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**AUDITOR-GENERAL'S FORENSIC  
AUDIT REPORT ON WAYLEAVE  
COMPENSATION IN SEVEN DONOR  
FUNDED PROJECTS  
BY THE STATE DEPARTMENT FOR ENERGY**

**SEPTEMBER 2025**



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## TABLE OF CONTENTS

1	EXECUTIVE SUMMARY .....	1
1.1	Introduction.....	1
1.2	Background .....	1
1.3	Audit Objective.....	2
1.4	Terms of Reference .....	2
1.5	Audit Scope and Limitations .....	3
1.6	Audit Approach .....	3
1.7	Summary of Audit Findings.....	4
1.8	Recommendations .....	62
1.9	Conclusion.....	64
2.1	Introduction.....	66
2.2	Background .....	66
2.2	Audit Objective.....	67
2.3	Terms of Reference .....	67
2.4	Audit Scope and Limitations .....	68
2.5	Audit Approach and Methodology.....	69
2.6	Report Structure .....	71
	DETAILED FINDINGS.....	73
	Preamble and Summary of Claims.....	73
3	ETHIOPIA – KENYA TRANSMISSION LINE.....	74
3.1	Project Overview.....	74
3.2	Conceptualization and Feasibility Study.....	75
3.3	Governance and Related Issues.....	77
3.4	Budget and Budgetary Control.....	79
3.5	Asset Management and Wayleave Acquisition.....	83
3.6	Financial Management and Expenditure .....	87
3.7	Physical Verification of the Ethiopia – Kenya Transmission Line .....	94
3.8	Irregularities, Responsibilities and Recommendations.....	96
3.9	Conclusion.....	97
4	KENYA – TANZANIA TRANSMISSION LINE.....	99
4.1	Project Overview.....	99
4.2	Conceptualization and Feasibility Study.....	99

4.3	Governance and Related Issues.....	103
4.4	Budget and Budgetary Control .....	104
4.5	Assets Management and Wayleave Acquisition.....	107
4.6	Financial Management and Expenditure .....	113
4.7	Physical Verification of the Kenya-Tanzania Transmission Line .....	116
4.8	Irregularities, Responsibilities and Recommendations.....	118
4.9	Conclusion.....	120
<b>5</b>	<b>KENYA – UGANDA TRANSMISSION LINE .....</b>	<b>121</b>
5.1	Project Overview.....	121
5.2	Conceptualization and Feasibility Study .....	123
5.3	Governance and Related Issues.....	126
5.4	Budget and Budgetary Control .....	127
5.5	Assets Management and Wayleave Acquisition.....	130
5.6	Financial Management and Expenditure .....	135
5.7	Physical Verification of the Kenya – Uganda Transmission Line.....	136
5.8	Irregularities, Responsibilities and Recommendations.....	138
5.9	Conclusion .....	139
<b>6</b>	<b>KENYA POWER TRANSMISSION SYSTEM IMPROVEMENT PROJECT .....</b>	<b>140</b>
6.1	Project Overview.....	140
6.2	Conceptualization and Feasibility Study .....	142
6.3	Governance and Related Issues.....	146
6.4	Budget and Budgetary Control .....	149
6.5	Assets Management and Wayleave Acquisition.....	152
6.6	Financial Management and Expenditure .....	158
6.7	Physical Verification of the Kenya Power Transmission System Improvement Project 164	
6.8	Irregularities, Responsibilities and Recommendations.....	168
6.9	Conclusion .....	169
<b>7</b>	<b>INDIA FUNDED PROJECT.....</b>	<b>171</b>
7.1	Project Overview.....	171
7.2	Conceptualization and Feasibility Study .....	172
7.3	Governance and Related Issues.....	177
7.4	Budget and Budgetary Control .....	178
7.5	Assets Management and Wayleave Acquisition.....	181

7.6	Financial Management and Expenditure .....	193
7.7	Physical Verification of the India Funded Project .....	195
7.8	Irregularities, Responsibilities and Recommendations.....	201
7.9	Conclusion .....	204
8	<b>NAIROBI RING PROJECT (SUSWA-ISINYA TRANSMISSION LINE) .....</b>	<b>205</b>
8.1	Project Overview.....	205
8.2	Conceptualization and Feasibility Study .....	206
8.3	Governance and Related Issues.....	209
8.4	Budget and Budgetary Control .....	211
8.5	Assets Management and Wayleave Acquisition.....	215
8.6	Financial Management and Expenditure .....	225
8.7	Physical Verification of the Suswa-Isinya Transmission Line.....	228
8.8	Irregularities, Responsibilities and Recommendations.....	229
8.9	Conclusion .....	232
9	<b>OLKARIA – LESSOS – KISUMU TRANSMISSION LINE .....</b>	<b>233</b>
9.1	Project Overview.....	233
9.2	Conceptualization and Feasibility Study .....	234
9.3	Governance and Related Issues.....	239
9.4	Budget and Budgetary Control .....	240
9.5	Assets Management and Wayleave Acquisition.....	243
9.6	Financial Management and Expenditure .....	250
9.7	Physical Verification of the Olkaria-Lessos-Kisumu Transmission Line .....	254
9.8	Irregularities, Responsibilities and Recommendations.....	258
9.9	Conclusion.....	259
10	<b>APPENDICES.....</b>	<b>262</b>

## LIST OF TABLES

Table 1: List of Persons Interviewed .....	71
Table 2: Summary of Claims .....	73
Table 3: Counties Affected by the Ethiopia - Kenya Transmission Line.....	74
Table 4: Summary of Ethiopia - Kenya Resettlement Action Plan Report .....	79
Table 5: Summary of Ethiopia - Kenya Financing Agreements .....	79
Table 6: Budget for MOE and KETRACO for the Ethiopia-Kenya Transmission Line .....	80
Table 7: Disbursements for the Ethiopia - Kenya Transmission Line .....	81
Table 8: Disbursements from MOE to KETRACO for the Ethiopia-Kenya Line .....	82
Table 9: Parcels of Land Purchased for the Ethiopia-Kenya Transmission Line .....	84
Table 10: Consultants Engaged for the Ethiopia-Kenya Transmission Line.....	85
Table 11: Valuation Reports for the Ethiopia - Kenya Transmission Line.....	87
Table 12: Compensation Amount for the Ethiopia-Kenya Transmission Line .....	88
Table 13: Reasons for Outstanding Compensation to PAPs for the Ethiopia - Kenya Transmission Line .....	89
Table 14: Compensation Amounts not Recovered for the Ethiopia-Kenya Line .....	91
Table 15: Community Based Groups Compensated for Ethiopia-Kenya Line.....	93
Table 16: Irregularities, Responsibilities and Recommendations for the Ethiopia – Kenya Transmission Line .....	96
Table 17: Summary of Affected Land Parcels, Trees, Structure and Businesses for the Kenya- Tanzania Interconnector Project .....	102
Table 18: Approved Budget for MOE and KETRACO for the Kenya - Tanzania Interconnector Project.....	105
Table 19: Disbursement of Funds for the Kenya – Tanzania Interconnector Project .....	106
Table 20: GOK Component Budget Vs Actual Disbursement for the Kenya - Tanzania Interconnector Project.....	106
Table 21: Summary of Land Ownership Details for the Kenya - Tanzania Interconnector Project Sub-Stations .....	108
Table 22; Contracted Surveyors, Valuers and Law Firms for the Kenya- Tanzania Interconnector .....	109
Table 23: List of Valuers for the Kenya – Tanzania Interconnector Project.....	111
Table 24: Compensation Amount for the Kenya-Tanzania Interconnector Project.....	114
Table 25: Compensation of Parcels of Land Not affected by the Wayleave Corridor .....	116
Table 26: Summary of Key Observations During Physical Verification .....	117
Table 27: Irregularities, Responsibilities and Recommendations for the Kenya – Tanzania Transmission Line .....	118
Table 28: Number of Affected Household, Business Structures and Trees for the Kenya- Uganda Power Interconnection Project .....	125
Table 29: Source of Financing for the Kenya-Uganda Power Interconnection Project .....	128
Table 30: Approved Budget by the Ministry of Energy and the Kenya Electricity Transmission Company for the Kenya-Uganda Power Interconnection Project .....	128
Table 31: Actual Disbursement from MOE to KETRACO and KETRACO to the Kenya- Uganda Power Interconnection Project .....	129
Table 32: GOK Component Budget Vs Disbursed Amounts for the Kenya-Uganda Power Interconnection Project.....	130
Table 33: Land Acquired for the Kenya-Uganda Power Interconnection Project.....	131

Table 34: List of Consultants for the Kenya-Uganda Power Interconnection Project.....	132
Table 35: Parcels of Land not De-gazetted.....	133
Table 36: List of Valuers for the Kenya-Uganda Transmission Line .....	134
Table 37: Total Compensation Payable Vs. Total Amount Paid for the Kenya-Uganda Power Interconnection Project.....	136
Table 38: Summary of Key Issues Raised During Field Verification.....	137
Table 39: Irregularities, Responsibilities and Recommendations Matrix for the Kenya-Uganda Transmission Line .....	138
Table 40: Transmission Lines under KPTSIP .....	141
Table 41: Consultants Engaged for KPTSIP Feasibility Study.....	143
Table 42: Environmental and Social Impact Assessment for KPTSIP.....	144
Table 43: Consultants of the Resettlement Action Plan for KPTSIP .....	145
Table 44: Financing Timelines for KPTSIP .....	147
Table 45: Summary of Contracts Awarded for KPTSIP .....	148
Table 46: Approved Budget for the Ministry of Energy and KETRACO for KPTSIP .....	150
Table 47: Total Disbursements for KPTSIP .....	151
Table 48: Comparison of the Approved Budget and Actual Disbursements for KPTSIP .....	152
Table 49: Extended and Newly Constructed Substations for KPTSIP.....	153
Table 50: Summary of Land Acquired for Construction of KPTSIP Sub-Stations.....	154
Table 51: Surveyors Engaged in the KPTSIP.....	155
Table 52: Gazettement of Land Parcels for KPTSIP .....	156
Table 53: Contracted Valuers for KPTSIP .....	157
Table 54: Variance on Number of Parcels of Land Valued for KPTSIP.....	158
Table 55: Compensation Amount for KPTSIP .....	159
Table 56: Reasons for Outstanding Land Compensation for KPTSIP .....	160
Table 57: Outstanding Wayleave Compensation for KPTSIP .....	164
Table 58: Physical Verification for KPTSIP .....	165
Table 59: Status of KPTSIP Sub-stations.....	168
Table 60: Irregularities, Responsibilities and Recommendations Matrix for KPTSIP .....	168
Table 61: Current Status of the India Funded Project .....	171
Table 62: Summary Budget of the RAP for the Turkwel-Ortum-Kitale Line .....	175
Table 63: RAP Analysis of Estimated Costs for Machakos-Konza Transmission Line .....	177
Table 64: Approved Budget for MOE and KETRACO for the India Funded Project.....	179
Table 65: Approved Budget and Disbursements for the India Funded Project .....	180
Table 66: Actual Project Disbursements for India Funded Project.....	181
Table 67: Substations Ownership Details for India Funded Project .....	184
Table 68: Survey Consultants Engaged in the India Funded Project .....	185
Table 69: Valuation Reports for India Funded Project.....	186
Table 70: Valuation of Land for India Funded Project .....	187
Table 71: Valuation of Structures for India Funded Project.....	188
Table 72: Valuation of Crops/Trees for India Funded Project .....	188
Table 73: Summary of Valuations for the Turkwel-Ortum-Kitale Transmission Line .....	189
Table 74: Unsupported Rerouted Structures for the TOK Transmission Line .....	191
Table 75: Summary of Valuations for the Machakos-Konza Transmission Line .....	192
Table 76: Parcels of Land Renegotiated for the Machakos-Konza Transmission Line.....	192
Table 77: Compensation Amount for the India Funded Project .....	194
Table 78: PAPs with Outstanding Claims Due to Family Disputes.....	197

Table 79: PAPs with Outstanding Claims Due to Absence of Title Deeds.....	198
Table 80: PAPs with Outstanding Claims Due to Succession Issues.....	200
Table 81: PAPs with Outstanding Claims Due to Payment Delays.....	201
Table 82: Irregularities, Responsibilities and Recommendations for India Funded Project .	202
Table 83: Summary ARAP Report for the Suswa-Isinya Transmission Line .....	211
Table 84: Financing for Nairobi Ring (Suswa-Isinya) Transmission Line .....	212
Table 85: Approved Budget for MOE and KETRACO for the Nairobi Ring Project .....	213
Table 86: Approved Budget and Disbursements for Nairobi Ring Project .....	214
Table 87: Variance between Amounts Disbursed by MOE and KETRACO for the Nairobi Ring Project.....	215
Table 88: Substations Ownership Details for the Suswa-Isinya Transmission Line .....	217
Table 89: Surveyors Engaged for the Suswa-Isinya Transmission Line .....	219
Table 90: Valuation Schedules for the Suswa-Isinya Transmission Line .....	220
Table 91: Valuations of Structures for the Suswa-Isinya Transmission Line .....	221
Table 92: Summary of Valuations for the Suswa-Isinya Transmission Line .....	222
Table 93: Renegotiated Parcels for the Suswa-Isinya Transmission Line .....	223
Table 94: Outstanding Claims for the Suswa-Isinya Transmission Line .....	225
Table 95: Reasons for Outstanding Wayleave Compensation Claims for the Suswa-Isinya Transmission Line .....	226
Table 96: Top-up Amount for the Suswa-Isinya Transmission Line.....	228
Table 97: Irregularities, Responsibilities and Recommendations for the Suswa – Isinya Transmission Line .....	230
Table 98: Olkaria-Lessos-Kisumu Project Start and End Dates .....	234
Table 99: Recommendation for the OLK Transmission Line Route .....	236
Table 100: Estimated Resettlement Cost for OLK Project.....	240
Table 101: Approved Budget for the Ministry of Energy and KETRACO .....	241
Table 102: Disbursements for the Olkaria-Lessos-Kisumu Project.....	242
Table 103: GOK Component Budget Vs Disbursements for the Olkaria- Lessos-Kisumu Project .....	242
Table 104: Approvals for Purchase of Land for OLK Substations .....	244
Table 105: OLK Substation Land Ownership Details .....	244
Table 106: Tender Award to M/S Lloyd Masika Limited for OLK Project .....	247
Table 107: Olkaria-Lessos-Kisumu Project Valuers .....	248
Table 108: List of Valuers for the Olkaria-Lessos-Kisumu Project .....	249
Table 109: Valuations and Total Compensation Payable for OLK Project.....	250
Table 110: Project Valuation Schedules Without Approval .....	250
Table 111: Payment for Land Acquired for the OLK Substations .....	251
Table 112: Compensation Amount for the OLK Project .....	251
Table 113: Valuation and Payment After Cut Off Dates for the OLK Project.....	253
Table 114: Summary of Outstanding Compensation Claims for the OLK Project .....	254
Table 115: Irregularities, Responsibility and Recommendations for the OLK Project.....	258

## CURRENCY EXCHANGE RATES

- 1. The exchange rates applied for the Ethiopia – Kenya Transmission line are as follows:**
  - i. Feasibility Study Report - CBK exchange rate prevailing on 28 February, 2009 when the report was signed was 1 EUR= Kshs.101;
  - ii. Financing Agreement with the International Development Association - CBK exchange rate prevailing on 5 December, 2012 when the agreement is dated was 1 USD= Kshs.86;
  - iii. Financing Agreement with the African Development Fund - CBK exchange rate prevailing on 6 December, 2012 when the agreement is dated was 1 USD= Kshs.86; and
  - iv. Financing Agreement with the Agence Francaise De Development - CBK exchange rate prevailing on 16 December, 2013 when the agreement is dated was 1 EUR= Kshs. 119.
- 2. The exchange rate applied for the Kenya - Tanzania Transmission Line is:**
  - i. Financing agreement with the Africa Development Bank - CBK exchange rate prevailing on 30 July, 2015 when the agreement was signed was 1 UA= Kshs.4.7962.
- 3. The exchange rate applied for the Kenya - Uganda Transmission Line is:**
  - i. Financing agreement with the Africa Development Bank - CBK exchange rate prevailing on 20 September, 2010 when the agreement was signed was 1 Kshs. = 1.079 UA.
- 4. The exchange rate applied for the Kenya Power Transmission System Improvement Project is:**
  - i. Financing agreement rate with the African Development Fund (ADF) – ADF exchange rate prevailing on 23 March, 2011 when the agreement is dated was 1 UA = Kshs.126.94.
- 5. The exchange rates applied for the India Funded Project are as follows:**
  - i. Financing/Line of Credit Agreement with Exim Bank of India - CBK Exchange rate of 1 USD= Kshs.80.4572 prevailing on 16 November, 2010, when the agreement was signed; and

- ii. Award for the construction of Substations by the Tender Committee, to Indian Companies, M/s Jyoti Structures Limited and M/s Shyama Power Limited - CBK Exchange rate of 1 USD= Kshs.86.0422 prevailing on 13 December, 2012, the date of the Tender Committee minutes.

**6. The exchange rates applied for the Nairobi Ring Project are as follows:**

- i. Financing Agreement with the French Development Bank - CBK Exchange rate of 1 EUR (€) = Kshs.105.94 prevailing on 08 June, 2012, when the agreement was signed; and
- ii. Subsidiary Agreement between the Government of Kenya and KETRACO - CBK Exchange rate of 1 EUR (€) = Kshs.112.55 prevailing on 13 December, 2012, when the agreement was signed.

**7. The exchange rate applied for the Olkaria- Lessos- Kisumu Transmission**

**Line is:**

- i. Financing agreement with the Japan International Co-operation Agency (JICA) CBK Exchange rate of 1 Kshs. = 1.21 Yen prevailing on 10 December, 2010 when the agreement was signed.

## LIST OF ABBREVIATIONS AND ACRONYMS

Abbreviation/Acronym	Full Description
COMESA	Common Market for Eastern and Southern Africa
CDR	Crop Damage Report
EEPCO	Ethiopian Electric Power Corporation
EEHP	Eastern Electricity Highway Project
ESIA	Environmental and Social Impact Assessment Study
FY	Financial Year
GOK	Government of Kenya
HDVC	High Voltage Direct Current
JICA	Japan International Cooperation Agency
KCB	Kenya Commercial Bank
KENGEN	Kenya Electricity Generating Company
KETRACO	Kenya Electricity Transmission Company Limited
KPLC	Kenya Power and Lighting Company
KPTSIP	Kenya Power Transmission System Improvement Project
KSHS	Kenya Shilling
KV	Kilovolt
LCPDP	Least Cost Electric Power Development Plan
LR	Land Registration
MD	Managing Director
MOE	Ministry of Energy
MOU	Memorandum of Understanding
NLC	National Land Commission
NEMA	National Environment Management Authority
OLK	Olkaria- Lessos- Kisumu
PAP	Project Affected Person
PDR	Property Damage Report
PIT	Project Implementation Team
RAP	Resettlement Action Plan
RFP	Resettlement Policy Framework

<b>Abbreviation/Acronym</b>	<b>Full Description</b>
SDR	Special Drawing Rights
TL	Transmission Line
TNT	The National Treasury
TOK	Turkwel Ortum Kitale
UA	Unit of Account

# 1 EXECUTIVE SUMMARY

## 1.1 Introduction

1.1.1 The reports of seven (7) donor-funded projects implemented by the Kenya Electricity Transmission Company Ltd (KETRACO), for the financial year 2018/2019 raised several issues under the Emphasis of Matter and/ or Other Matter Sections on long outstanding wayleave compensations for the projects. The wayleave compensations cumulatively amounted to Kshs.1,686,546,016 as at 30 June, 2019.

1.2.1 The seven (7) donor funded projects are:

- i. Ethiopia-Kenya Transmission Line;
- ii. Kenya-Tanzania Transmission Line;
- iii. Kenya-Uganda Transmission Line;
- iv. Kenya Power Transmission System Improvement Project;
- v. India Funded Project (Turkwel-Ortum-Kitale and Machakos-Konza Transmission Lines);
- vi. Nairobi Ring Project (Suswa-Isinya Transmission Line); and
- vii. Olkaria-Lessos-Kisumu Transmission Line.

1.3.1 The Public Accounts Committee (PAC) Report on the examination of the Report of the Auditor-General on the financial statements for the National Government for the financial year 2018/2019 was adopted by the National Assembly on 02 June, 2022. The PAC Report recommended that the Auditor-General conducts a Forensic Audit on Wayleave Compensations done by the Ministry of Energy in all donor-funded projects.

1.4.1 The Forensic Audit was conducted in accordance with Article 254(2) of the Constitution and Section 37 of the Public Audit Act, 2015 which stipulates that the Auditor-General may, upon request by Parliament, conduct forensic audits to establish fraud, corruption or other financial improprieties.

## 1.2 Background

### **Ministry of Energy**

1.2.1 The then Ministry of Energy, now the State Department for Energy, implements projects through implementing agencies. According to the

Executive Order No.1 of 2018, on Organization of the Government of the Republic of Kenya, the functions of the Ministry of Energy included the following:

- i) National Energy Policy, Development and Management;
- ii) Thermal Power Development;
- iii) Rural Electrification Programme;
- iv) Energy Regulation, Security and Conservation;
- v) Hydropower Development;
- vi) Geothermal Exploration and Development; and
- vii) Promotion of Renewable Energy.

### **Kenya Electricity Transmission Company Limited (KETRACO)**

- 1.2.2 The Kenya Electricity Transmission Company Limited (KETRACO) is one of the institutions/agencies under the then Ministry of Energy (MOE). KETRACO is registered under the Companies Act, Cap 486, pursuant to Sessional Paper No. 4 of 2004 on Energy. According to KETRACO's 2018-2022 Strategic Plan (Abridged Edition), the Company is mandated to plan, design, construct, own, operate and maintain high voltage electricity transmission grid and regional power interconnectors.
- 1.2.3 The seven (7) donor-funded projects under review were under the Ministry of Energy and were implemented by KETRACO.

### **1.3 Audit Objective**

- 1.3.1 The primary objective of the audit was to establish the accuracy and genuineness of the long outstanding wayleave compensations in all the seven (7) donor-funded projects. In addition, the audit sought to establish compliance with the law by the Ministry of Energy and KETRACO during the compensation process.

### **1.4 Terms of Reference**

- 1.4.1 The Terms of Reference (TORs) for the audit included: Conceptualization and Feasibility Study, to review how the projects were conceptualized and whether feasibility studies were undertaken; Governance and Related Issues, to assess the governance framework by examining the roles of the KETRACO Board and related institutions; Budget and Budgetary Control, to analyze

budget preparation, sources of funding, and budgetary allocations; Assets Management and Wayleave Acquisition, to verify the ownership, valuation, and acquisition processes of land and wayleaves; Financial Management and Expenditure, to evaluate payment processes, authorization of land compensation, and outstanding claims; and Identification of Irregularities, Responsibilities, and Culpabilities, and to provide Recommendations on the Way Forward.

## **1.5 Audit Scope and Limitations**

- 1.5.1 The scope of the audit was limited to the wayleave compensation to landowners in the seven (7) donor-funded projects. The audit was carried out at the State Department for Energy and KETRACO. Physical verification was also undertaken for the parcels of land with outstanding wayleave compensations.
- 1.5.2 The audit covered the wayleave compensation process for the financial years 2010/2011 to 2021/2022, within which period the projects were undertaken.
- 1.5.3 Some of the challenges encountered by the Audit Team included: Access challenges to some beneficiaries of the paid and/or outstanding wayleave compensation; complexity of the compensation process; delay in retrieval of the necessary records due to the time taken being longer than expected, among others.
- 1.5.4 In order to minimize the effect of the challenges on the audit, the Audit Team employed mitigating measures, which included: engaging and utilizing the local administration and wayleave assistants in order to access the Project Affected Persons (PAPs); engaging staff from the State Department for Energy, KETRACO and experts from the State Department for Lands and Physical Planning; and constantly following up on documents not provided.

## **1.6 Audit Approach**

- 1.6.1 In order to gather audit evidence, the Audit Team held meetings with the Management Teams at the State Department for Energy and KETRACO. In addition, evidence was gathered through document reviews, analytical reviews, interviews, physical verification and use of experts.

## **1.7 Summary of Audit Findings**

### **Summary of Claims for all the Seven Projects**

- 1.7.1 As at 30 June, 2023, the value in the compensation schedules for the seven (7) donor-funded projects under review amounted to Kshs.17,021,117,745, out of which Kshs.12,986,155,053 had been paid, leaving an outstanding balance of Kshs.4,034,962,691.
- 1.7.2 The Audit Team reviewed and analyzed the compensation claims for each of the transmission lines and the following are the key audit findings: -

### **ETHIOPIA – KENYA TRANSMISSION LINE**

#### **Project Overview**

- 1.7.3 The Eastern Electricity Highway Project (EEHP) is a 500kv high voltage direct current (HVDC) transmission line covering 1,045 Kilometers between Ethiopia and Kenya. The Project was undertaken by KETRACO and the Ethiopian Electric Power Corporation, representing Kenya and Ethiopia, respectively.
- 1.7.4 The Audit Team reviewed the Operational Acceptance Certificate issued on 30 December, 2022. The Certificate revealed that the construction of the transmission line, which traverses a total of 2,638 parcels of land, commenced in October 2015 and was completed on 8 November, 2022.

