement only the first company signed the contract on 27 March 2015.

Further, contrary to Section 2.1.3 (ii) of the contract agreement, both companies did not submit audited accounts for the previous three (3) years as required by bidding requirements on financial capability. In particular, the first company did not meet that mandatory requirement considering it was registered on 9 May 2012 and therefore was at the time of tendering yet to attain three years old since it was incorporated. Non-adherence to procurement procedures may lead to unnecessary legal challenges by dissatisfied bidders leading to delays in project implementation.

Whereas the leather equipments were destined for the Kisumu regional offices, an audit verification at the station in October 2016, revealed that some of these machines though delivered, were yet to be installed and commissioned mainly due to lack of appropriate space. It was not clear why the Institute went ahead to procure and purchase the machines without having arranged for adequate and appropriate space for their installation. Failure to have the machinery installed in a secure place could result to vandalism and breakdowns in addition to withholding vital services envisaged at the time of the project inception

Management's Response

Management referred the Committee to Section 2.1.3 (iii) of the contract which stated that one of the partner shall be nominated as the lead contractor and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners. This was done and submitted alongside the tender.

Section 2.1.3 (iv) of the contract stated that the lead contractor shall be authorized to incur liability and receive instructions for and on behalf of any and or of all the partners of the joint venture. (Attached is the extract of the specific power of the attorney by the joint venture partners appointing Ms. Precision Civil Engineering Ltd to that effect).

Management further referred the Committee to the Treasury Circular No.1/2015 dated 15th January, 2015 on the implementation of the 30 % Public Procurement Reservations and Preferences for Youth, Women and Persons with Disability. In the

said circular, the procuring entities were instructed not to subject the AGPO target group to any further prequalification once registered under the National Treasury.

MS Precision Civil Engineering Ltd was registered under National Treasury with registration certificate No. NT/PPD/YP/802/B. There is no procurement law which stated that the circular is applicable to only reserved categories.

As per Legal Notice No. 58 of the Public Procurement and Disposal Act 2005, the target groups were eligible for benefiting from Preferences and Reservations as defined under Part 4 of the Legal Notice.

Regarding the issue of inadequate space for the equipment, the initial plan was to set up a pilot plant for training. Along the way Government priority changed to have a facility that would serve the western sub-region in value addition to leather. A budget was then provided to upscale the project that included construction of extra space (leather annex) which is currently in progress which is near completion.

Committee Resolution

The Institute was asked to provide the contract for the project as well as the registration document for MS Precision Civil Engineering Ltd.

MIN/PIC/196/2018: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/197/2018: ADJOURNMENT

There being no other business, the meeting was adjourned at two minutes past one O'clock.

Signed..... Date.....19/08/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 36TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 24TH MAY 2018 IN 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. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. Paul Kahindi Katana, MP
5. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
6. The Hon. Gideon Mutemi Mulyungi, MP
7. The Hon. Ahmed Kolosh Mohamed, MP
8. The Hon. Thuku Zachary Kwenya, M.P
9. The Hon. Purity Wangui Ngirici, MP

ABSENT WITH APOLOGY

1. The Hon. Raphael Bitta Sauti Wanjala, MP
2. The Hon. Mary Wamaua Waithira Njoroge, MP
3. The Hon. Nicholas Scott Tindi Mwale, MP
4. The Hon. Babu Owino Paul Ongili, MP
5. The Hon. Joash Nyamache Nyamoko, MP
6. The Hon. Omar Mohamed Maalim Hassan, MP
7. The Hon. James Kamau Githua Wamacukuru, M.P
8. The Hon. John Muchiri Nyaga, M.P
9. The Hon. Rashid Kassim Amin, MP
10. The Hon. Mohamed Hire Garane, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Clerk Assistant I
2. Ms. Mugure Gituto	-	Legal Counsel
3. Mr. Thomas Ogwell	-	Fiscal Analyst
4. Ms. Noelle Chelagat	-	Media Relations Officer
5. Ms. Christine Maeri	-	Audio Recording Officer

IN ATTENDANCE

1. Ms. Florence Valla	-	Manager, Audit
2. Mr. Joshiah Oyuko	-	Manager, Audit

MIN/PIC/198/2018: PRELIMINARIES

The Vice Chairperson called the meeting to order at three O'clock followed by a word of prayer from Hon. Paul Kahindi Katana, MP.

MIN/PIC/199/2018: EVIDENCE BY KENYA SCHOOL OF LAW

Dr. Henry Mutai, the Chief Executive Officer of the Kenya School of Law accompanied by Brenda Kaberenge (Legal counsel) and Patrick Gachuhi, (Finance Manager) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Kenya School of Law for the financial year 2014/15 to 2016/2017.

MIN/PIC/200/2018: LOSS OF KENYA SCHOOL OF LAW PROPERTY ON PLOT NO. LR 2009/6238-HG613 OFFICIAL RESIDENCE OF THE SCHOOL OF PRINCIPAL IN KILIMANI AREA (FY 2014/15, 2015/16 AND 2016/17

The Committee heard that evidence available indicated that Plot No. LR 209/6238 measuring 0.3890 hectares along Bishops Road - Kilimani area had an institutional house No. HG/613 which was reserved by the Government as the official residence of the School Principal. However, on 3 November 1997, a grant of lease was purportedly issued to M/s Rockville Limited, whose Directors included a former Principal of the School, by the Commissioner of Lands, vide allotment Ref. No. 34250. Thereafter, a title deed was issued and registered as Grant No. LR. 74856. The property was later sold to M/s Standard assurance (K) Ltd on 12 June 2002 at a consideration of Kshs. 50,000,000.00 who then charged it to Diamond Trust Kenya Ltd. The matter was reported to the then Kenya Anti-Corruption Commission who on 26 January 2007 made an application to the High Court under Order 56 of the Anti-Corruption and Economic Crimes Act, 2003.

The Committee further heard that the Court ordered the preservation of the property and restrained the respondents from selling, disposing off, wasting or in any other way dealing with the property for six months. This matter had been pending before the High Court in Nairobi under miscellaneous application No. 42 of 2007 awaiting determination. No effort appeared to have been made by the School to have the case expeditiously dispensed with and the property reverted to the School.

Management Response

The Management informed the Committee that the plot was reportedly allocated to Rockville Ltd in 1997 who later transferred the property to Standard Assurance (K) Ltd in July 2002 for a consideration of Kshs. 50Million who in turn took a loan of Kshs.10 million from Diamond Trust Bank against the title. The property was charged to the bank in June 2003 and the matter was referred to the former Kenya Anti-Corruption Commission and court action taken in 2003.

In 2007 a court order was issued in line with section 56 of the Anti-Corruption and Economics Crimes Act No. 3 of 2003 preserving the property and restraining respondents from selling, disposing off, wasting or in any other way dealing with the aforesaid for a period of six months. Visits to the Ethics and Anti-Corruption Commission in March, 2014 established that M/s Standard Assurance (K) Ltd was under

statutory management and that the matter had stalled pending the fate of the Insurance Company, in the event that the said Company would come back into full operation the matter would be revived. The matter was in court on stay of Execution.

Committee Observations

The Committee made the following observations:

1. Though 20th PIC report had made the following recommendations, they have not yet been implemented:
   (ii) The former Director. Mr. Njagi should be held accountable and barred from holding public office, for misuse of the institution property.
   (iii) The letter by the Deputy Solicitor General Ms. Muthoni Kimani dated 1st November 2006 letter advising KSL to consider the property lost, needs to be revisited as the matter is a clear case of fraud on the part of the former Director, Mr Njagi.
   (iv) The Director, KSL should follow up the matter and ensure that the Bishop's Road Plot (Principal's House) is registered in the name of the Kenya School of Law.
2. Justice Njagi continued to hold public office despite PIC's recommendations

Committee Resolutions

Kenya School of Law to furnish the Committee with all documentation relating to the land within five working days.

MIN/PIC/201/2018: 6.8 HECTARES PLOT IN EMBAKASI AREA (FY 2014/15 & FY 2015/2016)

The Committee heard that in a letter dated 9 April 1991, the Commission of Lands forwarded an approved plan No. 268 for a plot in Embakasi near the School of Aviation measuring 6.18 hectares under departmental reference No. 42/14/90/1 of 3 January 1990 which was reserved for future development of the Kenya School of Law. Although all the fees and charges amounting to Kshs. 6, 122.00 were paid vide cheque No. 019198 dated 8 September 1999, no title deed was issued despite numerous reminders which were not responded to.

In a turn of events, there was communication between the Director/Chief Executive and Secretary, Council for Legal Education and the former Permanent Secretary Ministry of Lands, that the Council for Legal Education had resolved to relinquish its interest in the property and that the plot should revert to the Commissioner of Lands for reallocation. The Council further sought a refund of fees and charges paid in the process of acquiring title to the property.

An audit physical inspection carried out on 12 April 2002 revealed that the Plot was still intact but a small portion had been alienated and fenced off by third parties. Despite informing the Commissioner of Lands that the plot was in the process of being

grabbed through Management Letter Ref. CLE/201/1999/2000/(5) dated 12 April, 2002, no action was taken. The School was said to have been subsequently allocated another plot in Karen where it now sits.

The Committee further heard that despite the resolution to relinquish its interest on the property which was referred to as LR No. 29/5651 in the correspondences, the School again changed the decision to relinquish interest and wrote to the National Land Commission requesting a review of the matter. In a letter referenced KSL/PR/CONF/IC/VOLIII (257), the School requested the National Land Commission to cancel title deeds of plot No. LR. 209/5651 - Embakasi". There was no evidence of any action that has been taken by the National Land Commission on the School's request. It was not clear why the Council for Legal education resolved to relinquish its rights to the plot instead of pursuing and safeguarding public property. Further, the identity of the third parties now occupying the land measuring 6.18 hectares had not been disclosed nor had the School disclosed the size of the land in its books of accounts.

Management Response

The Management informed the Committee that the land at Embakasi, the ''Council/Kenya School of Law'' did not have reliable information on the alleged allocation of land to enable it pursue the process of obtaining relevant documents including the Title document. The ''Council/Kenya School of Law'' therefore visited the National Lands Commission on 31st March 2014 and held a meeting with Commissioner Emma Njogu. Ms. Njogu requested the School to write to the National Lands Commission requesting for a review of the matter and that she be copied all the correspondence in our file after which the Commission promised to carry out investigation and advise on the way forward.

Management further informed the Committee that the School vide its letter reference No. KSL/F&A/Vol. (188) dated 3rd April, 2014 requested for a review of the matter and enclosed copies of correspondences accordingly. Further, the School vide their letter reference No. KSL/PR/CONF/1C/VOL III (257) dated 25th September,2014 Communicated the School Board Resolution that management write to the National Land Commission requesting the cancellation of the Title Deed of the said plot. National Land Commission vide their letter reference NLC/CHIARMAN/VOL.VII/68 dated 17th October 2014 advised that the matter was being handled and that they shall respond to the school soonest. No correspondence had been received from the NLC since then.

The School vide their letter reference CLE/201/1999/2000(5) dated 12th April,2002, had informed the then Commissioner of Lands that the land in Embakasi was in the process of being grabbed, citing the long journey the School has travelled in securing the parcel of land without meaningful results, the School wrote vide their letter

reference No. KSL/PR/CONF./1C/VOL.III/257 to the National Land Commission with an intention to relinquish interest in the land.

Committee Observation

The Committee made the following observations:

1. It was grossly negligent on the part of the Kenya School not to establish who the third parties were that were sitting on some part of the land.
2. The Kenya School of Law's behavior of wanting the property today and on another day not wanting it portrayed indecisiveness of the school.
3. The Commissioner of lands and the National Land Commission had been negligent by not addressing the matter when it was brought to their attention.

Committee Resolution

The Committee made the following resolutions:

1. The Kenya School of Law to furnish with the Committee with all the documentation regarding the impugned land within a week for perusal.
2. The Committee will invite the National Land Commission and the Ministry of Lands at an opportune to explain why they have never acted on the requests from the Kenya School of law

MIN/PIC/202/2018: STALLED CONSTRUCTION PROJECT OF AN ULTRA-MODERN LIBRARY AND MOOT COURTS (FY 2016/17)

The Committee heard that a contract for construction of an ultra-modern library and moot courts was awarded to M/S Resjos Contractors at a cost of Kshs. 488, 704, 449 and commenced on 24 June 2013. The construction period was three years and was expected to be completed by September 2016. At the time of audit, Kshs. 68, 092, 974 had been paid to the contractor and the project had stalled at 20% stage of completion. Consequently, it had not been possible to confirm that the School has obtained value for money from the expenditure of Kshs. 68, 092, 974 incurred on the project as at 30 June 2017.

Management Response

While concurring that the Ultra-Modern library project had stalled due to consistent budget cuts from the Exchequer, the Kenya School of Law management averred that in the financial year 2016/2017, the School was not allocated any development funds. In the financial 2017/2018, the School was allocated Kshs. 60M, and up to date, the funds had not been released to the School. However, the expenditure of Kshs.68,092,973 was reflected in the financial statement under the Work In progress in the Prior Financial years. Correspondence shows clearly demonstrates that the Kenya School of Law had consistently requested the Exchequer through the Office of the Attorney General to release funds to facilitate completion of the Ultra-Modern Library Project whose construction commenced in the year 2013.

Committee Observations

The delayed implementation of the project would lead to variations and more expenses to the tax payers.

Committee Resolutions

The KSL was asked to furnish the Committee with the following documents regarding the project within a week:

- The signed contract agreement
- Minutes of the Board bearing all the issues related to the project
- The cost of the project detailing the amount paid so far and the variations

MIN/PIC/203/2018: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/204/2018: ADJOURNMENT

The meeting was adjourned at 4:05 p.m. Next meeting will be held on 28th May, 2018 at 10:00 a.m.

Signed..... **Date**.....19/06/2018.....

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 37TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 29TH MAY 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.35 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. Mary Wamaua Waithira Njoroge, MP
5. The Hon. Omar Mohamed Maalim Hassan, MP
6. The Hon. Nicholas Scott Tindi Mwale, MP

ABSENT WITH APOLOGY

1. The Hon. Raphael Bitta Sauti Wanjala, MP
2. The Hon. Chrisantus Wamalwa Wakhungu, 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. Rashid Kassim Amin, MP
7. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
8. The Hon. Ahmed Kolosh Mohamed, MP
9. The Hon. Gideon Mutemi Mulyungi, MP
10. The Hon. James Kamau Githua Wamacukuru, M.P
11. The Hon. Mohamed Hire Garane, M.P.
12. The Hon. Thuku Zachary Kwenya, M.P
13. The Hon. Babu Owino Paul Ongili, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Clerk Assistant I
2. Mr. Mohamed Boru	-	Clerk Assistant II
3. Mr. Charles Atamba	-	Research Officer
4. Ms. Mugure Gituto	-	Legal Counsel
5. Mr. Thomas Ogwel	-	Fiscal Analyst
6. Ms. Noel Chelagat	-	Media Relations Officer
7. Ms. Christine Maeri	-	Audio Recording Officer

IN ATTENDANCE

1. Mr. John Wangila	-	Manager, Audit
2. Mr. Joshiah Oyuko	-	Manager, Audit

MIN/PIC/205/2018: PRELIMINARIES

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

MIN/PIC/206/2018: EVIDENCE BY COMPETITION AUTHORITY

Mr. Wang'ombe Kariuki, the Director General of Competition Authority accompanied by Mr. Protus Sigei (Alt. Director, National Treasury), Mr. Henry Mutwiri (Chief Investment Officer), Mr. Boniface Makongo (Manager, Legal), Mr. Ambrose Agenga (Manager, Finance), Ms. Ninette Mwarania (Manager, Policy & Research), Ms. Elizabeth Shungula (Senior Investment Officer, National Treasury), and Ms. Hakima Mohammed (Finance Officer) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Authority for the financial year 2014/15 to financial year 2016/2017.

MIN/PIC/207/2018: EXAMINATION OF AUDITED ACCOUNTS OF COMPETITION AUTHORITY FOR THE FY 2014/15

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

MIN/PIC/208/2018: EXAMINATION OF AUDITED ACCOUNTS OF COMPETITION AUTHORITY FOR THE FY 2015/16

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

MIN/PIC/209/2018: EXAMINATION OF AUDITED ACCOUNTS OF COMPETITION AUTHORITY FOR THE FY 2016/17

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

Committee Observations

1. All the accounts of the Authority were unqualified for years under review.
2. The Authority cited some of the challenges it faces including lack of regulation in the retail sector hence dominance by the big players.

Committee Resolution

The Competition Authority should provide a list of all the privatization it has undertaken so far and the ones it intends to do within a week.

MIN/PIC/210/2018: ANY OTHER BUSINESS

The following was noted under the mandate of the Competition Authority:

1. The Authority further stated that some Kenyan companies face double regulation due to the existence of regional Competition Authorities. The Authority stated that it would bring forward proposals to Parliament to harmonize the regulation process.

2. The Authority also cited the introduction of disruptive technology such as cab hailing apps as a new sector for regulation and noted the need to balance between the needs of the existing market and new technology.
3. There was a monopoly in Grain Bulk importation which is considered a natural monopoly since the Port of Mombasa cannot host more than one grain handler due to limited space at the port. The Authority confirmed that the Kenya Ports Authority should have a minimum threshold for when tendering for Bulk Grain Handlers including a provision that such companies should not be involved in the business of milling to avoid creating a monopoly.
4. There was an existence of a monopoly in the shipping line business where shipping lines own ship merchant companies hence creating a monopoly. The Authority confirmed that it was inquiring into the matter and will make a determination by the end of May, 2018.

MIN/PIC/211/2018: ADJOURNMENT

The meeting was adjourned at ten minutes past eleven O'clock.

Signed.....

Date.....19/06/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 38TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 29TH MAY 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 2.30 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
5. The Hon. Omar Mohamed Maalim Hassan, MP
6. The Hon. Nicholas Scott Tindi Mwale, MP

ABSENT WITH APOLOGY

1. The Hon. Raphael Bitta Sauti Wanjala, MP
2. The Hon. John Muchiri Nyaga, M.P
3. The Hon. Mary Wamaua Waithira Njoroge, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. Paul Kahindi Katana, MP
6. The Hon. Purity Wangui Ngirici, MP
7. The Hon. Rashid Kassim Amin, MP
8. The Hon. Ahmed Kolosh Mohamed, MP
9. The Hon. Gideon Mutemi Mulyungi, MP
10. The Hon. James Kamau Githua Wamacukuru, M.P
11. The Hon. Mohamed Hire Garane, M.P.
12. The Hon. Thuku Zachary Kwenya, M.P
13. The Hon. Babu Owino Paul Ongili, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Clerk Assistant I
2. Mr. Mohamed Boru	-	Clerk Assistant II
3. Mr. Charles Atamba	-	Research Officer
4. Ms. Mugure Gituto	-	Legal Counsel
5. Mr. Thomas Ogwel	-	Fiscal Analyst
6. Ms. Noel Chelagat	-	Media Relations Officer
7. Ms. Christine Maeri	-	Audio Recording Officer

IN ATTENDANCE

1. Mr. Reuben Kamuruchi	-	Manager, Audit
2. Mr. Livingstone Njenga	-	Supervisor, Audit
3. Mr. Joshiah Oyuko	-	Manager, Audit
4. Mr. Henry Mutwiri	-	Chief Investment Officer, National Treasury
5. Ms. Elizabeth Shungula	-	Senior Investment Officer, National Treasury
6. Mr. Peter Ruteere	-	Assistant Inspector General, Corporations

MIN/PIC/212/2018: PRELIMINARIES

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

MIN/PIC/213/2018: EVIDENCE BY NATIONAL AIDS CONTROL COUNCIL

Dr. Nduku Kilonzo, the Chief Executive Officer of the National Aids Control Council accompanied by CPA Ken Nyamoko (Head of Finance), Mr. Eric Aluoch (Accountant) and Mr. Martin Mwenda (Accountant) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Council for the financial year 2012/13 to financial year 2016/2017.

MIN/PIC/214/2018: TRADE AND OTHER RECIEVABLES FY 2012/13

The Committee heard that the reported expenditure of Kshs. 2,041,044,654 by June 2013 and Kshs. 512,797,070 by June 2014 had not been audited contrary to TOWA financing agreement.

Management Response

Management informed the Committee that as required by the TOWA project financing agreement, the NACC procured private audit firms to undertake the audit of expenses reported by the Project Sub-Implementers (PSIs). For the FY 12/13 42.8% of the CSOs funded were audited. The sample size was agreed with the World Bank and copied to KENAO for concurrence at 30% of the funded organization in any one Financial Year. The NACC raised the 30% sample size to 40% for FY 2012/2013 in order to obtain reasonable assurance that Financial statements were fairly stated.

The TOWA project officially closed in June 2014 and was rated as satisfactory in the World Bank's Implementation Completion Report (ICR). A project closure audit was undertaken by OAG. The project was successfully audited and closed

Committee Observation

1. The Audit query has been resolved.

MIN/PIC/215/2018: TRADE AND OTHER RECIEVABLES - FY 2012/13

The Committee heard that Trade and other receivables balance of Ksh 277,103,535 included:

- District AIDS Coordinating Committees (DACC) Ksh 19,613,358
- Constituency AIDS Coordinating Committees (CACCs) Ksh 34,556,158
- AIDS Control Units (ACU) Ksh 3,697,926
- Field Offices (FO) Ksh 13,778,904
- Kenya Long Distance Truck Drivers Association (KLDTDA) Ksh 105,985

- Ministry of Health Division of Malaria Control Ksh 14,139,186
- Turkana County Ksh 310,378
- Staff Imprest and advances to former staff Ksh 1,660,879 and Ksh 78,258.

No recoveries had been made by 30 June, 2013, as required by the Government Financial Regulations and Procedures. In the circumstances, it has not been possible to confirm the recoverability of trade and other receivables balance of Kshs. 277,103,535.

Management Response

The advances to DTCs, ACUs World AIDS Day advance and the cited imprest and advances to former staff were all issued during the formative years before proper systems were put in place for accountability purposes.

The NACC wrote to the Ministry of Interior and Coordination, the then Ministry of State for National Planning and Inspector General -Corporations seeking details of the officers who were serving as DCs and DDOs in office at the time of disbursements without success. A number of these officers have since either retired, died or left the service in one way or another. Efforts from the Registrar of births and deaths have also not yielded much. ***(Annex II-Correspondences with different agencies)***

These were funds advanced to the Field Offices during the year for activities and office operations. The cited balances were as at the end of Financial year and were fully accounted for in the subsequent year.

The Kenya Long Distance long truck Drivers have since fully accounted for the resources by making cheque deposits to the NACC for Ksh 105,985. ***(Annex IV-Evidence of Payments)***

Ministry of Health Division of Malaria Control Ksh 14,139,186 were advances for the Division of Malaria Control under the TOWA Project and were subsequently accounted for in the Financial Year. The TOWA Project has since closed successfully.

The Amounts from DMOH Turkana were fully recovered from him through payroll by the Ministry of Health. ***(Annex V-Evidence of Recovery)***

On staff Imprest and advances to former staff Ksh 1,660,879 and Ksh 78,258, recoveries had been made from the staff who left NACC and deductions from their terminal dues effected.*(Annex III- deductions from Michael Aremon)*. There are however some older imprests like those given to the former CEO Margaret Gachara among others.

On advice by the Office of the Auditor General the NACC had made a provision of Ksh 81.3 Million in FY 2016/17 for bad and doubtful debts. A request had been made to the National Treasury to write off the unrecoverable amount had been recurring in the NACC's Financials. The National Treasury had since advised the NACC on the way

forward towards clearance of the same. ***(attached letter of communication Annex VIII).***

The FMA-Pricewaterhousecoopers finally accounted and documented all their accountabilities before the project closure as per their contract of services.***(Annex VI)***

Committee Observations

The Committee made the following observations:

1. The Council had taken several steps to improve their financial systems including automation of financial processes through adoption of ERP, posting regional accountants to handle the Council's finances and use of mobile money for financial trail where disbursements were made.
2. Some of the funds had been due for more than six years and the Statute of Limitation applies in such cases. The Council had sought and received the Board's approval to write off such debts.

Committee Resolution

1. The Council was asked to provide a breakdown detailing of all its debts within a week.

MIN/PIC/216/2018: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/217/2018: ADJOURNMENT

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

Signed..... **Date**.....19/06/2018.....

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 39TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 30TH MAY 2018 IN 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. Mary Wamaua Waithira Njoroge, MP
4. The Hon. Omar Mohamed Maalim Hassan, MP
5. The Hon. Nicholas Scott Tindi Mwale, MP
6. The Hon. Raphael Bitta Sauti Wanjala, MP
7. The Hon. Chrisantus Wamalwa Wakhungu, MP
8. The Hon. Purity Wangui Ngirici, MP
9. The Hon. Rashid Kassim Amin, MP
10. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
11. The Hon. Ahmed Kolosh Mohamed, MP
12. The Hon. Gideon Mutemi Mulyungi, MP
13. The Hon. James Kamau Githua Wamacukuru, M.P
14. The Hon. Thuku Zachary Kwenya, M.P

ABSENT WITH APOLOGY

1. The Hon. John Muchiri Nyaga, M.P
2. The Hon. Joash Nyamache Nyamoko, MP
3. The Hon. Paul Kahindi Katana, MP
4. The Hon. Babu Owino Paul Ongili, MP
5. The Hon. Mohamed Hire Garane, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Mr. Evans Oanda	-	Clerk Assistant I
2.	Mr. Mohamed Boru	-	Clerk Assistant II
3.	Mr. Charles Atamba	-	Research Officer
4.	Ms. Mugure Gituto	-	Legal Counsel
5.	Mr. Thomas Ogwel	-	Fiscal Analyst
6.	Ms. Noel Chelagat	-	Media Relations Officer
7.	Ms. Christine Maeri	-	Audio Recording Officer

IN ATTENDANCE

1.	Mr. John Wangila	-	Manager, Audit
2.	Mr. Joshiah Oyuko	-	Manager, Audit
3.	Mr. Festus Mwanzi	-	Manager, National Treasury

MIN/PIC/218/2018: PRELIMINARIES

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

MIN/PIC/219/2018: EXAMINATION OF AUDITED ACCOUNTS OF NAIROBI CENTER FOR INTERNATIONAL ARBITRATION FOR THE FY 2016/17

Mr. Lawrence Muiruri Ngugi, the Chief Executive Officer of the Nairobi Center for International Arbitration accompanied by Mr. Lawrence Waigi Kamau (Director) and Mr. Victor Amos Ochieng Ogunyo (Manager, Corporate Support Services) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Center for the financial year 2016/2017.

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

The Center was commended for the financial prudence exhibited in the financial year under consideration.

MIN/PIC/220/2018: EVIDENCE BY PRIVATIZATION COMMISSION

Ms. Jacqueline Muindi, the Ag. Executive Director of the Privatization Commission accompanied by Hon. Henry Obwocha (Commisson Chairman), Mr. Robert Mbarani (Chief Manager, Finance and Administration), Ms. Virginiah Kariuki (Finance Manager), Ms. Janerose Omondi (Transactions Manager) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Authority for the financial year 2007/08 to financial year 2015/2016.