#### **Summary of Claims**

- 1.7.5 As at 30 June, 2023, the total value in the compensation schedules for the Ethiopia-Kenya Transmission Line amounted to Kshs.2,619,511,109, out of which KETRACO had paid Kshs.2,305,195,668, representing 88%, leaving an outstanding balance of Kshs.314,315,441. The Audit Team reviewed and analyzed the claims for the project compensation. The following are the summarized audit findings: -

#### **Conceptualization and Feasibility Study**

- 1.7.6 Review of the Environmental and Social Impact Assessment (ESIA) study dated January 2012 indicated that the Government of the Federal Democratic Republic of Ethiopia and the Government of Kenya signed a Memorandum of

Understanding (MOU) on 7 May, 2006. However, the MOU between the two (2) countries was not provided for review and therefore, the Audit Team could not ascertain the scope of the Project.

- 1.7.7 A feasibility study conducted in 2009 by Fichtner GmbH & Company concluded that the Project was economically and financially viable.

#### **Governance and Related Issues**

- 1.7.8 The execution of the Project was delegated to the Project Implementation Team (PIT), which implemented the Resettlement Action Plan (RAP) and provided oversight over all other project activities. However, appointment letters for members of the Project Implementation Team and minutes of the meetings held were not provided for audit review.

#### **Budget and Budgetary Control**

- 1.7.9 The Resettlement Action Plan Report for the Ethiopia-Kenya Transmission Line was conducted in four (4) lots and identified 602 households that would be affected by the Project. The cost for the resettlement and compensation of the affected persons, communities, public and institution's land and assets was estimated at Kshs.1,778,204,391.
- 1.7.10 The Transmission Line was jointly funded by the Government of Kenya through the Ministry of Energy and Petroleum and The National Treasury, African Development Fund, International Development Association and Agence Française de Development.
- 1.7.11 The total funding from the development partners was estimated at Kshs.41,746,000,000. However, according to the Project's audited financial statements, the amount of the Donor and GOK Counterpart funding was Kshs.66,535,843,427 and Kshs.4,764,185,815, respectively.
- 1.7.12 Comparisons between the approved budgets and actual disbursements made for the Project revealed that from the financial year 2013/2014 to 2022/2023, KETRACO received a total of Kshs.4,332,964,566 from MOE, against the total approved budget of Kshs.4,764,185,815. This resulted in under funding of the budget by Kshs.431,221,249, which may have led to the delays in the

compensation process of the Project Affected Persons, thus impacting negatively on service delivery by KETRACO.

### **Asset Management and Wayleave Acquisition**

#### ***Failure to Provide the Land Scoping Report for the Purchase of Land for the Electrode Site***

- 1.7.13 On 27 January, 2016, KETRACO acquired 188.07 acres of land for Kshs.110,961,300 for the construction of the Electrode Site. The original sale agreement was for acquisition of 158.42 acres for Kshs.93,467,800. However, on 12 January, 2017, a deed of variation was signed between KETRACO and the seller, resulting in acquisition of 188.07 acres at a price of Kshs.590,000 per acre. The variation of 29.65 acres, from 158.42 acres to 188.07 acres, at an additional cost of Kshs.17,493,500 was not justified.
- 1.7.14 The Land Scoping Report, which indicates how the land was identified and any negotiations that were held between KETRACO and the landowner, was not provided for audit review. The Audit Team could therefore, not determine how the land was identified, and whether the acquired land was the most economically viable option.

#### ***Failure to Provide the Lists of Prequalified Suppliers for FY 2011/2012 to 2016/2017 and Contractual Documents for Valuers***

- 1.7.15 The Kenya Electricity Transmission Company engaged two (2) survey consultants and four (4) valuation consultants to provide cadastral survey and valuation reports for land parcels and structures for the Ethiopia–Kenya Transmission Line, respectively. In addition, KETRACO engaged two (2) law firms to register easement agreements.
- 1.7.16 However, the lists of prequalified suppliers for the financial years 2011/2012 to 2016/2017 were not provided for review.

### **Survey of the Affected Parcels of Land**

- 1.7.17 The Kenya Electricity Transmission Company engaged Geosurv Systems Limited and Opiko & Associates Limited on 23 June, 2014 to provide strip plan, cadastral data and ownership details. The two (2) survey companies issued

strip plans, cadastral data and ownership details through survey reports. However, the survey reports provided for audit were neither dated nor signed.

***Failure to Publicize the Affected Parcels of Land***

- 1.7.18 On 20 May, 2015, the Kenya Electricity Transmission Company publicized 1,569 parcels of land which would be affected by the Ethiopia–Kenya Transmission Line. However, the Audit Team established that there were four (4) registration blocks, comprising of 399 parcels of land, which were affected but were not publicized. The blocks are; Longonot/Kijabe/Block6(Nyakinyua), Kajiado/Ewaso-Kedong, Kijabe/Block1 (Maai Mahiu) and Cis Mara/ Suswa Kitet.

***Failure to Provide the Sampling Basis and Methodology Used in Arriving at Valuation Amounts***

- 1.7.19 The Audit Team reviewed the valuation reports provided by Crystal Valuers Ltd, Real Consult Valuers Ltd and the National Land Commission. The audit established that valuations of the affected parcels of land along the Ethiopia – Kenya Transmission Line Corridor were done on a sample basis.
- 1.7.20 It was established that KETRACO valued 157 parcels of land out of a total of 2,638 affected parcels of land, representing only 6%, which was used as a basis of computing the compensation amount payable to the Project Affected Persons. The criteria used to determine the 157 parcels of land was not provided for audit. In addition, the methodology used to arrive at the value of the land was also not provided to the Audit Team. It was therefore, not possible to confirm the accuracy, reliability and authenticity of the value of the land provided by the three (3) Land Valuers.

**Financial Management and Expenditure**

**Wayleave Compensation Paid and Outstanding**

- 1.7.21 The Kenya Electricity Transmission Company had identified 2,638 parcels of land that were affected by the Project. The total compensation for land, structures and crops that had been encumbered, affected or destroyed, respectively, amounted to Kshs.2,619,511,109. Out of this amount, KETRACO had paid Kshs.2,305,195,668 as at 30 June, 2023, leaving an

outstanding balance of Kshs.314,315,441. The reasons obtained for not compensating PAPs included, absentee landowners, court/succession cases, disputed/rejected offer letters, government land, payment process in progress, lack of ownership documents and survey issues.

#### ***Failure to Open an Escrow Account***

- 1.7.22 The Ethiopia – Kenya Transmission Line was completed in November 2022. Review of the audited financial statements for the year ended 30 June, 2022, revealed that the Project had an amount of Kshs.309,065,381 at KETRACO's operations bank account held at the Kenya Commercial Bank (KCB). An escrow account should have been opened to deposit the monies for compensations that were not utilized as at November 2022. As at the time of audit in November 2023, an escrow account had not been opened, contrary to the Resettlement Policy Framework, 2021.

#### ***Irregular Payment of Top Ups***

- 1.7.23 Review of the Ethiopia-Kenya Wayleave Compensation Schedule revealed that KETRACO paid top ups (second payment) amounting to Kshs.24,023,227 to fifty-nine (59) PAPs. The Resettlement Policy Framework, 2011 and Resettlement Policy Framework, 2021 do not have provisions for payment of top ups (second payment), after the initial compensation to PAPs. It was therefore, not clear why KETRACO made the top up payments amounting to Kshs.24,023,227. In addition, no documentary evidence was provided on any efforts made by the Company to recover the amount of Kshs.24,023,227.

#### ***Failure to Recover Compensation Paid for Parcels of Land Not Affected by the Project***

- 1.7.24 Review of the cadastral strip plan revealed that the Ethiopia-Kenya Transmission Line was rerouted, as it traversed the Naivasha/Maraigushu Block 13 (Kirima) Registration Block. As a result of the rerouting, eleven (11) parcels of land in the original route were no longer affected, since they were not within the new wayleave corridor. However, review of the compensation schedules provided revealed that seven (7) out of the eleven (11) parcels of land were compensated for a total amount of Kshs.8,305,182. The compensation was contrary to Section 148(1) of the Land Act, 2012 and

Section 7.2.1 of the Resettlement Policy Framework, 2021. No documentary evidence was provided of any efforts made by the Management to recover public funds that were irregularly paid to PAPs.

***Failure to Provide Board Approvals and Registration Certificates for Community Projects Undertaken in Marsabit County***

1.7.25 The Ethiopia–Kenya Transmission Line transverses 262km of community owned non-registered land in Marsabit County and therefore, there were no Project Affected Persons to be compensated for land and trees.

The Marsabit County Government and KETRACO resolved that community Projects in Marsabit County amounting to Kshs.105,000,000 were to be funded by KETRACO. A budget of Kshs.105,000,000 for community projects, in lieu of compensation to individual Project Affected Persons, was approved by the Managing Director. However, Board of Directors minutes approving the amount of Kshs.105,000,000 were not provided for review. As a result, the Audit Team could not confirm if this compensation was sanctioned by the KETRACO Board of Directors.

1.7.26 The Kenya Electricity Transmission Company signed Memorandums of Understanding with thirteen (13) community-based organizations/self-help groups that were paid a total of Kshs.104,990,079.

1.7.27 Registration certificates for four (4) community Groups from the State Department for Social Protection and Senior Citizens Affairs were not provided for audit review, namely; Burgabo KETRACO Community Group, Qilta KETRACO Community Group, Forole KETRACO Community Group and Merile KETRACO Development Self Help Group. As a result, the Audit Team could not confirm whether the four (4) Community-Based Organizations/ Self-Help Groups, that received a total of Kshs.22,541,068, were duly registered groups.

**Physical Verification of the Ethiopia – Kenya Transmission Line**

1.7.28 The Audit Team carried out physical verification of the Project in five (5) out of the eight (8) Counties traversed by the Transmission Line, namely; Narok, Kajiado, Nakuru, Nyandarua and Laikipia Counties. The purpose of the verification exercise was to confirm that the parcels of land exist, the actual

acreage/sizes affected and land occupancy. In addition, the physical verification exercise was to ascertain, where possible, the existence and occupancy status of the structures and crops with outstanding claims.

- 1.7.29 During the physical verification exercise held in September, 2023, the Audit Team verified 167 out of 2,638 parcels of land and engaged with 134 landowners.

#### **Actual Survey of Parcels of Land**

- 1.7.30 The Audit Team carried out survey of parcels of land to confirm the accuracy of sizes of the wayleave acquired for the Project, with the assistance of a surveyor from KETRACO. Out of the 167 parcels of land where physical verification was carried out, the Audit Team surveyed a sample of 72 parcels of land, representing approximately 43% of the total parcels of land.
- 1.7.31 From the survey data provided by the surveyor, there were no variances between the trace area provided by KETRACO in the compensation schedule and the trace area measured during the physical verification.

### **KENYA- TANZANIA TRANSMISSION LINE**

#### **Project Overview**

- 1.7.32 The Kenya-Tanzania Interconnector is a 400 KV Interconnector Project between Kenya and Tanzania, covering 94.8 kilometers, from the Isinya Substation in Kenya to Singida in Tanzania. The Transmission Line was aimed at facilitating power exchange within countries in the East African Region.
- 1.7.33 Construction of the Interconnector Project commenced in April 2017 and was scheduled to be completed in 2019. However, at the time of audit in November 2023, which was four (4) years after the anticipated completion date, the Transmission Line was still under construction.
- 1.7.34 As at 30 June, 2023, the total value in the compensation schedules for the Kenya-Tanzania Interconnection Project amounted to Kshs.1,636,575,245, out of which Kshs.1,314,888,467 had been paid, resulting in an outstanding compensation of Kshs.321,686,778. The Audit Team reviewed and analyzed the claims for the Project compensation. The following are the summarized audit findings.

### **Conceptualization and Feasibility Study**

- 1.7.35 A feasibility study was conducted in November 2012 by RSW International Consulting Engineers, concluding that the Project was economically and financially viable. An Environmental and Social Impact Assessment (ESIA) study for the Project was prepared by Genivar Consultancy in June, 2012. The RAP Report dated August 2015 was prepared by Panafcom Limited. The RAP Report identified 258 parcels of land that would be affected by the Project. The total budget for the resettlement and compensation of the project affected persons, communities, public and institution's land and assets was Kshs.1,334,612,752.
- 1.7.36 However, the Audit Team was not provided with contract documents between KETRACO and the consultants for the Feasibility, Environmental and Social Impact Assessment.

### **Governance and Related Issues**

- 1.7.37 The Kenya Electricity Transmission Company has four (4) Board Committees; Staff and Remuneration Committee, Audit and Risk Assurance Committee, Finance, Strategy & Risk Management Committee and Technical Committee. The Audit Team reviewed the Committee Charter for each of the four (4) Board Committees developed in 2019. However, Committee Charters prior to 2019 were not provided for audit and therefore, the Audit Team could not ascertain whether the Committees established prior to 2019 were in line with Section 1.7 of Mwongozo, the Code of Governance for State Corporations of 2015.
- 1.7.38 The execution of the Kenya-Tanzania Project was delegated to the Project Implementation Team (PIT), which was established to oversee all Project activities. However, the PIT members' appointment letters and minutes of meetings held were not provided for audit review. Consequently, the Audit Team could not establish whether a PIT was in place to oversee the implementation of the Project, as required by Section 9.1 of the Resettlement Policy Framework, 2011.

### **Budget and Budgetary Control**

- 1.7.39 According to the Resettlement Action Plan Report for the Kenya-Tanzania Interconnector, the cost of resettlement and compensation of the affected

persons, communities, public and institution's land and assets was estimated at Kshs.1,334,662,042.

1.7.40 The Kenya-Tanzania Interconnector Project was jointly funded by the Government of Kenya and the Africa Development Fund.

1.7.41 The Audit Team established that the Ministry of Energy's budget for the Project was Kshs.1,683,000,000, whereas the total amount released to the Project amounted to Kshs.1,308,854,692, resulting in an underfunding of Kshs.374,145,308. This may have led to the delays in the PAP's compensation process, thus impacting negatively on service delivery by KETRACO.

### **Assets Management and Wayleave Acquisition**

#### **Acquisition of Substations**

1.7.42 The Project had two (2) Substations, namely; Isinya Substation and Namanga Substation.

1.7.43 The audit established that the Isinya Substation on LR. No Kajiado/Kaputiei – North/24054, measuring 52.5 Acres, was initially acquired and owned by the Kenya Power and Lighting Company. On 7 January, 2015 KETRACO acquired LR. Number Dalakutuk/10503/Isinya, measuring 2.023 Hectares, adjacent to the Kenya Power and Lighting Company land.

1.7.44 The Audit Team established that KETRACO procured land Registration Number Kajiado/Mailu/5253, measuring 2.02023 Hectares for the Namanga Substation on 27 May, 2014.

1.7.45 However, the Land Scoping Report which indicates how the land for the Namanga Substation was identified and any negotiations that were held between KETRACO and the landowner were not provided for review. The Audit Team could therefore, not ascertain how the land was identified and whether the purchased land was the most economically viable option.

1.7.46 The Audit Team established that KETRACO engaged one (1) survey consultant to provide cadastral survey, four (4) valuers to carry out valuation of land and structures and three (3) law firms for legal services.

1.7.47 However, out of the eight (8) services contracted by the Kenya Electricity Transmission Company, six (6) contracts were not provided for audit review.

- They comprised one (1) for survey services, two (2) for valuation services and three (3) for legal services.
- 1.7.48 According to the list of contractors provided by KETRACO, Prime Survey Limited was engaged to provide strip plans, cadastral data and ownership details through survey reports.
- 1.7.49 On 20 May, 2015, the Kenya Electricity Transmission Company gazetted five hundred and one (501), out of five hundred and forty-nine (549) parcels of land which would be affected by the Kenya-Tanzania Project. However, the Audit Team noted that forty-eight (48) parcels of land were not publicized as required.
- 1.7.50 The Audit Team established that thirty-five (35) parcels of land that were initially gazetted as affected by the wayleave corridor were later not affected, due to changes in the project design. However, the parcels of land had not been degazetted at the time of the audit, thereby exposing the Company to the risk of future litigation by the land owners.
- 1.7.51 The Audit Team established that KETRACO was yet to issue gazette corrigendum and addendum on nineteen (19) parcels of land after subsequent change of ownership, thereby exposing the Company to an additional risk of future litigation by the land owners.
- 1.7.52 According to the list of consultants provided by KETRACO, valuation for the Kenya-Tanzania Interconnector Project was done by Njihia Muoka Rashid Company Limited, Gimco Valuers Limited, National Land Commission and Kiragu and Mwangi Co. Ltd.
- 1.7.53 Review of the report by Njihia Muoka Rashid Company Limited revealed that the Company valued fifteen (15) parcels of land. Gimco Limited valued three (3) plots and the National Land Commission valued 347 parcels of land. However, the criteria and methodology used to determine the parcels of land that were sampled and the basis of computing the compensation amount payable to PAP's were not provided for audit.
- 1.7.54 An Internal Memo dated 26 September, 2019 acknowledged receipt of a valuation report from the National Land Commission for valuation of the land. The Memo stated that on 24 June, 2019, an additional increase of 5% compensation rate on the valued land was agreed between the leaders of the

affected community and the then Cabinet Secretary, Ministry of Interior and Coordination of National Government.

- 1.7.55 However, the Audit Team was not provided with documents indicating how the 5% increment on land compensation was arrived at.

### **Financial Management and Expenditure**

- 1.7.56 Section 148 of the Land Act, 2012 states that compensation shall be payable to any person for the use of land, of which the person is in lawful or actual occupation, as a communal right of way. In the case of a wayleave, compensation is also payable for the use of land for any damage suffered in respect of trees, crops and buildings. For private land, compensation shall be based on the value of the land as determined by a qualified valuer. Further, Section 7.3 of the RPF, 2011 requires KETRACO to compensate for land acquired or encumbered, structures affected, crops/trees destroyed and loss of income/business/employment.
- 1.7.57 The Project Implementation Guideline issued by the Ministry of Energy to KETRACO was not provided for audit. The Guideline defines the allowable expenditures to be incurred by KETRACO, the scope of work to be undertaken by KETRACO and the responsibilities of both the Ministry of Energy and the Kenya Electricity Transmission Company, while constructing the Kenya-Tanzania Interconnector Project.
- 1.7.58 The Audit Team could not therefore, confirm whether the budgetary resources disbursed to the Kenya Electricity Transmission Company were prudently utilized.
- 1.7.59 The amount of compensation payable for land, crops and structures to the Project Affected Persons was approved by the Managing Director on various dates between April 2017 and March 2023.
- 1.7.60 The Audit Team reviewed the compensation schedule provided for audit and noted that the total compensation for land, structures and crops that had been encumbered, affected or destroyed amounted to Kshs.1,636,575,245. Out of this amount, Kshs.1,314,888,467 was paid, leaving an outstanding balance of Kshs.321,686,778 as at 30 June, 2023.

- 1.7.61 Review of the valuation reports revealed that the fifty-eight (58) parcels of land had their compensation amounting to Kshs.292,994,340, approved for payment. However, based on the recalculated size of the aforementioned parcels of land, the compensation amounts payable ought to have been Kshs.159,598,811. As a result, there was an overvaluation amounting to Kshs.133,395,529.
- 1.7.62 The Management had therefore, irregularly paid Kshs.116,182,341 to PAPs for forty-eight (48) out of the fifty-eight (58) parcels of land that were overvalued by Kshs.133,395,529.
- 1.7.63 Out of Kshs.1,314,888,467 payable for wayleave compensation, the Kenya Electricity Transmission Company had paid Kshs.1,054,223,485 for parcels of land, Kshs.36,721,227 for structures and Kshs.223,943,755 for crops. However, payment vouchers for compensation to landowners amounting to Kshs.18,304,071 did not have supporting documents to confirm easement registration. Further, the payments could not be traced to KETRACO's bank statements.
- 1.7.64 Review of the Cadastral Schedule, Cadastral Map and Compensation Schedule provided, and the field visits revealed that three (3) land parcels were irregularly compensated for a total of Kshs.3,030,979, despite the parcels no longer being affected by the wayleave corridor.

### **Physical Verification of Outstanding Claims for Land, Structures and Crops**

- 1.7.65 During the physical verification exercise carried out in September 2023, the Audit Team visited 70 out of 549 parcels of land. Further, the Audit Team engaged with 68 landowners with outstanding land compensation claims amounting to Kshs.209,162,721.

## **KENYA-UGANDA TRANSMISSION LINE**

### **Project Overview**

- 1.7.66 The Kenya-Uganda Power Interconnection Project was part of a multinational project involving the Republic of Kenya, Republic of Uganda, Republic of Rwanda and Republic of Burundi. The 400Kv Transmission Line originates

from the Lessos Substation in Kenya and terminates at the Tororo Substation in Uganda, covering approximately 132 Kilometers in Kenya and 10 Kilometers in Uganda.

- 1.7.67 Construction of the Transmission Line commenced on 20 September, 2010 and was expected to be completed by 31 December, 2017. However, upon physical verification in October 2023, the Audit Team established that the Project had stalled before completion.
- 1.7.68 A letter dated 25 April, 2016, Ref No. KET/4/14G/7/176/JM/RNK, from the Acting Managing Director, Kenya Electricity Transmission Company to the Project Manager, Instalaciones and Inabensa SA, the Kenya Electricity Transmission Company issued a notice of termination for the interconnection of the electric grid of the Nile Equatorial Lake Countries (Kenyan part). The Contractor was requested by the Kenya Electricity Transmission Company to cease all further works and to terminate all subcontractors, due to persistent failure to execute the contract. On 30 July, 2019 the arbitration tribunal issued an award in favor of the Contractor, Instalaciones and Inabensa South Africa. The Kenya Electricity Transmission Company challenged the decision of the arbitration tribunal in the High Court, vide case number: HC.COMM. MISC/E445/2019. The High Court upheld the decision of the arbitration tribunal by a ruling dated 15 June, 2021. The Kenya Electricity Transmission Company then challenged the decision of the High Court in the Court of Appeal, vide MISC. APPLICATION NO. E56 of 2021 However, the Court of Appeal upheld the decision of the High Court by a ruling dated 19 November, 2021. The Kenya Electricity Transmission Company further challenged the decision of the Court of Appeal by filing a notice of motion vide Petition No. 17(E024) of 2021 in the Supreme Court of Kenya. However, the Supreme Court of Kenya upheld the decision of the Court of Appeal by dismissing the notice of motion filed by KETRACO on 7 October, 2022.
- 1.7.69 The Management did not explain the reason why the Project had not resumed since the courts' ruling and the plans that were in place in order to complete the Project.
- 1.7.70 As at 30 June, 2023, the total value in the compensation schedules for the Kenya-Uganda Interconnection Project amounted to Kshs.1,835,863,715, out

of which, Kshs.1,357,202,952 had been paid, resulting to an outstanding wayleave compensation for the Project amounting to Kshs.478,660,763. The Audit Team reviewed and analyzed the claims for the project compensation, the following are the summarized audit findings: -

### **Conceptualization and Feasibility Study**

- 1.7.71 The Kenya-Uganda Power Interconnection Project was one of the priority projects identified for implementation in the Least Cost Power Development Plan (LCPDP) for the period 2008 to 2028, and the Kenya Electricity Transmission Company Strategic Plan for 2010/2011-2014/2015, 2015/2016-2019/2020 and 2018-2022.
- 1.7.72 The Energy Exchange Agreement signed on 5 September, 2022 between the Uganda Electricity Transmission Company Limited (UETCL) and the Kenya Power and Lighting Company (KPLC) identified the need for technical cooperation between the two (2) countries in power generation, transmission, rural electrification and customer-relation services. Section D of the Energy Exchange Agreement varied the seven (7) supplemental agreements for the period 28 October, 1964 to 01 February, 2005.
- 1.7.73 The Audit Team was not provided with the Project agreements for the period prior to 2010, which indicate how the Project was conceptualized.
- 1.7.74 The Audit Team established that the Environmental and Social Impact Assessment (ESIA) study were done by a consortium of four (4) firms, namely; SOGREAH Consultants, RSW International Inc, Hydro Quebec International and Hifab, who undertook the ESIA in 2007.
- 1.7.75 The Resettlement Action Plan Report for the Kenya-Uganda Transmission Line was prepared by Log Associates in May 2011 and identified households that would be affected by the Project. The RAP Report stated that the Project affected 1,478 persons, 1,055 business structures and crops, at an estimated cost of Kshs.215,276,650.

### **Governance and Related Issues**

- 1.7.76 The Kenya Electricity Transmission Company has four (4) Board Committees, namely; Staff and Remuneration Committee, Audit and Risk Assurance

Committee, Finance, Strategy & Risk Management Committee and Technical Committee. The Audit Team reviewed the Committee Charter for each of the four (4) Board Committees developed in 2019. However, the Audit Team was not provided with Committee Charters prior to 2019. The Audit Team therefore, could not ascertain whether the Committees established prior to 2019 were in line with Section 1.7 of Mwongozo, the Code of Governance for State Corporations of 2015.

- 1.7.77 The execution of the Kenya-Uganda Project was delegated the Project Implementation Team (PIT) which was established to oversee all project activities. However, the PIT members' appointment letters and minutes of meetings were not provided for audit review. Consequently, the Audit Team could not establish whether a PIT was in place to oversee the implementation of the Project, as required by the Resettlement Framework, 2011.

#### **Budget and Budgetary Control**

- 1.7.78 The Kenya-Uganda Interconnection Project was jointly funded by the Government of Kenya, through the Ministry of Energy and Petroleum, and The National Treasury and Africa Development Bank.
- 1.7.79 The Government of Kenya and the Africa Development Bank (ADB) entered into a Financing Agreement for the construction of the Kenya-Uganda Power Interconnection Project on 20 September, 2010.
- 1.7.80 The approved budget for the Ministry of Energy for the 2013/2014 financial year was not program-based, therefore, the Audit Team could not establish the budgeted amount for the Kenya-Uganda Power Interconnection Project.
- 1.7.81 It was established that the final approved budgets for the Ministry of Energy and Kenya Electricity Transmission Company for the GOK component was a single line budget. The allocation was to cater for wayleave, consultancy fees, and other operating costs. The amount allocated for compensation to PAPs from the Ministry of Energy was Kshs.4,354,000,000, while the amount allocated for compensation of PAPs by KETRACO was Kshs.2,850,000,000.
- 1.7.82 Review of the approved budgets and actual disbursements for the Project revealed that from the financial year 2013/2014 to 2022/2023, KETRACO received a total of Kshs.1,764,491,813 from MOE, against the total approved

budget of Kshs.2,850,000,000. This resulted in under funding of the Project by Kshs.1,085,508,187.

### **Assets Management and Wayleave Acquisition**

- 1.7.83 The Audit Team established that the Project had one (1) Substation, the Lessos Substation.
- 1.7.84 Review of the Transmission Asset Register revealed that KPLC had purchased land for the construction of the Lessos Substation. However, ownership documents supporting this information were not provided for audit. The audit established that KETRACO purchased three (3) additional parcels of land for the expansion of the Substation. However, the Land Scoping Reports for the identification of the additional parcels of land and letters appointing the scoping team were not provided to the Audit Team for review.
- 1.7.85 The Audit Team established that KETRACO engaged two (2) survey consultants, three (3) valuers for valuation of parcels of land and structures, and two (2) law firms for litigation services. However, the contracts for the seven (7) consultants were not provided for audit review.
- 1.7.86 The Audit established that KETRACO did not publicize a total of three hundred and sixteen (316) parcels of land, out of 2,581 parcels along the wayleave corridor. This contravenes Section 144(4)(a) of the Land Act, 2012 which requires a notice to be served on all persons occupying land over which the proposed wayleave is to be created, including persons occupying land in accordance with customary pastoral rights.
- 1.7.87 Comparison of gazette notices and the cadastral schedule provided for audit revealed that four (4) parcels of land, which were initially affected by the Project and had been gazetted, were later not affected. However, at the time of audit, the four (4) parcels had not been de-gazetted, contrary to Section 52(2)(a) of the Land Regulation, 2017, thereby exposing the Company to the risk of future litigation by the land owners.
- 1.7.88 According to the list of consultants provided, KETRACO engaged Njihia Muoka, Rashid Company Limited, Capital Valuers Limited, and the National Land Commission to carry out valuation of parcels of land within the Kenya-Uganda 400 KV, 132Km Line Corridor. The Audit Team established that the

values for a sample of twenty-two (22) parcels of land were used as a basis for computing the market value for all the parcels of land along the Kenya - Uganda Line Corridor. However, the valuation method used to arrive at the value of the twenty-two (22) parcels of land was not provided for audit.

- 1.7.89 Review of cadastral data and payment vouchers revealed that KETRACO paid for twenty (20) parcels of land whose actual affected area was less than the stated affected area, resulting to an overpayment of Kshs.7,661,576.

### **Financial Management and Expenditure**

- 1.7.90 Section 148 of the Land Act, 2012 provides that compensation shall be payable to any person in lawful or actual occupation of land used as a communal right of way. In the case of a wayleave, compensation is also payable for any damage to trees, crops, and buildings. For private land, such compensation shall be based on the value of the land as determined by a qualified valuer. Further, Section 7.3 of RFP, 2011 requires KETRACO to compensate for land acquired or encumbered, structures affected, crops/trees destroyed, and loss of income/business/employment. Kshs.1,835,863,715 was approved by the Managing Director on various dates for compensation payable to the Project Affected Persons (PAPs) for land, crops and structures. However, the Audit Team was not provided with guidelines for the implementation of the Project.
- 1.7.91 Review of the payment schedules provided for audit revealed that out of the total compensation payable for land, structures and crops amounting to Kshs.1,835,863,715, KETRACO had paid a total of Kshs.1,357,202,952, resulting to an outstanding balance amounting to Kshs.478,660,763 as at 30 June, 2023.
- 1.7.92 Supporting documents for the outstanding wayleave compensation amount of Kshs.478,660,763 were not provided for audit. Review of the total payments amounting to Kshs.1,357,202,952 revealed that a total of Kshs.17,801,746 was paid to sixty-five (65) PAPs who had rejected offer letters. The amount of Kshs.17,801,746 was therefore, irregular as it was paid without acceptance of the offer and execution of agreements by PAPs.

## **Physical Verification of the Kenya-Uganda Transmission Line for Land, Crops and Structures**

- 1.7.93 During the physical verification exercise held in September 2023, the Audit Team sampled one hundred and thirty-two (132) PAPs with outstanding compensation for land. Out of the one hundred and thirty-two (132) PAPs, the Team engaged one hundred and twenty-four (124) PAPs and noted several issues.
- 1.7.94 The issued identified were; ninety-one (91) landowners with outstanding claims, seven (7) landowners who were no longer affected by the Transmission Line, nineteen (19) parcels of land were paid at the time of audit between March 2023 and September 2023, four (4) PAPs had rejected offer letters, one (1) PAP owner was paid more than the valued amount for the parcel of land and one (1) PAP had subdivided their land into two (2) other parcels.
- 1.7.95 The Audit Team conducted physical verification for twenty-seven (27) PAPs with outstanding compensation claims for structures amounting to Kshs.6,848,351. Out of the twenty-seven (27) PAPs, six (6) PAPs confirmed that they had been paid, fifteen (15) PAPs had not been paid at the time of audit, while six (6) PAPs could not be traced.

## **KENYA POWER TRANSMISSION SYSTEM IMPROVEMENT PROJECT**

### **Project Overview**

- 1.7.96 The Kenya Power Transmission System Improvement Project (KPTSIP) was designed for construction of 431km of 132kv lines, namely: Ishiara – Embu (33 km); Lessos-Kabarnet (65 km); Nanyuki-Rumuruti (79 km); Olkaria-Narok (68km); Sotik-Bomet (33 km); and Mwingi-Kitui-Wote-Sultan Hamud (MKWSH) (153 km). The Project also involved the extension of six (6) substations and the construction of eight (8) new substations that would contribute towards the capacity of the Country increasing the number of new connections by 200,000 annually, as well as increasing the rural electricity connectivity from 23% to 40% by the year 2020.

- 1.7.97 The project's key objective was to contribute to the delivery of an adequate and reliable power supply, which would catalyze the growth and competitiveness of rural economies, and the development of social institutions, such as schools and hospitals.
- 1.7.98 The Project was jointly funded by the African Development Bank (ADB) and the Government of Kenya, through the Ministry of Energy and Petroleum, for an amount of Kshs.7,498,323,914 and Kshs.2,397,000,000, respectively.
- 1.7.99 The Project commenced in April 2013 and was expected to end in June 2015. However, it was not complete at the time of the audit.

### **Summary of Claims**

- 1.7.100 As at 30 June, 2023, the total value in the compensation schedules for the Kenya Power Transmission System Improvement Project amounted to Kshs.2,265,413,334, out of which KETRACO had paid Kshs.2,001,731,829, representing 88%, leaving an outstanding balance of Kshs.263,681,505. The Audit Team reviewed and analyzed the claims for the Project compensation. The following are the summarized audit findings: -

### **Conceptualization and Feasibility Study**

- 1.7.101 The six (6) KPTSIP Transmission Lines were identified in the Least Cost Power Development Plan, 2011-2030 for improving the performance of the West Kenya Network, in order to cater for the increasing load growth and meet the Vision 2030 objectives.
- 1.7.102 The feasibility study for the extension of 132 kV lines of the Power Transmission System Improvement Project was conducted by two (2) consultants: Norconsult ASA for the Ishiara-Kieni, Mwingi-Kitu-Wote-Sultan Hamud, Lessos-Kabarnet and Nanyuki-Rumuruti Lines; and SMEC International Pty for Olkaria-Narok and Bomet-Sotik Lines.
- 1.7.103 The Kenya Electricity Transmission Company undertook ESIA for each of the six(6) lines of the Project. The ESIA Reports which were approved by NEMA between November 2009 and April 2010. Review of the ESIA Reports revealed that the Project was expected to stabilize the power supply in order

to cushion consumers against losses occasioned by power failures and blackouts.

- 1.7.104 The Resettlement Policy Framework (RPF), 2011 required a specific Resettlement Action Plan (RAP) to be developed for each project. The Resettlement Action Plans for the six (6) transmission lines under the KPTSIP Project were developed between May and November 2013 by different consultants.
- 1.7.105 The audit established that although the objective for all the RAPs was indicated as identifying the Project Affected Persons (PAPs), only the Ishiara-Kieni and Mwingi- Kitui-Wote-Sultan Hamud Line indicated the number of PAPs in all the required categories namely; land, structures, and crops. The total cost for the resettlement and compensation of the affected persons, communities, public and institution's land, and assets for the six (6) transmission lines was estimated at Kshs.1,628,859,372.70.

#### **Governance and Related Issues**

- 1.7.106 The Kenya Electricity Transmission Company has four (4) Board Committees; Staff and Remuneration Committee, Audit and Risk Assurance Committee, Finance, Strategy & Risk Management Committee and Technical Committee. The Audit Team reviewed the Committee Charter for each of the four (4) Board Committees developed in 2019. However, Committee Charters prior to 2019 were not provided for audit. The Audit Team therefore, could not ascertain whether the Committees established prior to 2019 were in line with Section 1.7 of Mwongozo, the Code of Governance for State Corporations of 2015.
- 1.7.107 The execution of the Project was delegated to the Project Implementation Team (PIT), a management committee established to oversee all Project activities. However, the PIT members' appointment letters and minutes of meetings held were not provided for audit review. Consequently, the Audit Team could not establish whether a PIT was in place to oversee implementation of the Project.
- 1.7.108 The African Development Fund's financing was contingent on completing the six (6) transmission lines under KPTSIP by 30 June, 2015. Due to delays in the implementation of the Project, funding was terminated in May 2017, after

84.1% of the loan had been disbursed. The audit established that KETRACO's Project Management Team did not meet the completion timelines for various transmission lines, the Government of Kenya therefore, assumed the responsibility for settling the outstanding payments. The progress report, which indicated the percentage of completion at the time of termination of funding, was not provided for audit review.

1.7.109 The main Contractor, Jyoti Structures Limited, was unable to fulfill contractual obligations, leading to liquidation of the company in July 2018. Consequently, the Government of Kenya assumed the responsibility for the outstanding payments previously financed by the ADF loan.

1.7.110 Following the termination of the Contract with Jyoti Structures, China CAMCE Company Limited was awarded a new contract; to complete the unfinished work at a revised cost of USD 7,173,395 and Kshs.163,618,363, with a completion date of February 7, 2020. However, at the time of audit, sections of the Lessos-Kabarnet and Mwingi-Kitui-Wote-Sultan Hamud Transmission Lines were not complete as per the schedule.

#### **Budget and Budgetary Control**

1.7.111 According to the Resettlement Action Plan (RAP), the estimated resettlement and compensation cost for the Project was Kshs.1,628,859,373.

1.7.112 The Kenya Power Transmission System Improvement Project was jointly funded by the Government of Kenya and the African Development Fund (ADF), with a loan agreement signed on March 23, 2011, amounting to UA 46,700,000, equivalent to Kshs.5,928,191,400 at a rate of one (1) UA to Kshs.126.94 (Rate as at 23 March, 2011).

1.7.113 From the financial year 2014/2015 to 2022/2023, the Ministry of Energy allocated Kshs.4,532,323,913 from donor funds and Kshs.2,123,875,000 from the GOK to the Kenya Power Transmission System Improvement Project. The amount of Kshs.2,123,875,000 from GOK's counter funding was for compensation of PAPs, as set out in the Resettlement Action Plan. Compensation of PAPs was supposed to have been done before commencing the construction of the transmission lines.

1.7.114 The audit established that from the financial year 2014/2015 to 2022/2023, KETRACO disbursed Kshs.2,442,443,431 to KPTSIP, against the project's budget allocation of Kshs.2,523,875,000, resulting in an underfunding of Kshs.81,431,569.

### **Assets Management and Wayleave Acquisition**

#### ***Failure to Provide Appointment Letters of the Land Acquisition Scoping Team***

1.7.115 The scoping team was mandated to identify suitable parcels of land for the construction of substations, undertake due diligence, and carry out ranking and valuation of the identified parcels.

1.7.116 However, the Management did not provide documentation, evidencing the formal appointment of the scoping team for the land acquired for substations under the Kenya Power Transmission System Improvement Project.

#### ***Procurement and Ownership of Land for Sub-stations***

1.7.117 The audit established that the Management acquired eight (8) parcels of land for construction of new substations for the Project. However, documents relating to the identification and procurement of land were not provided. This was contrary to Section 44 (1) and (2) of the PPDA Act, 2015, which requires the accounting officer of a public entity to ensure proper documentation of procurement proceedings and safe custody of records.

1.7.118 In addition, title deeds for four (4) out of the eight (8) parcels of land were not provided for audit review. The Audit Team therefore, could not confirm the transfer of ownership upon acquisition of the parcels of land.

### **Wayleave Acquisition Process**

1.7.119 The audit established that the Management engaged six (6) private surveyors who developed a cadastral data schedule for all the routes identified for the wayleave. However, contracts for three (3) out of the six (6) private surveyors were not provided for review. It was therefore, not possible to confirm the date and terms of engagement.

### **Gazettement of Land Parcels**

1.7.120 Notice of intention for the acquisition of wayleave by the National Land Commission for the 132KV Transmission Line was advertised in Gazette notices on behalf of KETRACO between 20 May, 2015 and 15 April, 2016. However, the Gazette Notice for the Nanyuki-Rumuruti Transmission Line was not provided for audit review.

### **Valuation of Transmission Lines**

1.7.121 The Management contracted eighteen (18) valuers to value land, crops, and structures on the project wayleave corridor. However, the contracts signed between KETRACO and the valuers were not provided for audit review. The Audit Team therefore, could not ascertain the cost incurred, and the terms of the contracts. Further, out of the 3,092 affected parcels of land, KETRACO valued 159 parcels, representing 5.1% of the parcels of land. However, the criteria used to determine the 159 parcels of land that were sampled and valued was not provided for audit.

### **Financial Management and Expenditure**

1.7.122 Review of the compensation schedules provided for audit review revealed that Kshs.2,265,413,334 was identified and approved for compensation of land, crops and structures. The audit established that out of the amount, KETRACO had paid a total of Kshs.2,001,731,829 as at 30 June, 2023 leaving an outstanding balance of Kshs.263,681,505, comprising of Kshs.229,249,454, Kshs.20,188,715 and Kshs.14,243,336 for land, crops and structures, respectively. The Management did not provide reasons as to why compensation for crops and structures were still outstanding.

### **Outstanding Land Compensation**

1.7.123 The Audit Team established that KPTSIP had 1,311 cases of outstanding land compensation, amounting to Kshs.229,249,454 as at 30 June, 2023. Various reasons were obtained as to why PAPs had not been compensated, as detailed below: -

### ***Failure to Develop a Negotiation Framework***

1.7.124 Section 148(1) of the Land Act, 2012 provides that compensation for the use of land should be based on the value of land, as determined by a qualified valuer. However, the audit established that compensation for 101 parcels of land along the Nanyuki-Rumuruti Transmission Line and 249 parcels along the Sotik-Bomet Transmission Line was based on negotiation, rather than valuation. Further, the parcels of land did not have an initial assessed value. Additionally, the compensation amount for 124 parcels of land along the Ishiara–Kieni TL increased by Kshs.17,576,976, from Kshs.13,208,379 to Kshs.30,785,355, as a result of negotiation.

1.7.125 The Audit Team could not confirm whether the negotiations for the parcels of land along the three (3) Transmission Lines were carried out in the prescribed manner, as the negotiation policy or guidelines used for the negotiations were not provided for audit review.

### ***Construction of Transmission Lines Before Fully Compensating Project Affected Persons***

1.7.126 Section 9.2 of the Resettlement Policy Framework, 2011 states that PAPs should be compensated in accordance with the Framework and the project-specific RAP(s) before project civil works begin. The audit established that an amount of Kshs.229,249,454 for compensation of 1,311 out of the 3,092 total affected parcels of land was still outstanding as at the time of audit.

### ***Failure to Provide Bank Statements for the Escrow Account***

1.7.127 The Kenya Electricity Transmission Company Limited opened an Escrow Bank Account for KPTSIP at the Co-operative Bank of Kenya. However, the bank statement for the Escrow Account was not provided for audit.

### **Physical Verification of the Kenya Power Transmission System Improvement Project**

1.7.128 The Audit Team conducted physical verification of 265 parcels of land in order to confirm their existence, actual acreage affected, and occupancy status. The exercise also aimed to assess the existence and occupancy of any structures

and crops on the parcels, particularly in relation to outstanding compensation claims.

### **Land**

1.7.129 Engagements with landowners revealed that twenty-two (22) parcels of land were fully compensated. Among the reasons provided for parcels of land that were not fully compensated included: seventy-three (73) landowners from specific lines could not be traced; seventeen (17) parcels were pending due to insufficient documentation; twenty-five (25) parcels faced delays due to family disputes; and forty-nine (49) parcels were pending due to ongoing succession issues.

### **Substations**

1.7.130 The Audit Team visited nine (9) Substations, namely: Sultan-Hamud, Wote, Kitui, Kieni, Bomet, Sotik, Rumuruti, Kabarnet and Narok, out of which Sultan-Hamud was incomplete. Out of the nine (9) Substations visited, eight (8) Substations were complete and operational. However, title deeds for five (5) out of the nine (9) Substations were not provided for audit.

## **INDIA FUNDED PROJECT**

### **Project Overview**

1.7.131 The India Funded Project comprises two (2) Transmission Lines, namely; 220 kV Turkwel-Ortum-Kitale and 132 kV Machakos-Konza-Kajiado-Namanga; and five (5) Substations namely; Turkwel, Ortum, Kitale, Machakos and Konza. The Project was jointly funded by the Government of Kenya, through the Ministry of Energy and The National Treasury, and a Line of Credit obtained from the Exim Bank of India.

1.7.132 The Transmission Lines affected a total of 3,241 Project Affected Persons (PAPs) and commenced in November 2013. At the time of audit, the two lines were at different levels of completion; Turkwel, Ortum and Kitale Substations were 94% complete; Turkwel-Ortum-Kitale Transmission Line was 100% complete; Machakos and Konza Substations were 100% complete; and the Machakos-Konza Transmission Line was 97% complete.

## **Summary of Claims**

1.7.133 As at 30 June, 2023, the final valuation in the compensation schedules for the Turkwel-Ortum-Kitale Transmission Line amounted to Kshs.865,295,956, out of which KETRACO had paid Kshs.650,773,989, leaving an outstanding balance of Kshs.214,521,967. The total compensation payable for the Machakos-Konza Transmission Line amounted to Kshs.55,401,311, out of which KETRACO had paid Kshs.29,805,031, leaving an outstanding balance of Kshs.25,596,280. The Audit Team reviewed and analyzed the compensation claims for the Project. The following are the summarized audit findings: -

### **Conceptualization and Feasibility Study**

1.7.134 Section 2.1.1 of the Sessional Paper No. 4 on Energy, 2004 discusses power as one of the Sub-Sectors that is crucial to Kenya's economic growth. The paper highlights the need to develop a 20-year rolling Least Cost Electric Power Development Plan (LCPDP). The Plan is supposed to be revised annually to take account of new information, to identify existing potential in generation, possible investments in transmission, as well as carefully forecasting on future demand for power and how best it can be met at the minimum cost.

### ***Lack of Documentation on the Involvement of the Ministry of Energy Prior to Signing Financial Agreements***

1.7.135 Documents and correspondence on the involvement of the Ministry of Energy prior to signing the Project's financing agreements by the Cabinet Secretary, The National Treasury and the financiers were not provided for audit. The Audit Team therefore, could not confirm the involvement of the Ministry of Energy, prior to signing the Project's financing agreements, in line with Section 9.1 of the RPF, 2011 which assigned the Ministry of Energy the administrative authority for the Project.

### ***Lack of Documentation on Identification of the Project's Financiers***

1.7.136 Correspondences and other documents between the donors, Ministry of Energy and KETRACO on donor identification were not provided for audit

review. The Audit Team was, therefore, not able to establish how the financiers were identified.

1.7.137 The Audit Team established that the Feasibility and Viability, Environment and Social Impact Assessments and the Resettlement Action Plans were undertaken for each of the two (2) Transmission Lines.

1.7.138 The Resettlement Action Plans (RAPs) were carried out and the reports issued by Charchi Githinji & Partners Consulting Engineers for the Turkwel-Ortum-Kitale (TOK) Transmission Line in July 2013 and Panafcon Limited Development Consultants, in January 2013 for the Machakos-Konza-Kajiado-Namanga 132kV Transmission Line.

1.7.139 The Audit Team established that the RAP reports estimated the resettlement costs for the India Funded Project at Kshs.1,899,572,440, comprised of Kshs.1,208,765,535 and Kshs.690,806,905 for the Turkwel-Ortum-Kitale and Machakos-Konza Transmission Lines, respectively, which were to be financed by the Government of Kenya.

#### **Governance and Related Issues**

1.7.140 Review of documents provided for audit, including the Technical Committee Charter, Board Audit and Risk Committee Charter and the Finance Strategy and Risk Committee Charter for the year 2019 confirmed the involvement of the Board in the India Funded Project.

#### ***Non- Provision of Board, Audit and Risk Committee Board Minutes***

1.7.141 Review of the Board Audit and Risk Committee Charter, 2019, revealed that the Board Audit and Risk Committee was mandated to examine internal and external audit reports and recommendations. However, the Committee minutes were not provided for audit. The Audit Team, therefore, could not ascertain whether the Committee complied with the Charter.

#### ***Absence of Board Approval Minutes and Reports on Project Implementation***

1.7.142 Section 9.1 of the RPF, 2011 assigned the administrative authority for the Projects to the Ministry of Energy, with KETRACO being the implementing agent. Further, the execution of the project was delegated to a Project

Implementation Team (PIT), a Management Committee which was set up to manage and oversee all the activities of the Resettlement Action Plan.

1.7.143 However, appointment letters and reports for the PIT for the India Funded Project were not provided for audit. It was therefore, not possible to determine whether the PIT was constituted as per the requirements in the Resettlement Policy Framework, 2011. Further, the Audit Team could not ascertain whether the Project was implemented as per RPF, 2011.

#### **Budget and Budgetary Control**

1.7.144 According to the RAP reports, the Turkwel-Ortum-Kitale and Machakos-Konza Transmission Lines were estimated to cost Kshs.1,208,765,535 and Kshs.690,806,905, respectively, totaling Kshs.1,899,572,440. The amounts were to cater for wayleave compensation for land, structures, crops/ trees and other costs related to the Project Affected Persons (PAPs).

1.7.145 According to the finance agreement signed on 16 November, 2010, the India Funded Project was jointly funded by the Exim Bank of India and the Government of Kenya (GOK). The credit extended to the GOK amounted to USD61,600,000, approximately Kshs.4,956,163,520. The funding for the India Funded Project was not apportioned between the Turkwel-Ortum-Kitale Transmission Line and the Machakos-Konza-Kajiado-Namanga Transmission Line. The Audit Team therefore, could not establish the proportion for each Transmission Line.

1.7.146 Comparisons between the estimated costs in the RAPs of Kshs.1,899,572,440 and the amounts allocated for payment of wayleave compensation in KETRACO's approved budgets of Kshs.2,945,250,000, revealed an unexplained variance of Kshs.1,045,677,560.

1.7.147 Review of the amounts disbursed for the Project for the financial years 2014/2015 and 2022/2023 indicated total disbursements amounting to Kshs.1,274,627,066, against a budget allocation of Kshs.2,945,250,000. The Audit Team noted that the total disbursements for the Project exceeded the budget allocation by Kshs.1,670,622,934.

### ***Unaccounted for Project Funds***

1.7.148 Comparisons between the amount disbursed by MOE to KETRACO for the financial years 2014/2015 to 2022/2023 of Kshs.3,132,096,222, and the subsequent disbursement to the India Funded Project by KETRACO of Kshs.1,274,627,066, revealed unaccounted-for funds for the Project of Kshs.1,857,469,156.

### **Assets Management and Wayleave Acquisition**

#### **Acquisition of Land for Substations**

1.7.149 According to Section 7.3.1 of the Resettlement Policy Framework, 2011, acquisition of land applied to sites where substations were to be constructed, and KETRACO was to acquire the land and pay compensation based on open market values. The Audit Team established that the Project had five (5) substations, namely; Turkwel, Ortum, Kitale, Machakos and Konza Substations.