MIN/PIC/221/2018: EXAMINATION OF AUDITED ACCOUNTS OF PRIVATIZATION COMMISSION FOR THE FY 2007/08 TO FY 2009/10

The Committee heard that the Commission's accounts for the financial year 2007/2008 to financial year 2009/10 were unqualified.

MIN/PIC/222/2018: EXAMINATION OF AUDITED ACCOUNTS OF PRIVATIZATION COMMISSION FOR THE FY 2010/11

The Committee heard that the Commission's accounts for the financial year 2010/2011 was qualified due to lack of Commissioners.

Management Response

The Commissioners were appointed for three year terms through Gazette Notice dated 19th November, 2012.

The Finance Committee had earlier refused to vet the appointees on the basis of non-competitive nature of recruitment.

Committee Observations

1. The Audit query had been resolved.

MIN/PIC/223/2018: EXAMINATION OF AUDITED ACCOUNTS OF PRIVATIZATION COMMISSION FOR THE FY 2011/12 TO FY 2015/16

The Committee heard that the Commission's accounts for the financial year 2011/2012 to financial year 2015/16 were unqualified.

The Commission was commended for the prudent financial management for the financial years under consideration and asked to maintain such sound financial practices.

MIN/PIC/224/2018: ANY OTHER BUSINESS

1. The Commission was asked to provide a status report on the privatization of government-owned entities including sugar factories, the Kenya Meat Commission and all other government owned entities that had been privatized.

MIN/PIC/225/2018: ADJOURNMENT

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

Signed.....

Date.....19/06/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 42ND SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 19TH JUNE 2018 IN 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. Mary Wamaua Waithira Njoroge, MP
4. The Hon. Omar Mohamed Maalim Hassan, MP
5. The Hon. Nicholas Scott Tindi Mwale, MP
6. The Hon. Chrisantus Wamalwa Wakhungu, MP
7. The Hon. Rashid Kassim Amin, MP
8. The Hon. Ahmed Kolosh Mohamed, MP
9. The Hon. James Kamau Githua Wamacukuru, M.P
10. The Hon. Thuku Zachary Kwenya, M.P
11. The Hon. Paul Kahindi Katana, MP
12. The Hon. Mohamed Hire Garane, M.P.

ABSENT WITH APOLOGY

1. The Hon. Raphael Bitta Sauti Wanjala, MP
2. The Hon. John Muchiri Nyaga, M.P
3. The Hon. Joash Nyamache Nyamoko, MP
4. The Hon. Babu Owino Paul Ongili, MP
5. The Hon. Purity Wangui Ngirici, MP
6. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
7. The Hon. Gideon Mutemi Mulyungi, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Clerk Assistant I
2. Mr. Charles Atamba	-	Research Officer
3. Ms. Mugure Gituto	-	Legal Counsel
4. Mr. Thomas Ogwel	-	Fiscal Analyst
5. Ms. Noel Chelagat	-	Media Relations Officer
6. Ms. Christine Maeri	-	Audio Recording Officer
7. Nicodemus Maluki	-	Clerk Assistant III

IN ATTENDANCE

1. Mr. Joshiah Oyuko	-	Manager, Audit

2. Mr. Peter Lugaru - Manager, Audit
3. Mr. Bernard Ngulalu - AIG

MIN/NA/PIC/2018/234: PRELIMINARIES

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

MIN/NA/PIC/2018/235 CONFIRMATION OF MINUTES

Minutes of the previous meetings were confirmed as as follows:

1) Minutes of the 34th Sitting were confirmed as a true record of the proceedings and signed by the Chairman after being proposed by the Hon. James Kamau Githua Wamacukuru, M.P and Seconded by the Hon. Omar Mohamed Maalim, M.P
2) Minutes of the 35th Sitting were confirmed as a true record of the proceedings and signed by the Chairman after being proposed by the Hon. Nicholus Tindi Mwale, MP and Seconded by the Hon. James Kamau Githua Wamacukuru, M.P
3) Minutes of the 36th Sitting were confirmed as a true record of the proceedings and signed by the Chairman after being proposed by the Hon. Abdulswamad Sharrif Nassir, MP and Seconded by the Hon. Abdisalan Ibrahim, MP
4) Minutes of the 37th Sitting were confirmed as a true record of the proceedings and signed by the Chairman after being proposed by the Hon. Chrisantus Wamalwa, MP and Seconded by the Hon. Omar Mohamed Maalim, MP
5) Minutes of the 38th Sitting were confirmed as a true record of the proceedings and signed by the Chairman after being proposed by the Hon. Nicholus Tindi Mwale, MP and Seconded by the Hon. Abdisalan Ibrahim, MP
6) Minutes of the 39th Sitting were confirmed as a true record of the proceedings and signed by the Chairman after being proposed by the Hon. Abdisalan Ibrahim, MP and Seconded by the Hon. Nicholus Tindi Mwale, MP

MIN/NA/PIC/2018/236: EXAMINATION OF AUDITED ACCOUNTS OF NATIONAL CEREALS AND PRODUCE FOR THE FY 2016/17

Mr. Albin Sang, the Ag. Managing Director of the National Cereals and Produce Board (NCPB) accompanied by Mr. John K. Ngetich (Company Secretary), Mr. Ernest Ogwora (Manager M& E), Mr. Japheth Gitua (ICT Manager) and Mr. Richard K. Limo (Ag. Finance Manager) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Board for the financial year 2015/2016 and 2016/2017.

A. <u>Procurement of 40,000 Metric Tons of Maize FY 2015/2016</u>

The Committee head that the NCPB entered into a fixed sum contract sum of Kshs.730,968,000 for procurement of 40,000 MT of maize at USD 229 per MT on 26 November 2004but this contract was not executed. The supplier sought arbitration in July 2009 which awarded USD 3,106,000,an equivalent of Kshs.552,667,382. Thereafter the NCPB appealed but the award was increased to USD 6,140,859 equivalent to Kshs. 552,667,382. Kshs.264,864,285 has been settled leaving the balance of Kshs.251,499,614. Although the case is pending in court, it was not possible to ascertain the liability that may result from the claim in question.

Management Response

This matter was still pending in the Supreme Court.

Committee observations

(i) This matter had been inordinately pending in court.
(ii) The PIC Committee of the 12th Parliament tabled a Report on the matter of Erad Suppliers & General Contracts recommending investigations and prosecution of the a number of individuals.
(iii) This matter had been addressed in the 21st PIC report in which the Committee recommended that the Managing Director ensures that the Board applies for speedy conclusion of the case on the amount payable if any, or the amount due to the Board if the award is set aside
(iv) The recommendations of the 21st PIC report regarding the matter have been partially implemented.

Committee Resolution

B. Current Liabilities FY 2015/2016 AND 2016/2017

The Committee heard that as reported in the previous year, included in the current liabilities balance of Kshs. 10,826,182,855 as at 30th June 2016 was an amount of Kshs. 964,765,588 in respect of Value Added Tax arrears payable to Kenya Revenue Authority on provision of agencies services to the government. This figure included Kshs. 410,092,367 tax that had remained outstanding since 2002. This amount continued to attract penalties and interest that had not been assessed and incorporated in the financial statements.

Similarly, as previously reported, the Creditors and provisions balance of Kshs. 6,753,703,604 as disclosed under Note 13 to the financial statements included an amount of Kshs. 202,291,356 relating to trade creditors that had been outstanding since July 2012. No satisfactory reason had been given for the failure to settle the liabilities.

Further, the statement of financial position reflectd an amount of Kshs. 299,070,750 under Bank Overdraft. A review of bank reconciliation statement for the account

maintained at KCB Kencom Branch A/C No. 1107-165-679 revealed amounts of Kshs. 4,169,757 and Kshs. 1,490,672 described as payments in bank not in cash book and receipts in the bank not in cash book respectively, that had been outstanding since June 2015. No explanation has been provided for the amounts. Consequently, the accuracy of the overdraft amount of Kshs. 299,940,489 as at 30th June 2016 could not be confirmed.

Management Response

- **Taxation**

Management concurred that an amount of Kshs. 410,092,367 included as current liabilities related to a long outstanding matter on the taxation of GoK agency services. During their routine tax audits, Kenya Revenue Authority (KRA) indicated that GoK agency services rendered by NCPB were subject to Value Added Tax (VAT) and the SGR Trustees were advised to either seek exemption from Treasury or budgetary provision to pay the tax amount.

Several attempts were made to seek exemption from Treasury and eventually the National Treasury through letter ref. DFN 415/411/01 dated 7th February 2013 clarified that agency services were subject to VAT and therefore NCPB should comply with the law. The parent ministry was advised to seek budgetary provision to cover the VAT arrears which amounted to Kshs.464,430,643.61 based on the tax audit conducted by KRA in 2012.

KRA subsequently demanded VAT arrears on GOK Agency services for the period 2002 to 2012 plus penalties and interest as follows:-

Tax Period	Principal	Proposed
	Kshs	Kshs
2002 to 2006	258,300,806.00	2016/2017
2007 to 2009	399,393,901.00	2017/2018
2010 to 2012	307,070,880.97	2018/2019
Total	**964,765,587.97**	

Following several appeals by NCPB for the matter to be resolved on one hand and efforts by KRA to enforce correction measures on the other hand that resulted into a Notice of distress detraining goods and chattels, the National Assembly Departmental Committee on Agriculture Livestock and Cooperatives seized the matter to find an amicable solution. The Committee in its sitting on 14th June 2016 directed the CS MOALF and CS the National Treasury to meet and find a solution to the matter. They reported back to the Committee on 30th June 2016 where it was agreed that the best option was abandonment of the tax due to difficulty in paying as the budget provision

for SFR had reduced substantially.

As guided by Commissioner General (KRA), NCPB made a formal request for abandonment vide letter Ref: NCPB/CONF/1/2 dated 5th July 2016 to KRA. A follow up letter was done by PS MOALF vide letter Ref. MOA/LCD/9/4/2/VOL.1V dated 6th October 2016. Follow up letters have been done by the Board i.e. Ref: NCPB/C.31/1 dated 10th May 2017 and Ref: C.12/11 5th January 2018. NCPB has however not yet received the approval.

- **Trade Creditors - Kshs 443,536,381**

Management concurred with the Audit report that trade creditors that had been outstanding since July 2012 amounted to Kshs 202,291,356. These creditors arose from trading activities and were being reconciled in order to confirm those that were payable and appropriate action taken.

- **Bank Overdraft - KShs. 299,070,750**

As at 30th June 2017, the bank reconciliation for KCB Kencom Branch A/c No. 1107165679 included KShs.4,169,757.90 as payments in bank statement not in cash book and KShs.1,490,672 as receipts in bank statement not in cash book. The Board could not include these amounts in the bank balances because they were foreign entries in the bank statements that had been outstanding since 2005. The Board had been pursuing this matter with the bank with a view of clearing these pending items. The matter had been taken to the highest level at KCB with the Chief Executive giving his commitment vide letter dated 3rd January 2013 but to-date this has not been done.

Some of the issues have been sorted out while others were still being pursued. Correspondences on this matter are as per the attached were available such as a NCPB's last letter to KCB Ref. C.1/6 dated 20th February 2017 emails dated 11th September 2017, 6th November 2017 and 16th April 2018.

- **Payments In Bank Statement not in Cash Book of Kshs. 4,169,757.90**

The following are still outstanding and are being followed:-

DATE	DETAILS	BS NO.	KShs.	REMARKS
28.04.05	CHQ NO.....(no cheque number)	4098	3,005,400.00	KCB Issue
28.04.05	CHQ NO.....(no cheque number)	4098	201,400.00	KCB Issue
28.04.05	CHQ NO.241521-paid Twice-(BS.4083 & 4098)	4098	30,445.60	KCB Issue
07.03.06	CHQ NO.246818-paid Twice-(BS.4449)	4449	6,462.30	KCB Issue
11.05.06	Remittance	4520	926,050.00	KCB Issue
	Total		4,169,757.90	

- **Receipts in Bank Statement Not In Cash Book Kshs. 1,490,672.70**

An amount of Kshs.1,490,672.70 was still being followed with the bank to provide further clarification. They have since provided the details of **KShs 768,642.00** which has since been receipted while **KShs. 1,053,422.90** is being followed up. The details are as follows:-

(a) Resolved Cases

Date	Details	Amount (KShs)	Remarks
05.12.16	Cash deposit - Issack Abdullahi Ibrahim	85,392.00	Received during 2017/2018 FY vide MR no. 52A4073318
16.03.17	Cash deposit Fosca Osimbo	180,000.00	Received during 2017/2018 FY vide MR no. 52A4073310
06.06.17	Transfer	66,000.00	Received during 2017/2018 FY vide MR no. 52A4092360
30.06.2017	Cash deposit	437,250.00	Received during 2016/2017 FY vide MR no. 52A4088013
	Total	**768,642.00**	

Copies of receipts and bank statement were available

(b) Items being followed up with KCB Bank

Date	Details	B/S NO	Amount (KShs)	Remarks
06.08.03	Error corrected	3815	334,410.00	KCB Issue
12.08.04	Standing order	4205	416,522.20	KCB Issue
05.08.05	Misc.Credit	4208	200.00	KCB Issue
10.08.05	Misc.Credit	4211	209,435.00	KCB Issue
11.08.05	Misc.Credit	5257	66,030.00	KCB Issue
21.08.08	cheque pay in	5289	26,145.70	KCB Issue
31.01.09	Inward clearing credit	410	680.00	KCB Issue
			1,053,422.90	

Committee Observations

(i) On the VAT due to KRA, this should have been provided for in the budget before the NCPB undertook any project because that was what the law required. NCPB was negligent in their budget preparation in this matter. Further, the National Treasury has taken inordinately long time to grant a waiver of VAT to NCPB despite NCPB making several requests.

(ii) On the matter of reconciliation, it was noted with concern that there was

laxity by the Kenya Commercial Bank in reconciling the financial statement of NCPB leading to reported audit queries. Reconciliation should ordinarily be done on a monthly basis to avoid unnecessary queries

C. Current Assets

- Debtors and Prepayments

The Committee heard that Debtors and prepayments balance of Kshs. 545,036,971 as disclosed under Note 6 to the financial statements included trade debtors totaling Kshs. 1,046,873,031. However, included in the amount were debtors totaling to Kshs.753,589,267 representing 72% of trade debtors that have been outstanding for more than four (4)years. Although a cumulative bad debts provision of Kshs. 943,557,914 has been provided for in the financial statements, it has not been possible to confirm whether, and if so, when the Board will be able to recover the amounts. No action appears to have been taken to ensure recovery of these debts.

Management response

Management informed the Committee that the Accounts receivable as at 30th June 2016 included debts totaling to KShs. 753,589,267.00 that were more than four (4) years old. Some of the debts were statutory barred that makes any chance of recovery remote. Notwithstanding this, NCPB had vigorously pursued payments of all debts including taking legal action against defaulters in which cases involving Kshs. 199 million were under litigation. In some instances goods and properties belonging to defaulters had been confiscated and the same would be sold to defray the arrears. So far Kshs 204.7 million had been recovered as shown itemized below:

CATEGORY OF DEBTORS	AMOUNT 30:06:2016 KSHS	AMOUNT MORE THAN 4 YEARS 30:06:2016 KSHS	RECOVERIES	AMOUNT 30:04:2018 KSHS
Trade Debtors	505,480,791.55	212,197,028.66	204,706,539.75	300,774,251.85
Export Debtors	53,663,363.25	53,663,363.25	-	53,663,363.25
Swap Debtors	360,483,433.05	360,483,433.05	-	360,483,433.05
Gunny Bags Debtors	127,245,443.15	127,245,443.15	-	127,245,443.15
TOTAL	1,016,873,031.00	753,589,267.00	204,706,539.75	842,166,491.25

The management had taken remedial action to ensure that the debt portfolio did not escalate. This includef re-constitution of the Credit Committee and putting in place

new guideline on issuance of credit. The Credit Policy that was approved by the Board of Directors in the year 2008 was under review to realign the same with friendly commercial business practices and at the same time safeguard the interest of the Board. The management was developing the corporate write off policy for approval by the Board of Directors and once approved it will be used to process debts that were un-recoverable. However as a prudent measure, NCPB had provided Kshs.943 million as provision for doubtful debts.

Committee Observations

(i) A provision of Kshs. 943 million for doubtful debts is a very huge figure indicating that debt recoverability policy of the NCPB has a problem.

(ii) It was not clear on how the debt swap of Kshs 360,483,433.5 came about more than 15 years ago. NCPB was asked to provide a breakdown of this.

(iii) The lawyers representing the NCPB on the two cases involving matters of gunny bags debtors had already been paid all their legal fees despite two cases pending in court. NCPB was asked to provide details on the procurement of the said lawyers and the amount paid to them so far.

- **Government Debtors Agency Account**

The Committee heard that as previously reported, Government Agency Account balance of Kshs. 2,961,873,689 as at 30th June 2016 included brought forward figures of Kshs. 342,341,936 and Kshs. 191,916,638 relating to Strategic Grain Reserve Programme - old account and GOK 17 selected depots for old account Femine Relieve respectively, both of which had remained unpaid for 17 years. It had not been possible to confirm whether and is so, the Board will be able to recover the amounts. No provision for bad debts has been made in this regard.

Management Response

Management informed the Committee that outstanding debts are old debts amounting to Kshs.534.26 million as shown below.

	Old Debts	Kshs
i)	Cost of Reserved Capacity & Wheat Market Intervention Account on SGR	342,341,936
ii)	17 G.O.K Depots reserved for Famine Relief Programme	191,916,638
	Total	**534,258,574**

A Committee was constituted comprising officers from MOALF, MOD&P, Treasury and NCPB who went through all NCPB claim. However the final report was not issued to allow implementation of the recommendations. A proposal for formation of a joint committee to validate the claims had been communicated to MOALF vide NCPB's

Letter Ref. C.12/11 Dated 5th January, 2018. The matter will be finalized once a committee to relook at the claims is reconstituted. However as a prudent measure the management had provided Kshs 328.5 million as provision for doubtful debts.

Committee Observation

The debt was still outstanding

- Canon Insurance Arbitration

The Committee heard that the statement of financial position's debtors and prepayments balance of Kshs. 545,036,971 included an amount of Kshs, 20,354,729 being a deposit for a court case between M/S Afgri Trading (PYT) Limited Vs the Board. The deposit had been occasioned by a suit between Canon Assurance Limited and Afgri Trading Limited. Examination of documents available revealed that the matter arose as a result of an award in 2008 to Afgri Trading Limited to supply 60,000MT of white maize. During delivery, on 20th November 2008, the Board was informed of an explosion on the vessel carrying the maize whereby 6,350 MT were damaged and declared unfit for human consumption. The maize had been insured against marine perils by Cannon Assurance Limited. The Board therefore claimed for compensation of damaged maize for Kshs. 217 million which was paid.

Further examination of the documents revealed that the insurance company after compensating the Board instituted legal proceedings against the vessel which resulted in detaining the vessel that had transported the maize. The detention of the vessel led to accumulation of demurrage charges totaling to USD 211,359. This was followed by the insurer (Canon Assurance) instituting arbitration proceedings without consulting the Board. The ruling was made in favour of Afgri Trading (PTY) Limited and the claim of USD 211,359, 4% per annum interest,£4,656 cost of arbitration and Kshs. 590,345 taxed bill. This has since been paid by the Board to Afgri (PTY) Ltd. It is not clear why these costs were incurred by the Board since the Board did not instruct the insurance company to sue and detail the vessel. Consequently, the propriety of the cost of Kshs. 20,354,729 incurred by the Board as compensation to Afgri Trading (PTY) Limited could not be confirmed.

Management Response

Management informed the Committee that the Board contracted Afgri (Pty) Limited of South Africa on 8th August, 2008 for the supply of 60,000± 12% metric tons to be shipped on or before 15th November, 2008 in shiploads of 20,000 metric ton. The 1st and 2nd ships arrived safely without any incident. However the Board was informed by the supplier that there had been an explosion on the ship transporting the 3rd consignment.

The Ship was arrested by Cannon Assurance Company upon arriving at the port of Mombasa and thus accrued demurrage of USD 211,359.18 by the time it was allowed to sail away after issuing a suitable bank guarantee.

The NCPB then claimed from and was paid a sum of Kshs. 217 million by the then Cannon Assurance for the damaged imported maize. However, without the knowledge of NCPB the supplier commenced arbitration process in London against M/s. Afgri (Pty) Limited in exercise of their right of subrogation. The Arbitration was instituted in NCPB's name who was the policy holder, while Afgri (Pty) Limited also filed a counterclaim of USD 211,359.18. Cannon Assurance abandoned the case when they realized that they had sued the wrong party and Afgri were awarded their counterclaim.

When the arbitration process was abandoned, the counter claim for USD 211,359.18 was left undefended and therefore the arbitrator awarded Afgri the demurrage claim. The Board was thereafter served with the arbitral ward for USD 211,359.18 plus interest, arbitration cost £4,656 and taxed cost Kshs. 590,345.

The arbitral award was domesticated in Kenya and a decree was issued dated 20th May 2013. NCPB brought the matter to the attention of Cannon Assurance who declined to take up the payment and NCPB was therefore forced to settle the claim to avert the proclaimed assets being attached and sold by auctioneers. NCPB brought the matter to the attention of the regulator for actions considered inappropriate by Canon Assurance. They are yet to respond despite several reminders. The Board has since filed a suit against Cannon Assurance for the recovery of Kshs. 20,354,729 as per the court pleadings.

With the auctioneer having proclaimed and attached NCPB's assets the only recourse available was to settle the judgement award and pursue Canon Assurance for the restitution of the award and any attendant costs.

The alternative for NCPB was to disregard the court orders and have the assets proclaimed sold and the management cited for contempt of court (**Correspondences available).**

Current Position

The Cannon Assurance and Ship owners of MV Fonarun Naree negotiated an out of court settlement and a consent dated 2nd May 2017 for Kshs. 198,000,000.00 was recorded at the High Court. Part of the agreement was also the reimbursement of the funds paid out amounting to Kshs. 20,354,729.00 as per the abandoned arbitration process. The consent settling the NCPB Vs. Cannon Assurance was recorded on 4th July 2017 and the Board was reimbursed Kshs. 24 million on 19th June 2017.

MIN/NA/PIC/2018/237: ADJOURNMENT

The meeting was adjourned at ~~forty-e~~ight minutes past twelve O'clock.

Signed..... Date.....03/07/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 43RD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON Thursday 21ST JUNE 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.40AM

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. Omar Mohamed Maalim Hassan, MP
5. The Hon. Nicholas Scott Tindi Mwale, MP
6. The Hon. Chrisantus Wamalwa Wakhungu, MP
7. The Hon. Ahmed Kolosh Mohamed, MP
8. The Hon. James Kamau Githua Wamacukuru, M.P
9. The Hon. Thuku Zachary Kwenya, M.P
10. The Hon. Paul Kahindi Katana, MP
11. The Hon. Mohamed Hire Garane, M.P.
12. The Hon. Purity Wangui Ngirici, MP
13. The Hon. Babu Owino Paul Ongili, MP
14. The Hon. Gideon Mutemi Mulyungi, MP

ABSENT WITH APOLOGY

1. The Hon. John Muchiri Nyaga, M.P
2. The Hon. Joash Nyamache Nyamoko, MP
3. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
4. The Hon. Mary Wamaua Waithira Njoroge, MP
15. The Hon. Rashid Kassim Amin, MP
5.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Mr. Evans Oanda	-	Clerk Assistant I
2.	Mr. Charles Atamba	-	Research Officer
3.	Ms. Mugure Gituto	-	Legal Counsel
4.	Mr. Thomas Ogwel	-	Fiscal Analyst
5.	Ms. Noel Chelagat	-	Media Relations Officer
6.	Ms. Christine Maeri	-	Audio Recording Officer
7.	Nicodemus Maluki	-	Clerk Assistant III

IN ATTENDANCE

1.	Lawrence Oigara	-	Manager, Adit
2.	Reuben Kamuruchi	-	Manager, Audit
3.	Mr. Joshiah Oyuko	-	Manager, Audit

4. Mr. Livingstone Njenga - Supervisor, Audit
5. Mr. Peter Rutere - ISC

MIN/NA/PIC/2018/238: PRELIMINARIES

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

MIN/NA/PIC/2018/239: EXAMINATION OF AUDITED ACCOUNTS OF NATIONAL AIDS CONTROL COINCIL FOR THE FY 2016/17

Dr. Nduku Kilonzo, the Chief Executive Officer of the National Aids Control Council (NACC) accompanied by CPA. Ken Nyamolo (Head Finance) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the National Aids Control Council for the financial year 2013/2014 to 2016/2017.

FINANCIAL YEAR 2013/2014

1. Community Initiative Expenses

The Committee heard that a Statement of financial performance for the year ended 30 June 2014 reflected community initiative expenses of Kshs.512,797,070. However, the expenditure on community initiative activities had not been audited by this office which contravenes the Financing Agreement Schedule I, Section 11(B)(4) and Section IV (B)(6). As a result, the propriety of the particular expenditure amounting to Kshs.512,797,070 for the year ended 30 June 2014 could not be ascertained.

Management Response

The TOWA Project was Audited and successfully closed in 2015 with an ICR issued as Satisfactory.

Committee Observations

Issue has been resolved

2. Receivables from Non-exchange transactions

The Committee heard that as disclosed in Note 18 to the financial statements, the receivables from non-exchange transactions balance of Kshs.241,754,426 as at 30 June 2014 comprised advances to various committee organizations. Notable among these were advances to District Technical Committee (DTC), Constituency Aids Control Committees' (CACC's), World Aids Day and Aids Control Unit (ACU) amounting to Kshs.19,613,358. Kshs.40,198,287, Kshs.2,161,700 and Kshs.3,697,925 respectively which had been outstanding for a considerably long period of time.

Similarly, included in advances to CBOs pre-testing/support advance of Kshs.9,914,397 were advances to Field Officers (FO), Kenya Long Distance Truck Drivers Association (KLDTD), District Medical Officer of Health - Turkana and Kenya Consortium to Fight Aids, Tuberculosis and Malaria (KECOFATUMA) amounting to Kshs.24,097,966, Kshs.105,985, Kshs.310,378 and Kshs.84,350 respectively, which had not been accounted for as at 30 June 2014.

Further, the receivables from non-exchange transactions balance of Kshs.241,754,426 included staff imprests and staff advances of Kshs.4,589,511 out of which Kshs.2,113,579 is owing from former staff of the Council and which has been outstanding for a considerably long period of time. Also, included in the receivables from non-exchange transactions balance were advances of Kshs.109,752,890 to Financial Management Agency (FMA) but whose breakdown had not been availed for audit review.

Also, the balance of receivables from non-exchange transactions of Kshs.241,754,426 as at 30 June 2014 included other advances balance of Kshs.27,728,392. According to information available, these were expenses incurred by the two projects, but whose payments were made for GOK development account. As at 30 June 2014, these expenditures had not been reimbursed by the two projects. The management has however indicated that, efforts are under way to have all the outstanding advances and imprests recovered.

Consequently, the accuracy and full recovery of the receivables from non-exchange transactions balance of Kshs.241,754,426 as at 30 June 2014 could not be ascertained.

Management Response

Management informed the Committee that advances to DTCs, ACUs World AIDS Day advance and the cited imprest and advances to former staff were all issued during the formative years before proper systems were put in place for accountability purposes. The NACC wrote to the Ministry of Interior Coordination, the then Ministry of State for National Planning and Inspector General -Corporations seeking details of the officers who were serving as DCs and DDOs in office at the time of disbursements without success. A number of these officers have since either retired, died or left the service in one way or another. Efforts from the Registrar of births and deaths have also not yielded much.

On advice by the Office of the Auditor General the NACC had made a provision of Ksh 81.3 Million in FY 2016/17 for bad and doubtful debts.

On advances to CBOs pre-testing/support of Kshs.9,914,397, these were funds advanced to the Field Offices during the year for activities and office operations. The cited balances were as at the end of Financial year and were fully accounted for in the subsequent year.

The Kenya Long Distance long truck Drivers had fully accounted for the resources by making cheque deposits to the NACC for Ksh 105,985.

These were advances for the Division of Malaria Control under the TOWA Project and were subsequently accounted for in the Financial Year. The TOWA Project has since closed successfully.

The Amounts from DMOH Turkana were fully recovered from him through payroll by the Ministry of Health as per attached pay slips.

With regard to KECOFATUMA the NACC through the NGOs coordinating Board was able to establish that KECOFATUMA had closed its offices and Prof. Edward Karanja, who was the Coordinator of KECOFATUMA was no longer resident in Kenya. The NACC then wrote to Ministry of Foreign Affairs to assist in tracing him. The amounts have been included in the schedule of debt that the NACC has sought for authority for write-off from the National Treasury

Recoveries have been made from the staff who left NACC and deductions from their terminal dues effected. There are however some older imprests like those given to the former CEO Margaret Gachara among others.

On advice by the Office of the Auditor General the NACC has made a provision of Ksh 81.3 Million in FY 2016/17 for bad and doubtful debts. A request has been made to the National Treasury to write off the unrecoverable amount that recur in the NACC's Financials

The FMA-Pricewaterhousecoopers finally accounted and documented all their accountabilities before the project closure as per their contract of services.

Committee observations

i. Issues resolved - District Technical Committees (Kshs.19,613,358), Constituency AIDS Control Committees (Kshs.40,198,287), World Aids Day (Kshs.2,161,700), AIDS Control Units (Kshs.3,697,925), Field Offices Kshs.24,097,966, KECOFATUMA Kshs.84,350 and Staff imprests and Advances Kshs.2,113,579

ii. Breakdown of Financial Management Agency of Kshs.109,752,890 was availed

iii. Issues resolved - KLDTDA Kshs.105,985, District Medical Officer of Health - Turkana Kshs.310,378, other advances from GOK Development Account Kshs.27,728,392.

iv. The NACC has made a provision for bad and doubtful debts of Kshs.81,308,806 in FY 2016/17.

v. Paragraph not fully resolved.

FINANCIAL YEAR 2014/2015

1. Receivables from Non-exchange transactions

1.1 The Committee heard that as previously reported and as disclosed in note 18 to the financial statements, the receivables from non-exchange transactions balance of Kshs.217,761,358 as at 30 June 2015 comprised of advances to various committee organizations. Notable among these are advances to District Technical Committee, Constituency Aids Control Committees and World Aids Day and Aids Control Unit amounting to Kshs.31,133,444, Kshs.2,161,700 and Kshs.3,697,926 respectively which have been outstanding for considerably long period of time.

1.2 Similarly, included in advances to CBOs pre-testing/support advance of kshs.12,559,476 were advances to District Medical Officer of Health-Turkana, and Kenya Consortium to Fight Aids, Tuberculosis and Malaria (KECOFATUMA) amounting to Kshs.310,378 and Kshs.84,350 respectively which had not been accounted for or surrendered as at 30 June 2015.

1.3 Further, the receivables from non exchange transactions balance of Kshs.217,761,358 included advances to field officers of Kshs.21,947,595 and staff imprests and staff advances of Kshs.9,304,361 out of which Kshs.2,113,579 was owing from former staff of the Council and which had been outstanding for a considerably long period of time. Also, included in the receivables from non exchange transactions balance, were advances of Kshs.68,057,873 to Financial Management Agency (FMA) but whose breakdown has not been availed for audit review.

1.4 Also, the balance of receivables from non-exchange transactions of Kshs.217,761,358 as at 30 June 2015 included other advances amounting to Kshs.49,285,625. According to information available, these were expenses incurred by the two projects but whose payments were made from GOK development account. As at 30 June 2015, these expenditures had not been reimbursed by the two projects.

Consequently, the accuracy and full recoverability of the receivables from non exchange transactions balance of Kshs.217,761,358 as at 30 June 2015 could not be ascertained.

Management Response

On paragraphs 1.1, 1.2 and 1.3, Management informed the Committee that these were funds advanced to the Field Offices during the year for activities and office operations. The cited balances were as at the end of Financial year and were fully accounted for in the subsequent year. These were part of the TOWA CBOs that were eventually accounted for before project closure.

Recoveries have been made from the staff who left NACC and deductions from their terminal dues effected.

The FMA-Pricewaterhousecoopers finally accounted and documented all their accountabilities before the project closure as per their contract of services.

This was inter Project borrowing from GOK D to Global fund due to funds flow delays which was eventually refunded and cleared.

Current Status

i. Issues not resolved - District Technical Committees Kshs.19,613,358, Constituency AIDS Control Committees Kshs.31,133,444 World Aids Day Kshs.2,161,700, AIDS Control Units Kshs.3,697,926, Field Offices Kshs.21,947,595 and KECOFATUMA Kshs.84,350 and Staff imprests and Advances Kshs.2,113,579

ii. Breakdown of Financial Management Agency of Kshs.68,057,873 was availed.

iii. Issues resolved - KLDTDA Kshs.105,985, District Medical Officer of Health - Turkana Kshs.310,378, other advances from GOK Development Account Kshs.49,285,625.

iv. The NACC has made a provision for bad and doubtful debts of Kshs.81,308,806 in FY 2016/17.

v. Paragraph not fully resolved.

FINANCIAL YEAR 2015/16

1.0 Receivables from Non-exchange transactions

1.1 Advances to various committees

The Committee heard that as previously reported and as disclosed in note 19 to the financial statements, the receivables from non-exchange transactions balance of Kshs.89,408,840 as at 30 June 2016 comprised advances to various committee organizations. This item included advances to District Technical Committee (DTC) Kshs.19,613,358, Constituency Aids Control Committees' (CACC's Kshs.8,335,532, World Aids Day Kshs.2,161,700, and Aids Control Unit (ACU) Kshs.3,697,926 which had been outstanding for considerably long period of time.

1.2 Direct Advances to Implementers

Similarly, included in direct advances to implementers of Kshs.4,143,508 in note 19 to the financial statements were advances to District Medical Officer of Health-Turkana Kshs.310,378 and Kenya Consortium to Fight Aids, Tuberculosis and Malaria (KECOFATUMA) Kshs.84,350 which had not been accounted for or surrendered as at 30 June 2016.

1.3 Advances to Field Officers

Further, the receivables from non exchange transactions balance of Kshs.89,408,841 includes advances to field officers of Kshs.16,831,195 and staff imprests and staff advances of Kshs.2,721,876 out of which Kshs.2,366,978.30 was owing from former staff of the Council and which had been outstanding for a considerably long period of time. Also, included in the receivables from non exchange transactions balance were advances of Kshs.53,088,338 to Financial Management Agency (FMA) whose breakdown/analysis had not been availed for audit review.

1.4 Other Advances

Balance of receivables from non-exchange transactions of Kshs.89,408,841 as at 30 June 2016 included other advances amounting to Kshs.7,036,475. According to information available, these were expenses incurred by the two projects but whose payments were made from GOK development account. As at 30 June 2016, these expenditures had not been reimbursed by the two projects. The management had, however, indicated that efforts were under way to have all the outstanding advances and imprests recovered.

Consequently, the accuracy and full recoverability of the receivables from non exchange transactions balance of Kshs.89,408,841 as at 30 June 2016 could not be determined.

Management Response

Management informed the Committee that these were funds advanced to the Field Offices during the year for activities and office operations. The cited balances were as at the end of Financial year and were fully accounted for in the subsequent year. The other matters had been addressed in the following ways:

a. Imprest advanced to staff had been fully recovered
b. Recoveries have been made and request for write off made to National Treasury.
c. The FMA-Pricewaterhousecoopers finally accounted and documented all their accountabilities before the project closure as per their contract of services
d. On advances amounting to Kshs.7,036,475, these were inter projects salaries paid by GOK on behalf of Global Fund for the M&E Officers under Global Fund. This has since been reimbursed and cleared.

Current Status

i. Issues not resolved - District Technical Committees Kshs.19,613,358, Constituency AIDS Control Committees Kshs.8,335,532, World Aids Day Kshs.2,161,700, AIDS Control Units Kshs.3,697,926, Field Offices

Kshs.16,831,195 and KECOFATUMA Kshs.84,350 and Staff imprests and Advances Kshs.2,366,978

ii. Breakdown of Financial Management Agency of Kshs.53,088,338 was availed.

iii. Issues resolved - District Medical Officer of Health - Turkana Kshs.310,378, other advances from GOK Development Account Kshs.7,036,475.

iv. The NACC has made a provision for bad and doubtful debts of Kshs.81,308,806 in FY 2016/17.

v. Paragraph not fully resolved.

FINANCIAL YEAR 2015/2016

Disbursement Constituency Aids Control Coordinators (CACCs)

The Committee heard that Management disbursed a total of Kshs.34,053,439 to the Constituency Aids Control Coordinators during the year to finance their operations. The management has stated that the amount was charged to various items in the statement of financial performance for the year ended 30 June, 2017. However, the management has not provided explanation as to why the funds were sent directly to the Constituency Aids Control Coordinators and not through the County Governments who are the employers of the Constituency Aids Control Coordinators. The direct disbursement may lead to duplication since the County Government may have incurred similar expense towards the AIDS related activities.

In the circumstance, it was not possible to confirm the propriety of the disbursement to Constituency Aids Control Coordinators during the year of Kshs.34,053,439.

Management Response

The CACC have been part of the NACC structures since NACC's inception. The role of CACC committees included mobilizing community support for the fight against HIV and AIDs and dissemination of appropriate national policies, guidelines and strategies on HIV and AIDS. CACCs also played a central role in the successfully implementation of the TOWA project by vetting community groups to be funded and monitoring implementation.

The NACC has also been actively engaging with County Governments directly and through the Council of Governors. Out of these engagements the NACC has provided technical support to all 47 counties to develop county specific HIV and AIDS strategic plans. During FY 2016/17 the NACC's engagement with Counties resulted in Kshs.170 Million being set aside for HIV/AIDS activities in 13 counties while 24 counties had proposed combined HIV/AIDS budgets of Kshs.2 Billion for FY 2018/19 growing to Ksh2.3 Billion for the FY 2020/21.

The NACC had been disbursing funds to CACC bank accounts to support their office operation on quarterly basis. This amount was used to facilitate the operations of the CACC committees. This role was not supported by County Governments.

Committee Observations

1. The role of coordinating NGOs in collection and collation of data on HIV across the country is a National Government function undertaken by the NACC. This data is shared with county government for use in health service delivery to HIV AIDs affected and infected people. This is not duplication of work but synergistic in nature.
2. Most of the Members of the National Assembly were not aware of the activities of the CACC; not even the coordinators and the amount disbursed to each constituency. NACC was asked to provide a breakdown of disbursements to the each constituency within a week. Also consider updating Members of Parliament on the quarterly disbursements to CACC and the office bearers of CACC within each constituency.
3. The query was resolved

MIN/NA/PIC/2018/240: ADJOURNMENT

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

Signed.....

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

Date 03/07/2018

MINUTES OF THE 47TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY 28TH JUNE 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 11:50AM

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Raphael Bitta Sauti Wanjala, MP
3. The Hon. John Muchiri Nyaga, M.P
4. The Hon. Omar Mohamed Maalim Hassan, MP
5. The Hon. Nicholas Scott Tindi Mwale, MP
6. The Hon. Chrisantus Wamalwa Wakhungu, MP
7. The Hon. Ahmed Kolosh Mohamed, MP
8. The Hon. Thuku Zachary Kwenya, M.P
9. The Hon. Paul Kahindi Katana, MP
10. The Hon. Mohamed Hire Garane, M.P.
11. The Hon. Mary Wamaua Waithira Njoroge, MP
12. The Hon. Rashid Kassim Amin, MP

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Joash Nyamache Nyamoko, MP
3. The Hon. Purity Wangui Ngirici, MP
4. The Hon. Babu Owino Paul Ongili, MP
5. The Hon. James Kamau Githua Wamacukuru, M.P
6. The Hon. Gideon Mutemi Mulyungi, MP
7. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Mr. Evans Oanda	-	Clerk Assistant I
2.	Mr. Mohamed Boru	-	Clerk Assistant III
3.	Ms. Mugure Gituto	-	Legal Counsel
4.	Mr. Thomas Ogwel	-	Fiscal Analyst
5.	Ms. Noel Chelagat	-	Media Relations Officer
6.	Ms. Christine Maeri	-	Audio Recording Officer
7.	Mr. Fabian Suny	-	Junior Legislative fellow

IN ATTENDANCE

1.	Mr. Boniface Muli	-	Director, OAG
2.	Mr. J. M Njiru	-	Manager, Audit
3.	Mr. Josiah Oyuko	-	Manager, OAG

MIN/NA/PIC/2018/250: PRELIMINARIES

The Chairperson called the meeting to order at fifty minutes past eleven O'clock followed by a word of prayer from Hon. Muchiri Nyaga, MP.

MIN/NA/PIC/2018/251: EXAMINATION OF AUDITED ACCOUNTS OF THE KENYA RAILWAYS CORPORATION FOR THE FINANCIAL YEARS 2015/2016

Mr. Atanas Mana, the Managing Director of the Kenya Railways Corporation (KRC) accompanied three of his officers appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the corporation for the financial year 2015/2016.

1. Illegal Allocations of Land (FY 2015/2016)

The Committee heard that the statement of financial position as at 30th June 2016 reflected a balance of kshs. 22,571,735,017 in respect of property, plant and equipment. However, and as reported in the previous year, various parcels of land have been allocated to private developers by either the Commissioner of Lands or Local Authorities without the consent of the Corporation. Land measuring approximately 3 acres within Limuru Railway Station, constituting industrial plots No.7882/2 - 10 was allocated to private developers. Similarly, private buildings had been put up on another piece of land measuring approximately 2 acres within Kikuyu Railway Station. While in Mombasa, parcels of land measuring approximately 1 and 0.75 acres adjacent to Mombasa Railway Station had been allocated to private developers, without the Corporation's consent.

Consequently, the accuracy of the property, plant and equipment balance of kshs. 22,571,735,017 as at 30th June 2016 could not be confirmed.

Management Comments

Management informed the Committee that the Corporation was in the process of carrying out Survey and Registration of all its operational land and Marshalling Yards for purposes of acquiring ownership documents. It was working closely with the National Land Commission to speed up the process of registration to obtain title deeds and official communication had been forwarded.

To achieve this, the Corporation had engaged four surveying consultants to undertake countrywide surveys and registration of all operational land. This would see the survey of a total of 150 Railway Stations and marshalling yards measuring 2700 acres approximately finalized. It would further ensure that land irregularly allocated to third parties was identified, illegal surveys cancelled and titles revoked and the same registered under the Corporation. This exercise was expected to be completed by the end of the 2018/19 year.

The Corporation was also working closely with the Ethics and Anti-Corruption Commission in conducting investigations into land irregularly allocated to third parties with an aim of recovering the same. It had identified around 500 cases countrywide of parcels irregularly and illegally acquired and the same submitted to the Ethics and Anti-Corruption Commission for further investigations.

The corporation had also requested the Ministry of Lands to revoke titles of all the land that was irregularly allocated by the Commissioner of Lands. Letter to the NLC was availed.

Committee Observations

i) The letters to the EACC and NLC were done a long time ago without tangible results coming out of them.
ii) The information provided on the Kshs. 22 billion value of land was too generic.
iii) This particular matter had been observed in PIC's 21st report. In is inconceivable that the value of the land continues to remain the same as it was

Committee Resolution

KRC to provide the Committee with details of all its land countrywide that has been leased; the lease period; amount leased for and whether or not the said leases have been used to secure loans. The requested information should reach the Committee within a week.

2. CURRENT ASSETS (FY 2015/2016)

2.1 Short term Deposits

The Committee heard that included in current assets balance of kshs 79,497,740,347 as at 30th June 2016 was short term deposits amounting to kshs 2,725,000,000 out of which Kshs 800,000,000 was held as a fixed deposit with Chase Bank Limited at a rate of 12.5% p.a. However, Chase Bank Ltd was placed under receivership and Kenya Deposit Insurance Corporation (KDIC) appointed to assume the management and control of the bank on 7 April 2016. In the circumstances, the recoverability of the total Kshs. 800.000.000 was doubtful.

Management Comments

Management informed the Committee that the Central Bank of Kenya (CBK) and Kenya Deposit Insurance Corporation (KDIC) announced the signing of an agreement between SBM Bank (Kenya) Limited (SBM Kenya), and KDIC for the acquisition by SBM Kenya of certain assets and assumption of certain deposits with respect to Chase Bank (Kenya) Limited (In Receivership) (CBLR).

The agreement provided that there would be a transfer of 75 percent of the value of deposits currently under moratorium at CBLR, and the transfer of the majority of staff and branches of the existing CBLR operations. 25 percent of the value of moratorium deposits would remain in CBLR.

For the 75 percent of moratorium deposits to be transferred to SBM, the terms of these transferred deposits are to be as follows:

a. 25 percent of each transferred deposit is to be held in a current account with SBM Kenya, with unrestricted usage and without interest being payable thereon; and
b. a further 25 percent of each transferred deposit will be held in a savings account with SBM Kenya at an interest rate of 6.65 percent per annum, with unrestricted usage; and
c. the remainder of each transferred deposit will be held on fixed term deposit with SBM Kenya at an interest rate of 6.65 percent per annum , such deposits (together with the interest thereon) to mature, as to one-third of such remainder, on the first, second and third anniversaries of the transfer respectively.

The customary conditions that applied to current and savings accounts, and term deposits, respectively, would apply to these deposits. The interest rates in (b) and (c) above will be aligned to the interest rates as prescribed by law.

The date these deposits would be available, and the details under which the customer accounts would be managed was yet to be announced.

Committee Observation

i) It was wrong for management to deposit the money in a private bank
ii) There was no correspondence between the Chase Bank and the Kenya Railways Corporation to guarantee the above management response
iii) The KRC ignored Treasury Circular of July 2002 limiting investment of Funds to Treasury Bills and Treasury Bonds.

Committee Resolution

i) KRC to provide the Committee with the following information for perusal within a week:
ii) Communications between KRC, Chase Bank and the CBK regarding safeguarding the Kshs. 800 million
iii) Minutes of the KRC board when it was made aware of the arrangements to transfer some of the money to savings account and others to current account;
iv) Breakdown on how the deposits were made to an extent of amounting to Kshs. 800 million.
v) Board resolution authorizing depositing of the amount in Chase Bank.

2.1 Inventories

The Committee heard that the current assets balance of Kshs. 79,497,740,346 also included stores inventories amounting to Kshs. 3,471,628,460. However, no stock taking was carried out as at 30 June 2016. In the circumstances, it was not possible to confirm the correctness of the total inventories balance of Kshs. 3,471,628,460 included in the current assets as at 30th June 2016.

Management's Comments

Management concurred with the audit observation on the Corporation's inability to carry out stock-takes. This was as a result of cash flow constraints and staff inadequacies vis-à-vis the complexity and expansiveness of the Corporation's stores system. The Corporation therefore adjusts the stock values at the end of each financial year to take into account the movements within the year. The Corporation was however finalizing on a 100% stock take for its capital stores - an exercise that had taken 11 months.

Committee Observation

i) In absence of a stock take, the accuracy of the assets was in doubt.
ii) Despite the PIC's 21st report pointing out this, the problem largely remained unresolved.

3.0 Payables and Accrued charges (FY 2015/2016)

The Committee heard that included in payables and accrued charges balance of kshs. 2,197,081,570 as at 30 June 2016 was an amount of Kshs. 742,224,851 relating to payables which had been outstanding for over a year. No satisfactory explanation was provided as to why the same had remained outstanding for over a year.

Management's Comments

Most of the creditors listed are legacy creditors some of whom lack supporting documents to back up their claims, while others were in court. (A schedule of creditors was provided)

Committee observation

Some of the creditors have huge balances such as the Telcom Kenya.

Committee Resolution

KRC to provide the status in a week

4.0 Unaccounted for cash (FY 2015/2016)

4.1 Staff travel advance surrendered but not banked

The Committee heard that evidence available indicated that an amount of kshs 4,873,766 was surrendered by officers to the Corporation cashier, but the same was not banked as summarized below:-

Month	Cash returned	Cash banked	Cash un-accounted
Jul-15	990,238.00	82,988.00	907,250.00
Aug-15	605,233.00	424,832.00	180,401.00

Sep-15	1,076,129.00	68,200.00	1,007,929.00
Oct-15	477,151.00	-	477,151.00
Nov-15	247,520.00	-	247,520.00
Dec-15	106,159.00	32,300.00	73,859.00
Jan-16	269,404.00	-	269,404.00
Feb-16	286,512.00	-	286,512.00
Mar-16	415,151.00	114,900.00	300,251.00
Apr-16	438,937.00	48,900.00	390,037.00
May-16	270,563.00	-	270,563.00
Jun-16	442,889.00	-	442,889.00
TOTAL	**5,445,485.00**	**591,719.00**	**4,853,766.00**

In the circumstances, the total cash of kshs 4,853,766 has not been accounted for.

Management's Comments

Staff submitted Kshs. 4,853,766 through cash office and receipts provided but the same was not banked nor proof of banking provided. This was attributed to isolated cash office malpractices by some employees.

Since theft is a criminal offence, the matter was reported to the Criminal Investigation (CID). (See copy attached Appendix 3). In addition, disciplinary measures were taken on staff who were alleged to have failed in their duties in respect of the matter.

Further to the above actions, the management had put in additional controls to mitigate recurrence of cash malpractices by resulting to electronic funds transfer(EFT) and re-banking of surrenders by staff and provision of a banking slip for a KR official receipt to be offered.

Committee Observation

The matter had been dealt with in a manner that it should. However, it is sad that no conviction has been made so far.

4.2 Museum Revenue Unaccounted for

The Committee heard that a scrutiny of the Corporation's records revealed that during the year under audit, a total of kshs 1,981,920 was collected as museum revenue and surrendered to the Corporation cashier for banking. However, no banking slips were availed to confirm the total amount of kshs 1,981,910 was banked and the same had not been accounted for.

Management's Comments

This was attributed to isolated cash office malpractices by an employee. The matter had been reported to the police for prosecution.

Committee Observation

The matter had been dealt with in a manner that it should. However, it is sad that no conviction has been made so far.

MIN/NA/PIC/2018/252: ADJOURNMENT

The meeting was adjourned at thirty six minutes past one O'clock. Next meeting will be held on 29th June 2018 at 10:00am.

Signed..... Date..... 03/07/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 55TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 24TH JULY 2018 IN 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. Omar Mohamed Maalim Hassan, MP
4. The Hon. Nicholas Scott Tindi Mwale, MP
5. The Hon. Raphael Bitta Sauti Wanjala, MP
6. The Hon. Chrisantus Wamalwa Wakhungu, MP
7. The Hon. Rashid Kassim Amin, MP
8. The Hon. Ahmed Kolosh Mohamed, MP
9. The Hon. John Muchiri Nyaga, M.P
10. The Hon. Joash Nyamache Nyamoko, MP
11. The Hon. Paul Kahindi Katana, MP
12. The Hon. Babu Owino Paul Ongili, MP
13. The Hon. Mohamed Hire Garane, M.P.
14. The Hon. James Kamau Githua Wamacukuru, M.P
15. The Hon. Thuku Zachary Kwenya, M.P

ABSENT WITH APOLOGY

1. The Hon. Gideon Mutemi Mulyungi, MP
2. The Hon. Mary Wamaua Waithira Njoroge, MP
3. The Hon. Purity Wangui Ngirici, MP
4. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Mr. Evans Oanda	-	Clerk Assistant I
2.	Mr. Mohamed Boru	-	Clerk Assistant II
3.	Mr. Charles Atamba	-	Research Officer
4.	Ms. Mugure Gituto	-	Legal Counsel
5.	Ms. Noel Chelagat	-	Media Relations Officer
6.	Ms. Christine Maeri	-	Audio Recording Officer
7.	Mr. Fabian Sang	-	Junior Legislative Fellow

IN ATTENDANCE

1.	Mr. James Njuru	-	Manager, Audit
2.	Mr. Joshiah Oyuko	-	Manager, Audit

MIN/NA/PIC/2018/266: PRELIMINARIES

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

followed by a word of prayer from The Hon. Nicholas Tindi Mwale, MP.

MIN/NA/2018/267: EVIDENCE BY KENYA RAILWAYS CORPORATION

Mr. Atanas Maina, the Managing Director of the Kenya Railways Corporation, accompanied by Mr. James Siele (Business and Commercial Team Leader), Mr. David Njogu (Manager, Legal Services), Mr. Peter Kamakia (Assistant Accounts Manager) and Mr. Victor Wahome (Land Surveyor) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the authority for the financial years 2014/2015 and FY 2015/2016.

MIN/NA/PIC/2018/268: ADDITIONAL INFORMATION REQUESTED FROM KENYA RAILWAYS DURING THE LAST MEETING

The Committee was appraised on the additional information provided by the Corporation as per the resolutions of the last meeting as follows:

A. Details of Railway Land under Survey including details of the surveyors, status of survey and costs incurred

Committee Observations

1. The details had been provided but the documentation was not in a format that could easily be referenced by the Committee.
2. The contracts for the survey of Railways land had all lapsed. The first contract was issued in 2014 and lapsed in 2015 while the rest had been issued in 2017 and lapsed in 2018.
3. The Corporation indicated that the contracts that lapsed had been renewed.

Committee Resolutions

1. The Corporation should provide copies of the survey contracts that had been extended.
2. The details of the land under survey including LR numbers and location of the particular pieces of land should be provided to the Committee.
3. The requested information should be provided within ten days.

B. Details of Irregularly Allocated Railway Land

Committee Observations

The details of the irregularly allocated land had been provided but the documentation was not properly referenced or some information was lacking in some instances.

Committee Resolutions

The details of the irregularly allocated land including LR numbers, location of the particular pieces of land, persons who acquired the land and current status of the land should be provided to the Committee within ten days. However, the corporation undertook to provide the same in 30 days.

C. Details of Leased Railway Land

The Corporation provided details of the railway land leased out to various entities. The information will be reviewed by the Auditors and the Committee.

D. Details of Loans Charged to Leased Railway Land

The Corporation provided a schedule of loans acquired by leases of railway land who had charged the loan to the leased land.

Committee Resolution

The Corporation was requested to provide copies of the consent it gave to the leases allowing them to charge the loan on railway land.

E. Details of Court Cases on Railway Land

The Corporation provided details of the court cases regarding land claimed by the railway but whose ownership has been in contention with various entities.

F. Details on Short Term Deposits Held in Commercial Banks

The Corporation provided a chronology of the short term deposit held at Chase Bank that was the subject of an audit query. The information provided also included Board and Treasury approvals for the deposit at Chase Bank as well as the current status of recovery of the funds.