#### ***Absence of Appointment Letters for the Scoping Team who Identified the Land for Substations***

1.7.150 Section 1.4.1 of the RPF, 2011 provided that KETRACO would identify the potential site for the construction of a Substation. It further required that an outright purchase of land would apply to sites where Substations were to be constructed, and payment of the land be in full compensation, based on open market values or as guided by rates from the Ministry of Lands or consultations with local leaders within the project area. Further, it was established that a land scoping team was to be appointed to identify the land and carry out due diligence on the potential available lands for constructing the Substations.

1.7.151 However, the appointment letters for the scoping team for the Substations land purchased under the India Funded Project were not provided for audit.

#### ***Non-Provision of Payment Records on Acquisition of Land for Substations***

1.7.152 Out of the five (5) Substations, records indicating payments made to the landowners for the land where the Turkwel, Ortum, Kitale and Machakos

Substations were constructed were not provided for audit review. The Audit Team therefore, could not establish the total cost for the four (4) Substations.

1.7.153 According to the payment voucher No. KETRACO/00/13, it was noted that KETRACO had not completed payment for the purchase of land for the Konza Substation, which was valued at Kshs.6,750,000. The Audit Team established that KETRACO paid an amount of Kshs.750,000, being the deposit for the purchase of land. The Audit Team further noted that the outstanding balance of Kshs.6,000,000 was not included in the schedule of outstanding compensations.

### **Ownership of Substation Land**

#### ***Non-Provision of Ownership Documents for the Machakos and Konza Substation Land***

1.7.154 Review of documents provided for audit, including title deeds, revealed that the parcels of land where the Ortum and Kitale Substations were constructed belonged to KETRACO. However, title deeds for parcels of land for the Machakos and Konza Substations were not provided, therefore, ownership could not be confirmed.

1.7.155 In a letter from KETRACO, Ref: No. KET/2/LS/6/B/LS, dated 19 January, 2021, addressed to the Principal Secretary, Ministry of Energy, it was noted that the Substation in Turkwel was shared between KETRACO and KENGEN. However, documentary evidence supporting this shared agreement was not provided for audit.

### **Wayleave Acquisition**

#### **Survey of the Affected Parcels**

#### ***Absence of Consultant's Contract and Reports on Survey of the Turkwel-Ortum-Kitale and Machakos-Konza Transmission Lines***

1.7.156 According to the Contract documents signed on 21 May, 2013 between KETRACO and Jooyata Surveys, the consultant was to provide an updated register of the affected parcels of land along the Turkwel-Ortum-Kitale Transmission Line. Further, the consultant was to undertake cadastral surveys for the affected parcels of land, carry out searches, prepare cadastral strip plans and carry out as built surveys showing abutting properties and specific

areas affected. However, the detailed consultant's report on the work done was not provided for audit.

1.7.157 Further, review of KETRACO Tender Committee Minutes, Min.TC/010/2012 held on 29 March, 2012 revealed that GeoMaps Africa Limited was contracted to carry out an aerial survey of the Machakos-Konza Transmission Line. However, the contract document and report on the work done by GeoMaps Africa Limited were not provided for audit. It was therefore, not possible to confirm whether the consultant provided the services.

### **Gazettement of the Affected Parcels of land**

#### ***Failure to Publicize the Affected Land Parcels***

1.7.158 Documents indicating whether the affected parcels of land along the Turkwel-Ortum-Kitale and Machakos-Konza Transmission Lines were publicized were not provided for audit review. Further, the Audit Team could not establish whether the landowners along the wayleave corridor were informed of the upcoming Project, in line with Section 144(4)(a) of the Land Act, No. 6 of 2012 and Section 1.4.2 of the Resettlement Policy Framework, 2011 which required a public notification to be issued, informing the PAPs occupying the land of the proposed Transmission Line.

### **Valuations for the India Funded Project**

#### ***Failure to Provide Justification for Sampled Land Parcels***

1.7.159 The Audit Team reviewed Valuation Reports provided for Milestone Land Access Limited, Afriland Valuers Limited, Sedco Valuers (K) Ltd and Njihia Muoka Rashid Co. Ltd. The audit established that valuation of the affected parcels of land along the Turkwel-Ortum-Kitale and Machakos-Konza Transmission Lines was done on sample basis. The sampled parcels of land were thirty-nine (39), and were used as a basis of computing the compensation amount payable to 1,651 and ninety-five (95) PAPs along the Turkwel-Ortum-Kitale and Machakos-Konza Transmission Lines, respectively. However, the criteria used to determine the thirty-nine (39) parcels of land sampled and the methodology used to arrive at the value of land were not provided for audit.

***Non-Provision of the Prequalified List of Suppliers and Consultants' Valuation Contracts***

1.7.160 The contracts between KETRACO and the consultants who provided valuation services for the Project were not provided for audit. The Audit Team therefore, could not determine the contract sum (cost of the services), contract period (duration of the engagement), and the specific scope of work outlined in the contracts for each consultant firm engaged.

1.7.161 Further, the list of pre-qualified suppliers was not provided for audit review. The Audit Team therefore, could not confirm whether the engaged consulting firms were among the list of pre-qualified suppliers or whether the identification followed the prescribed procurement process.

**i. Valuations for the Turkwel-Ortum-Kitale Transmission Line**

1.7.162 According to the valuation schedules provided for audit, the value of land, structures, and crops/trees associated with the Turkwel-Ortum-Kitale TL was Kshs.591,171,919, Kshs.234,641,396 and Kshs.146,797,114 respectively, amounting to Kshs.972,610,429.

***Valuation of Land***

1.7.163 The Audit Team reviewed forty-seven (47) valuation schedules provided for audit and established that Kshs.591,171,919 was the valuation amount for 1,651 PAPs along the Turkwel-Ortum-Kitale Transmission Line.

***Lack of Cut-off date for Land Identified for Wayleave Compensation***

1.7.164 Section 6.3 of RPF, 2011 states that *"Notice of a cut-off date will be posted both in the local media and at appropriate locations within the footprint of the Project.... Establishing this cut-off date is essential in the process, as new inhabitants coming to the Project affected areas after the cut-off date will not be considered for compensation. The eligible cut-off date should be set immediately following the socio-economic survey"*. However, documents and or information indicating the cut-off date(s) for the affected parcels along the Transmission Line corridor were not provided for audit. There was therefore, a risk of duplication of ownership, where multiple owners might have been registered for the same parcel of land in different sections.

### ***Lack of Guidelines on Land Revaluations***

1.7.165 The Audit Team noted that land revaluation amounting to Kshs.88,907,633 was undertaken, and resulted in the reduction of the initial value of the land, from Kshs.591,171,919 to Kshs.502,264,286 for 1,651 PAPs. However, the Audit Team noted that KETRACO did not have clear guidelines or policies to guide the process of land renegotiations. The absence of clear guidelines raised several concerns, including the possibility of unfair treatment and rising costs of compensation.

### ***Valuation of Structures***

1.7.166 According to Section 7.2.2 of the Resettlement Policy Framework (RPF), 2011, KETRACO was required to align valuation costs with regional construction material types, and include a 15% disturbance allowance in the gross replacement cost of affected structures. The Project Development Services Department conducted the valuation of structures along transmission lines, resulting in a total valuation of Kshs.237,337,068, for 329 Project Affected Persons (PAPs). The valuations comprised of Kshs.234,641,396 for the Turkwel-Ortum-Kitale Transmission Line and Kshs.2,695,672 for the Machakos-Konza Transmission Line.

### ***Unsupported Rerouting of the Transmission Line***

1.7.167 Out of the initial approved valuation of structures amounting to Kshs.234,641,396, KETRACO rerouted the Transmission Line, which led to a total of nine (9) structures being eliminated from the valuation schedule. This resulted to a final valuation of Kshs.216,896,816 for three hundred and fifteen (315) PAPs. However, no documentary evidence was provided to support the rerouting of the structures.

### ***Valuation of Crops/Trees***

1.7.168 Section 7.2.3 of the Resettlement Policy Framework, 2011 provided that vegetation damage should be compensated at the value assessed on the basis of prevailing Government rates for crops/trees revised from time to time.

1.7.169 Review of the valuation reports provided for crops/trees destroyed along the Turkwel-Ortum-Kitale Transmission Line revealed that there were thirty (30)

sampled valuations of crops/trees carried out for 1,980 Project Affected Persons, totaling Kshs.146,797,114.

**ii. Valuations for the Machakos-Konza Transmission Line**

1.7.170 Review of the valuation schedules provided for audit revealed that the value of land, structures, and crops/trees associated with the Machakos-Konza TL was Kshs.40,394,621, Kshs.2,695,672 and Kshs.4,832,506, respectively, amounting to Kshs.47,922,799.

***Lack of Guidelines on Renegotiations***

1.7.171 The Management of KETRACO undertook an initial valuation of eighteen (18) sampled parcels of land that was used to value ninety-five (95) parcels of land, amounting to Kshs.40,394,621.

1.7.172 The Audit Team established that out of the initially assessed Kshs.40,394,621 for ninety-five (95) PAPs, fifteen (15) parcels were renegotiated upwards for a total of Kshs.7,290,512. However, the Audit Team noted that KETRACO did not have clear guidelines or policies that guided the process of land renegotiations for wayleave compensation. This is contrary to Section 9.1 of the RPF, 2011, which provides for an operational policy to guide staff who negotiate for compensation amounts on behalf of KETRACO, indicating the details on conduct of the process, appointment of the staff involved in negotiations, and the allowable price variation limits.

**Financial Management and Expenditure**

1.7.173 Section 7 of RPF, 2011, required KETRACO to compensate for land acquired or encumbered, structures affected, crops/trees destroyed and loss of income/business/employment.

1.7.174 Review of the valuation schedules provided for audit revealed that the total compensation for the Turkwel-Ortum-Kitale Transmission Line after revaluations, rerouting and re-negotiations, amounted to Kshs.865,295,956, out of which Kshs.650,773,989 was paid, leaving an outstanding balance of Kshs.214,521,967, approximately 24.79%, for the Project.

1.7.175 Further, the total compensation for the Machakos-Konza Transmission Line, amounted to Kshs.55,401,311, out of which Kshs.29,805,031 was paid to

landowners, leaving an outstanding balance of Kshs.25,596,280, approximately 46.20%, for the Project.

***Failure to Maintain a Separate Bank Account for the Project***

1.7.176 The Audit Team noted that payments for compensation of the Project were done through a bank account operated by KETRACO at KCB. The bank account was also used for other operations of the Company, contrary to Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015. The Project lacking a separate Project Bank Account, therefore, resulted in the co-mingling of project funds with funds meant for KETRACO operations.

1.7.177 Further, the Audit Team reviewed the bank statements and cashbook and noted that the documents lacked unique reference information which could be used to trace and confirm the payments. The Audit Team, therefore, was not able to confirm that all payments were in the bank statements.

1.7.178 It was noted that the cost of resettlement, as per the RAPs, was Kshs.1,899,572,440, while the total compensation was Kshs.920,697,267, resulting to a variance of Kshs.978,875,173. There was a likelihood that the variance was due to poor planning and budgeting in the initial planning phase.

1.7.179 Further, the Audit Team was not able to ascertain the consistency between the total amount paid of Kshs.680,579,019 with the project's disbursement of Kshs.1,274,627,066, due to lack of a schedule indicating how the amount disbursed was to be utilized within the Project.

**Physical Verification of the India Funded Project**

**Turkwel-Ortum-Kitale Transmission Line**

1.7.180 The Transmission Line had three (3) Substations, namely, Turkwel, Ortum and Kitale Substations. The Audit Team conducted physical verification for the Ortum and Kitale Substations. The Audit Team was informed that the land measuring approximately 8.10 hectares on which the Kitale Substation was constructed was acquired by KETRACO under another Project, the Eldoret to Kitale Transmission Line. This therefore, implied that KETRACO did not acquire the land specifically for the Turkwel-Ortum-Kitale Project.

1.7.181 The Audit Team observed that survey beacons and a perimeter wall to secure the Ortum Substation land measuring approximately 2.14 hectares were in place. However, a portion of the land remained outside the perimeter wall, posing a risk to the security of the land.

1.7.182 The Audit Team visited ninety-three (93) out of the 439 parcels of land with outstanding compensation claims in respect to the Turkwel-Ortum-Kitale Transmission Line and noted the following:

- a) Ten (10) PAPs could not be located on the parcels of land;
- b) Six (6) PAPs had family disputes;
- c) Seven (7) PAPs had identified and engaged with lawyers to initiate the succession process;
- d) Eleven (11) PAPs had no title documents to forward to KETRACO for payment;
- e) Fifty-nine (59) PAPs stated that the compensation amount was lower than the current market value and therefore, rejected the offer; and
- f) One (1) PAP, Galiblityei Primary School, was within the wayleave corridor. The school was not to be compensated but KETRACO was expected to undertake a social responsibility activity at the school, in lieu of the compensation. This had not been done by KETRACO.

1.7.183 Further, the Audit Team noted communication weaknesses by KETRACO, that contributed to the long outstanding wayleave compensation which included poor communication with the PAPs and absence of a documents' requirement checklist for the PAPs.

1.7.184 Out of the 1,651 PAPs affected, the Audit Team, through the expert (surveyor), surveyed a sample of twelve (12) parcels of land and compared with the area affected, as per the schedules provided for audit. The difference between the area affected and the surveyed land area revealed the following:

- a) Two (2) parcels had differences that were within 5% of the area affected, which may have arisen due to surveying errors, therefore, was allowable;
- b) Seven (7) parcels had differences less than the allowable 5% surveying errors, resulting to undervaluation of the affected area, and under compensation to the landowners amounting to Kshs.8,312,669; and

c) Three (3) parcels had differences more than the allowable 5% surveying errors, resulting to overvaluation of the affected area. Consequently, there was loss of public funds due to overcompensation to the landowners amounting to Kshs.245,035.

1.7.185 The Audit Team engaged with twelve (12) PAPs who confirmed non-payment for the crop damages at the time of the field visit.

#### **Machakos- Konza Transmission Line**

1.7.186 The Audit Team visited seventeen (17) parcels of land and noted the following: six (6) PAPs had succession issues; one (1) parcel had an ongoing dispute and a legal matter in court; and three (3) PAPs with outstanding claims stated that they had completed and forwarded the required documentation to KETRACO for processing but had not received their payments.

### **NAIROBI RING PROJECT (SUSWA-ISINYA TRANSMISSION LINE)**

#### **Project Overview**

1.7.187 The Nairobi Ring Project involved the construction of a 100 Kilometres 400 kV double circuit Transmission Line from the Suswa Substation to Isinya Substation and three (3) Substations at Suswa, Isinya and Kimuka.

1.7.188 The cost of the Project was estimated at €146,800,000, approximately Kshs.16,003,455,000, which was to be jointly funded by the French Development Bank (AFD), European Investment Bank (EIB), and the Government of Kenya (GOK). An agreement was signed between the French Development Bank and the Government of Kenya on 08 June, 2012, for €78,500,000, while the remaining cost of €68,300,000 was to be funded through a subsidiary agreement signed between GOK and KETRACO, dated 13 December, 2012, from the surplus funds from the Mombasa-Nairobi Transmission Line.

1.7.189 The Suswa-Isinya Transmission Line affected a total of 1,471 PAPs. The Suswa-Isinya Transmission Line covering 100km, 400kV double circuit commenced in October 2012 and was completed in August 2017.

### **Summary of Claims**

1.7.190 As at 30 June, 2023, the total value in the compensation schedules for the Nairobi Ring Project amounted to Kshs.2,160,697,705, out of which Kshs.2,014,339,790 had been paid, resulting to an outstanding wayleave compensation for the Project amounting to Kshs.146,357,915. The Audit Team reviewed and analyzed the compensation claims for the Project and the following are the summarized audit findings: -

#### **Conceptualization and Feasibility Study**

1.7.191 Section 2.3.4.1 of the Least Cost Electric Power Development Plan of March 2011 (LCPDP, 2011) stated that Kenya had experienced demand in electricity consumption in the last five (5) years prior to development of the Plan, and the rise in consumption required a corresponding increase in generation capacity and transmission network. The Audit Team established that KETRACO adhered to the abovementioned section of the Plan.

#### ***Lack of Documentation on the Involvement of the Ministry of Energy, Prior to Signing Financial Agreements***

1.7.192 Documents and correspondence on the involvement of the Ministry of Energy prior to signing the Project's financing agreements by the Cabinet Secretary, The National Treasury and the financiers were not provided for audit. The Audit Team therefore, could not confirm the involvement of the Ministry of Energy, prior to signing the Project's financing agreements.

1.7.193 Section 1.4.2 of the Resettlement Policy Framework, 2011 states that a feasibility study was to be undertaken. The feasibility study for the 220kV ring around the Nairobi Metropolitan was conducted in March 2011 by Parsons Brinckerhoff. The audit noted that KETRACO adhered to the Resettlement Policy Framework, 2011 by undertaking the feasibility study for the Suswa-Isinya Transmission Line.

1.7.194 The Policy Statement of the Resettlement Policy Framework, 2011 required KETRACO to undertake an Abbreviated Resettlement Action Plan (ARAP) if persons who required relocation were less than fifty (50) households.

1.7.195 The Abbreviated Resettlement Action Plan (ARAP) was carried out, and the report, issued by KETRACO, with an estimated cost of Kshs.283,100,000,

outlined that the land required for the Project was owned by approximately forty-eight (48) project affected households, covering 101kms and amounted to Kshs.135,000,000. Fifty (50) structures amounting to Kshs.50,000,000 and crops/trees amounting to Kshs.20,000,000 were affected, leaving a balance of Kshs.78,100,000, which was to cater for public consultation and sensitization, acquisition of substation land, and information dissemination.

### **Governance and Related Issues**

1.7.196 Review of documents provided for audit, including the Technical Committee Charter, Board Audit and Risk Committee Charter and the Finance Strategy and Risk Committee Charter for the year 2019 confirmed the involvement of the Board in the Nairobi Ring Project.

#### ***Non-Provision of Board, Audit and Risk Committee Minutes***

1.7.197 Review of the Board Audit and Risk Committee Charter for 2019, revealed that the Committee was mandated to examine internal and external audit reports and recommendations. However, the minutes for the Committee were not provided for audit. The Audit Team therefore, could not ascertain whether the Committee complied with the Charter.

#### ***Absence of Board Approval Minutes for the Implementation of the Project***

1.7.198 Section 9.1 of the Resettlement Policy Framework, 2011 stated that the Transmission Line Project was under the administrative authority of the Ministry of Energy, with KETRACO as the implementing agent. The execution of the Project was delegated to a Project Implementation Team (PIT), a Management Committee set up to manage and oversee all the activities of the Resettlement Action Plan.

1.7.199 However, appointment letters and reports for the Project Implementation Team for the Nairobi Ring Project were not provided for audit. It was therefore, not possible to determine whether the PIT was constituted as per the requirements in the Resettlement Policy Framework, 2011. Further, the Audit Team could not ascertain whether the Project was implemented as per the Resettlement Policy Framework, 2011.

## **Budget and Budgetary Control**

- 1.7.200 The Abbreviated Resettlement Action Plan (ARAP) Report for the Nairobi Ring (Suswa-Isinya) Project provided the costs and estimates, which were used in the preparation of the Project budget by KETRACO. According to the Report, the project cost was estimated at Kshs.283,100,000.
- 1.7.201 The Nairobi Ring (Suswa-Isinya) Project was jointly funded at €146,800,000, approximately Kshs.16,003,455,000. Section 2.5 of the Subsidiary Agreement outlined that the Government of Kenya was to finance the Project with a total of €30,500,000, approximately Kshs.3,432,775,000 (exchange rate of Kshs.112.55 on 13 December, 2012). However, the Agreement did not indicate the specific areas and costs of the Project that GOK was to finance. Consequently, the Audit Team could not reconcile the amount of Kshs.3,432,775,000, with wayleave related costs and estimates in the Abbreviated Resettlement Action Plan, amounting to Kshs.283,100,000.
- 1.7.202 The approved budget for the Ministry of Energy, for the Nairobi Ring Project's GOK component in the financial years 2015/2016 to 2021/2022 amounted to Kshs.1,627,475,000. However, the approved budget for the financial year 2014/2015 was not program-based, therefore, the Audit Team could not establish the budgeted amount in that financial year.
- 1.7.203 The approved budget for KETRACO for the GOK component for the Nairobi Ring Project in the financial years 2014/2015 to 2021/2022 amounted to Kshs.2,555,113,585.

### ***Lack of Itemised Amounts in Budgets***

- 1.7.204 The audit established that the approved budgeted amounts for the GOK component were to cater for wayleave, consultancy fees, and other operating costs. However, these amounts were budgeted for under a single line. As a result, the Audit Team could not establish the amount allocated for compensation to PAPs, out of Kshs.1,627,475,000 and Kshs.2,555,113,585.
- 1.7.205 The Audit Team therefore, could not reconcile the compensation amount estimated by the ARAP of Kshs.283,100,000, with the compensation amounts budgeted by the Ministry of Energy and KETRACO of Kshs.1,627,475,000 and Kshs.2,555,113,585, respectively.

1.7.206 Review of the Project's disbursed amounts for the period under review indicated that total disbursements from KETRACO to the Project amounted to Kshs.3,014,703,361, against a budget allocation of Kshs.2,555,113,585, resulting to an unexplained variance of Kshs.459,589,776.

1.7.207 The total disbursements for the GOK component made by the Ministry of Energy to KETRACO for the financial years 2015/2016 to 2021/2022 amounted to Kshs.1,658,475,000. However, the disbursements for the financial year 2014/2015 could not be established, since the budget for the period was not itemized. Consequently, the Audit Team could not reconcile the disbursements from MOE to KETRACO of Kshs.1,658,475,000 and from KETRACO to the Project of Kshs.3,014,703,361.

### **Assets Management and Wayleave Acquisition**

#### **Acquisition of Land for Substations**

1.7.208 Section 7.3.1 of the Resettlement Policy Framework, 2011, required the acquisition of land to be applied to sites where substations were constructed, and compensation paid based on open market values. The Audit Team noted that the Project had three (3) Substations, namely Isinya, Kimuka and Suswa Substations.

1.7.209 According to the shared Transmission Asset Register, the Isinya Substation (52.5 acres), was shared between KETRACO and the Kenya Power and Lighting Company Ltd (KPLC). Documentary evidence supporting the sharing of the parcel of land was not provided for audit.

1.7.210 Review of documents, including the Professional Opinion Ref No: KET/LP/18/2018/PK/fa/1, dated 29 November, 2018 and Tender Committee Minutes No. TC/022/2012, dated 27 March, 2012 revealed that KETRACO acquired land for the Kimuka (27.32 acres) and Suswa (200 acres) Substations, at negotiated costs of Kshs.54,640,000 and Kshs.130,000,000, respectively.

1.7.211 However, the letters for the appointment of the scoping team that identified the land for the Kimuka and Suswa Substations were not provided for audit. Further, the land scoping reports which indicated how the parcels of land were identified and any negotiations that were held between KETRACO and the

landowners were not provided to the Audit Team for review. The Audit Team, therefore, could not determine whether the land scoping was undertaken, how the parcels of land were identified and whether the purchased lands were the most economically viable options.

- 1.7.212 Comparative prices for land within the Substations at Kimuka and Suswa were not provided, therefore, the Audit Team was not able to ascertain whether the negotiated price was based on open market values.

#### **Ownership of Substation Land**

##### ***Non-Provision of Ownership Documents for the Kimuka Substation Land***

- 1.7.213 Ownership documents, such as title deeds for the Kimuka and Isinya Substations were not provided for audit review. However, review of the Transmission Asset Register revealed that the Isinya Substation is co-owned by KETRACO and KPLC. The Audit Team established that Isinya and Suswa Substations were complete and energized. However, the Kimuka Substation was complete but was not energized at the time of audit. Management did not provide an explanation as to why the Station had not been energized.

#### **Gazettement of the Affected Parcels of Land**

##### ***Failure to Publicize the Affected Parcels of Land***

- 1.7.214 Section 1.4.2 of the Resettlement Policy Framework, 2011 requires a public notification to be issued to the PAPs occupying the land, to inform them on the proposed transmission line. However, documentary evidence on publicizing the parcels of land on the wayleave corridor was not provided for audit. The Audit Team, therefore, could not determine whether the landowners of the affected parcels were informed of the proposed construction of the Suswa-Isinya Transmission Line, in compliance with Section 1.4.2 of the RPF, 2011.

#### **Survey of Affected Parcels of Land**

##### ***Non-Provision of the Survey Report for the Nairobi Ring Project***

- 1.7.215 Section 1.4.2 of RPF, 2011, required KETRACO to survey the area of land and plots falling within the wayleave trace by commissioning a land survey, the output being a cadastral map and report. KETRACO engaged three (3) consultants to carry out the route survey and wayleaves cadastral data acquisition survey services. However, the survey reports from the consultants

were not provided for audit review. The Audit Team could not therefore, ascertain the number of parcels surveyed and billed by each consultant.

## **Valuation for the Nairobi Ring Project**

### **i. Valuation of Land**

1.7.216 Section 7.2.1 of the Resettlement Policy Framework, 2011 states that "*land is valued via the schedule of land values by zones obtained from Chief Valuer, as well as by a registered and licensed valuer in the Commissioner of Lands Office, Ministry of Lands and Settlement*".

#### ***Non-Provision of Consultants Contracts***

1.7.217 The contracts between KETRACO and the consultants engaged to provide valuation services for the Suswa-Isinya Transmission Line, were not provided. The Audit Team was therefore, not able to ascertain the consultants who carried out the valuation services, the contract sum (cost of the services), contract period (duration of the engagement), and the specific scope of work for each consultant firm engaged.

#### ***Non-Provision of the Prequalified List of Suppliers***

1.7.218 The list of pre-qualified suppliers was not provided for audit review. The Audit Team therefore, could not confirm whether the engaged consulting firms were in the list of pre-qualified suppliers.

#### ***Non-Provision of Valuation Reports for the Project***

1.7.219 The reports that the valuers presented to KETRACO after carrying out valuation of land for the Suswa-Isinya Transmission Line were not provided for audit. The Audit Team therefore, could not ascertain the valued land and total valuation amounts. In the absence of the valuation reports, the Audit Team relied on the valuation schedules provided for audit, which indicated that sixteen (16) parcels of land were valued at a total amount of Kshs.24,500,000.

#### ***Absence of Criteria for Selection of Valued Parcels of Land***

1.7.220 Due to the non-provision of the valuation report, the Audit Team could not ascertain whether there was a criterion the valuer(s) applied in the selection of the sixteen (16) parcels of land that were valued.

## **ii. Valuation of Structures**

1.7.221 According to Section 7.2.2 the Resettlement Policy Framework, 2011, KETRACO was required to review and synchronize the costs to the relevant types of construction materials used for buildings at the various rural regions of Kenya.

1.7.222 The valuation for structures along the Transmission Line was undertaken by KETRACO. The Audit Team established that five (5) valuations, amounting to Kshs.60,032,928 were undertaken for the Suswa-Isinya Transmission Line.

## **iii. Valuation of Crops/Trees**

1.7.223 Section 7.2.3 of the Resettlement Policy Framework, 2011 required vegetation damage to be compensated at the value assessed on the basis of prevailing government rates for crops and trees, as revised from time to time.

1.7.224 Review of valuation reports for crops/ trees revealed that there were twenty-seven (27) valuations amounting to Kshs.178,023,345 along the Transmission Line.

### ***Variances in the Valuation Documents for Crops/Trees***

1.7.225 The Audit Team noted that a valuation (number 28) for crops with a value of Kshs.9,649,500, provided for audit, was not included in the summary of approved valuations, resulting to an understatement of the total valuation amount by Kshs.9,649,500.

## **Wayleave Compensation**

1.7.226 Review of the valuation schedules provided for audit revealed that the total value of land, structures and crops/trees was Kshs.2,040,790,942, Kshs.60,032,928 and Kshs.178,023,345, respectively, amounting to a total of Kshs.2,278,847,215 for the Nairobi Ring Project.

### **i. Compensation for Land**

1.7.227 The Audit Team established that the total approved valuations schedules for land amounted to Kshs.2,040,790,942, for fifty-one (51) valuations for 707 PAPs, and that these valuations were based on the sampled sixteen (16) parcels of land. However, valuation reports for the sixteen (16) parcels were not provided for audit. It was, therefore, not possible to ascertain how the sixteen (16) sampled parcels of land were used in the valuation of the 707

PAPs, and whether the criterion used was based on the open market values, across the Suswa-Isinya Transmission Line.

1.7.228 The Audit Team noted that out of the affected parcels of land for seven hundred and seven (707) PAPs, valued at Kshs.2,040,790,942, fourteen (14) land parcels with an initial value of Kshs.65,866,895 were renegotiated to Kshs.128,631,615, thereby increasing the valuation by Kshs.62,764,720. The renegotiation process for wayleave compensation was, however, not governed by policies and/or guidelines, which may have posed risks including, inequitable treatment, financial uncertainty, and project implementation delays.

1.7.229 Out of the Kshs.2,040,790,941 for the Suswa-Isinya Transmission Line, approved memos for eleven (11) valuations of land amounting to Kshs.125,729,566 were not provided for audit. It was, therefore, not possible to ascertain whether the amounts in the eleven (11) valuation schedules had been approved for payment.

#### **ii. Compensation for Structures**

1.7.230 The Audit Team established that the total approved valuations schedules for structures amounted to Kshs.60,032,928, for five (5) valuations for 73 PAPs. However, in the absence of the valuation reports, it was not possible to ascertain how the amounts in the five (5) valuation schedules, totaling Kshs.60,032,928 was arrived at.

#### **iii. Compensation for Crops/Trees**

1.7.231 The Audit Team established that the total approved valuations for crops/trees amounted to Kshs.178,023,345, for twenty-seven (27) valuations for 691 PAPs. However, in the absence of the valuation reports, it was not possible to ascertain how the amounts in the twenty-seven (27) approved valuation schedules were arrived at.

1.7.232 Further, out of the total valuation amount of Kshs.178,028,345, the Audit Team was not provided with approved memos for eleven (11) valuations, amounting to Kshs.63,797,780. It was, therefore, not possible to ascertain whether the amounts in the eleven (11) valuation schedules had been approved for payment.

## **Financial Management and Expenditure**

- 1.7.233 Section 7.3 of the Resettlement Policy Framework, 2011 required KETRACO to compensate for land acquired or encumbered, structures affected, crops/-trees destroyed and loss of income/business/employment.
- 1.7.234 Review of the valuation schedules provided for audit revealed that out of the total project cost of Kshs.2,278,847,215, adjustments of Kshs.118,149,508 were made due to rerouting, resulting in the total compensation amount of Kshs.2,160,697,705. At the time of audit, KETRACO had paid an amount of Kshs.2,014,339,790, leaving an outstanding balance of Kshs.146,357,915.
- 1.7.235 Section 7.3.3 of the RPF, 2011 outlined the basis for valuation and set out the condition that where a parcel of land is more than an acre, and less than 50% of the land is affected, the compensation percentile be 30% of the open market value. The Audit Team noted that in six (6) valuations, the initial compensation was Kshs.1,619,338,182, which was 30% of the open market value. However, KETRACO made a 20% top-up of Kshs.659,509,033, resulting in an increase of the wayleave compensation amount to Kshs.2,278,847,215. However, documentary evidence to support the top-up was not provided for audit.
- 1.7.236 Comparison between the cost of resettlement as per the Abbreviated Resettlement Action Plan (ARAP) of Kshs.283,100,000, with the total compensation of Kshs.2,160,697,705, revealed an increase of Kshs.1,877,597,705, approximately 663.22%, indicating a possibility of poor planning and budgeting.
- 1.7.237 Further, the Audit Team was not able to reconcile the total paid compensation amount of Kshs.2,014,339,790, with the disbursements from KETRACO to the Project of Kshs.3,014,703,361, since the Financial Statements did not indicate the specific areas/items of the Project that the disbursed amounts were to fund.

### ***Failure to Maintain a Separate Bank Account for the Project***

- 1.7.238 The Audit Team noted that payments for compensation of the Project were done through a bank account operated by KETRACO at KCB that was also used for other operations of the entity. This resulted in the co-mingling of project funds with funds meant for KETRACO operations. Further, there was

no unique identifier for each payment in the bank statements and cashbook, therefore, the Audit Team was not able to confirm the payments to the bank statements.

### **Outstanding Project Compensation**

#### ***Discrepancy in Outstanding Compensation Claims***

1.7.239 Comparison between the outstanding amounts in the summary of land payments amounting to Kshs.146,357,915 and payment schedules amounting to Kshs.143,045,908 revealed an unexplained variance of Kshs.3,312,008.

#### ***Inconsistencies in the Outstanding Compensation Claims***

1.7.240 The Audit Team noted inconsistencies in the outstanding claims. According to the Audited Financial Statements for 2021/2022, the total compensation to landowners was Kshs.2,558,971,379, out of which, Kshs.2,436,063,243 was paid, leaving an outstanding balance of Kshs.122,908,136. The outstanding amounts according to the summary of land payments of Kshs.146,357,915, and the payment schedules with indicated outstanding amount of Kshs.143,045,908, differed with the outstanding claims as per the audited Financial Statements of Kshs.122,908,136.

#### ***Lack of Supporting Information in the Outstanding Claims Schedule***

1.7.241 Information in the schedule for outstanding claims amounting to Kshs.143,045,908 included the names of the PAPs and the amounts owed. However, the schedule lacked information that could be linked to the affected parcels of land, such as the Land Registration Number. The Audit Team therefore, could not track the outstanding claims, identify and trace the PAPs.

### **Physical Verification of the Suswa-Isinya Transmission Line**

1.7.242 The Audit Team noted that survey beacons were not in place at the Suswa Substation. The Audit Team could therefore, not distinguish the land occupied by the Suswa-Isinya Transmission Line from the other transmission lines in the Suswa Substation.

1.7.243 The Audit Team sampled eighty-one (81) land parcels to establish whether the land existed, the actual acreage/sizes acquired, land occupancy, and the current usage of the land within the wayleave corridor of the Project. Out of

the eighty-one (81) land parcels, eighteen (18) had no outstanding compensation claims, while sixty-three (63) had outstanding compensation claims amounting to Kshs.108,288,321. Most of the landowners interviewed did not have the offer letters. It was, therefore, not possible to establish whether the amounts in the offer letters provided by KETRACO to the landowners were the same as the amounts in the compensation schedules provided for audit review.

## **OLKARIA – LESSOS – KISUMU TRANSMISSION LINE**

### **Project Overview**

- 1.7.244 The Olkaria-Lessos-Kisumu (OLK) Project is a 400kV double circuit Transmission Line from the Olkaria II Substation to the Lessos Substation, 220kV double circuit Transmission Line from Lessos Substation to Kibos Substation, and 132kV from Kibos Substation to Kisumu (Mamboleo Substation). The Transmission Line traverses a total of three thousand one hundred and thirty-two (3,132) parcels of land.
- 1.7.245 The Project was undertaken in three (3) Lots, and at the time of audit, construction of the Olkaria-Lessos-Kisumu Transmission Line was complete, with the exception of the extension of 400/220kV Lessos Substation under Lot 3.
- 1.7.246 As at 30 June, 2023 the total value in the compensation schedules for the OLK Project amounted to Kshs.5,582,359,371, out of which KETRACO had paid Kshs.3,312,217,328, representing 59%, leaving an outstanding balance of Kshs.2,270,142,043, representing 41%. The Audit Team reviewed and analysed the claims for the Project compensation. The following are the summarized audit findings: -

### **Conceptualization and Feasibility Study**

- 1.7.247 The Sessional Paper No. 4 on Energy 2004 outlines the government's role in the power sector, emphasizing policy formulation, manpower training, and the development of a 20-year Least Cost Electric Power Development Plan (LCPDP).
- 1.7.248 The March 2011 LCPDP highlights a rise in electricity demand over the past five years, necessitating increased generation capacity and expansion of the

transmission network. The plan includes provisions for addressing these needs through various projects aimed at both generation and transmission enhancements.

- 1.7.249 The Least Cost Electric Power Development Plan (LCPDP) 2011-2030 includes the 300km Olkaria-Lessos-Kisumu 220kV double circuit Transmission Line as a key project. The KETRACO Strategic Plan also prioritizes this project, identifying it as a significant initiative for implementation between 2010 and 2020, aligning with both the LCPDP and KETRACO's strategic goals.
- 1.7.250 The Audit Team reviewed the January 2010 preparatory survey for the Olkaria-Lessos-Kisumu Transmission Line Project conducted by Nippon Koei Co. Ltd., Tokyo Electric Power Services Co. Ltd, and IC Net Limited. The survey evaluated various routes for the Transmission Line and recommended Alternative 1 for both sections; Olkaria-Lessos and Lessos-Kisumu, based on its technical and logistical advantages.
- 1.7.251 The Kenya Electricity Transmission Company Limited (KETRACO) adopted this recommended route for the construction of a new 220kV double-circuit transmission line from Olkaria to Kisumu via Lessos.
- 1.7.252 On 25 June, 2012, KETRACO requested a change of scope, from a 220kV to a 400kV double circuit transmission line for the Olkaria-Lessos section of the Olkaria-Lessos-Kisumu Project, as detailed in their letter to the Japan International Cooperation Agency (JICA).
- 1.7.253 The Japan International Cooperation Agency (JICA) responded on 6 September, 2012, indicating no objection to this change. On 20 December, 2013, KETRACO confirmed that this adjustment would not increase the project's budget, but stated that any unforeseen cost escalations would require additional funding from The National Treasury.
- 1.7.254 The Japan International Cooperation Agency (JICA) approved the scope change vide a letter dated 21 February, 2014. This correspondence confirmed that the alteration from a 220kV to a 400kV transmission line in the Olkaria-Lessos section was requested and granted.

- 1.7.255 The Audit Team reviewed the Environmental and Social Impact Assessment (ESIA) Study Report dated 22 December, 2009, conducted by GIBB Africa Ltd for the Olkaria-Lessos-Kisumu Transmission Line Project.
- 1.7.256 The Report, which recommended adherence to mitigation measures and compliance with relevant guidelines, led to the issuance of NEMA License No. 0006709 to KPLC for a 220kV transmission line. This license was later varied on 19 November, 2012, to accommodate a 400kV double circuit line for the Olkaria-Lessos Section. On 24 August, 2015, NEMA License No. 0006709 was transferred to KETRACO.
- 1.7.257 Eco Plan Management Limited was engaged by KPLC to prepare the Resettlement Action Plan (RAP) for the 220 kV Olkaria-Lessos-Kisumu Transmission Line, detailed in a May 2010 Report. The RAP included identifying project impacts and affected populations, creating a compensation framework, outlining resettlement assistance, budgeting, scheduling, public consultation, and grievance redress mechanisms.
- 1.7.258 The total estimated resettlement cost was Kshs.381,192,065. The amount included Kshs.278,543,267 for land, Kshs.95,217,318 for structures and Kshs.7,431,480 for trees. The number of affected people or households was however not specified.

#### **Governance and Related Issues**

##### ***Failure to Provide Board Committee Charters Prior to Commencement of the Project***

- 1.7.259 The Kenya Electricity Transmission Company Limited (KETRACO) has four (4) Board Committees, namely; Staff and Remuneration Committee, Audit and Risk Assurance Committee, Finance, Strategy and Risk Management Committee and Technical Committee. However, Committee Charters prior to commencement of the Project in 2016 were not provided for review. It was therefore, not possible to ascertain the involvement of the Board in commencement of the OLK Project and consequent publication of PAPs in the year 2015.

### ***Absence of Appointment Letters for PIT Committee Members***

- 1.7.260 The Resettlement Policy Framework, 2011 states that the Ministry of Energy is responsible for providing policy direction and administrative input for KETRACO's projects, while project execution is delegated to a Project Implementation Team (PIT), a management committee established to oversee all project activities.
- 1.7.261 The size and functions of the PIT are determined by factors such as the extent of land acquisition and the number of affected persons. However, PIT members' appointment letters and meeting minutes were not provided for review. The Audit team therefore, could not establish whether a PIT was in place to oversee implementation of the Project, as required by the Resettlement Policy Framework, 2011.

### **Budget and Budgetary Control**

- 1.7.262 Review of the RAP revealed that the total resettlement cost for the Olkaria-Lessos-Kisumu Transmission Line was estimated at Kshs.381,192,065. The amount comprised of Kshs.278,543,267 for land, Kshs.95,217,318 for structures and Kshs.7,431,480 for trees.
- 1.7.263 The Olkaria-Lessos-Kisumu Transmission Line Construction Project was jointly funded by the Government of Kenya and JICA.
- 1.7.264 On 10 December, 2010, The National Treasury signed a financing agreement with the Japan International Cooperation Agency for a loan of JPY 12,410,000,000, equivalent to Kshs.10,256,198,347. The agreement specified that the Kenyan Government's contribution would cover general administration, taxes and duties, land purchases, compensation, and other indirect costs.
- 1.7.265 The approved budgets for the Ministry of Energy and KETRACO for the GOK component were presented as a single line item. As a result, the specific amount allocated by KETRACO for compensating Project Affected Persons (PAPs), from the total of Kshs.5,122,500,000 could not be determined. Additionally, the Audit Team could not reconcile the RAP's estimated compensation cost of Kshs.381,192,065 with the GOK component amount budgeted by KETRACO.

***Unexplained Variance Between Disbursements from MOE to KETRACO and to the Project***

- 1.7.266 Review of the Vote Books and the project's audited financial statements, for the period under review, revealed an unexplained variance of Kshs.83,082,118, between the disbursements of Kshs.5,114,500,000 from MOE to KETRACO, and Kshs.5,197,582,118 from KETRACO to the Project.
- 1.7.267 The audit established that from the Financial Year 2015/2016 to 2022/2023, KETRACO received Kshs.5,197,582,118, which exceeded the approved budget of Kshs.5,122,500,000. However, there was no discrepancy between the approved budget and the actual disbursements from the Ministry of Energy to KETRACO.

**Assets Management and Wayleave Acquisition**

- 1.7.268 The project's audited financial statements indicated that the Olkaria-Lessos-Kisumu Transmission Line Project was divided into three lots; Lot 1 covered 400kV transmission lines, Lot 2 covered 220kV and 132kV transmission lines, and Lot 3 included Sub-station extensions and the construction of a new 220/132/33kV Substation at Kibos.
- 1.7.269 The KETRACO Resettlement Policy Framework (RPF), 2011 states that the Company was to identify potential sites for substation construction and negotiate land prices with the landowner, based on the current market value.

***Absence of Land Scoping Reports for Purchase of Land for Construction of Project Sub-Stations***

- 1.7.270 The Kenya Electricity Transmission Company Limited (KETRACO) acquired two (2) parcels of land for Substations in the OLK Project, one at Lessos and the other at Kibos. The total cost for the Lessos land was Kshs.42,000,000, while the cost for the Kibos land was Kshs.25,500,000. However, Land Scoping Reports which indicate how the land was identified and any negotiations that were held between KETRACO and the landowners were not provided to the Audit Team for review. The Audit Team, therefore, could not determine how the parcels of land were identified and whether the purchased parcels of land were the most economically viable options.

### **Ownership Documents for Substations Land**

1.7.271 The Kenya Electricity Transmission Company Limited (KETRACO) owns the land for Kibos and Lessos Substations. Additionally, KETRACO was using two (2) Substations from KENGEN and KPLC at Olkaria and Mamboleo for the OLK Transmission Line Project. For the Lessos Substation, KETRACO purchased four (4) parcels of land, but only one (1) Parcel of land, Parcel Number Nandi/Songoliet/523 was linked to the Olkaria-Lessos-Kisumu Transmission Line Project. There was no evidence provided to link the other three (3) parcels of land for the Lessos Substation to the Olkaria-Lessos-Kisumu Transmission Line Project.

### **Wayleave Acquisition**

#### **Survey of Affected Parcels**

1.7.272 The Kenya Electricity Transmission Company Limited conducted a land survey within the wayleave trace, adhering to the Resettlement Policy Framework, 2011, which resulted in a cadastral map detailing plot number, ownership, parcel sizes, and tower positions. Survey service contracts for the OLK Project were awarded to three (3) prequalified firms; Kiplan Consultants, Juliko Geospatial, and Jooyato Surveys. The audit confirmed that the selection process for these surveyors followed proper procedures.

#### ***Failure to Provide Application to the National Land Commission for Creation of a Wayleave***

1.7.273 The Land Act, 2012 requires a public authority to make an application for creation of a wayleave to the National Land Commission (NLC). However, Management did not provide for audit review the application to NLC for creation of the project wayleave corridor.

#### ***Publication of Notice of Intention to Create a Right of Way After the Construction of the Transmission Line and Payment of Project Affected Persons had Begun***

1.7.274 The Land Act, 2012 requires an applicant for creation of wayleave to serve a notice on all persons occupying land over which the proposed wayleave is to be created. NLC issued notice of intention to compulsorily create a right of way for the construction of the Olkaria-Lessos-Kisumu Transmission Line on

behalf of KETRACO on 22 February, 2019, which was publicized after the construction of the Transmission Line and payment to Project Affected Persons had already begun.

1.7.275 On 10 July, 2013, KETRACO's Tender Committee approved the award of a consultancy contract to Lloyd Masika Limited for all the three (3) lots, at a cost of Kshs.41,606,880. The objective of the study was to value land, structures and crops/trees to be affected.

***Failure to Provide the List of Pre-Qualified Consultants for the Financial Year 2013/2014 and Study Report by M/s Lloyd Masika Limited***

1.7.276 On 10 July, 2013, KETRACO awarded the consultancy contract for an updated valuation and census study of the Olkaria-Lessos-Kisumu Project to Lloyd Masika Limited. However, the Audit Team could not verify if Lloyd Masika Limited was on the pre-qualified consultants list for the financial year 2013/2014, as the list was not provided. Additionally, the study report from Lloyd Masika Limited was also not provided for audit review.

**Valuation for Wayleave Acquisition**

1.7.277 The Kenya Electricity Transmission Company Limited issued instructions to three (3) valuation firms to assess sampled parcels along the Olkaria-Lessos-Kisumu Transmission Line, as detailed in the letters of instructions reviewed during the audit.

***Irregular Engagement of a Valuer***

1.7.278 M/s Realmast Limited was instructed to value sampled parcels of land along the Olkaria-Lessos-Kisumu Transmission Line. However, review of the pre-qualified firms for valuation services from 2015-2017 showed that Realmast Limited had not been pre-qualified under this category.

***Failure to Provide a List of Pre-Qualified Consultants for the Financial Year 2017/2018***

1.7.279 On 15 August, 2017, KETRACO issued a letter of instructions to Icon Valuers for the valuation of selected parcels along the Olkaria-Lessos-Kisumu Transmission Line. However, the Audit Team could not verify if Icon Valuers was included in the list of pre-qualified consultants for the financial year 2017/2018, as this list was not provided for audit review.

### ***Failure to Provide Criteria Used in Sampling Parcels of Land to be Valued***

1.7.280 The Audit Team reviewed valuation reports from Realmast Ltd, Capital Valuers Ltd, Icon Valuers Ltd, and the National Land Commission, noting that valuations for the Olkaria-Lessos-Kisumu Transmission Line Project were conducted on a sample basis, with values from sampled parcels applied to similar parcels based on location. However, documentation detailing the criteria used to select the sampled parcels for valuation was not provided, making it impossible to assess the fairness of the sampling process.

### **Valuation Schedules for Land, Structures and Crops/Trees**

1.7.281 The Kenya Electricity Transmission Company Limited provided one hundred and fifty-two (152) valuation schedules for land, forty-Eight (48) for structures, and fifty- nine (59) for crops/trees, all of which were approved by the Managing Director before offer letters were issued to the Project Affected Persons.

### ***Un - approved Valuation Schedules***

1.7.282 Review of valuation schedules revealed that three (3) valuations for land and structures were not approved by the Managing Director. Out of the total unapproved valuation amounting to Kshs.314,728,315, a total of Kshs.49,021,787 had already been paid to Project Affected Persons (PAPs) by the time of audit.

### **Financial Management and Expenditure**

#### **Payment for Land Acquired for Substations**

1.7.283 A review of the Tender Committee Minutes showed that two (2) parcels of land were acquired for the Olkaria-Lessos-Kisumu Transmission Line Project; one for the Lessos Substation and one for the Kibos Substation. Payment records for the landowners were also reviewed, where it was noted that KETRACO has an outstanding balance of Kshs.5,841,037 for the Kibos Substation land, which was not included in the provided schedules of outstanding compensation.

#### **Payment of Compensation Funds- Wayleave Acquisition**

1.7.284 Review of the payment schedules for the Olkaria-Lessos-Kisumu Transmission Line Project revealed that out of a total compensation of

Kshs.5,582,359,370.87, KETRACO had paid Kshs.3,312,217,327.99, leaving an outstanding balance of Kshs.2,270,142,042.88. This indicates that the compensation payments had covered only 59% of the total amount due, with compensation for land being particularly low, at 43% of the expected amount.

1.7.285 Further, the Project lacked a dedicated bank account, with payments made through KETRACO's general KCB bank account, which also handled other company operations. This lack of a unique payment identifier in the bank statements made it challenging for the Audit Team to verify all transactions to the bank statements. However, all payments were confirmed through the payment schedules provided.

#### ***Valuation and Payment for Parcel of Land After Cut Off Dates***

1.7.286 The Resettlement Policy Framework (RPF) of 2011 defines the cut-off date for compensation and resettlement as the completion of the socio-economic survey or asset inventory of Project Affected Persons (PAPs). Further, RPF, 2021 defines the cut-off date as the date of the gazette notice of intention to create wayleave.

1.7.287 For Parcel No. LR No. 3967, gazetted on 22 February, 2019, the valuation schedule dated 4 February, 2022, listed three (3) new subdivisions. However, a payment of Kshs.2,464,822.50 made on 28 September, 2022, for one (1) subdivision (LR No. 3967/450), which was subdivided on 17 December, 2021, did not align with the RPF guidelines.

#### ***Irregular Compensation Based on Revaluation***

1.7.288 Nineteen (19) parcels of land, initially valued at Kshs.27,868,902.43, were compensated for a total amount of Kshs.41,728,322.69, resulting in an excess payment of Kshs.13,859,420.26. Review of payment records revealed that revaluation documentation was missing, making it impossible to verify the legitimacy of the excess payment. Additionally, the Audit Team found that KETRACO lacked guidelines or procedures for conducting revaluations for compensation.

### **Outstanding Compensation for the Project**

1.7.289 The audit established that as at 30 June, 2023, the total compensation claims for the Project amounted to Kshs.2,270,142,044. The amount included Kshs.2,118,031,111 for land, Kshs.39,457,088 for structures, and Kshs.112,653,845 for crops and trees.