The Committee observed that the investments was duly approved by the Board and that the same investments would be realized once the SBM Bank completes takeover of Chase Bank.

G. Inventory Valuation

The Committee heard that stock taking was currently ongoing and would be concluded by the end of July, 2018 before being shared with the Committee in the first week of August 2018.

H. Payables and Accrued Creditors

The Committee observed that the schedule of creditors was provided by the Corporation including details of legacy creditors.

MIN/NA/PIC/2018/269: CONTROVERSY ON MANAGEMENT OF THE STANDARD GAUGE RAILWAY (SGR)

Following the ongoing controversy regarding mistreatment of Kenyan SGR staff by their Chinese counterparts, the Committee heard that:

1. Kenya Railways does not tolerate discrimination among its staff based on any criteria.
2. The Corporation had since carried out an exercise to evaluate 'work satisfaction' among SGR employees and would use the result to come up with strategies of increasing synergy between the Chinese and Kenyan SGR staff.
3. The Committee was further informed that the Kenyan staff working at the SGR stood at 1635 workers while the Chinese staff numbered 841 workers. The Kenyan staff are further complemented by approximately 1000 support staff including cleaners and security wardens. Chinese workers at the SGR are technical staff who are training Kenyans with a view to handing over operations of the rail to locals.
4. There is an objective of having 90% of SGR worker being Kenyan by the fifth year of operation.

The Committee was concerned by the suggestion that the Corporation was carrying out exercises in cultural integration noting that it is the Chinese workers who should adapt to Kenyan culture and not vice versa.

MIN/NA/PIC/2018/270: CONTRACT FOR OPERATION AND MAINTENANCE OF THE STANDARD GAUGE RAILWAY

The Committee was briefed as follows:

1. On 6th May 2016, the Ministry of Transport and Infrastructure in a letter addressed to the Managing Director of Kenya Railways communicated the directive of the 13th Summit of the Northern Corridor Integration Project of 23rd April, 2016 held in Kampala, Uganda. The Summit had directed that China Communications Construction Company (CCCC) and China Road and Bridge Corporation (CRBC), the contractor for the Mombasa-Nairobi/Kampala was the preferred operator for the Mombasa-Kampala SGR. Kenya Railway was advised to implement the directive and carry out a due diligence on CCCC/CRBC.
2. In June 2016, the Government of Kenya sent a team to conduct due diligence on CCCC, CRBC and John Holland Group Pty (JH) of Australia. The team visited China and Australia. The team recommended that with the support of JH, CRBC would have the required capacity for the Mombasa-Nairobi SGR Operations and Maintenance project and that CCCC through CRBC/JH be engaged for an initial period of five (5) years or such other term as the GoK may consider fit on an O&M contract.
3. The Due Diligence report was approved by Kenya Railways Board on 29th August, 2016 and submitted to the Ministry of Transport on 30th August, 2016. In a letter dated 5th September, 2016, the Ministry of Transport directed Kenya Railway to fast-track the process of finalizing the commercial contract for Operations and Maintenance between Kenya Railway and CRBC/JH which are subsidiaries of CCCC.

4. On 30th May, 2017, Kenya Railways signed a contract on operations and maintenance service with China Roads and Bridges Corporation. The contract will run for 5 years and is renewable for a further 5 years.

5. The SGR services commenced with the launch of passenger service train on 1st June, 2017 with freight services launched on 19th June, 2017. The Kenya Railway management is responsible for monitoring and evaluation of the performance based on Key Performance Indicators agreed with the contractor.

Procurement Process

6. Kenya Railway procured Aarvee Consortium as the Transaction Adviser (TA) to assist in the process of operator procurement. The Consultant commenced work on 25th November, 2016 and was involved in the preparation of the RPF Document submitted to CRBC to provide the scope of work for operations and financial quotations.

7. Kenya Railway sent out an invitation to tender to M/S CRBC/JH consortium on 2nd March, 2017 and subsequently issued an addendum on 9th March, 2017. The bid was submitted on 14th March, 2017. An Evaluation Committee was appointed to evaluate the Tender by CRBC/JH. Kenya Railway also made a request for technical expertise from the State Department of Transport and the National Treasury to support the evaluation process in line with the provisions of the Public Procurement and Disposal Act of 2015.

8. The Evaluation Team and representatives of CRBC/JH proceeded to negotiate the financial proposal and agreed on a final position. Whereas Kenya Railway requirement was for a separate reimbursable cost of operations and maintenance (labour and materials) and a management fee for the operator, the bidder proposed a fixed contract sum plus variables for tonnage above 1.5 million tonnes per year.

9. The Corporation wrote to the Ministry of Transport on 26th May, 2017 highlighting the financial implication and requesting for budgetary allocation for the O & M contract for the Mombasa-Nairobi SGR.

10. The parties came up with a draft contract which was forwarded to the Hon. Attorney General on 26th May, 2017 for clearance as the contract sum was above Kshs. 5 Billion as per Section 134 (2) of the Public Procurement and Disposal Act (2015). The Attorney General's office wrote to the National Treasury on the same day highlighting the financial obligations in the draft Operations and Maintenance (O & M) contract seeking a confirmation that the National Treasury had taken measures allowed under the Laws of Kenya to ensure that the financial obligations of the O & M contract shall be made when they fall due. The Attorney General asked Kenya Railway to conclude the Evaluation process and submit the reports.

11. Kenya Railways finalized the process and submitted all the documents to the Hon. Attorney General's office on 29th May, 2017.

12. The National Treasury confirmed vide a letter dated 29th May, 2017 that USD 110,618,322.16 required for operations and USD 30 Million required for the reserve account would be made available under the Railway Development Fund.

13. The Hon. Attorney General wrote to Kenya Railways on 30th May, 2017 indicating that they did not have sufficient time to comprehensively review and advise on the draft contract. The AG indicated that the O & M contract could be executed with necessary modifications. This was based on the assumption that Kenya Railway was satisfied with the advice of the Transaction Advisor.

14. The Ministry of Transport in its oversight authority was well versed with the subject at hand and satisfied the Transaction Adviser's advice in the proposed contract. The AG also assumed that Kenya Railway and the Ministry of Transport had obtained the appropriate approvals and assurances by and from the National Treasury on budgetary allocations. It was his further assumption that the National Treasury had taken the measures allowed under the Laws of Kenya to ensure that the financial obligations of the O & M contract are in order from a financial perspective and the necessary budgetary allocations will be made available as and when they fall due.

Committee Observations

The Committee made the following observations:

1. Kenya Railways initiated the procurement process for Operations and Maintenance Contract for the SGR after receiving communication from the Ministry of Transport relaying the directive from the 13th Summit of the Northern Corridor Integration Project of 23rd April, 2016 held in Kampala, Uganda. The Summit had directed that China Communications Construction Company (CCCC) and China Road and Bridge Corporation (CRBC), the contractor for the Mombasa-Nairobi/Kampala was the preferred operator for the Mombasa-Kampala SGR.
2. The Hon. Attorney General wrote to Kenya Railways on 30th May, 2017 indicating that his office did not have sufficient time to comprehensively review and advise on the draft contract between Kenya Railways and CRBC/JH. The AG indicated that the O & M contract could be executed with necessary modifications. This was based on the assumption that Kenya Railway was satisfied with the advice of the Transaction Advisor.

Committee Resolution

1. The Committee resolved that Kenya Railway should provide copies of the correspondence with the Ministry of Transport as well as well as the Attorney General.

MIN/NA/PIC/2018/271: CONTRACT FOR HANDLING 'DIRTY CARGO'

The Committee was briefed as follows:

1. During a cabinet meeting held on 16th December, 2017 at Embulbul, H.E the President directed that all cargo should be transported by SGR. He also directed that the service should break even within 6 months, move 5 million tonnes within 6 months, 8 million tonnes within 12 months and 18 million tonnes within 3 years.
2. Subsequent meetings held at the Ministry of Transport and Infrastructure with Shippers on 3rd and 4th January, 2018 came up with resolutions in order to achieve the above objective. (*Copy of Resolutions - Annex 2*).
3. Some of the key areas include moving of bulk cargo and handling of bulk cargo, grain and clinker.
4. It was agreed that 1000 acres of land be acquired from East African Portland Cement Company to develop clinker and grains terminal and a specialized bulk handling facility in Athi river to enable Kenya Railways meet the demand for specialized and bulk cargo as well as achieve targets in terms of tonnage.
5. The Government resolved that the easiest way to achieve this is through working with the private sector, by providing land for development. The parties will then develop the necessary infrastructure with the resources and in return ensure they provide the required tonnage for movement by train. The infrastructure is to be developed within the shortest time possible.
6. The Corporation has received various proposals and the same under review for consideration. Disclosure at this moment would be prejudicial to the ongoing negotiations.

Committee observation

1. The Committee observed that four companies were being engaged with a view to developing clinker and grains terminal and a specialized bulk handling facility in Athi River. This would therefore ensure that no company had a monopoly with regards to the terminals.

MIN/NA/PIC/2018/272: ANY OTHER BUSINESS

No other business arose.

MIN/NA/PIC/2018/273: ADJOURNMENT

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

Signed..... Date.....26/07/2018.....

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 56TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 25TH JULY 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10:00 AM

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. Ahmed Kolosh Mohamed, MP
5. The Hon. James Kamau Githua Wamacukuru, M.P
6. The Hon. Omar Mohamed Maalim Hassan, MP
7. The Hon. Thuku Zachary Kwenya, M.P
8. The Hon. Gideon Mutemi Mulyungi, MP
9. The Hon. Raphael Bitta Sauti Wanjala, MP
10. The Hon. Rashid Kassim Amin, MP
11. The Hon. Paul Kahindi Katana, MP
12. The Hon. Mary Wamaua Waithira Njoroge, MP
13. The Hon. Mohamed Hire Garane, M.P
14. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
15. The Hon. Nicholas Scott Tindi Mwale, MP
16. The Hon. Babu Owino Paul Ongili, MP

ABSENT WITH APOLOGY

1. The Hon. Joash Nyamache Nyamoko, MP
2. The Hon. Purity Wangui Ngirici, MP
3. The Hon. John Muchiri Nyaga, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Clerk Assistant I
2. Mr. Mohamed Boru	-	Clerk Assistant III
3. Ms. Mugure Gituto	-	Legal Counsel
4. Mr. Thomas Ogwell	-	Fiscal Analyst
5. Ms. Noelle Chelagat	-	Media Relations Officer
6. Ms. Christine Maeri	-	Audio Recording Officer
7. Mr. Fabian Sang	-	Junior Legislative Fellow

IN ATTENDANCE

1. Mr. Joshiah Oyuko	-	Manager, Audit
2. Mr. Samuel Bollo	-	Manager, Audit
3. Mr. John Wagura	-	Manager, Audit

MIN/NA/PIC/2018/274: PRELIMINARIES

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

MIN/NA/PIC/2018/275: CONFIRMATION OF MINUTES

Confirmation of previous Minutes was deferred to the next meeting.

MIN/PIC/276/2018: EVIDENCE BY NATIONAL HOSPITAL INSURANCE FUND

Mr. Geoffrey Mwangi, the Chief Executive Officer of the National Hospital Insurance Fund accompanied by Mr. Hilbert Kurgat (Ag. Manager, Finance); Ms. Ruth Makallah (Ag. Corporation Secretary); Mr. Bernard Ngenye (Manager) and Ms. Irene Rono (Manager, Finance and 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 2015/2016 and 2016/2017.

MIN/NA/PIC/2018/277: PROPERTY, PLANT AND EQUIPMENT FY 2015/16 & FY 2016/17

2.1 Land Situated at Karen - 10 Hectares

The Committee heard that included in the property, plant and equipment balance of Kshs.12,841,519,701 in the statement of financial position as at 30 June, 2016 is land valued at Kshs.298,589,665 which includes an amount of Kshs.93,712,675 for land Ref. No.LR 24968/2 measuring 10 hectares situated at Karen. However, and as previously reported, the ownership of this particular parcel of land is in dispute and the matter is in court.

Although the issue has been discussed by the Public Investment Committee, no action appear to have been taken on the PIC recommendations as per the 19th report that the National Land Commission conducts further investigations on the issue of the land within six months after adoption of the Report.

Management Response

The Board of management of NHIF purchased land from KASKAZI TRADERS LTD, title **L.R. NO. 24968/2 KAREN**. The transfer was registered to NHIF. It came to the attention of the Fund in September 2004 that a contractor had been commissioned by a third party (Crown line Freighters Ltd) to develop the said plot claiming ownership. The Fund instructed M/S Rachier and Amollo Advocates to protect the interests of the fund by pursuing appropriate action to restrain the third party from interfering with the property.

The Advocates moved to court under **HCCC NO. 1071 OF 2004** and sought the following orders:

- A declaration that the Fund has the sole proprietary rights and interest over the said parcel of land.

- An injunction against the third party from continuing with construction on the said parcel of land.

The court granted the orders.

The Fund was pursuing the matter and had already taken the necessary steps to ensure the matter is determined in its favor.

The Fund is relying on the evidence from the Commissioner of Lands confirming that the land was registered under the Fund's Board of Management.

The Commissioner of Lands in his letter referenced **186267/T.C/17** dated **22nd August 2007** addressed to the Attorney General stated categorically that the suit property **L.R. NO. 209/24968/2/R 87345** was registered in favor of the NHIF board of management.

The Permanent Secretary Ministry of Medical Services on **6th March, 2009** wrote to the Attorney General asking the A.G to amend their defense to be in line with the Commissioner of Lands instructions.

The Attorney General's office in their letter referenced **AG/MLS/292/04** dated **9th November 2009** confirmed receipt of the instructions from the Commissioner of Lands to amend the defense on record as the land is legally owned by the NHIF board of Management and that they were going to amend the defense accordingly to safeguard the suit property. The matter was moved to the Environment and Land Division and assigned the case a new number **HCCC.ELC NO. 691 of 2011**. This was in a bid to ensure the matter is expedited. The matter was set down for hearing on **11th April, 2018**.

Inquiry by the National Land Commission

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

The Commission pronounced itself and observed that the issue of ownership of the said parcel of Land was in Court. The Commission guided that the issue of ownership of the subject land be determined in the pending suit being ELC 691 of 2011.

Committee Observations

The Committee made the following observations:

1. The National Land Commission met the Fund and stated that the Commission cannot confirm who the land belongs to as the matter of the ownership of land is in court. The land is being claimed by Crown Line Freighters Limited.

2. The Fund had got a court order to fence the land but had been unable to do so due to interference from squatters.
3. The Fund had tried to secure the land by placing security guards at the site but the Fund's security officers were arrested.
4. The land was also being claimed by a Mr. David Leparakwo who had placed squatters on the land. The squatters would attack anyone who attempted to set foot on the land.
5. The land is further claimed by a company called Cirtex Kenya Limited.

Committee Resolution

The Committee made the following resolutions:

1. The Fund provides copies of all correspondence with the National Land Commission regarding the land in question.
2. The Fund provides minutes of meetings with the National Land Commission regarding the land.
3. The Registrar of Society to provide ownership of all companies associated with the land, that is, Kaskazi Traders Limited, Crown Line Freighters Limited and Cirtex Kenya Limited.
4. The Committee will undertake an inspection visit to the said land on 31st July 2018.

2.2 Proposed Resource Centre at Karen Land

The Committee heard that a further review indicates that included in the property, plant and equipment balance of Kshs.12,841,519,701 as at 30 June 2016 (Kshs.13,103,788,341 as at 30 June 2017) was Work in Progress balance of Kshs.1,634,578,339 out of which Kshs.1,444,687,484 was in respect of payments for drawings and designs for the proposed Resource Centre and whose construction has not yet commenced since the land was acquired fourteen years ago. As noted in the previous year, the management has however explained that construction of the Resource Centre has not yet commenced because of lack of approval from parent Ministry.

In the circumstances, it was not possible to ascertain the ownership status of the parcel of land in dispute and whether the property, plant and equipment balance of Kshs.12,841,519,701 as at 30 June 2016 is fairly stated.

Management Response

Management informed the Committee that it was true that as at 30 June 2016 was work in progress of Kshs.1,444,687,484 in respect of payments for the proposed Resource Centre on the Karen Land whose construction has not yet commenced. The amount comprised arbitration award to Architects and further payments to other consultants and professionals that had been engaged. They included quantity surveys,

business plans and financial analysis consultancy, legal fees, architectural design services fees and feasibility study.

In the year 2001/2002 the Fund planned to build a Resource Centre on the land acquired in Karen at a cost of Kshs.93,712,675. The establishment and implementation of a Resource Centre on the land was approved by the board in 2002. The then Chief Executive commissioned consultants in accordance with the Architects and Quantity Surveyors Act Cap 525 of the Laws of Kenya to carry out a feasibility study on the development of a recreational facility.

Arbitration by Architects and Quantity Surveyors on the Proposed Resource Centre

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

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

The Karen Medical Centre of Excellence

The Original Project was revised to a Medical Center of Excellence and a Vision 2030 flagship project for the Ministry of Health. The Karen Medical center of excellence project lead to litigations from the consultants.

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

The following are the pending legal proceedings commenced by the Consultants in respect to the Karen Medical Centre of Excellence.

1. Rebman Ambalo Malala T/A Ujenzi Consultants Vs NHIF HCCC No. 25 of 2016

Ujenzi Consultants were engaged as the Project's Quantity Surveyors. They filed a civil suit in the High Court on 20 January 2016 for alleged unpaid fees together with

penalties and interest allegedly accruing on the alleged unpaid fees. The suit is pending in Court.

2. Comm Case No. 255 Of 2016 - NHIF Vs. Eng. Peter Scott and Manga and Associates

NHIF moved to the High Court and filed an application to set aside the Arbitrator's preliminary ruling and further challenged his jurisdiction.

The Court granted a stay and allowed the Court to determine the issue of jurisdiction.

The matter is still pending in Court.

3. High Court Civil Suit No. 504 of 2016: National Hospital Insurance Fund Vs. Baseline Architects Ltd

The Fund filed an Application in the High Court to set aside the Arbitral Award dated 16th November, 2017.

The Ruling on the matter was delivered on 17th July, 2017. The Fund Succeeded in the matter. The Court set aside the Arbitral Award.

4. Civil Suit No. 176 Of 2017 - Professional Consultants Ltd -Vs- NHIF

The Plaintiffs, moved to court and filed a claim on 26th April 2017 for alleged provision of Civil, Geo - technical and Mechanical engineering Services.

Following the ruling on the matter of the Architects, the Court set a precedent on the issue of protecting public funds and public interest and it is likely that all the above matters will be ruled in favour of the Fund.

Committee Observations

The Committee made the following observations:

1. The Fund had made payments of Kshs.1,444,687,484 in respect of payments for drawings and designs for the proposed Resource Centre despite the fact that no development had been done on the land.
2. By the time the Fund changed the project from a proposed Resource Center to a Medical Center of Excellence, the land was already in dispute. This exposed the Fund to further litigation arising from the Medical Center project.
3. The Fund made the decision to engage the same Architects and Consultants for the Medical Center project without opening the contract to competitive bidding despite the fact that the scope and specification of the project was different to the proposed Resource Center.

Committee Resolutions

The Committee made the following resolutions:

1. The Fund should provide documentation on the procurement process for the proposed Karen Resource Center including tender documents, minutes of

tender committee and payment vouchers. The Fund should further provide the drawings by the Architects that resulted in the payment vouchers issued.

2. The Fund should provide documentation on the disputed Karen land including the sale agreement and title.
3. Any due diligence done before the commencement of the project should be provided to the Committee.
4. The Board of NHIF as well as the Chief Executive Officer at the time of the project will appear before the Committee to explain their role in the matter.
5. The Committee would have representatives from the Ethics and Anti-Corruption Commission and the Directorate of Criminal Investigation during the meeting with the former NHIF Board and the Chief Executive Officer.

MIN/NA/PIC/2018/278: ANY OTHER BUSINESS

No other business arose.

MIN/NA/PIC/2018/279: ADJOURNMENT

The meeting was adjourned at twenty minutes past twelve O'clock. The next meeting will be held on Wednesday 25th July, 2018 at three O'clock.

Signed..... Date.....26/07/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 57TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 25TH JULY 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 3:00 PM

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. John Muchiri Nyaga, M.P
5. The Hon. Gideon Mutemi Mulyungi, MP
6. The Hon. Raphael Bitta Sauti Wanjala, MP
7. The Hon. Paul Kahindi Katana, MP
8. The Hon. Mohamed Hire Garane, M.P
9. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
10. The Hon. Babu Owino Paul Ongili, MP

ABSENT WITH APOLOGY

1. The Hon. Joash Nyamache Nyamoko, MP
2. The Hon. Purity Wangui Ngirici, MP
3. The Hon. Nicholas Scott Tindi Mwale, MP
4. The Hon. Omar Mohamed Maalim Hassan, MP
5. The Hon. Thuku Zachary Kwenya, M.P
6. The Hon. Rashid Kassim Amin, MP
7. The Hon. Mary Wamaua Waithira Njoroge, MP
8. The Hon. Ahmed Kolosh Mohamed, MP
9. The Hon. James Kamau Githua Wamacukuru, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Clerk Assistant I
2. Mr. Mohamed Boru	-	Clerk Assistant III
3. Ms. Mugure Gituto	-	Legal Counsel
4. Mr. Thomas Ogwell	-	Fiscal Analyst
5. Ms. Noelle Chelagat	-	Media Relations Officer
6. Ms. Christine Maeri	-	Audio Recording Officer
7. Mr. Fabian Sang	-	Junior Legislative Fellow

IN ATTENDANCE

1. Mr. Joshiah Oyuko	-	Manager, Audit
2. Mr. Samuel Bollo	-	Manager, Audit
3. Mr. John Wagura	-	Manager, Audit

MIN/NA/PIC/2018/280: PRELIMINARIES

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

followed by a word of prayer.

MIN/NA/PIC/2018/281: CONFIRMATION OF MINUTES

Confirmation of previous Minutes was deferred to the next meeting.

MIN/NA/PIC/2018/282: EVIDENCE BY NATIONAL HOSPITAL INSURANCE FUND

Mr. Geoffrey Mwangi, the Chief Executive Officer of the National Hospital Insurance Fund accompanied by Mr. Hilbert Kurgat (Ag. Manager, Finance); Ms. Ruth Makallah (Ag. Corporation Secretary); Mr. Bernard Ngenye (Manager) and Ms. Irene Rono (Manager, Finance and 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 2015/2016 and 2016/2017.

MIN/NA/PIC/2018/283: SHORT TERM INVESTMENTS FY 2015/16

The Committee heard that as previously reported, included in the cash and cash equivalent balance of Kshs.16,230,036,846 in the statement of financial position as at 30 June 2016 is short term investments balance of Kshs.15,275,768,478 which is net of provision for impaired investments of Kshs.1,304,410,609 under note 22 to the financial statements. The provision includes an amount of Kshs.49.5 million which had been deposited by the Fund on 26 June 2001 at the Consolidated Bank Ltd in Nairobi. However, available information indicates that the entire deposit of Kshs.49.5 million was off-set by the Bank against a guarantee executed by the former Fund Chief Executive Officer, on behalf of Euro Bank Ltd. It was not clear and the management has not explained the circumstances under which the Fund's deposit was used as a guarantee by the then Chief Executive Officer.

Although the Public Investment Committee recommended that the Chief Executive Officer should ensure that any future investments of the Fund were made in accordance with the Treasury circulars and were based on prudent commercial practices, no explanation was provided for failing to recover the Kshs.49.5 million lost from the then Chief Executive Officer.

In the circumstances, it has not been possible to confirm whether the short term investment balance of Kshs.15,275,768,478 is fairly stated.

Management Response

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

This matter was handled by the Inspectorate of State Corporations, which was of the view that the Fund had no capacity to provide a guarantee for a loan to a private

bank. The Inspectorate of State Corporation further noted that consolidated bank should pay back the amount of **Kshs.49.5 million**. (Appendix S)

The investments were listed as non-performing and had been provided for with other non-performing investments in the fund's financial statement. As per the recommendations of the Inspector General, NHIF had since written to Consolidated Bank of Kenya seeking re-payment of **Kshs.49.5 million**. NHIF had also approached Consolidated Bank with a view of finding ways on how to make outstanding amount good. (Appendix T)

21st Report of PIC - Committee Recommendations

The PIC's 21st report recommended that the query should be excluded from subsequent Reports of the Auditor General, provided that the management makes full disclosure of this unresolved matter in its financial statements as required by the International Accounting Standard no. 37.

Further Action by Management

NHIF had had since reviewed its investment policy guidelines to conform to Treasury circulars and NHIF Act among other Government Regulations. The Management ensures strict adherence by all staff in order to achieve the overall objective of the Fund and mitigate future audit queries. The Fund ensures that appropriate recognition criteria are applied to contingent liabilities and assets. They are disclosed when a possible obligation depending on whether some uncertain future event occurs or when there is a present obligation but payment is not probable or amount cannot be measured reliably. Contingent assets are only disclosed where an inflow of economic benefits is probable as guided by IAS 37.

The Fund had made Provisions in the financial statements for the bad and doubtful debt in the Audited Report and Financial statements as per IAS 37.

Current Status

The Fund had not recovered Kshs.49.5 million from the then Chief Executive Officer / Consolidated Bank as recommended in the 21st Public Investment Committee report.

Committee Observations

The Committee made the following observations:

1. The Fund's former CEO, Mr. Ibrahim Hussein was arraigned in court with regards to the matter.
2. The Fund had made Provisions in the financial statements for the bad and doubtful debt in the Audited Report and Financial statements as per IAS 37.

Committee Resolution

The Committee made the following resolutions:

1. The Inspectorate of State Corporations should make a submission regarding the matter with an update of the current status of the case.

MIN/NA/PIC/2018/284: TRADE AND OTHER RECIEVABLES FY 2015/16

The Committee heard that as similarly reported in 2014/2015, the trade and other receivables balance of Kshs.3,926,313,543 in the statement of financial position as at 30 June 2016 includes Hospital surcharges of Kshs.5,722,635, outstanding contributions of Kshs.1,247,669,690, R.D cheques of Kshs.1,150,561, staff receivables of Kshs.2,104,123, supplier advances of Kshs.4,660,314 and revenue holding account of Kshs.11,934,574 all totalling Kshs.1,273,241,897. These balances had been outstanding for a considerably long period of time and only provisions for bad and doubtful debts of Kshs.180,587,538 have been made in the accounts. Although the management has indicated that efforts are underway to pursue the debts, the seriousness of the management on this issue is doubtful as the matter has been long outstanding as indicated in the previous reports. Further, the Public Investment Committee recommendation in the 19th report that the Chief Executive Officer puts in place financial control and debts collection immediately they fall due did not address the issue raised on the long outstanding debts.

In the circumstances it was not possible to confirm the accuracy and recoverability of the trade and other receivables balance of Kshs.3,926,313,543 included in the statement of financial position as at 30 June 2016.

Management Response

Management informed the Committee that Trade and other receivables are recognised at fair values less allowances for any uncollectible amounts. An estimate is made of doubtful receivables based on a review of all outstanding amounts at the year end.