### **Physical Verification of the Olkaria-Lessos-Kisumu Transmission Line**

1.7.290 The Audit Team conducted physical verification for the Olkaria-Lessos-Kisumu Transmission Line Project to assess the existence and details of the land within the wayleave corridor. This included confirming land location, size, occupancy, and current use, as well as checking the status of Project Affected Persons (PAPs) with outstanding claims. The approach involved site inspections, land surveys, and interviews with both affected and compensated landowners.

### **Physical Verification of Land for Substations**

1.7.291 The Audit Team physically verified four (4) Substations—Lessos, Kibos, Mamboleo, and Olkaria—and found no issues, except at the Lessos Substation where it was observed that the Substation had not been constructed, despite the completion deadline being scheduled for 31 March, 2022. Beaconing was completed on the acquired land, but part of the land was not fenced, and previous landowners were still living and farming the land.

### **Physical Verification of the Project Wayleave Corridor**

1.7.292 The Audit Team sampled two hundred and twenty-eight (228) land parcels for physical verification. Out of that, twenty-nine (29) parcels had no outstanding compensation claims, while one hundred and ninety-nine (199) parcels had claims totaling Kshs.1,334,435,273. One Hundred Seventy-Four (174) landowners were not present on their parcels of land. However, the Audit Team confirmed that those parcels of land exist and had been affected by the Project.

1.7.293 One (1) landowner had been listed as a person with an outstanding compensation claim, but had acquired the land after the Transmission Line traversed the said parcel of land. The previous owner had not been

compensated. Further, two (2) landowners had not been compensated due to rejected offer letters, with one (1) landowner disputing the land size and the other lacking supporting documents. Additionally, four (4) Project Affected Persons (PAPs) experienced compensation delays due to land succession issues.

- 1.7.294 The audit established that landowners lacked offer letters and could not recall the exact compensation amounts, this made it difficult to verify the figures provided by KETRACO.

#### **Actual Survey of Parcels of Land**

- 1.7.295 The Audit Team sampled one hundred (100) out of the two hundred and twenty-eight (228) land parcels verified, representing about 44% of the total parcels, with the assistance of a KETRACO surveyor. The survey results showed no discrepancies between the trace area recorded in KETRACO's compensation schedule and the measurements taken during the physical verification.

#### **Crops/Trees**

- 1.7.296 The Audit Team sampled forty-three (43) Project Affected Persons (PAPs) with outstanding compensation claims for crops and trees. Of these, twenty-five (25) PAPs reported they had not received payment for damaged crops, while eighteen (18) were not found. However, all the forty-three (43) PAPs were confirmed to be within the project corridor.
- 1.7.297 The issues identified include the absence of compensation amounts in the Property Damage Reports (PDRs) provided by KETRACO, as the reports did not include compensation details, despite KETRACO having conducted the valuations. Additionally, PAPs signed the Property Damage Reports before the compensation amounts were determined, thereby denying them an opportunity to either agree or disagree with the valuations. Furthermore, many PAPs in the Nandi-Lessos-Timboroa Section had not been compensated for trees that were cut, which had since regrown and were at a risk of contact to the transmission cables.

## **Structures**

- 1.7.298 The Audit Team physically verified seventeen (17) Project Affected Persons (PAPs) with outstanding compensation claims for structures within the Olkaria-Lessos-Kisumu Transmission Line Project Corridor. Six (6) PAPs out of the seventeen (17) confirmed they had not been paid, while eleven (11) were not found, though the existence of all seventeen (17) PAPs was verified.
- 1.7.299 The issues noted in the audit included the lack of acknowledgement letters from KETRACO for four (4) PAPs, making it difficult to verify compensation amounts. Additionally, the Naivasha GK Prison, which had received an offer amounting to Kshs.13,998,938 from KETRACO, for demolished structures, disputed the amount and offered a counter proposal of Kshs.18,908,204. However, an agreement was reached between KETRACO and Naivasha GK Prison for KETRACO to rebuild the structures with its own contractors, but as at the time of audit, the construction had not started.

## **1.8 Recommendations**

In order to address the weaknesses identified during the audit, the KETRACO Management should: -

- 1.8.1 Strengthen project conceptualization and feasibility processes by ensuring that Resettlement Action Plans (RAPs) comprehensively identify and quantify all Project Affected Persons (PAPs), and establish realistic compensation budgets. This will provide reliable baselines for project implementation and minimize significant variances between planned and actual compensation costs.
- 1.8.2 Clarify governance roles and strengthen oversight by ensuring that the State Department for Energy and the KETRACO Board discharge their statutory mandates under the Energy Act, 2019, the Land Act, 2012 and any other relevant regulations. This will enhance accountability in land acquisition and compensation processes and reduce risks of irregular payments or weak Board oversight.
- 1.8.3 Ensure alignment between approved budgets and actual disbursements in compliance with the Public Finance Management Act, 2012 and related

- Regulations. This will reduce persistent underfunding, avoid accumulation of arrears, and ensure timely settlement of compensation obligations.
- 1.8.4 Develop and enforce approved policies, guidelines, and procedure manuals for wayleave acquisition and project implementation, and ensure they are consistently applied. This will standardize processes, improve compliance, and minimize disputes.
  - 1.8.5 Improve documentation and record management by maintaining complete and verifiable records of land ownership, valuations, acquisitions, and payments, in line with Section 44 of the Public Procurement and Asset Disposal Act, 2015. Establishing a centralized digital records system will improve transparency and reduce disputes.
  - 1.8.6 Strengthen financial management controls by enforcing proper authorization of all compensation payments, conducting regular reconciliations of wayleave compensation accounts, and subjecting them to periodic internal audits. This will mitigate risks of duplicate, irregular, or unsupported payments.
  - 1.8.7 Publicize all affected land parcels and subsequent addendums, and ensure parcels no longer affected due to rerouting are formally degazetted. This will improve transparency and prevent irregular or duplicate claims.
  - 1.8.8 Formally appoint and empower Project Implementation Teams (PITs) to oversee Resettlement Action Plans (RAPs) and ensure accountability for implementation of project activities.
  - 1.8.9 Reconcile and account for all valuation and compensation amounts, ensure use of dedicated project bank accounts, and recover any irregular payments. Disciplinary measures should be taken against responsible officers in line with relevant laws and regulations.
  - 1.8.10 Build staff capacity on budgeting, financial management, and project controls in order to ensure effective use of budgets as a control tool, and adherence to Government's PFM frameworks.
  - 1.8.11 Account for the Kshs.1,857,469,156 unaccounted funds in the India Funded Project, complete reconciliations, and implement controls to prevent recurrence in future projects.
  - 1.8.12 Expedite valuation and settlement of outstanding compensation claims relating to damaged crops, trees, structures, and businesses, and disclose

compensation payable to PAPs in a transparent manner. This will ensure timely closure of claims and restore livelihoods.

- 1.8.13 Establish an escrow account for PAP compensation to facilitate timely payment, minimize disputes, and ensure funds are ring-fenced for compensation purposes.
- 1.8.14 Document the lessons learnt from the implementation of the seven (7) projects and integrate them into KETRACO's policies, manuals, and training programs, in order to prevent recurrence of the identified weaknesses in future projects.

## **1.9 Conclusion**

- 1.9.1 The primary objective of the audit was to establish the accuracy, genuineness and compliance with the law by the Ministry of Energy and KETRACO on the long outstanding wayleave compensations in all the seven (7) donor-funded projects.
- 1.9.2 As at 30 June, 2023, the total value in the compensation schedules for the seven (7) donor-funded projects amounted to Kshs.17,021,117,745, out of which Kshs.12,986,155,053 had been paid, leaving an outstanding balance of Kshs.4,034,962,691.
- 1.9.3 The audit established that project conceptualization and feasibility assessments were not sufficiently robust to provide reliable estimates of compensation requirements. The Resettlement Action Plans (RAPs) prepared at project inception did not quantify all Project Affected Persons, and their budgets did not provide a sound basis for implementation. This was evidenced by significant variances between estimated and actual compensation costs across the projects.
- 1.9.4 Governance structures, including the roles of the Ministry of Energy and the KETRACO Board, did not consistently comply with statutory mandates, resulting in weak oversight in land acquisition and compensation processes. Budgeting was affected by variances between approved budgets and actual disbursements, leading to persistent underfunding and delays in meeting compensation obligations. Documentation relating to land ownership, valuation, and acquisition was incomplete, limiting assurance on the accuracy and genuineness of the wayleave claims. Financial management controls

were weak, with instances of irregular payments and significant outstanding claims not supported by adequate records.

- 1.9.5 There were systemic weaknesses in feasibility planning, governance, budgeting, documentation, and compliance processes undermined accountability. These lapses compromised the reliability of compensation records, increased the risk of irregular or duplicate payments, and exposed public resources to legal disputes, financial loss, and protracted settlement of claims.

## 2 INTRODUCTION AND BACKGROUND INFORMATION

### 2.1 Introduction

- 2.1.1 The reports of seven (7) donor-funded projects implemented by the Kenya Electricity Transmission Company Ltd (KETRACO), for the financial year 2018/2019 raised several issues under the Emphasis of Matter and/ or Other Matter Sections on long outstanding wayleave compensations for the projects. The wayleave compensations cumulatively amounted to Kshs.1,686,546,016 as at 30 June, 2019.
- 2.1.2 The Public Accounts Committee (PAC) Report on the examination of the Report of the Auditor-General on the financial statements for the National Government for the financial year 2018/2019 was adopted by the National Assembly on 02 June, 2022. The PAC Report recommended that the Auditor-General should conduct a forensic audit on wayleave compensation done by the Ministry of Energy in all donor-funded projects.
- 2.1.3 The Auditor-General carried out the Forensic Audit in accordance with Article 254(2) of the Constitution and Section 37 of the Public Audit Act, 2015 which stipulates that the Auditor-General may, upon request by Parliament, conduct forensic audits to establish fraud, corruption or other financial improprieties.

### 2.2 Background

#### **Ministry of Energy**

- 2.2.1 The then Ministry of Energy, now the State Department for Energy, implements projects through implementing agencies. According to the Executive Order No.1 of 2018, on Organization of the Government of the Republic of Kenya, the functions of the Ministry of Energy included the following:
- i) National Energy Policy, Development and Management;
  - ii) Thermal Power Development;
  - iii) Rural Electrification Programme;
  - iv) Energy Regulation, Security and Conservation;
  - v) Hydropower Development;
  - vi) Geothermal Exploration and Development; and
  - vii) Promotion of Renewable Energy.

## **Kenya Electricity Transmission Company Limited**

2.1.1 The Kenya Electricity Transmission Company Limited (KETRACO) is one of the institutions/agencies under the then Ministry of Energy (MOE). KETRACO is registered under the Companies Act, Cap 486, pursuant to Sessional Paper No. 4 of 2004 on Energy. According to KETRACO's 2018-2022 Strategic Plan (Abridged Edition), the Company is mandated to plan, design, construct, own, operate and maintain high voltage electricity transmission grid and regional power interconnectors. In carrying out this mandate, the Company aims at developing a robust grid system in order to:

- i. Improve quality and reliability of electricity supply in Kenya;
- ii. Transmit electricity to areas that are currently not supplied from the national grid;
- iii. Evacuate power from planned generation plants;
- iv. Provide a link with the neighboring countries in order to facilitate power exchange and develop electricity trade in the Eastern African Region;
- v. Reduce electricity transmission losses; and
- vi. Protect electricity consumers from high cost of power by absorbing capital cost of transmission infrastructure.

2.1.2 The seven (7) donor-funded projects under review were under the Ministry of Energy and were implemented by KETRACO.

## **2.2 Audit Objective**

2.2.1 The primary objective of the audit was to establish the accuracy and genuineness of the long outstanding wayleave compensations in all the seven (7) donor-funded projects. In addition, the audit sought to establish compliance with the law by the Ministry of Energy and KETRACO during the compensation process.

## **2.3 Terms of Reference**

2.3.1 The following Terms of Reference (TORs) guided the audit: -

### **a) Conceptualization and Feasibility Study:**

- To establish how the Projects were conceptualized; and

- To establish if there was feasibility study before commencement of each Project.

**b) Governance and Related Issues**

- To review the roles and responsibilities of the Board of Directors of KETRACO and Commissioners of NLC and confirm whether these responsibilities were undertaken according to the law/ guidelines in the Projects cycle.

**c) Budget and Budgetary Control:**

- To review the budget for the financial years under review to confirm whether the process complied with the law; and
- To establish the sources of funds for the Projects and budgetary allocation

**d) Assets Management and Wayleave Acquisition:**

- To establish the ownership of the affected parcels to confirm that they are not public land;
- To ascertain the parcel number, acreage/size and value of each parcel and if professional valuation was carried out;
- To establish if the process applied in the acquisition of the parcels was according to the law; and
- To confirm if the ownership was transferred to the respective government institutions.

**e) Financial Management and Expenditure:**

- To establish the payment process and internal control system in place;
- To ascertain that all payments relating to land compensations are properly authorized and in compliance with the law; and
- To confirm the outstanding compensation claims

**f) Identify any Irregularities and Responsibilities and give Recommendations on Way Forward.**

**2.4 Audit Scope and Limitations**

**Scope**

2.4.1 The scope of the audit was limited to the wayleave compensation to landowners in the seven (7) donor-funded projects. The audit was carried out at the State

Department for Energy and KETRACO. Physical verification was also undertaken for the parcels of land with outstanding wayleave compensations.

2.4.2 The audit covered the wayleave compensation process for the financial years 2010/2011 to 2021/2022, within which period the projects were undertaken.

### **Limitations and Mitigations**

2.4.3 The Audit Team experienced challenges and limitations, which were mitigated in several ways in order not to negatively affect the quality and result of the findings. Some challenges and measures taken included:

- i) Access challenges to some beneficiaries of the paid and/or outstanding wayleave compensation-To mitigate this challenge, the Audit Team engaged and utilized the local Administration to reach the Project Affected Persons (PAPs), including landowners and other PAPs.
- ii) Complexity of the compensation process-The Audit Team mitigated this challenge by constantly engaging staff from the State Department for Energy, KETRACO and experts from the State Department for Lands and Physical Planning.

1.5.5 The audit covered twelve (12) financial years, from 2010/2011 to 2021/2022. Consequently, there was delay in retrieval of the necessary records due to the time taken being longer than expected, among others. The challenge was mitigated by forwarding to the client, the list of required documents one (1) week before the audit exercise commenced. Further, during audit execution, the Audit Team constantly updated the client on the documents not provided as a follow up. However, the documents listed in **Appendix 1** were not provided for audit.

## **2.5 Audit Approach and Methodology**

2.5.1 The Audit Team held inception, entry and exit meetings with the Management Teams at the State Department for Energy and KETRACO.

2.5.2 An inception meeting was held at KETRACO on 5 October, 2022. Entry meetings were held at the State Department for Energy and KETRACO on 4 April, 2023 and 5 April, 2023, respectively. During the entry meetings, the audit strategies were discussed and adopted, which were then applied in the

execution of the audit. Exit meetings were held at the State Department for Energy and KETRACO on 31 October, 2023 and 1 November, 2023, respectively.

- 2.5.3 The main evidence gathering methods applied during the audit execution were as follows: -

#### **Document Reviews**

- 2.5.4 To effectively execute the Audit and as a source of audit evidence, the Audit Team reviewed various documents, including but not limited to: Sessional Paper No. 4 of Energy 2004, Energy Act 2019, Least Cost Power Development Plan (LCPDP) for 2008 to 2028, Transmission Master Plan 2022 to 2041, Feasibility Study Reports, Environmental and Social Impact Assessment (ESIA) study Reports, Resettlement Policy Framework, Resettlement Action Plan reports, Projects Loan Agreements, Projects Contracts, Public Finance Management Act, 2012, Public Finance Management Regulations, 2015, Land Act, 2012, Title Deeds for Substation land acquired, Offer letters, Crop Damage reports, Financial Statements, Survey reports, Valuation reports, Cadastral Strip Plans, Approved Valuation Schedules, Payment schedules, Standard Operating Procedures (SOPs), Board minutes, Relevant Policies and Circulars, Approved Budgets, Cash Books, Bank Statements, Ledgers, Payment Vouchers, Claims, Internal Audit Reports and other relevant documents.

#### **Analytical Reviews**

- 2.5.5 The Audit Team undertook computations, comparisons and other necessary analysis in order to obtain the required evidence.

#### **Use of Experts**

- 2.5.6 Due to the technical nature of the assignment, the Office engaged experts from the State Department for Lands and Physical Planning, to offer professional guidance in the assessment of land compensation valuation process of the Projects. The experts were drawn from the Land Adjudication and Settlement Department, Survey Department, Land Valuation Department and Land Registration Department. The experts were nominated by the

Principal Secretary, State Department for Lands and Physical Planning, vide Letter Reference Number LS/APPTS/VOL I/5/ (128), dated 24 April, 2023.

### Physical Verification

- 2.5.7 The Audit Team carried out physical verification between 21 August and 20 September, 2023 for the seven (7) donor-funded projects, so as to ascertain existence, the size/acreage and locations of the parcels of land with outstanding claims.

### Interviews

- 2.5.8 The Audit Team interviewed officers from the State Department for Energy, KETRACO and PAPs, as detailed in **Table 1**.

**Table 1: List of Persons Interviewed**

No.	Name	Designation	Date Interviewed
<b>State Department for Energy</b>			
1.	Wycliffe Ogallo	Secretary Administration	24 April, 2023
2.	Tom Maruti	Economist	27 April, 2023
<b>KETRACO</b>			
1.	Dr. (Eng.) John Mativo	Managing Director (MD)	30 May, 2023
2.	Tom Imbo	General Manager Finance	02 May, 2023
3.	Johnson Muthoka	Senior Wayleave Acquisition Manager	17 April, 2023
4.	Harrison Sungu	Senior Engineer Wayleave	13 April, 2023
5.	Victor Wanyams Oundo	Surveyor	19 April, 2023
6.	David Matolo	Project Accountant	18 April, 2023
7.	David Obale	Legal Officer	13 March, 2023
8.	Simon Abusu	Internal Auditor	19 April, 2023
9.	Project Affected Persons	PAPs	21 August to 20 September, 2023

## 2.6 Report Structure

- 2.6.1 This report is presented in the following format:
- i. Executive Summary;
  - ii. Introduction and Background;
  - iii. Detailed Findings;
  - iv. Irregularities, Responsibilities and Recommendations;
  - v. Conclusion; and

vi. Appendices.

2.6.2 The report should be read in its entirety in order to comprehend fully the approach to and findings of our work. The report has covered analysis and facts as understood, with the aim of informing the Public Accounts Committee of the genuineness of the land compensation claims in the Ministry of Energy and KETRACO, bearing in mind the challenges and limitations experienced.

## DETAILED FINDINGS

### Preamble and Summary of Claims

According to the Auditor-General's and Public Accounts Committee (PAC) reports for the year ended 2018/2019, the cumulative amount for the long outstanding wayleave compensation for the seven (7) projects was Kshs.1,686,546,016. The amount was in respect to 6,141 claims implemented by the Kenya Electricity Transmission Company Ltd (KETRACO).

As at 30 June, 2023, the total value in the compensation schedules for the seven (7) donor-funded projects amounted to Kshs.17,021,117,745, out of which Kshs.12,986,155,053 had been paid. The outstanding wayleave compensation for the Projects therefore, amounted to Kshs.4,034,962,691, as summarized in **Table 2**.

**Table 2: Summary of Claims**

	Transmission Line	Compensation Amount (Kshs.)	Amount Paid (Kshs.)	Amount Outstanding (Kshs.)	Percentage Outstanding
1.	Ethiopia Kenya	2,619,511,109	2,305,195,668	314,315,441	12%
2.	Kenya Tanzania	1,636,575,245	1,314,888,467	321,686,778	20%
3.	Kenya Uganda	1,835,863,715	1,357,202,952	478,660,763	26%
4.	KPTSIP	2,265,413,334	2,001,731,829	263,681,505	12%
5.	Turkwel Ortum – Kitale	865,295,956	650,773,989	214,521,967	25%
	Machakos Konza	55,401,311	29,805,031	25,596,280	46%
6.	Suswa - Isinya	2,160,697,705	2,014,339,790	146,357,915	7%
7.	Olkaria	5,582,359,370	3,312,217,327	2,270,142,042	41%
	Lessos Kisumu				
	<b>Total</b>	<b>17,021,117,745</b>	<b>12,986,155,053</b>	<b>4,034,962,691</b>	

The Audit Team reviewed and analysed the claims and the audit findings are reported herein.

### 3 ETHIOPIA – KENYA TRANSMISSION LINE

#### 3.1 Project Overview

- 3.1.1 The Eastern Electricity Highway Project (EEHP) is a 500kv high voltage direct current (HVDC) transmission line between Ethiopia and Kenya. The transmission line originates from Suswa Substation in Kenya and terminates at Wolayta/Sodo Substation in Ethiopia covering approximately 1,045 Kilometers with 612 Kilometers being in Kenya and 433 Kilometers being in Ethiopia. The Project was undertaken by KETRACO and Ethiopian Electric Power Corporation representing Kenya and Ethiopia respectively.
- 3.1.2 The Transmission Line traverses a total of 2,638 parcels of land in eight (8) Counties in Kenya, as detailed in **Table 3**.

**Table 3: Counties Affected by the Ethiopia - Kenya Transmission Line**

	<b>County</b>	<b>Number of Parcels</b>
1.	Marsabit	2
2.	Samburu	6
3.	Isiolo	1
4.	Laikipia	84
5.	Nyandarua	1,364
6.	Nakuru	1,143
7.	Kajiado	10
8.	Narok	28
	<b>Total</b>	<b>2,638</b>

- 3.1.3 The construction of the transmission line commenced in October 2015 and was completed on 18 November, 2022 according to the operational acceptance certificate issued on 30 December, 2022.

#### **Summary of Claims**

- 3.1.4 As at 30 June, 2023 the total value in the compensation schedules for the Ethiopia-Kenya Transmission Line amounted to Kshs.2,619,511,109 out of which KETRACO had paid Kshs.2,305,195,668 (88%) leaving an outstanding balance of Kshs.314,315,441. The Audit Team reviewed and analyzed the claims for the Project compensation. The following are the audit findings;

## 3.2 Conceptualization and Feasibility Study

### Project Conceptualization

- 3.2.1 Sessional Paper No. 4 of 2004 on Energy, lays the policy framework upon which cost-effective, affordable and adequate quality energy services will be made available to the domestic economy on a sustainable basis over the period 2004-2023. It further sets out the National policies and strategies for Kenya's energy sector in the short to long-term.
- 3.2.2 Part 2.1.2 of the Sessional Paper No. 4 of 2004 on Energy on Institutional Arrangements states that Government activities in the power sub-sector are limited to formulation and articulation of policies through which it provides an enabling environment to all economic operators and other stakeholders, training of manpower, preparation of the Country's twenty (20) year rolling Least Cost Electric Power Development Plan (LCPDP) revised annually to take account of new information, implementation of the rural electrification programme and to a large extent mobilization of financial resources for system expansion.
- 3.2.3 It was established that the Ethiopia - Kenya Transmission Line was captured as one of the regional interconnections in the Least Cost Power Development Plan (LCPDP) for 2008 to 2028 as required.
- 3.2.4 According to the Environmental and Social Impact Assessment (ESIA) study dated January 2012, the Government of the Federal Democratic Republic of Ethiopia and the Government of Kenya signed a Memorandum of Understanding (MOU) on 07 May, 2006 which identified the need for technical cooperation between the two countries in power generation, transmission, rural electrification and customer-relations services. In this regard, interconnection of the Ethiopian and Kenyan electric power systems was agreed upon. However, the MOU between the two (2) countries was not provided for review. The Audit Team therefore, could not ascertain the scope of the Project.
- 3.2.5 Following the bilateral arrangement between Ethiopia and Kenya to develop a transmission interconnector between the two (2) Countries, Ethiopian Electric

Power Corporation (EEPCO) and The Kenya Power and Lighting Company (KPLC) entered into a Power Purchase Agreement.

- 3.2.6 The KETRACO provided a Power Purchase Agreement for the Project dated 26 July, 2022 which referred to an initial Power Purchase Agreement dated 14 February, 2012. However, the initial Power Purchase Agreement was not provided for review. Part K and N of the Power Purchase Agreement, 2022 states that EEPCO has agreed to sell and KPLC has agreed to purchase power in accordance with the terms and conditions of the agreement in order to actualize the objective of the power trade.
- 3.2.7 Section 5(2) of the Energy Act, 2019 states that each National energy service provider shall develop and submit to the Cabinet Secretary plans for provision of energy services in accordance with its mandate. KETRACO therefore, developed a Transmission Masterplan covering the period 2022 to 2041 to comply with the Energy Act, 2019 and the Ethiopia - Kenya Transmission Line was captured as one of the Projects to be implemented.
- 3.2.8 Therefore, based on the aforementioned, the Ethiopia – Kenya interconnector Project was in line with the LCPDP and Transmission Masterplan as required by Sessional Paper No. 4 of 2004 on Energy and the Energy Act, 2019, respectively.