The trade and other receivable balances were historical balances dating back to 2001/2002 financials years. It was true as reported by the auditor general that Hospital receivables of Kshs.5,722,635, outstanding contributions of Kshs.1,247,669,690, R.D cheques of Kshs.1,150,561, staff receivables of Kshs.2,104,123, supplier advances of Kshs.4,660,314 and revenue holding account of Kshs.11,934,574 were long outstanding unrecoverable debts as at June 30 2016 except for outstanding contributions where Kshs.1, 210,679,942 was recovered in the year 2015/2016 FY.

The Fund had since put in place cashless revenue collection mechanisms to curb stealing by staff. This has been achieved through banking revenues directly at contracted banks by the contributors; introduction of online revenue collection; use of mobile money transfers and collection by contracted agents. The Fund makes Provisions in the financial statements for any bad and doubtful debts as per IAS 37.

21st Report of PIC - Committee Recommendations

The 21st PIC Report recommended that the Fund ensures that, the gains made in improving revenue collection and sealing revenue leakages were sustained.

Further Action by Management

The Fund made reconciliation on the accounts since the debts arose due to reconciliation issue and the outstanding debts were referred to an advocate of the high court who was engaged in order to recover the long outstanding debts. The advocate sent demand letters to the debtors. Some demand letters were honoured and debt paid, however some were declined.

Committee Observations

The Committee made the following observation:

The Fund has put in place cashless revenue collection mechanisms to curb stealing by staff.

Committee Resolution

The Committee made the following resolution:

The Fund was asked to follow up on the outstanding amounts to enable the audit query to be resolved.

MIN/NA/PIC/2018/285: ANY OTHER BUSINESS

No other business arose.

MIN/NA/PIC/2018/286: ADJOURNMENT

The meeting was adjourned at ten minutes past four O'clock. The next meeting will be held on Thursday 26th July, 2018 at ten O'clock.

Signed.....

Date.....26/07/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 59TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 25TH JULY 2018 AT NHIF'S DISPUTED LAD IN KAREN AT 11:00 AM

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Chrisantus Wamalwa Wakhungu, MP
3. The Hon. John Muchiri Nyaga, M.P
4. The Hon. Paul Kahindi Katana, MP
5. The Hon. Joash Nyamache Nyamoko, MP
6. The Hon. James Kamau Githua Wamacukuru, M.P
7. The Hon. Mary Wamaua Waithira Njoroge, MP

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Gideon Mutemi Mulyungi, MP
3. The Hon. Raphael Bitta Sauti Wanjala, MP
4. The Hon. Mohamed Hire Garane, M.P
5. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
6. The Hon. Babu Owino Paul Ongili, MP
7. The Hon. Purity Wangui Ngirici, MP
8. The Hon. Nicholas Scott Tindi Mwale, MP
9. The Hon. Omar Mohamed Maalim Hassan, MP
10. The Hon. Thuku Zachary Kwenya, M.P
11. The Hon. Rashid Kassim Amin, MP
12. The Hon. Ahmed Kolosh Mohamed, MP

IN ATTENDANCE - NATIONAL ASSEMBLY

1. The Hon. Nixon Korir, MP	-	Langata Constituency

IN ATTENDANCE
NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Clerk Assistant I
2. Mr. Mohamed Boru	-	Clerk Assistant III
3. Ms. Mugure Gituto	-	Legal Counsel
4. Mr. Charles Atamba	-	Researcher
5. Mr. Thomas Ogwell	-	Fiscal Analyst
6. Ms. Noelle Chelagat	-	Media Relations Officer
7. Ms. Christine Maeri	-	Audio Recording Officer
8. Mr. Fabian Sang	-	Junior Legislative Fellow

IN ATTENDANCE

1. Mr. Joshiah Oyuko	-	Manager, Audit
2. Mr. Samuel Bollo	-	Manager, Audit

MIN/PIC/293/2018: PRELIMINARIES

The Chairperson called the meeting to order at eleven O'clock with a word of prayer.

MIN/PIC/294/2018: EVIDENCE BY NATIONAL HOSPITAL INSURANCE FUND

Mr. Geoffrey Mwangi, the Chief Executive Officer of the National Hospital Insurance Fund (NHIF) accompanied by Dr. Peter Cherutich (Board Member), Dr. Elly Nyaim Opot (Board Member), Mr. Lattif Shaban (Board Member), Mr. Yussuf Ibrahim (Board Member), Ms. Ruth Makallah (Ag. Corporation Secretary), Ms. Gloria Ochako legal services) and Mr. Paul Kamau (Administrator) appeared before the Committee to adduce evidence on the disputed land in Karen that is claimed by various parties including NHIF.

MIN/PIC/295/2018: BRIEF ON THE DISPUTED LAND - LR NO. 24968/2

The Committee was briefed as follows:

1. Since the Public Investments Committee made recommendations regarding the disputed land in its 2st report, there had been a new claimant on the land by the name of Mr. David Peter Leparakwo.
2. The Fund lay claim to the land on leasehold basis and had been paying land rates.
3. The Fund had attempted to fence the land as per the Committee's recommendation and had got a court order to that effect on 27th July, 2018. Attempts to fence the land were however thwarted by Mr. Leparakwo's group. Following this, the Fund had raised a complaint with the police.
4. The Fund stated that they had carried out due diligence before purchasing the land and submitted a document (Annex 174/2002) as evidence of due diligence.

Committee Observations

The Committee made the following observation:

1. The land is vacant and has been fenced. The fencing was done by one of the claimant to the land, Mr. David Peter Leparakwo.
2. The Fun provided a copy of the court order acquired to fence the land.

Committee Resolution

The Committee made the following resolution:

The Fund was asked to provide the following additional information:

1. Receipts confirming payment of land rates to the relevant authorities;
2. A copy of a current search on the land indicating ownership of the land;
3. A copy of the complaint filed with the police when they were denied the opportunity to fence the land.

MIN/PIC/296/2018: ANY OTHER BUSINESS

The Committee resolved to invite Mr. David Peter Leparakwo to adduce evidence on the ownership of the disputed land.

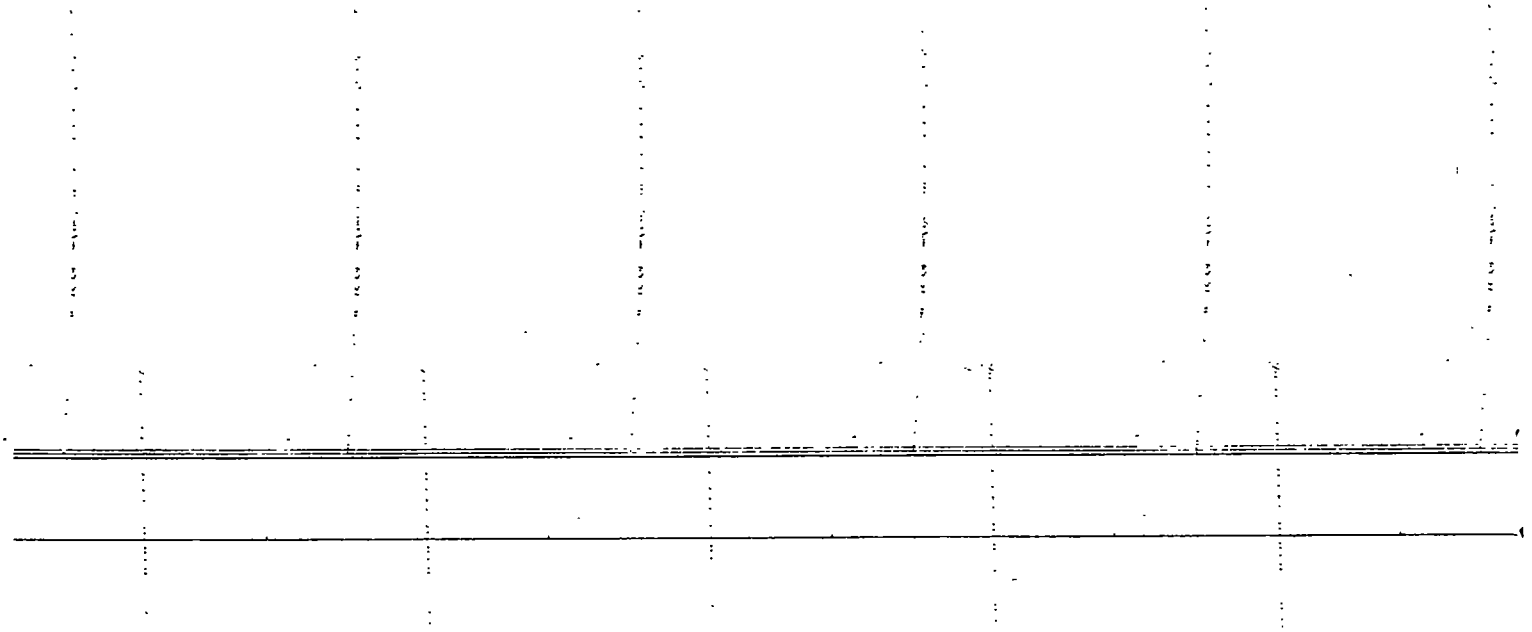
MIN/PIC/297/2018: ADJOURNMENT

The meeting was adjourned at thirty minutes past eleven O'clock. The next meeting will be held on Wednesday 1st August, 2018 at ten O'clock.

Signed..... **Date**.....14/08/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)



MINUTES OF THE 62ND SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 2ND AUGUST 2018 IN 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. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. Ahmed Kolosh Mohamed, MP
5. The Hon. James Kamau Githua Wamacukuru, M.P
6. The Hon. Rashid Kassim Amin, MP
7. The Hon. Raphael Bitta Sauti Wanjala, MP
8. The Hon. Mohamed Hire Garane, M.P.
9. The Hon. Gideon Mutemi Mulyungi, MP

ABSENT WITH APOLOGY

1. The Hon. Nicholas Scott Tindi Mwale, MP
2. The Hon. Thuku Zachary Kwenya, M.P
3. The Hon. Omar Mohamed Maalim Hassan, MP
4. The Hon. John Muchiri Nyaga, M.P
5. The Hon. Joash Nyamache Nyamoko, MP
6. The Hon. Paul Kahindi Katana, MP
7. The Hon. Babu Owino Paul Ongili, MP
8. The Hon. Mary Wamaua Waithira Njoroge, MP
9. The Hon. Purity Wangui Ngirici, MP
10. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Clerk Assistant I
2. Mr. Mohamed Boru	-	Clerk Assistant II
3. Mr. Charles Atamba	-	Research Officer
4. Ms. Mugure Gituto	-	Legal Counsel
5. Mr. Thomas Ogwel	-	Fiscal Analyst
6. Ms. Noel Chelagat	-	Media Relations Officer
7. Ms. Christine Maeri	-	Audio Recording Officer

MIN/ PIC/307/2018: PRELIMINARIES

The Chairperson called the meeting to order at twelve minutes past ten O'clock followed by a prayer from The Hon. Chrisantus Wamalwa, MP.

MIN/ PIC/308/2018: BRIEF BY MR. DAVID PETER LEPARAKWO

Mr. David Leprakwo, a claimant of the disputed land in Karen (LR 24968/2) that is the subject of the NHIF audit query, accompanied by Ms. Esther Kalwa (Advocate) briefed the Committee as follows:

1. **Peter David Leparakwo** is the registered owner of the suit property known as L.R. No. 24968/2, I.R. No 152577, of Deed Plan No. 230580 measuring 9.72 Ha (hereinafter referred to as the Property) which he holds in trust for himself and the former Maasai employees of A.J. Faulkner & Sons Limited, a British company that owned the suit property (**Copy of certificate of title and deed plan marked as Annex 1a and 1b**).
2. The Managing Director of A.J. FAULKNER & SONS, one Mr. W.J. FAULKNER wrote to the Permanent Secretary of The Ministry of Lands on 10th November 1982 categorically stating that the company was surrendering the suit property to the Maasai workers who had worked for his company since 1971 (**Copy of letter marked as annex 2**).
3. Since the departure of the A.J. FAULKNER & SONS and their surrender of the suit property to Mr. Leparakwo and the other former employees, the latter have used the suit property as their grazing land despite the rapid urbanisation.
4. Mr. Leparakwo and his group began the pursuit of formal allocation of the suit property in their name and with the ministry of lands. The process of seeking formal allocation has over the years since 1982 been riddled with corruption as they witnessed illegal invasion to the suit property which kept reducing in size.
5. That their quests, numerous visits to the Ministry of Lands, political offices and government authorities finally bore fruit when the property was allocated to them and issued in the name of **Peter David Leparakwo's** brother, the late **Ruben Reititi Leparakwo** to hold in trust for our Clients.
6. They later discovered that their property L.R. NO. 24968 had been subdivided illegally which revogorated increased visits and complaints to concerned government agencies and political offices.(**Copy of the police abstract reporting the loss of title deed marked as annex 3**)
7. However, these efforts were met with renewed threats of forceful and violent evictions. One of such violent eviction attempt was carried out on 7th November 2014 and was sustained for a period of 5 days by regular and administrative police, despite them producing ownership documents to the suit property, which were instead destroyed and confiscated before their own eyes. (**Copy of the newspaper cutting outlining the same marked as annex 4**).
8. Upon discovery of this development, Mr. Leparakwo and his group resorted to sustained pressure against the officials of the Ministry of Lands and even political pressure which efforts led to them being promised a title to the

property known as L.R. NO. 24968/2 measuring 9.72 H.a on the basis that the subdivision of the original allocation was initiated and consented to by their deceased brother Mr. Ruben Reititi Leparakwo.

9. Mr. Leparkwo's group held general meetings on 19th June 2010 and 16th June 2012 at Karen Plains (Manyatta), where Peter David Leparakwo was granted authority to register the said parcel of land now known as parcel L.R 24968/2 in his own names being the eldest to hold in trust for his own benefit and for the benefit of all our clients. **(Copies of both minutes of the said meetings, affidavits sworn by Suakei Ole Parkire Lempa Ole and Parkie Leposo dated 6th August 2018 and 10th August 2018 respectively confirming that as the true position marked as annex 5).**

10. They finally got the title to the suit property, which is L.R. NO. 24968/2 measuring 9.72H.a. on 29th October 2013 which was titled in **Peter David Leparakwo's** name being the eldest leader of the group. This gave tenure security to them to continue occupying and using the suit land to their benefit.

11. They have been contributing money from the sale of livestock and business to pay for annual land rent and rates of the suit property as well as necessary fees required to defend the suit property.

12. Given the intensified attempts to grab the land, they saw it fit to put up a fence round the suit property to protect it from unlawful attempts to occupy and settle on the property.

13. On 16th March 2018, Mr. Leprakwo's group applied to the Director, Planning Compliance & Enforcement of the Nairobi County for authority to put up a temporary barbed wire fence **(Copy of the application letter marked as annex 6).**

14. The application to put up a temporary barbed wire fence was approved on 19th March 2018 having paid the necessary fees of Kshs. 4000/- after which, they proceeded to put up the temporary barbed wire fence **(Copy of authorisation and receipts marked as annex 7 and 8).**

15. Official searches to the property have always yielded results that the property is held by PETER DAVID LEPARAKWO in trust for the group **(Copy of searches marked as annex 9)**

16. Given the fact that they hold a legitimate title, they have been paying the annual rent and rates due on the land (Copies of receipts marked as annex 10a and 10b).

17. However there are various entities alleging ownership of the property including: National Hospital Insurance Fund (NHIF), Crownline Freighters, Kaskazi Traders Ltd., Nectel Kenya Ltd., Gifted Community Initiative Programme, Cirtex Ltd., Kenpark Holdings Ltd. and Page Investments. Ltd.

18. That on 19th April 2016, Mr. Leprakwo's group wrote to the National Land Commission, on 25th July 2017 to principal secretary, on 2nd August 2017, to the Ethics and Anti-Corruption Commission, 17th August 2017, to the Chief Valuer, Nairobi City Council, on 18th August 2017 to the Director Criminal Investigation and Cabinet Secretary Ministry of Lands and Physical Planning asking them to investigate on overlapping titles issued over suit property including the Cirtex Kenya Ltd's title (**Copies of the letters marked as annex 11**).

19. Vide the letter dated 26th August 2016, investigations by County Commission concluded that Mr. Peter David Leparako is the lawful owner of the Property (**Copy of the letter from the Deputy County Commissioner dated 26/08/2016 and its annextures marked 12**)

20. The aforementioned claimants to the title have on several occasions been summoned by the National Land Commission to state/prove their claims but failed/neglected to attend wherewith a decision by the said body is pending when they resume office in June 2018 (**Copy of summons marked 13**).

21. The fencing of the Property by Mr. Leprakwo's group instead prompted CIRTEX KENYA LTD. to file an Environment and Land Court Suit No. 152 OF 2018 at Nairobi alleging that Our Clients are trespassers on their property.

22. Mr, Leparakwo and his group have always been in occupation of the said Property while CIRTEX KENYA LTD are strangers who have never set foot or occupied the Property in any way or manner.

23. The Cirtex Kenya Ltd, despite summons by the National Land Commission, never appeared before the Commission to defend its alleged new grant and title in the name of L.R. No24968/2 of IR No. 179264 and as such, the Plaintiff is trying to use the Courts to sanitize its title which is illegal and irregular.

24. That it is of great importance to note that Cirtex Kenya Ltd's title is fraudulent, irregular and illegal and cannot be protected by law on the basis of various particulars; eg.

    a) Letter of allotment date was obtained after issuance of the one of our Clients,

    b) survey and subdivision was done via a file with a CF number not of Karen,

    c) The size is different from the actual property on the ground among others).

25. Early this year, the Principal Secretary in response to a letter from Mr. Leparakwo's advocate dated 18th August 2017 did write a letter dated 16th January 2018, categorically indicating that as per the Government records held at the central registry Nairobi, it clearly shows that Mr. Peter David Leparakwo is the duly registered legal owner of the suit property (**Copy of the PS' letter, marked as annex14**).

Committee Observations

The Committee made the following observations:

1. Mr. David Leparakwo holds a valid title deed issued on 29th October, 2013. The title is held in trust for the rest of the Emowuo Olarro Self Help Group. The group acquired the land in the form of a grant from the immediate former owner, Mr. A.J Faulkner in 1982.
2. The group had been paying land rent to the relevant authorities.
3. Apart from Mr. Leparakwo's group, the land is claimed by eight other parties: National Hospital Insurance Fund (NHIF), Crownline Freighters, Kaskazi Traders Ltd., Nectel Kenya Ltd., Gifted Community Initiative Programme, Cirtex Ltd., Kenpark Holdings Ltd. and Page Investments. Ltd.
4. The Nairobi Deputy County Commissioner, in a letter to the National Lands Commission dated 26th August, 2016 indicated that the allotment letter and title deed used by Kaskazi Traders was unlawful and invalid and also indicated that the IR No. used (No. 87345) was also obtained unlawfully since the IR's location was not in Karen. The Attorney General's office further stated the title which Kaskazi Traders Limited used to sell the land to the National Health Insurance Fund (NHIF) was unlawful, invalid and should be cancelled. This puts in doubt the claim to the land by NHIF.

Committee Resolutions

The Committee made the following resolutions:

1. Mr. Peter David Leparakwo should submit additional documents including the letters referenced in their presentations, minutes of Emowuo Olarro self-help group regarding the registration of the land, affidavits allowing Mr. Leprakwo to register the land in his name and any other document cited in their submission that was not presented to the Committee.
2. The Registrar of Societies should provide ownership details of the seven companies laying claim to the land.

MIN/PIC/309/2018: ANY OTHER BUSINESS

The Committee resolved to seek information from various banks regarding the status of loans taken by various private entities which had been charged to leases acquired from Kenya Railways.

MIN/PIC/310/2018: ADJOURNMENT

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

Signed..... Date..16th Aug, 2018.

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 65TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 8TH AUGUST, 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 3:00 PM.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. John Muchiri Nyaga, M.P
3. The Hon. Raphael Bitta Sauti Wanjala, MP
4. The Hon. Mary Wamaua Waithira Njoroge, MP
5. The Hon. Paul Kahindi Katana, MP
6. The Hon. Joash Nyamache Nyamoko, MP
7. The Hon. Mohamed Hire Garane, M.P
8. The Hon. Nicholas Scott Tindi Mwale, MP
9. The Hon. Omar Mohamed Maalim Hassan, MP

ABSENT WITH APOLOGY

1. The The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Chrisantus Wamalwa Wakhungu, MP
3. The Hon. Thuku Zachary Kwenya, M.P
4. The Hon. Rashid Kassim Amin, MP
5. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
6. The Hon. Purity Wangui Ngirici, MP
7. The Hon. James Kamau Githua Wamacukuru, M.P
8. The Hon. Babu Owino Paul Ongili, MP
9. The Hon. Gideon Mutemi Mulyungi, MP
10. The Hon. Ahmed Kolosh Mohamed, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Mohamed Boru	-	Third Clerk Assistant
2. Ms. Mugure Gituto	-	Legal Counsel
3. Mr. Charles Atamba	-	Researcher
4. Mr. Thomas Ogwell	-	Fiscal Analyst
5. Ms. Noelle Chelagat	-	Media Relations Officer
6. Ms. Winfred Atieno	-	Audio Recording Officer

MIN/PIC/321/2018: PRELIMINARIES

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

MIN/PIC/322/2018: SUBMISSION FROM THE KENYA BUREAU OF STANDARDS

The Committee heard that the Ag. Managing Director of the Kenya Bureau of Standards was unavailable and had sent apologies. The Committee resolved to re-invite the Bureau to appear before it on Wednesday 15th August, 2018 at 3.00pm.

MIN/PIC/323/2018: **ANY OTHER BUSINESS**

No other business arose.

MIN/PIC/324/2018: **ADJOURNMENT**

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

Signed..... **Date** 18th Aug. 2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 66TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 9TH AUGUST 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. John Muchiri Nyaga, M.P
3. The Hon. Raphael Bitta Sauti Wanjala, MP
4. The Hon. Omar Mohamed Maalim Hassan, MP
5. The Hon. Nicholas Scott Tindi Mwale, MP
6. The Hon. Mohamed Hire Garane, M.P.
7. The Hon. Joash Nyamache Nyamoko, MP
8. The Hon. Paul Kahindi Katana, MP

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Mary Wamaua Waithira Njoroge, MP
3. The Hon. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. Purity Wangui Ngirici, MP
5. The Hon. Rashid Kassim Amin, MP
6. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
7. The Hon. Ahmed Kolosh Mohamed, MP
8. The Hon. Gideon Mutemi Mulyungi, MP
9. The Hon. James Kamau Githua Wamacukuru, M.P
10. The Hon. Thuku Zachary Kwenya, M.P
11. The Hon. Babu Owino Paul Ongili, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Mr. Mohamed Boru	-	Clerk Assistant II
2.	Mr. Charles Atamba	-	Research Officer
3.	Ms. Mugure Gituto	-	Legal Counsel
4.	Mr. Thomas Ogwel	-	Fiscal Analyst
5.	Ms. Noel Chelagat	-	Media Relations Officer
6.	Ms. Christine Maeri	-	Audio Recording Officer

IN ATTENDANCE

1.	Mr. Charles Nyanyuki	-	Director, Audit
2.	Mr. George Otieno Nashon	-	Deputy Director, Audit
3.	Ms. Evelyn Kauna	-	Manager, Audit

MIN/PIC/325/2018: PRELIMINARIES

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

followed by a word of prayer and introductions.

MIN/PIC/326/2018: EVIDENCE BY THE CENTRE FOR MATHEMATICS, SCIENCE AND TECHNOLOGY EDUCATION IN AFRICA (CEMESTEA)

Mr. Stephen Njoroge, the Director of the Centre For Mathematics, Science And Technology Education In Africa accompanied by Ms. Sarah Mwaniki (Accountant), Mr. George Kiria (Training Coordinator, Primary Programme), Mr. Patrick Logolla (Training Coordinator, Special Programmes), Mr. Makanda John (Training Coordinator, Primary Programme) and Ms. Mary Sichangi (Training Coordinator, Linkages and International Training appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Center for the financial year 2015/16 to financial year 2016/2017.

MIN/PIC/327/2018: EXAMINATION OF AUDITED ACCOUNTS OF CEMESTEA FOR THE FY 2015/16

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

MIN/PIC/328/2018: EXAMINATION OF AUDITED ACCOUNTS OF CEMESTEA FOR THE FY 2016/17

The Committee heard that the Center's account for the financial year 2015/2016 was unqualified.

MIN/PIC/329/2018: ANY OTHER BUSINESS

The Committee heard that the CEMESTEA had not had a fully constituted Board of Directors for the last two years. There had been plans to merge the Center with other government training agencies so a decision was made to have one Board for the merged institutions. The merger had not yet taken place.

Committee Resolution

The Center was asked to write to the parent Ministry and update the latter on the lack of a fully constituted Board.

MIN/PIC/330/2018: ADJOURNMENT

The meeting was adjourned at ten minutes to eleven O'clock.

Signed..... **Date** 18th Dec 2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 71ST SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 30TH AUGUST 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 11.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Kolosh Mohamed, MP
3. The Hon. Chrisantus Wamalwa Wakhungu, MP
4. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
5. The Hon. Thuku Zachary Kwenya, M.P
6. The Hon. Purity Wangui Ngirici, MP
7. The Hon. John Muchiri Nyaga, M.P

ABSENT-WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Omar Mohamed Maalim Hassan, MP
3. The Hon. Nicholas Scott Tindi Mwale, MP
4. The Hon. James Kamau Githua Wamacukuru, M.P
5. The Hon. Paul Kahindi Katana, MP
6. The Hon. Raphael Bitta Sauti Wanjala, MP
7. The Hon. Joash Nyamache Nyamoko, MP
8. The Hon. Babu Owino Paul Ongili, MP
9. The Hon. Mohamed Hire Garane, M.P.
10. The Hon. Mary Wamaua Waithira Njoroge, MP
11. The Hon. Gideon Mutemi Mulyungi, MP
12. The Hon. Rashid Kassim Amin, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Joshiah Oyuko - Manager, Audit
2. Mr. Geoffrey Wandabwa - Manager, Audit

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

3. Mr. Mohamed Boru - Clerk Assistant II
4. Ms. Sharon Rotino - Research Officer
5. Mr. Thomas Ogwel - Fiscal Analyst
6. Ms. Mugure Gituto - Legal Counsel
7. Ms. Noel Chelagat - Media Relations Officer
8. Ms. Christine Maeri - Audio Recording Officer

MIN/ PIC/349/2018: PRELIMINARIES

The Chairperson called the meeting to order at four minutes past eleven O'clock.

MIN/ PIC/350/2018: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN/PIC/351/2018: EVIDENCE BY THE KENYA COPYRIGHT BOARD

Mr. Edward Sigei, the Executive Director of the Kenya Copyright Board accompanied by Mr. George Kiogora (Senior Assistant), Mr. George Nyakweba (Chief Legal Officer) and Mr. Cyrus Kinyunju (Senior Public Communications Officer) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Board for the financial year 2014/15 to financial year 2016/2017.

MIN/PIC/352/2018: EXAMINATION OF AUDITED ACCOUNTS OF KENYA COPYRIGHT BOARD FOR THE FY 2014/15

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

MIN/PIC/353/2018: EXAMINATION OF AUDITED ACCOUNTS OF KENYA COPYRIGHT BOARD FOR THE FY 2015/16

The Committee heard that the Board's account for the financial year 2015/2016 was unqualified.