### **Project Feasibility and Environmental and Social Impact Assessment Studies**

- 3.2.9 A feasibility study was conducted in 2009 by Fichtner GmbH & Company which concluded that the Project was economically and financially attractive under the assumption of all three cases.
- 3.2.10 The feasibility study gave three (3) cases considering the different degrees of utilization of the lines. The first case gave a project cost of €1,182,608, equivalent to Kshs.119,443,408, the second case gave a project cost of € 797,248, equivalent to Kshs.80,522,048 and the third case gave a total cost of €1,022,708, equivalent to Kshs.103,293,508. The Audit Team did not determine the case scenario that was implemented by KETRACO since the scope of the audit was limited to compensation of the Project Affected Person and not construction of the transmission line.

- 3.2.11 Section 2.1.7 of the Sessional Paper No. 4 of 2004 on Energy requires that a comprehensive Environmental Impact Assessment is conducted for all Projects prior to their implementation. An Environmental and Social Impact Assessment study (ESIA) for the Project was prepared in January 2012 by Tropics Consulting Engineers Plc and Gamma Systems Ltd. According to ESIA, the Ethiopia – Kenya Power Interconnection Project was to usher in regional energy trade and optimization of the usage of energy resources available in the COMESA region. The study concluded that the Project would have subtle direct impacts on the biophysical environment, insufficient impact on the wildlife, high socio – economic impact as there would be relocation of a few households and compensation of assets and remote impact of electromagnetic fields and ionic effects. The ESIA report resulted in a NEMA License No. 0017046, dated 25 July, 2013 for the Ethiopia – Kenya Transmission Line.
- 3.2.12 Section 1.1 of the Resettlement Policy Framework (RFP), 2011 states that a specific Resettlement Action Plan (RAP) will be developed for each project. The RAP Report for the Ethiopia-Kenya Transmission Line was completed in May 2014. The RAP was done in four (4) lots by Log Associates, Najj Consultants Ltd and Panafcon Ltd and identified 602 households that would be affected by the Project. The budget for the resettlement and compensation of the affected persons, communities, public and institution land and assets was Kshs.1,778,204,391.

### **3.3 Governance and Related Issues**

#### **Roles and Responsibilities as per the Law/ Guidelines in the Project Cycle**

##### ***Failure to Provide Board Committee Charters Prior to 2019***

- 3.3.1 Section 1.7 of Mwongozo, the Code of Governance for State Corporations of 2015, states that the Board should establish not more than four (4) committees with the Audit Committee being one of them.
- 3.3.2 The Kenya Electricity Transmission Company Ltd had four (4) Board Committees, namely; Staff and Remuneration Committee, Audit and Risk Assurance Committee, Finance, Strategy & Risk Management Committee and

Technical Committee. The Audit Team reviewed the committee charter for each of the four (4) Board Committees developed in 2019.

3.3.3 However, committee charters prior to 2019 were not provided for review. The Audit Team therefore, could not ascertain whether the committees were established prior to 2019 in line with Section 1.7 of Mwongozo, the Code of Governance for State Corporations of 2015.

3.3.4 According to the committee charters developed in 2019, the Technical Committee had the primary responsibilities with regards to implementation of Projects. The main roles and responsibilities of the Technical Committee were:

- i) To oversee the operationalization and implementation of the company transmission master plan;
- ii) To receive regular reports on power system planning, Project progress, system availability and operations and maintenance and make necessary recommendations to the Board as may be appropriate;
- iii) To ensure that Projects are planned, implemented in accordance with the strategic plan priorities, performance contract, approved budgets, procurement plans, national policies and priorities and engineering best practice; and
- iv) To receive and consider the reports of all proposed new Projects, policies, and capital developments.

***Absence of Project Implementation Team Appointment Letters***

3.3.5 Section 9.1 of the Resettlement Policy Framework, 2011 provides that the Ministry of Energy will offer administrative input and make decisions about the policy direction of the Projects undertaken by KETRACO. The execution of a Project is delegated to the Project Implementation Team (PIT), a Management Committee established to implement the Resettlement Action Plan (RAP) and provides oversight over all other Project activities.

3.3.6 Appointment letters of the PIT members and minutes of meetings were not provided for audit review. Consequently, the Audit Team could not establish whether a PIT was in place to oversee implementation of the Project as required by the Resettlement Policy Framework, 2011.

### 3.4 Budget and Budgetary Control

#### Wayleave Compensation and Resettlement Cost

- 3.4.1 The Resettlement Action Plan report for the Ethiopia-Kenya Transmission Line was done in four (4) lots and identified 602 households that would be affected by the Project. The cost for the resettlement and compensation of the affected persons, communities, public and institution land and assets was estimated at Kshs.1,778,204,391, as shown in **Table 4**.

**Table 4: Summary of Ethiopia - Kenya Resettlement Action Plan Report**

Lot No.	Area Covered	Kilometres	No. of PAPs	No. of Structures	Compensation Estimate (Kshs.)
Lot 1	Ethiopia Border to Log Logo	195	12	59	85,989,108
Lot 2	Log Logo to Kinamba	195	97	212	30,231,634
Lot 3	Kinamba to Shamata	111	141	297	443,533,368
Lot 4	Shamata to Suswa	111	352	1,283	1,218,450,281
<b>Total</b>		<b>612</b>	<b>602</b>	<b>1,851</b>	<b>1,778,204,391</b>

#### Project Source of Funds and Financing

- 3.4.2 The Ethiopia – Kenya Transmission Line was financed by the Government of Kenya through the Ministry of Energy and Petroleum and the National Treasury, African Development Fund, International Development Association and Agence Française de Development.
- 3.4.3 The Government of Kenya through The National Treasury entered into financing agreements with the donor partners for the Ethiopia – Kenya Transmission Line, as detailed in **Table 5**.

**Table 5: Summary of Ethiopia - Kenya Financing Agreements**

Donor	Loan Amount	Amount (Kshs.)	Date of Financing Agreement
African Development Fund	Unit of Account (UA) 75,000,000	6,450,000,000	6 December, 2012
International Development Association	Special Drawing Rights (SDR) 284,500,000	24,467,000,000	5 December, 2012
Agence Française De Development	EUR 91,000,000	10,829,000,000	16 December, 2013
<b>Total</b>		<b>41,746,000,000</b>	

3.4.4 The Audit Team noted that the Government of Kenya, through the Ministry of Energy and Petroleum and The National Treasury, did not enter into any financing agreement with KETRACO. The amount to be financed by the Government of Kenya and how it was to be utilized could therefore, not be ascertained.

#### **Approved Budget for Ministry of Energy and KETRACO**

3.4.5 The Ethiopia – Kenya Transmission Line was financed by the Government of Kenya, International Development Association, Agence Française de Development and African Development Bank. The budget for both the donor and GOK component was factored in the Development Budgets for both the Ministry of Energy and KETRACO, as shown in **Table 6**.

**Table 6: Budget for MOE and KETRACO for the Ethiopia-Kenya Transmission Line**

FY	Ministry of Energy as per Revised Budget Estimates			KETRACO as per Audited Financial Statements		
	Donor (Kshs)	GOK (Kshs.)	Total (Kshs.)	Donor (Kshs.)	GOK (Kshs.)	Total (Kshs.)
2013/2014	Not Itemised	Not Itemised	N/A	957,000,000	503,000,000	1,460,000,000
2014/2015	Not Itemised	Not Itemised	N/A	4,352,000,000	600,000,000	4,952,000,000
2015/2016	5,068,842,164	147,000,000	5,215,842,164	12,778,437,564	296,000,000	13,074,437,564
2016/2017	13,761,500,000	457,000,000	14,218,500,000	10,144,795,543	986,587,600	11,131,383,143
2017/2018	3,691,610,320	304,848,215	3,996,458,535	3,691,610,320	304,848,215	3,996,458,535
2018/2019	5,326,000,000	1,155,000,000	6,481,000,000	5,326,000,000	1,155,000,000	6,481,000,000
2019/2020	11,283,000,000	327,750,000	11,610,750,000	11,483,000,000	327,750,000	11,810,750,000
2020/2021	7,600,000,000	372,000,000	7,972,000,000	6,324,000,000	372,000,000	6,696,000,000
2021/2022	5,728,000,000	0	5,728,000,000	5,728,000,000	93,000,000	5,821,000,000
2022/2023	5,751,000,000	126,000,000	5,877,000,000	5,751,000,000	126,000,000	5,877,000,000
<b>Total</b>	<b>58,209,952,484</b>	<b>2,889,598,215</b>	<b>61,099,550,699</b>	<b>66,535,843,427</b>	<b>4,764,185,815</b>	<b>71,300,029,242</b>

3.4.6 The approved budget for the Ministry of Energy for the FY 2013/2014 and 2014/2015 were not program-based budgets. The Audit Team therefore, could not establish the budgeted amount for the Ethiopia – Kenya Transmission Line in those financial years.

3.4.7 It was established that the final approved budgets for both the Ministry of Energy and KETRACO for the GOK component was a single line budget. The allocation was to cater for wayleave, consultancy fees and other operating costs. The amount allocated by KETRACO for compensation to PAPs out of the GOK component of Kshs.4,764,185,815 could not be established. The Audit Team therefore, could not compare the compensation amount estimated by the RAP of Kshs.1,778,204,391 with the compensation amount budgeted by KETRACO.

#### **Disbursements from the Ministry of Energy to KETRACO**

3.4.8 The total disbursements made by the Ministry of Energy (MOE) to KETRACO for the GOK component is summarized in **Table 7**.

**Table 7: Disbursements for the Ethiopia - Kenya Transmission Line**

<b>FY/Project</b>	<b>MOE to KETRACO (Kshs.) as per MOE Schedules</b>	<b>KETRACO to Project (Kshs.) as per Audited FS</b>
2013/2014	Not Itemised	626,844,572
2014/2015	Not Itemised	397,494,002
2015/2016	147,000,000	331,839,485
2016/2017	457,000,000	638,806,085
2017/2018	304,848,215	342,480,422
2018/2019	1,155,000,000	972,500,000
2019/2020	437,000,000	510,250,000
2020/2021	372,000,000	388,250,000
2021/2022	0	93,000,000
2022/2023	31,500,000	31,500,000
<b>Total</b>	<b>2,904,348,215</b>	<b>4,332,964,566</b>

3.4.9 The disbursements from the MOE to KETRACO for 2013/2014 and 2014/2015 could not be established since the vote books for the period were not program based. The Ministry of Energy transferred a total of Kshs.2,904,348,215 to KETRACO between the FY 2015/2016 and 2022/2023 while KETRACO's receipts on the Project according to the audited financial statements for the period 2013/2014 to 2022/2023 was Kshs.4,332,964,566. The Audit Team therefore, could not reconcile the disbursements from MOE to KETRACO and to the Project.

**GOK Component Budget Vs Actual Disbursement for the Eastern Electricity Highway Project**

***Variance Between Approved Budget and Disbursements to KETRACO Kshs.431,221,249***

3.4.10 A comparison between the approved budgets and actual disbursements made for the Project revealed that from the financial year 2013/2014 to 2022/2023, KETRACO received a total of Kshs.4,332,964,566 from MOE against the total approved budget of Kshs.4,764,185,815, resulting in under funding of the budget by Kshs.431,221,249, as shown in **Table 8**.

**Table 8: Disbursements from MOE to KETRACO for the Ethiopia-Kenya Line**

FY/Project	MOE			KETRACO		
	Budget Allocation Kshs.	Actual Disbursement from MOE Kshs.	Variance Kshs.	Budget Allocation Kshs.	Actual Disbursement to the Project Kshs.	Variance Kshs.
2013/2014	Not Itemised	Not Itemised	-	503,000,000	626,844,572	123,844,572
2014/2015	Not Itemised	Not Itemised	-	600,000,000	397,494,002	(202,505,998)
2015/2016	147,000,000	147,000,000	-	296,000,000	331,839,485	35,839,485
2016/2017	457,000,000	457,000,000	-	986,587,600	638,806,085	(347,781,515)
2017/2018	304,848,215	304,848,215	-	304,848,215	342,480,422	37,632,207
2018/2019	1,155,000,000	1,155,000,000	0	1,155,000,000	972,500,000	(182,500,000)
2019/2020	327,750,000	437,000,000	109,250,000	327,750,000	510,250,000	182,500,000
2020/2021	372,000,000	372,000,000	0	372,000,000	388,250,000	16,250,000
2021/2022	0	0	0	93,000,000	93,000,000	0
2022/2023	126,000,000	31,500,000	(94,500,000)	126,000,000	31,500,000	(94,500,000)
<b>Total</b>	<b>2,889,598,215</b>	<b>2,904,348,215</b>	<b>14,750,000</b>	<b>4,764,185,815</b>	<b>4,332,964,566</b>	<b>(431,221,249)</b>

3.4.11 The underfunding of the budget by Kshs.431,221,249 may have led to the delays in the compensation process of the Project Affected Persons and thus impacted negatively on service delivery by KETRACO.

### 3.5 Asset Management and Wayleave Acquisition

#### *Failure to Provide the Land Scoping Report for the Purchase of Land for the Electrode Site*

- 3.5.1 Section 1.4.1 of the Resettlement Policy Framework (RPF), 2011 provides that the Company will identify a potential site for constructing a Substation and the price of land will be negotiated with the landowner based on existing market value.
- 3.5.2 The Kenya Electricity Transmission Company Ltd contracted Lloyd Masika Ltd to carry out valuation of the proposed electrode site land, L.R No. Suswa/Kitet/1 and provide the value for one (1) acre piece of land. The valuation company inspected the land on 08 August, 2014 and issued a valuation report dated 21 August, 2014 where an acre was valued at Kshs.600,000.
- 3.5.3 According to the Tender Committee Minutes dated 06 November, 2014, the Committee approved purchase of 188.42 acres at Kshs.600,000 per acre, amounting to a total cost of Kshs.113,052,000.
- 3.5.4 The Kenya Electricity Transmission Company Ltd entered into a sale agreement with Suswa/Kitet Group Ranch on 27 January, 2016. According to clause 1.1.8 of the Sale Agreement, the purchase price was Kshs.93,467,800 for 158.42 acres, at a price of Kshs.590,000 per acre.
- 3.5.5 A deed of variation was signed on 12 January, 2017 between KETRACO and Suswa/Kitet Group Ranch. According to the deed of variation, clause 1.1.8 of the Sale Agreement was varied to give a purchase price of Kshs.110,961,300 for 188.07 acres at a price of Kshs.590,000 per acre.
- 3.5.6 The acreage for the proposed land, L.R No. Suswa/Kitet/1 increased from 158.42 acres to 188.07, which comprised of five (5) parcels of land, as shown in **Table 9**.

**Table 9: Parcels of Land Purchased for the Ethiopia-Kenya Transmission Line**

Land Parcel	Acreage per Sale Agreement	Acreage per Deed of Variation	Variance
Cis-Mara/Suswa Kitet 220	38.2	38.2	-
Cis-Mara/Suswa Kitet 221	43.12	72.77	29.65
Cis-Mara/Suswa Kitet 219	38.2	38.2	-
Cis-Mara/Suswa Kitet 218	30.15	30.15	-
Cis-Mara/Suswa Kitet 222	8.75	8.75	-
<b>Total</b>	<b>158.42</b>	<b>188.07</b>	<b>29.65</b>

- 3.5.7 Clause C of the Deed of Variation indicated that Land Parcel Cis-Mara/Suswa Kitet 221 measured 72.77 acres, instead of 43.12 acres, as described in the agreement, thereby increasing the size of the plot by 29.65 acres. The Audit Team was not able to measure the parcel of land to confirm the actual acreage and the justification for the increase by 29.65 acres was not clear.
- 3.5.8 The Kenya Electricity Transmission Company Ltd paid the purchase price of Kshs.110,961,300 in two (2) instalments of Kshs.18,693,560 and Kshs.92,267,740. Consequently, KETRACO was issued with five (5) title deeds for the five (5) parcels of land.
- 3.5.9 The land scoping report which was expected to contain information on how the land was identified and any negotiations that were held between KETRACO and the landowner was not provided to the Audit Team for review. The Audit Team could therefore, not determine how the land was identified and whether the land acquired was the most economically viable option.

***Failure to Provide the List of Prequalified Suppliers for FY 2011/2012 to 2016/2017 and Contractual Documents for Valuers***

- 3.5.10 The Kenya Electricity Transmission Company Ltd engaged two (2) survey consultants and four (4) valuation consultants to provide cadastral survey and valuation reports of land parcels and structures for the Ethiopia – Kenya Transmission Line, respectively. In addition, KETRACO engaged two (2) law firms to register easement agreements, as shown in **Table 10**.

**Table 10: Consultants Engaged for the Ethiopia-Kenya Transmission Line**

No	Firms	Description of Service	Name of Consultant	Contract Date	Contract Period
1.	Geosurv Systems Ltd	Survey Consultant	Not indicated	23 June, 2014	3 months
2.	Opiko & Associates	Survey Consultant	Not indicated	23 June, 2014	3 months
3.	Crystal Valuers Ltd;	Valuation Consultant	Evanson N Karanja	Not provided	Not Known
4.	Real Consult Valuers Ltd	Valuation Consultant	Nicholas M Kimanathi	29 August, 2017	Not stated
5.	National Land Commission.	Valuation Consultant	Prof. Muhammad A. Swazuri, PhD, OGW	29 October, 2015	Conclusion of wayleave acquisition process
6.	Panafcon Ltd	Valuation Consultant	Not provided	Not provided	Not Known
7.	Muciimi Mbaka & Co. Advocates	Register Easement agreements	Muciimi Mbaka	16 February, 2012	Open
8.	Anne Thungu & Co. Advocates	Register Easement agreements	Anne Wanjiru Thungu	27 September, 2016	Open

3.5.11 The Kenya Electricity Transmission Company Ltd provided contracts signed between themselves and the consultants for review except for Crystal Valuers Ltd and Panafcon Ltd.

3.5.12 The lists of prequalified suppliers for the FY 2011/2012 to 2016/2017 were not provided for review contrary to Section 9(1)(e) of the Public Audit Act, 2015. The Audit Team therefore, could not establish whether the two (2) survey consultants, three (3) valuation firms and the two (2) law firms contracted were in the list of prequalified suppliers as required by Section 25(3) of the Public Procurement Regulations, 2006 which states that; the procuring entity shall invite tenders from only the persons who have been pre-qualified under this regulation.

### **Survey of the Affected Parcels of Land**

- 3.5.13 Resettlement Policy Framework, 2011 and 2021 requires the surveyor to prepare a cadastral map of the transmission line route showing the plot numbers, ownership, parcel size and affected area of the individual parcels as well as the position of the towers. KETRACO engaged Geosurv Systems Limited and Opiko & Associates Limited on 23 June, 2014 to provide strip plan, cadastral data and ownership details. The two (2) survey companies issued strip plans, cadastral data and ownership details through survey reports. However, the survey reports provided for audit were neither dated nor signed.

### ***Failure to Publicize Affected Parcels of Land***

- 3.5.14 Section 144(4)(a) of the Land Act, 2012 states that a notice shall be served on all persons occupying land over which the proposed wayleave is to be created, including persons occupying land in accordance with customary pastoral rights.
- 3.5.15 The Kenya Electricity Transmission Company Ltd publicized 1,569 parcels of land which would be affected by the Ethiopia – Kenya Transmission Line on 20 May, 2015. However, the Audit Team noted that there were four (4) registration blocks namely; Longonot/Kijabe/Block6(Nyakinyua), Kajiado/Ewaso-Kedong, Kijabe/Block1 (Maai Mahiu) and Cis Mara/ Suswa Kitet comprising of 399 parcels of land which were affected but were not publicized as required. No documentary evidence was provided to the Audit Team to indicate that the fore-mentioned parcels of land were publicized at a later date. The parcels of land not publicized are as detailed in **Appendix 2**.

### ***Failure to Provide the Sampling Basis and Methodology Used in Arriving at Valuation Amounts***

- 3.5.16 Section 148(1) of the Land Act, 2012 provides that compensation for the use of land should be based on the value of land as determined by a qualified valuer. Further, Section 7.2.1 of the RPF, 2011 states that land is valued via the schedule of land values by zones obtained from the chief valuer as well as by a registered and licensed valuer.
- 3.5.17 The Audit Team reviewed the valuation reports provided by Crystal Valuers Ltd, Real Consult Valuers Ltd and the National Land Commission. It was noted

that valuation of the affected parcels of land along the Ethiopia-Kenya Transmission Line corridor were done on a sample basis, as shown in **Table 11**.

**Table 11: Valuation Reports for the Ethiopia - Kenya Transmission Line**

No.	Name of the Firm	Date of the Valuation Report	No. of Parcels Valued
1.	Crystal Valuers Ltd	27 July, 2015	81
2.	Real Consult Valuers Ltd	16 October, 2017 23 September, 2017	7
3.	National Land Commission	2 March, 2016 6 April, 2022	69
	<b>Total</b>		<b>157</b>

3.5.18 It was established that KETRACO valued 157 parcels of land out of a total of 2,638 affected parcels of land representing 6% which was used as a basis of computing the compensation amount payable to the Project Affected Persons. The criteria used to determine the 157 parcels of land that were sampled and valued was not provided for audit. In addition, the methodology used to arrive at the value of the land was not provided to the Audit Team. Therefore, it was not possible to confirm the accuracy, reliability and authenticity of the value of land provided by the three (3) Land Valuers.

### **3.6 Financial Management and Expenditure**

#### ***Lack of a Project Implementation Guideline Issued by MOE to KETRACO***

3.6.1 There was no project implementation guideline issued by the Ministry of Energy to KETRACO to define the allowable expenditures to be incurred by KETRACO, the scope of work to be undertaken by KETRACO and the responsibilities of both the MOE and KETRACO while constructing the Ethiopia - Kenya transmission line. The Audit Team therefore, could not confirm whether there was an efficient and effective use of the budgetary resources disbursed to KETRACO.

### Approved Wayleave Compensation

- 3.6.2 According to the RPF 2011, KETRACO was to compensate for land acquired or encumbered, structures affected, crops/trees destroyed and loss of income/business/employment. The amount of compensation payable for land, crops and structures to the Project Affected Persons was approved by the Managing Director on various dates between October 2016 and May 2023.
- 3.6.3 The Audit Team reviewed the compensation schedule provided for audit and noted that KETRACO had identified 2,638 parcels of land that were affected by the Project and the total compensation for land, structures and crops that had been encumbered, affected or destroyed respectively amounted to Kshs.2,619,511,109.

### Wayleave Compensation Paid and Outstanding

- 3.6.4 It was established that out of the total amount of Kshs.2,619,511,109 due for wayleave compensation, KETRACO had paid Kshs.2,305,195,668 as at 30 June, 2023 leaving an outstanding balance of Kshs.314,315,441 as detailed in **Appendix 3, Appendix 4 and Appendix 5**, respectively and summarized in **Table 12**.

**Table 12: Compensation Amount for the Ethiopia-Kenya Transmission Line**

Description	Number Affected	Total Wayleave Compensation Amount (Kshs.)	Amount Paid (Kshs.)	Amount Outstanding (Kshs.)
Land	2,638	1,457,267,520	1,175,712,071	281,555,449
Structure	866	648,965,576	639,394,616	9,570,960
Crop	2262	513,278,013	490,088,981	23,189,032
<b>Total</b>		<b>2,619,511,109</b>	<b>2,305,195,668</b>	<b>314,315,441</b>

- 3.6.5 The outstanding wayleave compensation amounting to Kshs.314,315,441 was reviewed and the reasons obtained as to why the PAPs have not been compensated are summarized in **Table 13**.

**Table 13: Reasons for Outstanding Compensation to PAPs for the Ethiopia - Kenya Transmission Line**

	<b>Reason for Outstanding Compensation</b>	<b>Parcels of Land</b>	<b>Amount (Kshs.)</b>
1	Absentee landowners	356	98,914,872
2	Court cases/ Succession cases	86	18,837,121
3	Disputed/ Rejected offer letters	110	82,999,844
4	Land held by Government of Kenya	15	22,214,864
5	Awaiting payment	455	82,885,332
6	PAPs did not have ownership documents	22	5,790,541
7	Survey issues	10	2,672,867
	<b>Total</b>	<b>1054</b>	<b>314,315,441</b>

3.6.6 The total amount for disputed/ rejected offer letters was Kshs.82,999,844 representing 26% of the outstanding wayleave compensation amount. According to Section 148(5) of the Land Act, 2012, "If the person entitled to compensation under this Section and the body under a duty to pay that compensation are unable to agree on the amount or method of payment of that compensation or if the person entitled to compensation is dissatisfied with the time taken to pay compensation, to make, negotiate or process an offer of compensation, that person may apply to the Court to determine the amount and method of payment of compensation and the Court in making any award may, make any additional costs and inconvenience incurred by the person entitled to compensation."

3.6.7 Therefore, there is a risk of KETRACO being taken to court by the Project Affected Persons for failure to agree on a compensation amount and this could result in KETRACO incurring nugatory legal costs.

***Failure to Open an Escrow Account***

3.6.8 The Resettlement Policy Framework, 2021 states that in the case of absentee PAPs, an escrow account will be set up where the allocated funds will be deposited to remain available for payment whenever the PAP(s) present themselves to KETRACO. Further, it also states that all monies due for compensation as at the Project completion date will be secured in the escrow account.

3.6.9 The Audit Team noted that the Ethiopia – Kenya Transmission Line was completed in November 2022. According to the audited financial statements

for the financial year ended 30 June, 2022, the Project had an amount of Kshs.309,065,381 at the KETRACO's operations bank account held at KCB. An escrow account should have been set up to deposit the monies for compensation that were not utilized as at November 2022. As at the time of the audit in November 2023, an escrow account had not been opened contrary to the Resettlement Policy Framework, 2021.