MIN/PIC/354/2018: EXAMINATION OF AUDITED ACCOUNTS OF KENYA COPYRIGHT BOARD FOR THE FY 2016/17

The Committee heard that the Board's account for the financial year 2016/2017 was unqualified.

MIN/PIC/355/2018: ANY OTHER BUSINESS

The Kenya Copyright Board stated some of the challenges it faces in implementation of its mandate. The Challenges include limited funding as well as shortage of human resource.

The Committee commended the Board for their prudent financial management.

MIN/PIC/356/2018: ADJOURNMENT

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

Signed..... **Date**.....16/10/2018.....

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 73RD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON THURSDAY, 5TH SEPTEMBER 2018 IN ROOM 9, MAIN PARLIAMENT BUILDINGS AT 3.30 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Thuku Zachary Kwenya, M.P
3. The Hon. Joash Nyamache Nyamoko, MP
4. The Hon. Chrisantus Wamalwa Wakhungu, MP
5. The Hon. Gideon Mutemi Mulyungi, MP

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
3. The Hon. Nicholas Scott Tindi Mwale, MP
4. The Hon. James Kamau Githua Wamacukuru, M.P
5. The Hon. Paul Kahindi Katana, MP
6. The Hon. Babu Owino Paul Ongili, MP
7. The Hon. Mohamed Hire Garane, M.P.
8. The Hon. Mary Wamaua Waithira Njoroge, MP
9. The Hon. Rashid Kassim Amin, MP
10. The Hon. John Muchiri Nyaga, M.P
11. The Hon. Ahmed Kolosh Mohamed, MP
12. The Hon. Raphael Bitta Sauti Wanjala, MP
13. The Hon. Purity Wangui Ngirici, MP
14. The Hon. Omar Mohamed Maalim Hassan, MP

IN ATTENDANCE

OFFICE OF THE AUDITOR GENERAL

1. Mr. John Wangila	-	Manager, Audit
2. Mr. Henry Manegene	-	Manager, Audit

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Senior Clerk Assistant
2. Ms. Sharon Rotino	-	Research Officer
3. Ms. Noel Chelagat	-	Media Relations Officer
4. Mr. Fabian Snag	-	Junior Legislative fellow

MIN/PIC/361/2018: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past three O'clock followed by a word of prayer from Hon. Gideon Mulyungi, MP.

MIN/PIC/362/2018: EVIDENCE BY THE UNCLAIMED FINANCIAL ASSETS AUTHORITY

MrS. Kellen Kariuki, Managing Director of the unclaimed financial assets authority accompanied by John Kisegu (Assistant Inspector General Corporations); Daniel Mutua (A/t, Treasury), John Mwangi (Manager), Pius Kimutai (Manager Internal audit) and Leonard Langat (Senior Accountant) appeared before the Committee to adduce evidence on the Reports of the Auditor General on the Financial Statements of the authority and the Unclaimed Financial Authority Trust Fund for the financial years 2014/2015 through to 2016/2017.

1) Financial Year 2014/2015

The Committee heard that both the accounts of the authority and that of the Trust Fund for the Financial Years 2014/2015 were unqualified. The Committee congratulated the authority for prudent financial management.

2) Financial Year 2015/2016

The Committee heard that both the accounts of the authority and that of the Trust Fund for the Financial Years 2015/2016 were unqualified. The Committee congratulated the authority for prudent financial management.

3) Financial Year 2016/2017

The Committee heard that both the accounts of the authority and that of the Trust Fund for the Financial Years 2016/2017 were unqualified. The Committee congratulated the authority for prudent financial management.

MIN/PIC/363/2018: ANY OTHER BUSINESS

1) The meetings discussed on the mandate of Unclaimed Financial Assets Authority and commended the work the authority does so far. It however emerged that some banks are not remitting money that has not been claimed as per the regulations. The authority has so far received Kshs 10.7 billion in cash.
2) The Committee resolved to commence sittings on 18th September 2018. The Chairman undertook to prepare a programme for the same.

MIN/PIC/364/2018: ADJOURNMENT

The meeting was adjourned at forty six minutes past four O'clock.

Signed.....

Date.....18/10/2018.....

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 74TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 18TH SEPTEMBER 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 11.05 A.M.

PRESENT

1) The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2) The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3) The Hon. Chrisantus Wamalwa Wakhungu, MP
4) The Hon. Mary Wamaua Waithira Njoroge, MP
5) The Hon. Paul Kahindi Katana, MP
6) The Hon. James Kamau Githua Wamacukuru, M.P
7) The Hon. Ahmed Kolosh Mohamed, MP

ABSENT WITH APOLOGY

1) The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
2) The Hon. Babu Owino Paul Ongili, MP
3) The Hon. Mohamed Hire Garane, M.P.
4) The Hon. Rashid Kassim Amin, MP
5) The Hon. John Muchiri Nyaga, M.P
6) The Hon. Raphael Bitta Sauti Wanjala, MP
7) The Hon. Purity Wangui Ngirici, MP
8) The Hon. Omar Mohamed Maalim Hassan, MP
9) The Hon. Joash Nyamache Nyamoko, MP
10) The Hon. Thuku Zachary Kwenya, M.P
11) The Hon. Nicholas Scott Tindi Mwale, MP
12) The Hon. Gideon Mutemi Mulyungi, MP

IN ATTENDANCE

OFFICE OF THE AUDITOR GENERAL

1.	Mr. Anderson Kariuki	-	Director, Audit
2.	Richard Bichanga	-	Ag. Director
3.	Mr. John Kuria	-	Manager, Audit
4.	Mr. Hillary Muswa	-	Manager, Audit
5.	Mr. Joshiah Oyuko	-	Manager, Audit
6.	Ms. Anne Karaya	-	Manager, Audit

INSPECTORATE OF STATE CORPORATIONS

Deputy Inspector General	-	ISC

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Mr. Evans Oanda	-	Senior Clerk Assistant
2.	Ms. Sharon Rotino	-	Research Officer
3.	Ms. Noel Chelagat	-	Media Relations Officer
4.	Mr. Fabian Sang	-	Junior Legislative fellow

5. Winfred O - Audio Officer

MIN/PIC/365/2018: PRELIMINARIES

The Chairperson called the meeting to order at five minutes past eleven O'clock followed by a word of prayer from Hon. Paul; Katana, MP.

MIN/PIC/366/2018: EVIDENCE BY THE KENYA LIBRARY SERVICES

Mr. Richard Atuti, Chief Executive Officer accompanied by J M Kariuki (Ag. Principal Accountant); Wanjiku Mwangi(Principal Internal Auditor), Joice Wafula (Deputy Director F&D); and Jane Nzau (Board Member) appeared before the Committee to adduce evidence on the Reports of the Auditor General on the Financial Statements of the Kenya National Library Service (KNLS) for the financial years 2013/2014 through to 2016/2017. The Committee heard that:

1. **Property, Plant and Equipment**

2013-2014

a) As reported in 2012-2013, the property, plant and equipment balance of ksh 1,207,514,766.00 reflected in the financial statements as at 30th June 2014 excluded ten (10) parcels of land valued at kshs 7,540,000.00 and three (3) other parcels of land whose value was undetermined and without title deeds donated to the service by local communities for construction of libraries. In the circumstances, it was not possible to confirm whether the carrying value stated in the financial statements reflect the fair values of the properties as at 30th June 2014.

b) Further, the property, plant and equipment balance net book value disclosed under fixed assets movement schedule Note 21 moved from kshs 438,885,000.00 in 2012/2013 to kshs 430,250,000.00 in the year under this audit review, resulting into a difference of kshs 8,635,000.00. The downward movement in the net book value of land was attributed to two (2) parcels of land i.e. Kisii Municipality Block / 2/231 and Wundanyi LR No. 28243 disclosed in the books and included kshs 10,215,000.00 in respect of the value of the building and one (1) parcel of land in Mombasa Island No 209 and 210 was undervalued then by kshs 1,580,000.00.

However, from the records provided auditors were unable to confirm and verify how the adjustments were done in the books without raising a journal voucher to correct the errors. In addition, it was not satisfactory why the error took eight (8) years since the time of valuation in 2007 to be corrected and why the figures were netted off from the books without disclosing a revaluation gain or loss in the financial statement. In the circumstances the accuracy and ownership of the plant, property and equipment of kshs 1,207,514,766 could not be confirmed.

2014-2015

(i) As reported in 2013/2014, the financial statements as at 30th June 2015 reflect property, plant and equipment balance of kshs 1,200,283,655.00. However, thirty-five (35) parcels of land with an estimated

value of kshs 12,150,000.00 had partial or no legal ownership documents at all and were omitted from the financial statements.
In the circumstances, it was not possible to confirm whether the carrying value stated in the financial statements reflects the fair values of the properties as at 30th June 2015.

(ii) In addition, the property, plant and equipment net book value disclosed under fixed assets movement schedule Note 22 excluded the values of the fully depreciated assets of kshs 66,703,840.45 as at 30th June 2015. According to records provided for audit review, these assets are still in use, though reflecting nil values in the assets register.

Consequently, the accuracy of the property, plant and equipment balance of kshs 1,200,414,622.00 reflected in the statement of financial position as at 30th June 2015 could not be confirmed.

2015-2016

a) The property, plant and equipment balance of Kshs. 1,174,539,934 reflected in the financial statements as at 30th June 2016, as similarly reported in 2014/2015 excluded thirty-five (35) parcels of land with an estimated value of Kshs. 12,500,000, which had partial or no ownership documents. According to the Board most of these parcels were donated to knls by local communities for construction of libraries but processing of ownership documents and valuation had not been completed as at 30th June 2016.

In the circumstance, it was not possible to confirm whether the carrying value stated in the financial statements reflected the fair values of the properties as at 30th June 2016.

b) Further the Property, Plant and Equipment balance net book value disclosed under fixed assets movement schedule - Note 22 to the financial statements, excluded the values of fully depreciated assets of Kshs. 81,669,406.25. According to records provided for audit review, these assets were still in use, though reflected at nil value in the assets register. The assets are yet to be revalued

Consequently, the accuracy and revaluation of the property, plant and equipment balance of Kshs. 1,174,539,934 could not be confirmed.

2016-2017

As previously reported, the value of property, plant and equipment figure of Kshs. 1,278,390,069 in 2016/2017 excluded Kshs. 12,500,000 in respect of estimated value of thirty-five (35) parcels of land with partial or no ownership documents as observed during the audit of records availed for audit review.
In the circumstances, it was not possible to confirm the accuracy, custody, and security of the property, plant and equipment balance of Kshs. 1,278,390,069 as at 30 June 2017.

Management Response

Management informed the Committee the said (35) parcels of land included land donated by the community to KNLS while for others the entity is in possession of allotment letters from the defunct local

authorities awaiting formalization and issuance of title deeds. IPSAS 16 requires that an entity can only include/declare any property in the Financial Statements if it is in possession of the ownership documentation. In this case KNLS were pursuing with the relevant authorities the ownership documentation and have the same included as Property, Plant & Equipment in the Financial Statements.

The registration of ownership documents for these parcels of land is in different stages as summarized below;

(i) 13 Parcels of land with letters of allotment from the defunct local authorities
(ii) 20 Free hold parcels of land owned by communities with operational library buildings
(iii) 1 Free hold undeveloped parcel of land in Sabatia (Vihiga County)
(iv) 1 Undeveloped parcel of land in Awendo (with library services currently being provided from Sony Sugar Primary School compound)

The omission of the thirty-five (35) parcels of land valued at approximately **Kshs.12, 500,000** was because the Board had not yet obtained the ownership documents for these parcels. KNLS Board has continued to consult with the relevant Government agencies, to facilitate processing and registration of ownership documents for parcels above so as to secure them.

Further KNLS management embarked on revaluation of all Board's properties and assets in July 2017. The aim of the exercise was to enable the Board update its assets inventory and reflect the current and fair value in its books of accounts.

The exercise was undertaken jointly by officers from Ministry of Land and Physical Planning, Ministry of Transport, Infrastructure, Housing & Urban Development (State Department of Housing and Urban Development) and knls staff drawn from Finance, Planning and Audit Departments.

By the end 30th June 2018, the evaluation had been completed awaiting the comprehensive valuation report from the team. This will facilitate updating of the books of account.

Committee Observations

(i) Securing ownership documents has taken KNLS inordinately long time to be done. 45 parcels of land have no titles as at 30th June 2018.
(ii) Despite lacking titles deeds for the majority of the 77 pieces of land owned by the KNLS across the country, there has not been any encroachment into the said land.
(iii) KNLS is currently undertaking valuation of all its properties across the country.
(iv) Library Services are devolved functions and therefore in the fullness of time, all these properties owned by KLS will be transferred to counties. It is therefore necessary that KNLS expedites securing title deeds of the said properties under the name of the KNS pending such transfer.

Committee Resolution

(i) Kenya Library Service should expedite processing of titles of the remaining parcels. This should be done within for months from 18th September 2018. The KNLS should report on the progress made to the Committee on a monthly.

2. **Construction of the National Library and Kenya National Library Service Headquarters.**

2013-2014

On 2nd March 2012, the Kenya National Library Service Board entered into a contract with a local construction company to construct the National Library and Headquarters at a sum of kshs. 2,055,200,200.00. The work was to take 208 weeks or 208 months commencing on 10th April 2012 with expected completion date on 19th January 2016. As at 15th December 2014, the amount of work certified was only kshs 750,884,096.33 or 37 % while 148 weeks or 72% of the period had lapsed by 20th January 2015 with only 53% of work done. There is a likelihood of the contract not being completed on the scheduled date due to delays in the anticipated funding from the Government through the Ministry of Sports Culture and the Arts. The delayed funding had resulted to claims for interest on delayed payments amounting to kshs 11,925,099.81 as at 16th September 2014. Management of the entity has not given measures to put in place to ensure that there are no further claims of interest due to delayed funding.
As a result, the project may cost more than planned and delay completion.

2014-2015

As reported in 2013/2014, Kenya National Library Service entered into a contract on 8th may 2012 with a local construction company to construct the National Library and headquarters at a sum of kshs 2,055,200,200.00. The work was to take 48 weeks commencing on 10th April 2012 with a practical completion date on 19th January 2017.

Further, the management had indicated that kshs 580,000,000.00 had been allocated in 2016/2017 through the MTEF budgeting process giving a total cumulative resource allocation of kshs 2,275,156,702.00 against the signed contract sum of kshs 2,055,200,200.00. The explanation given for the resultant difference of kshs 219,956,502.00 was that the signed contract sum of kshs 2,055,200,200.00 excluded various consultants' fees.

It was not clear why the consultant fees was excluded from the contract sum and whether the project will be completed within the project contract sums to avoid the provisional and prime cost sums, and contingencies currently stated at kshs 563,435,000.00 and kshs 85,000,000.00 respectively in the contract document final summary.

2015-2016

As reported in 2014/2015, Kenya National Library entered into a contract for the construction of Library headquarters (Vision 2030 Flagship Project) at a contract sum of Kshs. 2,055,200,200. The works were to take 208 weeks (48 months) commencing on 10th April 2012 and ending on 19th January 2017. Information available indicated that the percentage of work certified as at 30th June 2016 was only 53% which should have been higher given the duration the contract had taken. The slow completion rate was attributed to non-release of projected exchequer issues. Further, according to Note 26 to the financial statements, the work in progress as at 30 June 2016 was Kshs. 1,389,492,367 (68%) leaving Kshs. 665,707,833 of the contract sum.

In addition, since works on the commercial wing tower have not commenced, the balance of the contract sum may not be sufficient to complete the project.

As a result, the knls risks an increase in the costs of construction and delay in reaping the benefits of its investment in the project.

2016-2017

Kenya National Library Service on 2 March 2012 awarded a contract to M/S K.G. Patel Sons Limited - Building & Civil Engineering Contractors for the construction of the Proposed National Library and Headquarters at a contract sum of Kshs. 2,055,200,200. However, the contract sum of Kshs. 2,055,200,200 was exclusive of undetermined consultants' fees. Construction commenced in April 2012 and was set to be completed in a period of 208 weeks or by January 2016.

Audit inspection carried out in February 2018 revealed that the Project had not been completed and handed over due to various extension of time period awarded on contractor's request. The period was extended by additional sixty-five (65) weeks to 3 July 2017. Additional extension of 72 weeks was also made from 3 July 2017 to 19 November 2018. Since the commencement of the project in April 2012 there had been a 127.88%-time lapse. Further as noted by the Board in their meeting dated 29 June 2017, cost for some of the project works had notably escalated due to delays resulting to price increase, technological changes rendering the proposed ones almost obsolete for appropriate benchmarking thus the need to install high level of technology. At the point of production of tender document, the Audio Visual component was valued at Kshs.11Million but at the time of appraisal, the cost was estimated at Kshs. 73,940,904.

Initial contract sum of the Project was Kshs. 2,055,200,200 but the appraised sum was recorded at Kshs. 2,409,876,499 and thus registering an increase of Kshs. 354,676,299 or 17.26% but revised Bill of Quantities had not been availed for audit review. Further, the continued extensions of time had led to payment of avoidable interests and penalties of Kshs. 18,907,162.

It is not clear why these major changes to the Atrium Roof, Alterations at exhibition area on ground floor, relocations and technological changes were not foreseen by the consultants mainly the Architect, Structural Engineer and Quantity Surveyor.

In the circumstances, it was not possible to confirm that expenditure occasioned by several extension of time totaling Kshs. 354,676,299 was a proper charge against public resources. It was also not explained as to why the consultants' fees were not quantified and included in the main contract. The continued delay in completing the project is al so likely to lead to further escalation of costs.

Management response

The National Library of Kenya/knls Headquarters project was conceived and conceptualized by the knls Board as a Vision 2030 Flagship project. This was a four-year multi-tier project whose construction commenced on 10th April 2012 with an expected completion date of 19th January 2017.

The contract sum of Kshs. 2,055,200,200 is exclusive of the consultants' fees since conceptualization. The project began with identification of relevant service providers namely;

Consultants

a) Architectural services - Aaki Consultants
b) Quantity surveying - Procost Ltd
c) Electrical and civil engineers - Mecoy Consultants Ltd
d) Structural engineering services -Professional Consultants

The teams were to work with the knls Board to develop the building designs, bill of quantities/ tender documents and estimates for tendering purposes and contract documents for main contractor and subcontractors.The fee payable to the consulting firms was determined and awarded independently and prior to the determination of the actual tender sum of all contractors for builders works and specialized services.

The totality of the project cost would in effect comprise of the tender sum of kshs 2,055,200,200 plus consultant's fees as is normally the practice in the industry. The knls Board and the parties involved in the implementation of the contract had signed a fluctuating contract in line with Government regulation. In addition, the consultants had been paid as per the guidelines of JPC price index alongside the interim certificates from the main contractor for work done.

Challenges in Implementation of the Project

The project had faced a number of challenges resulting in time and cost overruns that have consequentially resulted into variations in scope.

Initial contract sum of the project was Kshs 2,055,200,200 but the appraised sum is Kshs 2,409,876,499 thus registering an increase of kshs 354,676,299 or 17.26%. The revised bill of quantities incorporating the variations was an addendum to the financial appraisal No. 3. The document was not availed in time to the auditors for audit review. However, the document was available for audit review and verification and to support the financial appraisal No. 3 as approved by the Board. The challenges faced by the project include but not limited to:

i) **Unfavorable ground conditions** – Existence of black trap rock which was very difficult to excavate resulting to escalation of cost of substructures. The contractor had to do the excavation at night as NEMA would not allow it during the day
ii) **Cash flow not commensurate with level of completed works** – This has resulted to delayed payments which attract interest pursuant to clause 34.6. This also leads to slow

progress of work and therefore extension of time which results to further cost escalations in extended preliminaries

iii) **Change in technology** – This project was designed in 2011. Most of the services installations since then have been rendered obsolete by emerging new technologies. The new installations come with cost escalations.

iv) **Price of Material escalations** – The cost of materials has been affected by inflation since the works were tendered in 2012. There has also been escalations on the exchange rates which have affected the prices of imported components of the works, more so in electrical and mechanical installations

In the circumstances, upon presentation of the financial appraisal, the Board approved kshs 354,676,299.71 or 17.26% variation to the project on 29th June 2017 summarized as under:

Project Cost Data

Original Contract sum	: KES 2,055,200,200.20
Appraised amount	: KES 2,409,876,499.91
Variation	: KES 354,676,299.71
Percentage variation	: 17.26%
Projected professional payments to Consultants (20% of contract sum)	: KES 481,975,299.98
Projected total project cost	: KES 2,891,851,799.80

Payment Breakdown as at 30th June 2017

Construction Costs	KES. 1,326,224,952.34
Professional Fees for consultants	KES. 348,371,545.04
Other direct payments to the project (approvals etc)	KES. 24,184,672.62
Total Incurred by the Project as at 30th June 2017	**KES. 1,698,781,170.00**
Allocation for FY'2017/18	KES. 445,666,000.00
TOTAL	**KES. 2,144,447,170.00**
Amount required to complete the Project as at 30th June 2018	**KES. 747,404,609.80**

Summary of variations	**KES**
a) Extended preliminaries	23,974,298.60
b) Partitioning and refurbishment of knls Buruburu	3,132,549.92
c) Main Works – Builders work	116,689,577.42
d) External works	2,041,390.20
e) Electrical Services Installations	80,595,913.42
f) Mechanical services Installations	13,300,349.00
g) General PC & provisional sums	13,322,080.00
h) Contractual entitlements	101,620,141.15
Total	**354,676,299.71**

The funding model of the project was purely by the Government of Kenya. Funds are allocated to the project at the beginning of each financial year and within the ceilings of the sector and for the Parent Ministry.

The funding levels to the project had not been commensurate with the projected program of works thus causing delays in project completion and payment for work done, and in some instances attracting penalties in form of interest in delayed payments.

In the circumstances, the project completion period had been extended twice by 65 and 72 weeks to November 2018. Since the commencement of the project in April 2012, there had been a 127.88%-time lapse.

The appraisal indicates a cost coding for main construction cost, breakdown of pricing document (initial contract sum), amount awarded, appraisal amounts, difference, comments on difference, approved variations and variations to be approved at each stage of project implementation.

The Board remained positive that it will be able to receive adequate funding from Government towards completion of the project.

The Board also concured that various changes had been made to the project due to technological changes. It should be noted that the project commenced over five years ago and technological changes and other emerging issues may be inevitable and adjustments of project works as and when they arise will be handled accordingly.

Committee Observations

(i) The Project had taken inordinately long time to complete. This raises concerns on the KNLS' capacity to plan and implement projects of such magnitudes.
(ii) The Financial Appraisal report on the project has not been availed to the auditors for audit review so far despite its availability.
(iii) Board minutes approving variations had not been availed to the Committee
(iv) The variation of 17.6% was within the allowed limit in the Public Procurement and Disposal Act of 2005.

Committee Resolution

(i) The KNLS should avail the Financial Audit report on the project to the auditors for audit review.
(ii) The KNLS should avail KNLS Board Minutes approving variations of the project to the Committee for perusal.

MIN/PIC/367/2018: EVIDENCE BY THE JOMO KENYATTA FOUNDATION (KJF)

Mr. Rosemary Barasa, Chief Executive Officer accompanied by H.S. Abdi (Board Member); Sammy Motanya (Manager Finance); Elsie Oyoo (Deputy Company Secretary) and Alex Wagacha (GM, Internal audit) appeared before the Committee to adduce evidence on the Reports of the Auditor

General on the Financial Statements of the Jomo Kenyatta Foundation (JKF) for the financial years 2010/2011 through to 2016/2017. The Committee heard that:

1) **Financial Year 2010/2011**

The Committee heard that the accounts of Jomo Kenyatta Foundation for the Financial Years 2010/2011 were unqualified.

2) **Financial Year 2011/2012**

Financial Performance

The Committee heard that during the Year under review, the Foundation reported a loss of Kshs. 16,093,000 (2011 profit was Kshs.46,631,000). Although the management had explained that strategies had been put in place to reverse the trend. The Foundation may face challenges in the event the devised strategies fail to work.

Management Response

Management informed the Committee that the decrease in profit was mainly because of low sales due to re3duced spending by the Government on text books. To mitigate on the loss, the Foundatuion formulated the 2012/2017 startegic plan and strategies were put in place to reverse the trend. In the subsequent years, the foundation reported profits as follows:

- 2012/2013 - Ksha 48,290,000
- 2013/2014 - Kshs. 62,335,000
- 2014/2015 - Kshs. 85,705,000
- 2015/2016 - Kshs. 87,600,000
- 2016/2017 - Kshs. 11,535,000

Committee Observations

(i) Development of the Strategic Plan 2012/2017 was instrumental in turning around the profit margins of the Foundation in the subsequent years.
(ii) The low profit margins witnessed in the 2016/2017 was occasioned by the low sales arising from change of government policy on curriculum.
(iii) The query was dropped from the subsequent financial years

Trade and other receivables

Note 11 of the financial statements reflected net trade receivables of Kshs. 76,921,000 which had been arrived at after deducting provision for doubtful debts of Kshs. 16,030,000 described as impaired balances which management considered doubtful. The Management had not provided satisfactory explanations as to the measures it intended to take to improve recovery of such debts.

Management Response

The provision for doubtful debts of Kshs. 16,030,000 was deducted before arriving at the net figure of Kshs. 76,921,000 as required by the IFRS 9 on impairment of financial assets. To improve the recoverability of the long outstanding debts, the Foundation reviewed its credit policy terms. Other customers are required to pay cash or by postdated cheques for their transactions. In addition the management engaged the services of external debt collector who followed up on these long outstanding debts. The Foundation had not received any litigation cases as other measures like requirement of bank guarantee reduces the credit risk

Committee Observations

Measures had been put in place to avoid future recurrence of the matter. There is no recurrence of that in the subsequent financial years.

Committee Resolutions

The matter had been conclusively addressed

Trade and other Payables

The trade and other payables balance of Kshs.205,224,000 included trade payables of Kshs.163,280,000 out of which Kshs. 1,288,605 were debtors with credit balances which had not been reconciled. In the circumstances, it had not been possible to confirm that the trade and other payables balance of Kshs.205,244,000 as at 30 June 2012 as fairly stated.

Management Response

Some repetitive customers pay with postdated cheques in advance of books collection so as to enjoy the quantity discounts. During collection the sale value may slightly differ with the advance amount paid. This results to a credit to the customer which is first utilized in the subsequent orders. For a long time customers always comes back to utilize the credit and no refunds have been requested/claimed. An amount of Ksh. 1,288,605 being the total credit balance to the customers was not a reconciliation issue could be accounted to specific customers. The Foundation agrees as per IAS 1 on presentation of financial statements as it was a wrong classification which we subsequently corrected.

Committee Observation

This matter was subsequently addressed by the management

3) Financial Year 2012/2013

The Committee heard that the Foundation's accounts for the Financial Year 2012/2013 were unqualified.

4) Financial Year 2013/2014

Trade and other receivables

The Committee heard that Trade and other receivables balance of Kshs.95,522,000 under note 14 of the financial statements included a VAT receivable balance of Kshs. 21,312,000 which was at variance with

VAT 3 returns filed with the KRA figure of Kshs.26,028,000. Although management had explained the resultant difference of Kshs.4,716,000 was a write off not included in VAT 3 returns, authority for write off was not provided for audit review. In the circumstances, the accuracy of trade and other receivables balance of Kshs.95,522,000 as at 30 June 2014 could not be confirmed.

Management response

VAT Act 2013 introduced taxation of books. Prior to this period the Foundation was only claiming input VAT for supplies from KRA. Some claims were paid and others disallowed by KRA. The resultant difference as at June 2014 of Ksh.4, 716,000 related to the difference between the Foundation's ledger and KRA VAT 3 which arose due to disallowed expenses by KRA. The Foundation adjusted the VAT ledger in its books but this adjustment was not effected from the KRA VAT 3 ledger. The Foundation engaged a consultant to carry out the VAT reconciliation and report was given but this could not be adjusted from KRA I-tax platform.

Committee Observations

The variance had been reconciled by the consultant, verified by the OAG and the matter was closed.

5) **Financial Year 2014/2015**

The Committee heard that the Foundation's accounts for the Financial Year 2014/2015 were unqualified.

6) **Financial Year 2015/'2016**

The Committee heard that the Foundation's accounts for the Financial Year 2012/2013 were unqualified.

7) **Financial Year 2016/2017**

The Committee heard that the Foundation's accounts for the Financial Year 2012/2013 were unqualified.

MIN/PIC/368/2018: ANY OTHER BUSINESS

The Management of JKF informed the Committee that the JKF Board has a newly appointed Chairman and collates to transact any business. It however has four vacancies that have yet to be filled.

MIN/PIC/369/2018: ADJOURNMENT

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

Signed.....

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

Date.....16/10/2018

MINUTES OF THE 76TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 19TH SEPTEMBER 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 3.30P.M.

PRESENT

1) The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2) The Hon. Paul Kahindi Katana, MP
3) The Hon. James Kamau Githua Wamacukuru, M.P
4) The Hon. Ahmed Kolosh Mohamed, MP
5) The Hon. Rashid Kassim Amin, MP
6) The Hon. Joash Nyamache Nyamoko, MP
7) The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

ABSENT WITH APOLOGY

1) The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2) The Hon. Chrisantus Wamalwa Wakhungu, MP
3) The Hon. Mary Wamaua Waithira Njoroge, MP
4) The Hon. Babu Owino Paul Ongili, MP
5) The Hon. Mohamed Hire Garane, M.P.
6) The Hon. John Muchiri Nyaga, M.P
7) The Hon. Raphael Bitta Sauti Wanjala, MP
8) The Hon. Purity Wangui Ngirici, MP
9) The Hon. Omar Mohamed Maalim Hassan, MP
10) The Hon. Thuku Zachary Kwenya, M.P
11) The Hon. Nicholas Scott Tindi Mwale, MP
12) The Hon. Gideon Mutemi Mulyungi, MP

IN ATTENDANCE

OFFICE OF THE AUDITOR GENERAL

1.	Mr. Joshiah Oyuko	-	Manager, Audit
2.	Mr. Samuel Bollo	-	Manager, Audit

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1.	Mr. Evans Oanda	-	Senior Clerk Assistant
2.	Ms. Halima Husein	-	Third Clerk Assistant
3.	Ms. Sharon Rotino	-	Research Officer
4.	Ms. Noel Chelagat	-	Media Relations Officer
5.	Mr. Fabian Sang	-	Junior Legislative fellow
6.	Winfred O	-	Audio Officer

MIN/PIC/370/2018: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past three O'clock followed by a word prayer from Hon. Joash Nyamoko, MP.

MIN/PIC/374/2018: EVIDENCE BY THE KENYA MEDICAL SUPPLIES AGENCY (KEMSA)

Dr. Jonah Manjari, Chief Executive Officer of Kenya Medical Supplies Agency accompanied by Enos Namasaka; Caroline Wanjiru (Ag. Finance Manager); Fredrick Wanyonyi (Corporation Secretary); Eliud Muriithi (Director, Commercial Services) and Dr. George Walukana (Customer Service Manager) appeared before the Committee to adduce evidence on the accounts of KEMSA for the Financial Year 2016/2017

Property Plant and Equipment

This is a repeat paragraph already dealt with in the previous financial years

Receivables from Exchange Transactions

This is a repeat paragraph already dealt with in the previous financial years

Staff Costs (2016/2017 FY)

The Committee heard that staff costs of Kshs 695,779,767 in the statement of financial performance for the year ended 30th June 2017 includes Kshs 25,891,540 paid to forty-seven (47) officers employed during the year about eight (8) promoted during the same period whose supporting recruitment /promotion documents including approval by the board were not availed for audit review. Further, the Authority had six hundred and ninety-five (695) employees against the approved establishment of three hundred and forty-one (341) resulting to an unapproved over employment of three hundred and fifty-four officers. No explanation had been provided for the excess employment. Consequently, the propriety of the staff cost of Kshs 695,779,767 for the year ended 30th June 2017.

Management Response:

Management concurred with the auditors that KEMSA recruited the 47 staff and promoted 8 members of staff. The 47 members were contracted as program employees. The 8 members promoted were KEMSA staff and were within the approved staff establishment. Due to the bulkiness and sensitivity nature of the supporting documents involved, they could not be attached. The documents were available and the Auditors could make arrangement to verify.

KEMSA had a staff establishment of 341 which was approved by the Board of Directors meeting held on the 15th October 2013 (Appendix 15*) - BOD minutes MIN 44/B/2013 IX and approved staff establishment*). The current in-post is at 329, which was approved vide the letter from the Permanent Secretary Ministry of Health (Ref: MMS/ADM/1/17) dated 13th May 2010 as recommended by the Joint Ministerial Committee (Appendix 16*)*.

There was a variance of 13 positions that was to be filled in due course. Currently KEMSA is in the process of recruiting the Finance Director, Human Resource Director, Human Resource Manager and Administration Manager. This would increase the staff establishment to 333 which will still be within the approved establishment of 341.

Due to the need for proper management, KEMSA was planning to conduct Corporate wide review on Human Resource based on the current programs and we are in the process of acquiring approvals from the Ministry to increase the current workforce from 341 to 371 in order to support the devolved healthcare.

The 695 employees indicated was the total number of staff both KEMSA staff (329 in-post) and Program staff (366). The 366 were contracted staff by KEMSA to render services to the various programs that KEMSA has with its Strategic Partners. Despite the massive changes within the organization due to adoption of the new business model which was implemented to support the devolved healthcare system, the management has adhered to the approved establishment by limiting the recruitment of new staff to be within the approved establishment of 341.

However, after adoption of the new business model to support the devolved county health facilities necessitated that KEMSA comes up with a new business architecture and organizational structure that supports devolved healthcare system, creation of a commercial division with a sale & marketing, and customer service departments, planning unit and other appropriate structures and systems.

The nature of the new business model requires that KEMSA responds to the workload/ demand as and when necessary as opposed to the old centralized system where workload was predictable. Counties make orders as per their requirements as and when they want. KEMSA is obligated by the service level agreement in the MOU to service those orders within the timelines specified.

While approving the new business model, the KEMSA 35th board meeting held on October 2013, under minute No.44/FB/2013 gave authority to the management for the recruitment of short term /contract staff based on the new business model needs. This authority was given to enable the management effectively manage the unpredictable workload from the county health facilities and also the strategic partners' projects within the Approved Personnel Emoluments budget.

In addition, KEMSA has Contractual Partnerships with thirteen strategic partners to whom KEMSA offers supply chain services with variable and unpredictable workload. The various projects under the different strategic partners have different contract durations ranging from one year to five years and hence the need for short term contract staff to cater for their specific needs.

Given the above scenario, the short term contract staff are inevitable but do not form part of the approved staff in the establishment since they are required for specific period of time tied to the life of the Project. An Example is the KEMSA-USAID Medical Commodity Program which was to run for an initial 3-year period with an extension of 2 year. The technical staff recruited to manage the project have 5-year employment contracts.

These contracted staffs for the projects are meant to ensure meeting performance target as set by the development partners and guard against taking on board staff on permanent terms for tasks/assignments that are not of long-term in nature/whose lifespan is period-specific. (Appendix 16)

Engagement of contract staff is duly provided for in the KEMSA HR policies and the contracts are reviewed each year – based on exigency of service and KEMSA's operational and business requirements.

Under the new business model, KEMSA operates 24-hours a day and 7 days a week. This means that to efficiently manage the work load from both the projects and counties the, work schedule is structured on day and night shift model.

During the period KEMSA employed contracted staff in line with business needs/work load requirements and as approved by the Board and hence there was no unapproved/overemployment of staff.

Committee Observation

(i) There existed approval from the Board allowing management to employ staff on contractual terms as and when need arises (MIN/44/FB/2013 of the meeting held on 15th October 2013).

(ii) All the contracted staff are always paid off and leave upon expiry of their contracts.

Committee Resolution

KEMSA was asked to avail records of the 352 staff who had been hired on contract for audit review.

Expired/Damaged Drugs

The Committee had that as explained in note 3 of the financial statements for the year ended 30th June 2017, the net sales of Kshs 900,094,880 is arrived at after deducting cost of sales for pharmaceuticals of Kshs 2,693,328,090. The Cost of sales figure included an amount of Kshs 92,392,937 for commodities/expired drugs that were unsaleable due to expiry or damage. In the previous year, the expired drugs amounted to Kshs 259,741,614 (Appendix 17).

No explanation had been provided for stocking expired/damaged drugs thereby causing unnecessary loss to the Authority when the country's hospitals were short of drugs. In the circumstance, it was not possible to determine the propriety of the inventory balance of Kshs 11,776,786,528 included in the statement of financial position as at 30th June 2017 as well as the net sales of Kshs 900,094,880 included in the statement of financial performance for the year ended 30th June 2017. Further in the two financial years, public money on purchase of drugs worth Kshs 352,134,551 have not been applied in an effective way.

Management Response

Management acknowledged expiry of drugs but attributed it to:

1. In the Financial Year 2012/2013, in response to devolution of HealthCare in line with the Constitution, KEMSA adopted a new business model. Medical stocks that previously belonged to the Ministry of Health, became KEMSA's Capital Stocks. The Inherited stocks were under the "PUSH" system where quantification of health commodities needs for the over 5,000 public health facilities was determined by the Ministry of Health. KEMSA's mandate then was to procure as per the specifications given by the Ministry of Health, warehouse and distribute the commodities as per the given distribution list to the public health facilities.

   After devolution of Health care, the new business model was adopted under a "PULL" system where counties determine what they require and buy the same from KEMSA. Some commodities attracted little or no demand from the counties. These commodities have over time exhausted their

shelf life and hence becoming obsolete.

2. Change of treatment regimen due to drug resistance e.g. Drugs for Malaria treatment where a new drug with higher efficacy is introduced and therefore the drug under the old treatment regimen becomes obsolete.
3. Change Technology from analogue to Digital: As a result of the Initiative by the National Government of equipping 2 hospitals in each County and 4 National Referral hospitals with outsourced specialized state-of-the-art medical equipment. This has reduced the demand for commodities specifically X-Ray films and Dialyzers. The stocks X-Ray films and Dialyzers that KEMSA was holding were therefore rendered obsolete.
4. Damages: This has been minimal and KEMSA has realized damage of Kshs 40 only in the financial year 2016/2017.

REASON FOR EXPIRY	FINANCIAL YEAR 2015/2016	FINANCIAL YEAR 2016/2017	TOTAL
Change of treatment regimen/Change of preference due to drug resistance	91,928,472.00	29,362,742.45	121,291,214.45
Change Technology from analogue to Digital	-	20,373,050.25	20,373,050.25
Change from Push to Pull	167,813,142.24	42,657,104.08	210,470,246.32
Damages		40.00	40.00
TOTAL	259,741,614.24	92,392,936.78	352,134,551.02

Other Factors that contributed to expiries in the financial year 2016/2017:

(i) Strikes by the Medical Service Providers -Doctors, Nurses and Clinical Officers in the Public Health Facilities during and before the financial year 2016/2017 also contributed to low demand for commodities hence the expiries.

(ii) Decreased demand of commodities from the county governments as a result of leadership transitions occasioned by the General Elections. This was mostly in counties where the Chief Officers of Health and Directors left office to seek elective posts and therefore orders for Medical commodities from KEMSA could not be placed promptly.

The KEMSA management has also been proactive in management of Near-Expiry commodities (Those with less than 6 Months to Expiry) by:

a) Ensuring that all commodities received in our warehouses have a minimum of 75% of their shelf life. The KEMSA Warehouse Management System (WMS) in the ERP cannot accept new receipts of less than 75% shelf life.

b) Donations to County Health Facilities and Free Medical Camps. See attached sample of correspondences between county health facilities and KEMSA (Appendix 18).

c) Participation in various health camps across the country through donation of the short expiry commodities that are good for human use.

d) Adoption of a First Expiry First Out strategy in commodities management at the warehouse.

NB: The KEMSA Warehouse Management System (WMS) cannot release a product with less than 6 months to shelf life.

We also wish to inform you that in the event of commodities expiring at any KEMSA warehouses, they are disposed using procured service providers accredited by the National Environment Management Authority (NEMA).

The service providers are recruited through a competitive procurement process and are expected to strictly adhere to the disposal guidelines issued by NEMA and also in line with the expectations of the Pharmacy and Poisons Board.

Once a commodity expires, the Warehouse Management System (WMS) automatically isolates and places it in an expiries/Damages Virtual warehouse where it cannot be picked for issue to customers. It is thereafter manually picked and separated from the other stocks, awaiting disposal through incineration.

KEMSA's stock valuation of Kshs 11,776,786,528 as presented in the Financial Statements does not include the expired commodities of Kshs 92,392,937.

Committee Observation

i) Expiry of drugs were not due to breach of contractual terms
ii) Expiry due to change in drug regimen indicates poor planning by KEMSA. KEMSA should ordinarily know which drugs are obsolete and which drugs are going to be introduced into the Market.
iii) KEMSA has devised strategies to determine the demand of drugs from across the counties by constantly engaging and collecting data to avoid expiry of drugs among other strategies such as prioritizing on shelf life of drugs.

MIN/PIC/375/2018: ADJOURNMENT

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

Signed.....

Date.....16/10/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 77TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 2ND OCTOBER, 2018 IN ROOM 7, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Chrisantus Wamalwa Wakhungu, MP
3. The Hon. Thuku Zachary Kwenya, M.P
4. The Hon. John Muchiri Nyaga, M.P
5. The Hon. Omar Mohamed Maalim Hassan, MP
6. The Hon. Nicholas Scott Tindi Mwale, MP
7. The Hon. James Kamau Githua Wamacukuru, M.P
8. The Hon. Paul Kahindi Katana, MP
9. The Hon. Raphael Bitta Sauti Wanjala, MP
10. The Hon. Joash Nyamache Nyamoko, MP
11. The Hon. Babu Owino Paul Ongili, MP
12. The Hon. Mohamed Hire Garane, M.P.

ABSENT WITH APOLOGY

1. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
2. The Hon. Ahmed Kolosh Mohamed, MP
3. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
4. The Hon. Purity Wangui Ngirici, MP
5. The Hon. Mary Wamaua Waithira Njoroge, MP
6. The Hon. Gideon Mutemi Mulyungi, MP
7. The Hon. Rashid Kassim Amin, MP

IN ATTENDANCE

1. Mr. Joshiah Oyuko	-	Manager, Audit
2. Ms. Evelyn Kauna	-	Manager, Audit
3. Mr. Victor Momanyi	-	Inspectorate of State Corporations

IN ATTENDANCE
NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Mohamed Boru	-	Clerk Assistant II
2. Ms. Sharon Rotino	-	Research Officer
3. Mr. Thomas Ogwel	-	Fiscal Analyst
4. Ms. Noel Chelagat	-	Media Relations Officer
5. Ms. Winfred Otieno	-	Audio Recording Officer

MIN/ PIC/377/2018: PRELIMINARIES

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

MIN/ PIC/378/2018: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN/PIC/379/2018: EVIDENCE BY THE TECHNICAL AND VOCATIONAL EDUCATION AND TRAINING AUTHORITY

Dr. Kipkirui Langat, the Director General of the Technical and Vocational Education and Training Authority (TVETA) accompanied by Mr. Anthony Masinde (Alternate Director, Ministry of Education) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Authority for the financial year 2015/16 to financial year 2016/2017.

MIN/PIC/380/2018: CASH AND CASH EQUIVALENTS FY 2015/16

Note 11 to the financial statements reflect Kenya Commercial Bank balance of Kshs. 23,816,820. However, the respective bank reconciliation statement as at 30 June 2016 indicate unpresented cheques totaling Kshs. 2,531,245 and whose subsequent clearance by the bank had not been known by the time of the audit. Further, one of the unpresented cheques of Kshs. 163,537 had become stale as at 10 March, 2017 and had not been reversed in the cashbook as at the same date. In the circumstance, it has not been possible to confirm the accuracy of cash and cash equivalents balance of Kshs. 23,817,820 as at 30 June, 2016.

Management Response

On 17th June, 2016, P.V No. 513, Payee: Director Dr. Ahmed Ferej was erroneously posted as Kshs. 163,537.00 instead of Kshs. 90,437.00. The difference of Kshs. 73,100 was amount for air ticket processed by the SCMO. Kshs. 90,437 was correctly posted on 26th August, 2016 but Kshs. 163,537 was not reversed and remained outstanding as payment in cashbook, not in bank statement (unpresented cheque). It was reversed on 26th April, 2017 after the audit.

Committee Observations

The Committee made the following observations:

1. The Authority had not provided a full explanation for the unpresented cheques totaling Kshs. 2,531,245.

Committee Resolutions

The Committee made the following resolutions:

1. The Authority was invited to re-appear before the Committee on 9th October, 2018 to provide an explanation on the audit query.
2. The audit query had not been resolved.

MIN/PIC/381/2018: ANY OTHER BUSINESS

The Authority stated that that distribution of funds to TVET students, worth an approximate Kshs. 2.5 Billion, was done via the Ministry of Education and not a specialized agency like the case with the Higher Education Loans Board.

Committee Resolutions

The Committee made the following resolutions:

1. The Authority should provide a breakdown of all the TVET institutions in the country and the line ministries they are domiciled under.
2. The Committee will initiate amendments to the TVET Act to provide for funding to TVET students via the Authority.
3. The Inspectorate of State Corporations should have a Parliamentary Liaison Officer to accompany the sector Inspector to every Public Investments Committee meetings

MIN/PIC/382/2018: ADJOURNMENT

The meeting was adjourned at nine minutes past eleven O'clock.

Signed..... Date.....16/10/2018.....

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 85TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON MONDAY, 29TH OCTOBER 2018 IN CONFERENCE ROOM, ENGLISH POINT MARINA 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. Rashid Kassim Amin, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. Raphael Bitta Sauti Wanjala, MP
6. The Hon. Omar Mohamed Maalim Hassan, MP
7. The Hon. Ahmed Kolosh Mohamed, MP
8. The Hon. Justus Kizito, MP
9. The Hon. Purity Wangui Ngirici, MP

ABSENT WITH APOLOGY

1. The Hon. Chrisantus Wamalwa Wakhungu, MP
2. The Hon. Thuku Zachary Kwenya, M.P
3. The Hon. Babu Owino Paul Ongili, MP
4. The Hon. Gladys Wanga, MP
5. The Hon. Paul Kahindi Katana, MP
6. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
7. The Hon. Mohamed Hire Garane, M.P.
8. The Hon. Mary Wamaua Njoroge, MP
9. The Hon. James Kamau Githua Wamacukuru, M.P
10. The Hon. John Muchiri Nyaga, M.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Senior Clerk Assistant
2. Mr. Mohamed Boru	-	Clerk Assistant III
3. Ms. Halima Hussein	-	Clerk Assistant III
4. Ms. Sharon Rotino	-	Research Officer
5. Mr. Alex Mutuku	-	Senior Sergeant-at-Arms
6. Mr. Sidney Lugaga	-	Legal Counsel
7. Ms. Winfred Atieno	-	Audio Recording Officer

IN ATTENDANCE

1. Mr. Gerald Mwangi	-	Assistant Inspector General of State Corporations
2. Mr. Joshiah Oyuko	-	Manager, Office of the Auditor General

MIN/ PIC/416/2018: PRELIMINARIES

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

MIN/ PIC/417/2018: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN/PIC/418/2018: CONSIDERATION OF THE DRAFT 22ND PIC REPORT

The Committee considered the draft 22nd Report on the Audited Accounts of State Corporations and made the following changes to the observations and recommendations therein:

General Observations

1. The Committee re-emphasized the recommendations of the 19th Report of the Public Investments Committee on audited accounts of State Corporations that unless there are compelling reasons, the audit exercise of key State Corporations should not be outsourced.
2. Parliament amends the Public Audit Act to restrict outsourcing of audit for State Corporations taking into consideration their strategic importance and turnover.
3. Parliament should adopt regulations that guide the outsourcing of audit exercise of State Corporations. The guidelines can give directions on how to outsource and sanctions for audit firms that flout these regulations.

KENYA POWER

The Committee observed that:

1. There are several cases pending in court regarding financial irregularities at Kenya Power with senior Managers of the State Corporation taken to court to answer to various charges including economic crimes and abuse of office.

The Committee recommended that:

1. The Office of the Auditor General should conduct a forensic audit at Kenya Power based on their internal audit reports from FY 2014/15 onward. The forensic audit should factor in the matter of purchase of pre-paid electricity tokens and faulty transformers.

GEOTHERMAL DEVELOPMENT COMPANY

Audit Query - Procurement of Rig Move Services

The Committee observed that:

1. The 19th Public Investment Committee Report on audited accounts of State Corporations recommended the Ethics and Anti-Corruption Commission (EACC) to conduct investigations on this audit query.

The Committee Resolved that:

1. The EACC and the Directorate of Criminal Investigations should expedite investigations into the matter of procurement of rig services and conclude it within six months.

KENYA ELECTRICITY TRANSMISSION COMPANY (KETRACO)

Other Matter - Project Performance

The Committee made the following recommendations

1. That the Office of the Auditor General should carry out a performance audit to establish whether the process of procuring the Nairobi Ring Project delivered value for money. Those found to have caused any loss of public funds due to their omission or commission during the procurement process should be held liable.
2. On the Lessos-Tororo project (part of NELSAP Project), the Office of the Auditor General should conduct a performance audit to establish whether there was value for money with respect to the procurement and award of contract to Inabensa of Spain. The performance audit should ascertain whether KETRACO conducted due diligence on the capacity of Inabensa to complete the project and whether the procurement process was conducted in accordance with the Public Procurement and Disposal Act, 2005.
3. The EACC and DCI should conduct an investigation to establish whether there was a breach of law under section 68 of the Pubic Finance Management Act, 2012 with respect to incurring expenditure for the Government without lawful authority with a view to prosecuting for financial misconduct the same where the same is established.
4. That KETRACO conducts cost benefit analysis of its procurement systems to ensure value for public funds in procurement of goods and services.
5. In future, any State Corporation that floats an international tender should provide for the Nairobi Center for International Arbitration as the primary point of arbitration in the event of any contractual dispute.

Nairobi Center for International Arbitration, Privatization Commission and Competition Authority

1. The three State Corporations should continue with the sound financial management.

MIN/PIC/419/2018: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/420/2018: ADJOURNMENT

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

Signed.....

Date.....31/10/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 86TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON MONDAY, 29TH OCTOBER 2018 IN CONFERENCE ROOM, ENGLISH POINT MARINA AT 2.30 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. Raphael Bitta Sauti Wanjala, MP
6. The Hon. Omar Mohamed Maalim Hassan, MP
7. The Hon. Ahmed Kolosh Mohamed, MP
8. The Hon. Justus Kizito, MP
9. The Hon. Purity Wangui Ngirici, MP

ABSENT WITH APOLOGY

1. The Hon. Chrisantus Wamalwa Wakhungu, MP
2. The Hon. Thuku Zachary Kwenya, M.P
3. The Hon. Babu Owino Paul Ongili, MP
4. The Hon. Gladys Wanga, MP
5. The Hon. Paul Kahindi Katana, MP
6. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
7. The Hon. Mohamed Hire Garane, M.P.
8. The Hon. Mary Wamaua Njoroge, MP
9. The Hon. James Kamau Githua Wamacukuru, M.P
10. The Hon. John Muchiri Nyaga, M.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Senior Clerk Assistant
2. Mr. Mohamed Boru	-	Clerk Assistant III
3. Ms. Halima Hussein	-	Clerk Assistant III
4. Ms. Sharon Rotino	-	Research Officer
5. Mr. Alex Mutuku	-	Senior Sergeant-at-Arms
6. Mr. Sidney Lugaga	-	Legal Counsel
7. Ms. Winfred Atieno	-	Audio Recording Officer

IN ATTENDANCE

1. Mr. Gerald Mwangi	-	Assistant Inspector General of State Corporations
2. Mr. Joshiah Oyuko	-	Manager, Office of the Auditor General

MIN/ PIC/421/2018: PRELIMINARIES

The Chairperson called the meeting to order at twenty two minutes to three O'clock.

MIN/ PIC/422/2018: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN/PIC/423/2018: CONSIDERATION OF THE DRAFT 22ND PIC REPORT

The Committee considered the draft report of the audited accounts of State Corporations and made the following resolutions:

General Observations

1. The National Assembly should consider reviewing the Standing Orders to allow for Departmental Committees to set up Sub-Committees that will follow up on resolutions of Committee recommendations with the Implementation Committee.

Kenya School of Law (KSL)

Audit Query: Loss of KSL Property on Plot LR 2009/6238-HG613 -

The Committee made the following observation

1. Mr. Leonard Njagi was eventually appointed and served as judge of the High Court of Kenya and therefore, continued to hold public office despite PIC's recommendations.

Committee Recommendation

The Committee made the following recommendation:

1. Mr. Leonard Njagi should step aside to permit for conclusion of the pending matter in court insofar as the matter raises issues touching on the integrity of the officer in accordance chapter 6 of the constitution.
2. Mr. Leonard Njagi should also be barred from holding public office.

Audit Query - 6.8 Hectares Plot in Embakasi

The Committee made the following recommendation:

1. The KSL Board should take up disciplinary measures against the Company Secretary on account of her administrative failure regarding the land in Embakasi.
2. Additionally, the third party who had grabbed part of the land should be unmasked by the National Land Commission and criminal proceedings initiated against them.

CEMESTEA

1. The Committee commended the Center for the prudent financial management.

UNCLAIMED FINANCIAL ASSESTS AUTHORITY

1. The Committee commended the Authority for the prudent financial management.

KENYA COPYRIGHT BOARD

1. The Committee commended the Board for the sound financial management.

MIN/PIC/424/2018: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/425/2018: ADJOURNMENT

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

Signed..... Date.....31/10/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 87TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 30TH OCTOBER 2018 IN CONFERENCE ROOM, ENGLISH POINT MARINA 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. Rashid Kassim Amin, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. Raphael Bitta Sauti Wanjala, MP
6. The Hon. Omar Mohamed Maalim Hassan, MP
7. The Hon. Ahmed Kolosh Mohamed, MP
8. The Hon. Justus Kizito, MP
9. The Hon. Purity Wangui Ngirici, MP
10. The Hon. Thuku Zachary Kwenya, M.P
11. The Hon. Mary Wamaua Njoroge, MP
12. The Hon. John Muchiri Nyaga, M.P
13. The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

1. The Hon. Chrisantus Wamalwa Wakhungu, MP
2. The Hon. Babu Owino Paul Ongili, MP
3. The Hon. Gladys Wanga, MP
4. The Hon. Paul Kahindi Katana, MP
5. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
6. 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 III
3. Ms. Halima Hussein	-	Clerk Assistant III
4. Ms. Sharon Rotino	-	Research Officer
5. Mr. Alex Mutuku	-	Senior Sergeant-at-Arms
6. Mr. Sidney Lugaga	-	Legal Counsel
7. Ms. Winfred Atieno	-	Audio Recording Officer

IN ATTENDANCE

1. Mr. Gerald Mwangi	-	Assistant Inspector General of State Corporations
2. Mr. Joshiah Oyuko	-	Manager, Office of the Auditor General

MIN/ PIC/426/2018: PRELIMINARIES

The Chairperson called the meeting to order at twenty two minutes to three O'clock.

MIN/PIC/427/2018: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN/PIC/428/2018: CONSIDERATION OF THE DRAFT 22ND PIC REPORT

The Committee considered the draft report of the audited accounts of State Corporations and made the following changes and additions:

NATIONAL COUNCIL FOR POPULATION DEVELOPMENT

Audit Query: Land in Upper Hill Nairobi (LR No. 209/13332-Plan No. 93637/11/724) -

The Committee made the following additional observations:

1. The National Land Commission acknowledges that the allocation of the land to Rosestar Limited was irregular.
2. The National Land Commission wrote to the Committee indicating that they did not receive a copy of the court order despite there being no court case on the matter.

The Committee made the following additional recommendations:

1. The National Lands Commission should be investigated by the Directorate of Criminal Investigations with a view to establishing culpability for transferring the land to Rosestar Limited under the guise of protecting public interest.
2. The Directors of Rosestar should be identified and prosecuted for grabbing public land.

Audit Query: Kisii Land

The Committee made the following additional recommendations;

1. The Council must employ a legal officer within six months. Further, the Cabinet Secretary, National Treasury should compel the accounting officer to provide within three months after adoption of this report, reasons on either the failure to appoint a company secretary or secure the property of the Council.
2. Where no satisfactory explanation is provided to the CS National Treasury and Auditor General within the stipulated time, the accounting officer should be prosecuted for financial misconduct relating to failure to manage an asset of that entity contrary to section 197(1)(k) of the Public Finance Management Act, 2012.

Audit Query: Muranga Land

The Committee made the following recommendations;

1. The Council must employ a legal officer within six months. Further, the Cabinet Secretary, National Treasury should compel the accounting officer to provide within three months after adoption of this report, reasons on either the failure to appoint a company secretary or secure the property of the Council.
2. Where no satisfactory explanation is provided to the CS National Treasury and Auditor General within the stipulated time, the accounting officer should be prosecuted for financial misconduct relating to failure to manage an asset of that entity contrary to section 197(1)(k) of the Public Finance Management Act, 2012.

Audit Query: Change of Ownership of NCPD Vehicles - GK T925 and GK U206

The Committee made the following additional recommendation:

1. The Accounting Officer must ensure that all applicable accounting and financial controls, systems, standards, laws and procedures are followed when procuring or disposing of goods and services and that, in the case of goods, adequate arrangements are made for their custody, safeguarding and maintenance pursuant to the the provisions of section 68(2)(d) of the Public Finance Management Act, 2012.

NATIONAL AIDS CONTROL COUNCIL

Audit Query: Disbursement of Constituency AIDS Control Coordinators (CACCs)

1. The Committee resolved that Observation (ii) on the activities of CACCs is not under the mandate of the Public Investments Committee and should be deleted from the report.

Audit Query: Receivables from non-exchange transactions

The Committee made the following additional recommendations:

1. Accounting officers must ensure that in the event that an imprest holder fails to account for or surrender the imprest on the due date, the Accounting Officer shall take immediate action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank Rate pursuant to the provsions of regulation 93(6) of Public Finance Management(National Government)Regulations, 2015
2. The National Aids Control Council should proceed to write off the old imprests issued to former officers including that by the former CEO Margaret Gachara as advised by the Office of the Auditor General.

KENYA INDUSTRIAL RESEARCH AND DEVELOPMENT INSTITUTE

Audit Query: Development Grants

The Committee made the following additional observation:

1. No public funds were lost in the mismatch of entries between reccurent and development expenditure.

The Committee made the following additional recommendation:

1. The Management should always follow Public Finance Management guidelines on budget execution including relevant provisions on budgetary planning and re-allocation pursuant to the provisions of the Public Finance Management Act, 2012.

Audit Query: Financial Performance

The Committee made the following additional recommendation:

1. Contractors should only be paid based on certifications and approvals by the State Department of Public Works.

Audit Query: Accounts Receivables - Long outstanding balances

The Committee made the following additional recommendation:

1. Any agreement between two government agencies should be put down in writing to clear any ambiguity that may result in audit queries or legal action.
2. Accounting officers musts ensure that they ensure that all contracts entered into by the entity are lawful and are complied with pursuant to the provisions of section 68(2)(d) of the Public Finance Management Act, 2012.

MIN/PIC/429/2018: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/430/2018: ADJOURNMENT

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

Signed..... **Date**.....31/10/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 88TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON TUESDAY, 30TH OCTOBER 2018 IN CONFERENCE ROOM, ENGLISH POINT MARINA 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. Rashid Kassim Amin, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. Raphael Bitta Sauti Wanjala, MP
6. The Hon. Omar Mohamed Maalim Hassan, MP
7. The Hon. Ahmed Kolosh Mohamed, MP
8. The Hon. Justus Kizito, MP
9. The Hon. Thuku Zachary Kwenya, M.P
10. The Hon. John Muchiri Nyaga, MP
11. The Hon. Mary Wamaua Njoroge, MP
12. The Hon. James Kamau Githua Wamacukuru, M.P

ABSENT WITH APOLOGY

1. The Hon. Chrisantus Wamalwa Wakhungu, MP
2. The Hon. Babu Owino Paul Ongili, MP
3. The Hon. Gladys Wanga, MP
4. The Hon. Paul Kahindi Katana, MP
5. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP
6. The Hon. Mohamed Hire Garane, M.P.
7. The Hon. Purity Wangui Ngirici, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Senior Clerk Assistant
2. Mr. Mohamed Boru	-	Clerk Assistant III
3. Ms. Halima Hussein	-	Clerk Assistant III
4. Ms. Sharon Rotino	-	Research Officer
5. Mr. Alex Mutuku	-	Senior Sergeant-at-Arms
6. Mr. Sidney Lugaga	-	Legal Counsel
7. Ms. Winfred Atieno	-	Audio Recording Officer

IN ATTENDANCE

1. Mr. Gerald Mwangi	-	Assistant Inspector General of State Corporations
2. Mr. Joshiah Oyuko	-	Manager, Office of the Auditor General

MIN/PIC/431/2018: PRELIMINARIES

The Chairperson called the meeting to order at twenty minutes to four O'clock.

MIN/ PIC/432/2018: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN/PIC/433/2018: CONSIDERATION OF THE DRAFT 22ND PIC REPORT

The Committee considered the draft 22nd Report on the Audited Accounts of State Corporations and made the following changes to the observations and recommendations therein:

NATIONAL SOCIAL SECURITY FUND

Audit Query: Members contributions held in suspense account

The Committee made the following additional recommendation:

1. The Fund should within three months establish the identity of the contributors through the employers who remitted the contributions held in the suspense account.

Audit Query: Illegal Transfer of NSSF Land in Upper Hill

The Committee made the following additional recommendations:

1. NSSF should continue to engage the National Land Commission and the Ministry of Lands to ascertain the ownership of the land
2. The NSSF should urge its legal representatives to fast trackthe court litigation.
3. The EACC and DCI ought to investigate the irregular revocation of title LR NO. 209/11642 with a view to prosecuting any person that is found to have committed a criminal offense in line with said revocation.

Audit Query: Stalled Projects - Hazina Towers

The Committee made the following additional recommendation:

1. The EACC and DCI should conduct an investigation of the Management and the Board of NSSF that were in place during period under review with a view to establish whether there was fraud relating to the contract of works on the completion of Hazina Trade Centre and the subsequent prosecution of any person found culpable.

Audit Query: Nyayo Estate Embakasi Phase 6 Contract No. 18/2012-2013

The Committee made the following additional observation:

1. The Fund risked losing Kshs. 215,540,744 that was made as an advance payment to the contractor.

Audit Query: Unsatisfactory Budget Performance (Expenditure)

The Committee made the following additional observation:

1. The Kenya Revenue Authority had interefered with the smooth operations of the Fund by imposing Corporation Tax on NSSF.

The Committee made the following additional recommendation:

1. In the event of a dispute with a counterpart Government agency, NSSF should explore arbitration to resolve the matter.

Audit Query: Unremitted Members' Contribution

The Committee made the following additional recommendation:

1. Parliament should increase financial allocation to OAG to acquire additional human resource to assist in effectively undertaking its mandate.

Audit Query: Irregular Disposal of Undeveloped Land

1. The EACC and the DCI should investigate the Director of Survey, the Registrar Of Titles and Messrs Karsan Ramji & Sons with respect to the acquisition and Grant No. I.R. 91466 (LR No. 26817) and be prosecuted where any of the parties flouted applicable laws in possession and registration of public land.

Audit Query: Hazina Plaza Mombasa Lease - LR.NO.MSA/BLK XX/328 & 329

The Committee made the following additional observation:

1. NSSF had won the court case relating to the ownership of Hazina Towers.

Committee Recommendation

The Committee made the following additional observation:

1. The Auditor General should carry out a forensic report to establish whether the transaction under this matter was not marred in fraud.

General recommendations:

2. State Corporations should ensure that the diversify their investment portfolios
3. Appointing authorities must ensure that no person should serve in acting capacity for a duration exceeding twelve months.

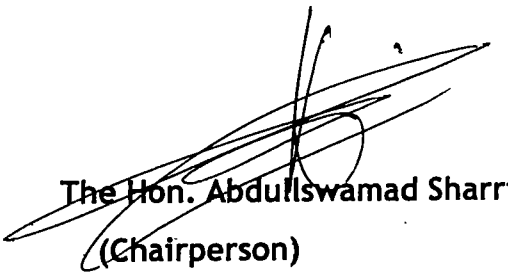
MIN/PIC/434/2018: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/435/2018: ADJOURNMENT

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

Signed..... Date.....31/10/2018.



The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 89TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 31ST OCTOBER 2018 IN CONFERENCE ROOM, ENGLISH POINT MARINA AT 9.30 A.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. Raphael Bitta Sauti Wanjala, MP
6. The Hon. Omar Mohamed Maalim Hassan, MP
7. The Hon. Ahmed Kolosh Mohamed, MP
8. The Hon. Justus Kizito, MP
9. The Hon. Thuku Zachary Kwenya, M.P
10. The Hon. John Muchiri Nyaga, MP
11. The Hon. Mary Wamaua Njoroge, MP
12. The Hon. James Kamau Githua Wamacukuru, M.P
13. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

ABSENT WITH APOLOGY

1. The Hon. Chrisantus Wamalwa Wakhungu, MP
2. The Hon. Babu Owino Paul Ongili, MP
3. The Hon. Gladys Wanga, MP
4. The Hon. Paul Kahindi Katana, MP
5. The Hon. Mohamed Hire Garane, M.P.
6. The Hon. Purity Wangui Ngirici, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Senior Clerk Assistant
2. Mr. Mohamed Boru	-	Clerk Assistant III
3. Ms. Halima Hussein	-	Clerk Assistant III
4. Ms. Sharon Rotino	-	Research Officer
5. Mr. Alex Mutuku	-	Senior Sergeant-at-Arms
6. Mr. Sidney Lugaga	-	Legal Counsel
7. Ms. Winfred Atieno	-	Audio Recording Officer

IN ATTENDANCE

1. Mr. Gerald Mwangi	-	Assistant Inspector General of State Corporations
2. Mr. Joshiah Oyuko	-	Manager, Office of the Auditor General

MIN/PIC/436/2018: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past nine O'clock.

MIN/PIC/437/2018: CONSIDERATION OF THE DRAFT 22ND PIC REPORT

The Committee considered the draft 22nd Report on the Audited Accounts of State Corporations and made the following changes to the observations and recommendations therein:

NATIONAL HOSPITAL INSURANCE FUND

Audit Query: Construction of Multi-storey car park

The Committee made the following additional recommendation:

1. The Department of Criminal Investigations should be enjoined in the investigations to establish any criminality in the project.

Audit Query: Land Situated in Karen - 10 Hectares

The Committee made the following additional observations:

1. Mr. David Leparakwo holds a title deed for the land issued on 29th October, 2013. The title is held in trust for the rest of the Emowuo Olarro Self Help Group. The group acquired the land in the form of a grant from the immediate former owner, Mr. A.J Faulkner in 1982.
2. Apart from Mr. Leparakwo's group, the land is claimed by eight other parties: National Hospital Insurance Fund (NHIF), Crownline Freighters, Kaskazi Traders Ltd., Nectel Kenya Ltd., Gifted Community Initiative Programme, Cirtex Ltd., Kenpark Holdings Ltd. and Page Investments. Ltd.
3. The Nairobi Deputy County Commissioner, in a letter to the National Lands Commission dated 26th August, 2016 indicated that the allotment letter and title deed used by Kaskazi Traders was unlawful and invalid and also indicated that the IR No. used (No. 87345) was also obtained unlawfully since the IR's location was not in Karen. The Attorney General's office further stated the title which Kaskazi Traders Limited used to sell the land to the National Health Insurance Fund (NHIF) was unlawful, invalid and should be cancelled. This puts in doubt the claim to the land by NHIF.
4. There is a subsisting court order confirming ownership status of the ownership of the land in favour of NHIF. The matter is currently under appeal.

The Committee made the following additional recommendations:

1. The parties engage the Court and the National Land Commission are encouraged to pursue legal remedies through the Court to its logical conclusion.
2. The EACC and DCI should undertake an investigation with a view to establishing whether there has been any fraud that has been disclosed with respect to

transfer of ownership of land and prosecute any person who may have been identified as having breached the law accordingly.

Audit Query: Proposed Resource Centre at Karen Land

The Committee made the following additional recommendations:

1. The NHIF pursues the expeditious prosecution and conclusion of the case to its logical conclusion with a view to safeguarding the ownership interest in the land.
2. The Auditor General should conduct a forensic audit with a view to establish whether there was fraud corruption or other financial improprieties in the construction of the proposed resource centre.
3. The Auditor General should conduct a procurement audit to establish whether procurements were done lawfully and in an effective way.
4. The Auditor General should conduct a performance audit to establish whether the public has gotten value for money in the project and submit the report to Parliament for tabling and debate.

Audit Query: Short Term Investments

The Committee made the following additional recommendation:

1. The EACC and DCI extend the investigation to the entire Board to establish culpability in loss of public funds.

KENYA RAILWAYS CORPORATION

Audit Query: Illegal Allocation of Land

The Committee made the following additional recommendation:

1. The EACC and DCI should expedite investigations on irregular allocation of 500 parcels of land belonging to Kenya Railways by the Commissioner of Lands with a view to facilitate prosecution of any person found criminally liable.

Audit Query: Short Term Deposits

The Committee made the following additional recommendations:

1. Parliament should enact legislation to lay down guidelines relating to the investment of surplus revenue.
2. Kenya Railways should ensure that it adheres to prudent financial management of public resources pursuant to section 68(2)(a) of the Public Finance Management Act, 2012.
3. Parliament should enact legislation to regulate the deposit of money in private banks by State Corporations.

Audit Query: Inventories

The Committee made the following additional observations:

1. The Corporation is in the process of undertaking the finalizing on a 100% stock take for its capital stores - an exercise that had taken 11 months.
2. The Committee anticipates that the matter will have been resolved during the following financial year.

Audit Query: Unaccounted for cash - Staff travel advance surrendered but not banked

The Committee made the following additional observations:

1. The matter has been reported to DCI.
2. The Management reported that disciplinary measures were taken on staff who were alleged to have failed in their duties in respect of the matter.

Audit Query: Unaccounted for cash - Museum Revenue Unaccounted for

The Committee made the following additional recommendation:

1. The Management should establish other ways of revenue generating like setting up of restaurants and shops to let within the facility and reduce the entry fees to increase public accessibility to the Museum.

KENYA PIPELINE CORPORATION

The Committee resolved to await the findings of Special audit requested from the Office of the Auditor General regarding audit queries of Kenya Pipeline Corporation and therefore, the accounts of the Corporation would not be included in the report.

MIN/PIC/438/2018: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/439/2018: ADJOURNMENT

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

Signed..... **Date**.....31/10/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 90TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 31ST OCTOBER 2018 IN CONFERENCE ROOM, ENGLISH POINT MARINA AT 2.30 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. Raphael Bitta Sauti Wanjala, MP
6. The Hon. Omar Mohamed Maalim Hassan, MP
7. The Hon. Ahmed Kolosh Mohamed, MP
8. The Hon. Justus Kizito, MP
9. The Hon. Thuku Zachary Kwenya, M.P
10. The Hon. John Muchiri Nyaga, MP
11. The Hon. Mary Wamaua Njoroge, MP
12. The Hon. James Kamau Githua Wamacukuru, M.P
13. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

ABSENT WITH APOLOGY

1. The Hon. Chrisantus Wamalwa Wakhungu, MP
2. The Hon. Babu Owino Paul Ongili, MP
3. The Hon. Gladys Wanga, MP
4. The Hon. Paul Kahindi Katana, MP
5. The Hon. Mohamed Hire Garane, M.P.
6. The Hon. Purity Wangui Ngirici, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Senior Clerk Assistant
2. Mr. Mohamed Boru	-	Clerk Assistant III
3. Ms. Halima Hussein	-	Clerk Assistant III
4. Ms. Sharon Rotino	-	Research Officer
5. Mr. Alex Mutuku	-	Senior Sergeant-at-Arms
6. Mr. Sidney Lugaga	-	Legal Counsel
7. Ms. Winfred Atieno	-	Audio Recording Officer

IN ATTENDANCE

1. Mr. Gerald Mwangi	-	Assistant Inspector General of State Corporations
2. Mr. Joshiah Oyuko	-	Manager, Office of the Auditor General

MIN/PIC/440/2018: PRELIMINARIES

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

MIN/ PIC/441/2018: CONFIRMATION OF MINUTES

Confirmation of minutes was deferred to the next sitting.

MIN/PIC/442/2018: CONSIDERATION OF THE DRAFT 22ND PIC REPORT

The Committee considered the draft 22nd Report on the Audited Accounts of State Corporations and made the following changes to the observations and recommendations therein:

KENYA INDUSTRIAL RESEARCH DEVELOPMENT INSTITUTE

Audit Query: Accounts Receivables - Procurement of Leather Processing and Production Equipment

The Committee made the following additional recommendation:

1. The Company has done the supply of the machines and the value of the contract awarded was Kshs. 129 Million.
2. The Management of KIRDI did not conduct due diligence when procuring for the equipment considering they did not have space for its installation and as a result, the equipment are lying idle. The Management should be held responsible for the negligence and imprudent use of public funds.

NATIONAL CEREALS AND PRODUCE BOARD

Audit Query: Current Liabilities - Trade Creditors

The Committee made the following additional recommendation:

1. The Accounting Officer should seek the services of an external accounting firm to assist with internal reconciliation of the bills of Kshs 202,291,356.

Audit Query: Current Liabilities - Bank Overdraft

The Committee made the following additional recommendation:

1. The Management should put internal control tools to limit as to the amount that can be incurred in terms of an overdraft.
2. Kenya Commercial Bank should resolve the matter within 90 days or surcharged for the difference in the amount on the cash book.

Audit Query: Current Liabilities - Bank Statement not in cash book

The Committee made the following additional recommendation:

1. The Management needs to adopt a more effective accounting system as the current approach appears to have significant shortcomings.

Audit Query: Current Assets - Debtors and Prepayments

The Committee made the following additional recommendation:

1. The Auditor General should undertake a forensic audit of the bad debts totaling Kshs. 943,557,914 to establish whether there has been fraud, corruption or other financial improprieties and prosecute any culpable party.

Audit Query: Current Liabilities - Government Debtors Agency Account

The Committee made the following additional recommendation:

1. Management has formed a multiagency committee to resolve the matters relating to bad debts. The Committee should resolve the matter within three months of the passing of the Report.

KENYA MEDICAL SUPPLIES AGENCY

Audit Query: Property, Plant and Equipment

The Committee made the following additional recommendation:

1. The County of Kakamega has expressed willingness to allocate KEMSA an alternative piece of land. The relocation process of the property should therefore be fast tracked.

Audit Query: Receivables from Exchange Transaction

The Committee made the following additional recommendations:

1. The relevant committee of the House dealing with matters relating to health should inquire into the propriety of the drugs purchased.
2. Counties should purchase drugs from the KEMSA for purposes of ensuring uniformity of standards pursuant to the provisions of Article 191 of the Constitution.
3. Counties should ensure that they have budgetary provisions before incurring the expenditure for the purchase of drugs pursuant to the provisions of section 68(2)()of the Public Finance Management Act, 2012.

Audit Query: Expired/Damaged Drugs

The Committee made the following additional recommendation:

1. KEMSA needs to ensure that it puts in place strategies that will prevent waste through use of data touching anticipatory patterns of making purchases from the Counties.

KENYA NATIONAL LIBRARY SERVICES

Audit Query: Property, Plant and Equipment

The Committee made the following additional recommendation:

1. The National Treasury should always ensure that there is a timely disbursement of funds to avoid incurring extra costs through variation of contract timelines.

MIN/PIC/443/2018: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/444/2018: ADJOURNMENT

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

Signed..... **Date**.....31/10/2018

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)

MINUTES OF THE 91ST SITTING OF THE PUBLIC INVESTMENTS COMMITTEE HELD ON WEDNESDAY, 31ST OCTOBER 2018 IN CONFERENCE ROOM, ENGLISH POINT MARINA AT 7.30 P.M.

PRESENT

1. The Hon. Abdullswamad Sharrif Nassir, MP (Chairman)
2. The Hon. Ahmed Abdisalan Ibrahim, MP (Vice chairman)
3. The Hon. Rashid Kassim Amin, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. Raphael Bitta Sauti Wanjala, MP
6. The Hon. Omar Mohamed Maalim Hassan, MP
7. The Hon. Ahmed Kolosh Mohamed, MP
8. The Hon. Justus Kizito, MP
9. The Hon. Thuku Zachary Kwenya, M.P
10. The Hon. John Muchiri Nyaga, MP
11. The Hon. Mary Wamaua Njoroge, MP
12. The Hon. James Kamau Githua Wamacukuru, M.P
13. The Hon. (Prof.) Mohamud Sheikh Mohammed, MP

ABSENT WITH APOLOGY

1. The Hon. Chrisantus Wamalwa Wakhungu, MP
2. The Hon. Babu Owino Paul Ongili, MP
3. The Hon. Gladys Wanga, MP
4. The Hon. Paul Kahindi Katana, MP
5. The Hon. Mohamed Hire Garane, M.P.
6. The Hon. Purity Wangui Ngirici, MP

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Evans Oanda	-	Senior Clerk Assistant
2. Mr. Mohamed Boru	-	Clerk Assistant III
3. Ms. Halima Hussein	-	Clerk Assistant III
4. Ms. Sharon Rotino	-	Research Officer
5. Mr. Alex Mutuku	-	Senior Sergeant-at-Arms
6. Mr. Sidney Lugaga	-	Legal Counsel
7. Ms. Winfred Atieno	-	Audio Recording Officer

IN ATTENDANCE

1. Mr. Gerald Mwangi	-	Assistant Inspector General of State Corporations
2. Mr. Joshiah Oyuko	-	Manager, Office of the Auditor General

MIN/PIC/445/2018: PRELIMINARIES

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

MIN/ PIC/446/2018: CONFIRMATION OF MINUTES

1. Minutes of 79th sitting were confirmed as a true record of the proceedings having been proposed by The Hon. Joash Nyamache Nyamoko, M.P and seconded by The Hon. Ahmed Abdisalan Ibrahim, MP.
2. Minutes of 80th sitting were confirmed as a true record of the proceedings having been proposed by The Hon. Mary Wamaua Njoroge, MP and seconded by The Hon. John Muchiri Nyaga, MP.
3. Minutes of 81st sitting were confirmed as a true record of the proceedings having been proposed by The Hon. Kwenya Zachary Thuku, MP and seconded by The Hon. James Githua Wamacukuru, MP.
4. Minutes of 82nd sitting were confirmed as a true record of the proceedings having been proposed by The Hon. James Githua Wamacukuru, MP and seconded by The Hon. Kwenya Zachary Thuku, MP.
5. Minutes of 83rd sitting were confirmed as a true record of the proceedings having been proposed by The Hon. Joash Nyamache Nyamoko, M.P and seconded by The Hon. Kwenya Zachary Thuku, MP.
6. Minutes of 84th sitting were confirmed as a true record of the proceedings having been proposed by The Hon. Ahmed Abdisalan Ibrahim, MP and seconded by The Hon. Raphael Wanjala, MP.
7. Minutes of 85th sitting were confirmed as a true record of the proceedings having been proposed by The Hon. Justus Kizito, MP and seconded by The Hon. Ahmed Abdisalan Ibrahim, MP.
8. Minutes of 86th sitting were confirmed as a true record of the proceedings having been proposed by The Hon. Raphael Wanjala, MP and seconded by The Hon. Joash Nyamache Nyamoko, MP.
9. Minutes of 87th sitting were confirmed as a true record of the proceedings having been proposed by The Hon. Mary Wamaua Njoroge, M.P and seconded by The Hon. Justus Kizito, MP.
10. Minutes of 88th sitting were confirmed as a true record of the proceedings having been proposed by The Hon. James Githua Wamacukuru, MP and seconded by The Hon. John Muchiri Nyaga, MP.
11. Minutes of 89th sitting were confirmed as a true record of the proceedings having been proposed by The Hon. (Prof.) Mohamed Sheikh Mohammed, MP and seconded by The Hon. Justus Kizito, MP.
12. Minutes of 90th sitting were confirmed as a true record of the proceedings having been proposed by The Hon. James Githua Wamacukuru, MP and seconded by The Hon. Raphael Wanjala, MP.

MIN/PIC/447/2018: ADOPTION OF THE DRAFT 22ND PIC REPORT

The Committee considered and adopted the 22nd Report of the Public Investments Committee on the Audited Accounts of State Corporations.

MIN/PIC/448/2018: ADOPTION OF FOREIGN VISITS REPORT

The Committee considered and adopted the following reports on foreign visits undertaken during the second session:

i. Report of the Conference on Ethics and Integrity held in Birmingham, United Kingdom from April 9th-13th 2018;

ii. Report of the benchmarking visit to the Parliament of India from August 6th - 16th 2018.

MIN/PIC/449/2018: ANY OTHER BUSINESS

No other business arose.

MIN/PIC/450/2018: ADJOURNMENT

The meeting was adjourned at twenty nine minutes past eleven O'clock.

Signed..... Date.....

The Hon. Abdullswamad Sharrif Nassir, MP

(Chairperson)