***Irregular Payment of Top Ups Amounting to Kshs.24,023,227***

- 3.6.10 The Kenya Electricity Transmission Company Ltd developed a Resettlement Policy Framework (RPF) in 2011 which was later revised in 2021. The RPF guided the resettlement process from feasibility studies, stakeholder consultation, compensation, resettlement and actual management of the stakeholders during implementation of RAPs.
- 3.6.11 According to RPF 2011 and RPF 2021, compensation for land was based on size of land and area affected, compensation for structures was paid to PAPs in two (2) instalments while compensation for crops was paid after assessment of the damaged crops/trees.
- 3.6.12 Review of the Ethiopia-Kenya wayleave compensation schedule revealed that KETRACO paid fifty-nine (59) PAPs top ups (second payment) amounting to Kshs.24,023,227. The RPF 2011 and RPF 2021 do not have any provision for payment of top ups (second payment) after the initial compensation to the PAPs. It was therefore, not clear why KETRACO made the top up payments of Kshs.24,023,227 as detailed in **Appendix 6**. In addition, no documentary evidence was provided on any efforts made by the Company to recover the Kshs.24,023,227.
- 3.6.13 In addition, no documentary evidence was provided by KETRACO to indicate any efforts made by the Company to recover public funds that were irregularly paid to the PAPs.

***Failure to Recover Compensation Paid for Parcels of Land Not Affected by the Project Amounting to Kshs.8,305,182***

- 3.6.14 Section 148(1) of the Land Act 2012, states that, compensation shall be payable to any person for the use of land, of which the person is in lawful or actual occupation, as a communal right of way and with respect to a wayleave.

Section 7.2.1 of RPF 2021 states that KETRACO will pay for limited loss of use of land within the wayleave corridor.

3.6.15 A review of the cadastral strip plan revealed that the Ethiopia – Kenya Transmission Line was rerouted as it traversed the Naivasha/Maraigushu Block 13 (Kirima) Registration Block. As a result of the rerouting, eleven (11) parcels of land in the original route were no longer affected since they were not within the new wayleave corridor. However, review of compensation schedules provided revealed that seven (7) out of the eleven (11) parcels of land which were not in the new wayleave corridor as per the cadastral strip plan were compensated. The landowners were paid a total of Kshs.8,305,182 for the land contrary to Section 148(1) of the Land Act, 2012 and Section 7.2.1 of the RPF 2021, as shown in **Table 14**.

**Table 14: Compensation Amounts not Recovered for the Ethiopia-Kenya Line**

	Registration Block	Parcel Number	Payment Voucher Number	Amount in Kshs.	Date Paid
1.	Naivasha / Maraigushu Block 13 (Kirima)	113	K8087	1,152,032	8 November, 2017
2.	Naivasha / Maraigushu Block 13 (Kirima)	114	K9870 (Kshs. 1,272,800) and L3961 (Kshs. 1,428,200)	2,701,000	12 September, 2018 9 September, 2020
3.	Naivasha / Maraigushu Block 13 (Kirima)	115	L2292	878,750	20 August, 2019
4.	Naivasha / Maraigushu Block 13 (Kirima)	116	K9871	710,400	12 September, 2018
5.	Naivasha / Maraigushu Block 13 (Kirima)	177	K7492	1,063,000	6 September, 2017
6.	Naivasha / Maraigushu Block 13 (Kirima)	120	K0294	600,000	3 March, 2016
7.	Naivasha / Maraigushu Block 13 (Kirima)	103	K1014	1,200,000	12 May, 2016
	<b>Total</b>			<b>8,305,182</b>	

3.6.16 In addition, no documentary evidence was provided by KETRACO to indicate any efforts made by the Company to recover public funds that were irregularly paid to the PAPs.

***Failure to Provide Board Approvals and Registration Certificates for Community Projects Undertaken in Marsabit County***

- 3.6.17 According to an internal memo from the Senior Manager Wayleave Acquisition to the Managing Director dated 14 March, 2017 the Ethiopia-Kenya Transmission Line traverses 262km of community owned non-registered land in Marsabit County. There were therefore, no Project Affected Persons to be compensated for land and trees.
- 3.6.18 Further, in consultative meetings were held on 16 November, 2016 and 09 December, 2016 between Marsabit County Government and KETRACO and it was agreed that community Projects in Marsabit County amounting to Kshs.105,000,000 were to be funded by KETRACO. A budget of Kshs.105,000,000 for community Projects in lieu of compensation to individual Project Affected Persons was approved by the Managing Director on 17 March, 2017. However, Board of Director minutes approving the Kshs.105,000,000 was not provided for review, contrary to Section 7.1 of the Board Manual, 2021, which provides for matters reserved for the Board including reviewing and approving major corporate actions, significant business and financial transactions. As a result, the Audit Team could not confirm if this compensation was sanctioned by the KETRACO Board of Directors.
- 3.6.19 The Kenya Electricity Transmission Company Ltd signed Memorandums of Understanding with thirteen (13) community-based organizations/self-help groups for each location traversed by the transmission line in the County on various dates between 08 February, 2018 and 31 May, 2018. The MOUs stated the amount that would be received by each community-based organization/self-help group and the community project to be undertaken. The Audit Team reviewed payment vouchers and noted that the thirteen(13) groups were paid a total of Kshs.104,990,079, as shown in **Table 15**.

**Table 15: Community Based Groups Compensated for Ethiopia-Kenya Line**

No.	Name of Group	Location	Date of Signing MOU	Community Project	Registration Number	Amount Paid Kshs.
1	Loglogo Development Community Self Help Group	Loglogo	9 February, 2018	Staff quarters, Administration block and Youth recreational centre	MS(LAI) 2017/0144	9,306,274
2	Bubisa KETRACO Community Group	Bubisa	8 February, 2018	Dining hall, dormitory and masonry tank	3311	20,528,897
3	Kamboe KETRACO Development Committee Self Help Group	Laisamis	Not indicated	Administrative police residential quarters	MS(LAI) 2017/0148	3,373,574
4.	Burgabo KETRACO Community Group	Tordi	Not indicated	Dormitory	Not provided	6,400,000
5	Turbi KETRACO Community Group	Turbi	Not indicated	3 classrooms, laboratory and dormitory	3315	14,552,281
6.	Qilta KETRACO Community Group	Qilta	28 February, 2018	Dormitory and Teachers house	Not provided	5,349,810
7	Parkishon Community Group	Karare	Not indicated	Administration block	3316	3,593,156
8	Laisamis KETRACO CSR Self Help Group	Laisamis	27 February, 2018	Water piping, concrete water tank, kitchen, classroom	MS(LAI) 2017/0159	14,085,171
9	Nagayo KETRACO Community Group	Nagayo	27 February, 2018	Plastic water tanks for 180 households	3327	5,349,810
10	Ei-Borr Self Help Group	Karare	1 March, 2018	Underground water tank	3318	4,515,399
11	Karare KETRACO Project	Karare	Not indicated	Water pan and dining hall	3310	7,144,449
12.	Merile KETRACO Development Self Help Group	Merile	14 May, 2018	2 classrooms, chief's office and furniture	Not provided	5,844,867
13.	Forole KETRACO Community Group	Forole	31 May, 2017	Community Social Hall	Not provided	4,946,391
	<b>Total</b>					<b>104,990,079</b>

3.6.20 Registration certificates for the Burgabo KETRACO Community Group, Qilta KETRACO Community Group, Forole KETRACO Community Group and Merile KETRACO Development Self Help Group from the State Department for Social Protection and Senior Citizens Affairs were not provided for audit review. As a result, the Audit Team could not confirm whether the four (4) community-based organizations/ self-help groups that received a total of Kshs.22,541,068 were duly registered groups.

### 3.7 Physical Verification of the Ethiopia – Kenya Transmission Line

3.7.1 The Audit Team carried out physical verification of the Project in five (5) out of the eight (8) counties traversed by the Transmission Line namely; Narok, Kajiado, Nakuru, Nyandarua and Laikipia Counties. The purpose of the verification exercise was to confirm that the parcels of land exist, the actual acreage/sizes affected and land occupancy. In addition, the physical verification exercise was to ascertain the existence and occupancy status of the structures and crops, if possible, with outstanding claims. The Audit Team applied three approaches in the physical verification exercise as follows:

- i. Physical verification at the Transmission Line and interviews with landowners;
- ii. Actual survey of the parcels of land;
- iii. Interviews with PAPs with outstanding claims for structures and crops; and
- iv. Use of experts.

#### **Physical Verification of the Transmission Line and Interviews with Landowners**

3.7.2 During the physical verification exercise held in September 2023, the Audit Team was able to verify 167 out of 2,638 parcels of land and engaged with 134 landowners, as detailed in **Appendix 7(a) and Appendix 7(b)**, respectively. From the verification exercise and engagement with the 134 landowners, the following observations relating to the wayleave acquisition were made:

- i). Nineteen (19) PAPs were not compensated since they had succession issues as detailed in **Appendix 7(c)**;
- ii). All the 134 PAPs claimed that the compensation amount was inadequate and public participation should have been done to agree on the compensation amount;
- iii). Nine (9) PAPs complained of the long duration that KETRACO held their title deeds when registering the easement agreements; and
- iv). Two (2) PAPs claimed to have health issues as a result of the close proximity of the transmission line to their residence. A PAP of parcel

number Naivasha/Maraigushu Block 1 (Missouri)/5394 claimed that the noise from the transmission line was negatively affecting his 10-year-old daughter with her showing signs of sleep inertia. The PAP of parcel number Olaragwai Settlement Scheme/7216 claimed that the charge from the transmission line was interfering with her pacemaker forcing her to move out of her home and seek temporary accommodation elsewhere. Both PAPs have letters from the Nakuru County Department of Health Services corroborating their claims of health complications. As at the time of the audit, both cases had not been addressed conclusively. KETRACO should develop a policy on how to address health concerns raised by PAPs as a result of the transmission line traversing their parcels of land.

#### **Actual Survey of Parcels of Land**

- 3.7.3 The Audit Team assisted by a surveyor from KETRACO carried out survey to confirm the accuracy of sizes of the wayleave acquired for the Project. Out of the 167 parcels of land visited during physical verification, the Audit Team surveyed a sample of 72 parcels of land, representing approximately 43%, as detailed in **Appendix 7(d)**.
- 3.7.4 From the survey data provided by the surveyor, the Audit Team noted that there were no variances between the trace area provided by KETRACO in the compensation schedule and the trace area measured during the physical verification.

#### **Interviews with PAPs with Outstanding Claims for Structures and Crops**

- 3.7.5 During the verification exercise, the Audit Team was able to engage with 41 PAPs whose structures and/or crops were destroyed, as detailed in **Appendix 7(e)**. The following observations relating to structures and crops were made:
- i. Thirty (30) PAPs claimed that the compensation amount payable for crops was not disclosed to them and the PAP's crop damage report did not indicate the amount payable; and
  - ii. Two (2) PAPs recommended that relocation cost and cost associated with connecting utilities (power and water) to their new structures after relocating should be factored in the compensation amount for structures.

### 3.8 Irregularities, Responsibilities and Recommendations

3.8.1 The irregularities, responsibility and corresponding recommendations identified by the Audit Team are as detailed in **Table 16**.

**Table 16: Irregularities, Responsibilities and Recommendations for the Ethiopia – Kenya Transmission Line**

No	Irregularities	Amount Involved (Kshs.)	Section of the Report	Responsibility	Recommendations
1	Failure to provide documents for audit review as detailed in Appendix 1 contrary to Section 9 (1)(e)(i) of the Public Audit Act, 2015	N/A	Appendix 1 of the Report	KETRACO Management	The Management of KETRACO should comply with the Public Audit Act, 2015, in relation to audit and provision of documents
2	Variance between Approved Budget and Disbursements to KETRACO	431,221,249	3.4.10	Accounting Officer	The State Department for Energy should ensure that a project budget is fully funded.
3	Failure to provide land scoping report for purchase of land for the Electrode site contrary to Section 9 (1)(e)(i) of the Public Audit Act, 2015	110,961,300	3.5.9	KETRACO Management	The Management of KETRACO should comply with the Public Audit Act, 2015, in relation to audit and provision of documents
4	Failure to Publicize Affected Parcels of Land contrary to Section 144(4)(a) of the Land Act, 2012	N/A	3.5.15	KETRACO Management	The Management of KETRACO should publicize affected parcels of land as well as any addendums or corrigendum
5	Failure to provide sampling basis and methodology used in arriving at valuation amounts	N/A	3.5.18	KETRACO Management	The Management of KETRACO should provide the sampling basis and methodology used in the valuation
6	Lack of a project implementation guideline between the MOE and KETRACO	N/A	3.6.1	PS, State Department for Energy and KETRACO Management	The State Department for Energy should develop project implementation guidelines for projects undertaken by State Corporations

No	Irregularities	Amount Involved (Kshs.)	Section of the Report	Responsibility	Recommendations
7	Failure to open an Escrow Account contrary to the Resettlement Policy Framework, 2021	314,315,441	3.6.9	KETRACO Management	The Management of KETRACO should open an escrow account to deposit all monies due for compensation to PAPs still held at its KCB operation account
8	Irregular payment of top ups contrary to the Resettlement Policy Framework 2011 and 2021	24,023,227	3.6.12	KETRACO Management	The Management of KETRACO should take responsibility for the irregular payment of top ups amounting to Kshs. 24,023,227
9	Failure to recover compensation paid for parcels of land not affected by the Project contrary to Section 148(1) of the Land Act, 2012 and Section 7.2.1 of the RPF, 2021	8,305,182	3.6.14	KETRACO Management	The Management of KETRACO should take responsibility for the irregular compensation of land parcels not affected amounting to Kshs. 8,305,182 and initiate recovery mechanism from the PAPs who benefited
10	Failure to provide Board approval and registration certificates for community Projects undertaken in Marsabit County contrary to Section 9 (1)(e)(i) of the Public Audit Act, 2015	22,541,068	3.6.19	KETRACO Management	The Board of Directors should confirm if the management acted with its direction.

### 3.9 Conclusion

3.9.1 The Eastern Electricity Highway Project (EEHP) is a 500kv high voltage direct current (HVDC) transmission line between Ethiopia and Kenya. The 500kv transmission line originates from the Suswa Substation in Kenya and terminates at Wolayta/Sodo Substation in Ethiopia, covering approximately 1,045 kilometres, with 612 kilometres in Kenya and 433 kilometres in Ethiopia. The Project was undertaken by KETRACO and the Ethiopian Electric Power

Corporation representing Kenya and Ethiopia, respectively. The Transmission Line was constructed from October 2015 and was completed on 18 November, 2022 according to the operational acceptance certificate issued on 30 December, 2022.

- 3.9.2 The Eastern Electricity Highway Project was financed by the Government of Kenya, through the Ministry of Energy and Petroleum, and The National Treasury, African Development Fund, International Development Agency and Agence Française De Development.
- 3.9.3 The Resettlement Action Plan Report for the Ethiopia-Kenya Transmission Line was completed in May 2014. The RAP was done in four (4) lots and identified 602 households that would be affected by the Project. The budget for the resettlement and compensation of the affected persons, communities, public and institution land and assets was Kshs.1,778,204,391.
- 3.9.4 A comparison between the approved budgets and actual disbursements made for the Project revealed that from the financial year 2013/2014 to 2022/2023 KETRACO received a total of Kshs.4,332,964,566 instead of the total approved budget of Kshs.4,764,185,815 resulting in under funding of the budget by Kshs.431,221,249 for the GOK component.
- 3.9.5 The Kenya Electricity Transmission Company Ltd had identified 2,638 parcels of land that were affected by the Project and the total compensation for land, structures and crops that had been encumbered, affected or destroyed respectively amounted to Kshs.2,619,511,109. Out of the total amount of Kshs.2,619,511,109 due for wayleave compensation, KETRACO had paid Kshs.2,305,195,668 as at 30 June, 2023 leaving an outstanding balance of Kshs.314,315,441.
- 3.9.6 The outstanding wayleave compensation amounting to Kshs.314,315,441 was reviewed and the reasons obtained as to why the PAPs have not been compensated include absentee landowners, court cases/ succession cases, disputed/ rejected offer letters, Government of Kenya Land, awaiting payment, PAPs who do not have ownership documents and PAPs with survey issues.
- 3.9.7 The major irregularities noted by the Audit Team include failure to provide documents, unexplained variances, non – disbursement of funds, failure to provide sampling basis and methodology used in arriving at valuation

amounts, failure to publicize affected land parcels, failure to open an escrow account, irregular payment of top-ups and failure to recover compensation for parcels of land not affected among others.

## **4 KENYA – TANZANIA TRANSMISSION LINE**

### **4.1 Project Overview**

- 4.1.1 The Kenya- Tanzania Interconnector is a 400 KV Transmission Line between Kenya and Tanzania. The Transmission Line is aimed at facilitating power exchange within countries in the East African Region.
- 4.1.2 The Project scope includes construction of high voltage transmission line from Isinya Substation in Kenya to Singida in Tanzania together with associated high voltage Substations. The Transmission Line covers a distance of 94.8 Kms from Isinya to Namanga, passing through Kajiado and Bisil areas.
- 4.1.3 The Kenya-Tanzania Interconnector Project traverses' various terrains of privately-owned land, affecting 549 PAPs. Construction of the Transmission Line commenced in April 2017 and was scheduled to be completed in 2019. However, as at the time of audit in November 2023, four (4) years after the expected completion date, the Transmission Line was still under construction.

#### **Summary of Claims**

- 4.1.4 As at 30 June, 2023, the total value in the compensation schedules for the Kenya-Tanzania Interconnection Project amounted to Kshs.1,636,575,245, out of which Kshs.1,314,888,467 had been paid, resulting to an outstanding compensation of Kshs.321,686,778. The Audit Team reviewed and analysed the claims for the Project compensation. The following are the detailed audit findings: -

### **4.2 Conceptualization and Feasibility Study**

#### **Project Conceptualization**

- 4.2.1 Sessional Paper No. 4 on Energy 2004 lays the policy framework upon which cost-effective, affordable and adequate quality energy services was made available to the domestic economy on a sustainable basis over the period 2004-2023. Further, the paper sets out the National Policies and strategies for Kenya's energy sector in the short to long-term.

- 4.2.2 Part 2.1.2 of the Sessional Paper No. 4 of Energy 2004 requires that Government activities in the power sub-sector have policies through which it provides an enabling environment to all economic operators and other stakeholders, training of manpower, preparation of the Country's 20 year rolling Least Cost Electric Power Development Plan (LCPDP) which are revised annually to taking into account new information, implementation of the rural electrification programme and to a large extent mobilization of financial resources for system expansion.
- 4.2.3 The Least Cost Power Development Plan (LCPDP) for 2008 to 2028 and KETRACO Strategic Plan for 2010/2011 to 2014/2015 identified Kenya-Tanzania 400Kv as one of the priority Projects for implementation.
- 4.2.4 An Inter-Governmental memorandum of Understanding (MOU) between The Government of the Republic of Zambia, the Republic of Tanzania and the Republic of Kenya was signed on 15 December, 2014. Article 5 Section (2) of the MOU required the three Governments to establish appropriate mechanisms for coordinating interconnector operation and power trading post commissioning of the Project. The mechanisms included wheeling arrangement, power purchase agreements, bilateral arrangements operational agreements and capacity building.
- 4.2.5 Further, according to Section 2.1 of the Strategic Plan 2010/2011 to 2014/2015, KETRACO was to develop new high voltage electricity transmission infrastructure that formed the backbone of the National Transmission Grid, in line with Kenya Vision 2030. This was aimed at shielding electricity consumers from high retail tariffs.
- 4.2.6 The Kenya-Tanzania Interconnector transmission line was also included in KETRACO's Transmission Master Plan 2022 to 2041. Therefore, the Kenya-Tanzania interconnector Project was in line with the LCPDP and Transmission Masterplan as required by Sessional Paper No. 4 of Energy 2004 and the Energy Act, 2019, respectively.

## **Project Feasibility and Environmental and Social Impact Assessment Studies**

### ***Failure to Provide Contracts for Feasibility, Environmental and Social Impact Assessment***

#### **Feasibility Study**

- 4.2.7 According to Section 1.4.2 of the Resettlement Policy Framework, 2011, a feasibility study was to be undertaken. A feasibility Study was conducted in November 2012 by RSW International Consulting Engineers, concluding that the Project was economically and financially attractive. However, the Audit Team was not provided with contract documents between KETRACO and the consultant engaged to undertake the feasibility study.
- 4.2.8 The feasibility study report concluded that the Project once completed would result in savings from the export of power not fully utilized by the indigenous generation systems particularly from Ethiopian power surplus and the unrestricted Tanzanian gas reserves.

#### **Environment and Social Impact Assessment**

- 4.2.9 According to Part III 12 (1) of the Legal Notice No.101 of the Environmental (Impact Assessment and Audit) Regulations, 2003, an environmental assessment study was required to be conducted in accordance with the set out general environmental impact assessment guidelines and sector environmental impact assessment guidelines set out in the third schedule of the Regulations.
- 4.2.10 Section 2.1.7 of the Sessional Paper No. 4 on Energy 2004 required that a comprehensive environmental impact assessment be conducted for all projects prior to their implementation. An Environmental and Social Impact Assessment study (ESIA) for the Project was prepared by Genivar Consultancy in June 2012.
- 4.2.11 According to Section one (1) of the ESIA Report, the Transmission Line was to:
- i. Lead to positive opportunities for the Project Affected Persons and communities;

- ii. Project Provide a more sustainable energy supply for both countries and increase power supplies to areas without electricity;
- iii. Project Reduce the duration and frequency of power interruptions in Nairobi, Isinya, Arusha, Manyara, Dodoma and Singida regions; and
- iv. Help in reducing power system and technical losses so as to meet the existing and increasing power demand in the whole area.

4.2.12 The ESIA Report resulted in a NEMA License No. 0019999, dated 12 November, 2013 for the Kenya Tanzania Interconnector.

#### **Resettlement Action Plan**

4.2.13 Section 6.1 of the Resettlement Policy Framework, 2011 identified the need to carry out a social economic survey (census) of the persons who will be affected by the Project to determine who is eligible for assistance and benefits, determine level of asset loss and assign economic values to them. The survey was to involve review of tenure documents owned by occupants and interviews with individual households and groups in the affected area(s). Further, it required KETRACO (or their designated consultant) to hold discussions with local authorities and the Ministry of Lands and Settlement. The RAP Report was prepared and presented by Panafcom Limited in August 2015.

4.2.14 Section 14.1 of the RAP Report summarized the PAPs, the nature and compensation cost of their affected land, structures and trees along the 60-meter-wide wayleave from Isinya to Namanga.

4.2.15 The RAP identified 258 parcels of land that would be affected by the Project. The total budget for the resettlement and compensation of the affected persons, communities, public and institution land and assets was Kshs.1,334,612,752, as shown in **Table 17**.

**Table 17: Summary of Affected Land Parcels, Trees, Structure and Businesses for the Kenya- Tanzania Interconnector Project**

No.	Description	Number Affected	Total Amount (Kshs.)
1	Land parcels	258	1,236,540,072
2	Trees	27,444	50,899,000
3	House Hold Structures	319	46,948,290
4	Business Structure	1	225,390
	<b>Total</b>	<b>28,022</b>	<b>1,334,612,752</b>

4.2.16 However, the Audit Team was not provided with contract documents between KETRACO and the consultants contracted for the Feasibility, Environmental and Social Impact Assessment and Resettlement Action Plan.

### 4.3 Governance and Related Issues

#### **Roles and Responsibilities as per the Law/ Guidelines in the Project Cycle**

##### ***Failure to Provide Board Committee Charter Prior to 2019***

4.3.1 Section 1.7 of Mwongozo, the Code of Governance for State Corporations of 2015, states that the Board should establish not more than four (4) committees with the Audit Committee being one of them.

4.3.2 The Kenya Electricity Transmission Company had four (4) Board committees namely; Staff and Remuneration Committee, Audit and Risk Assurance Committee, Finance, Strategy & Risk Management Committee and Technical Committee. The Audit Team reviewed the committee charter for each of the four (4) Board committees developed in 2019.

4.3.3 According to the Board Committee Charters developed in 2019, the technical committee had the primary responsibilities with regards to implementation of Projects. The main roles and responsibilities of the Technical Committee were:

- i) To oversee the operationalization and implementation of the Company Transmission Master Plan;
- ii) To receive regular reports on power system planning, project progress, system availability and operations and maintenance and make necessary recommendations to the Board as may be appropriate;
- iii) To ensure that projects are planned, implemented in accordance with the strategic plan priorities, performance contract, approved budgets, procurement plans, national policies and priorities and engineering best practice; and
- iv) To receive and consider the reports of all proposed new projects, policies, and capital developments.

4.3.4 However, the Audit Team was not provided with Committee Charters prior to 2019. The Audit Team therefore, could not ascertain whether the Committees

were established prior to 2019 were in line with Section 1.7 of Mwongozo, the Code of Governance for State Corporations of 2015.

#### ***Absence of Appointment Letters for the Project Implementation Team***

- 4.3.5 Section 9.1 of the Resettlement Policy Framework, 2011 (RPF, 2011) stated that the transmission line Project was under the administrative authority of the Ministry of Energy, with KETRACO as the implementing agent and the execution of the Kenya-Tanzania Project was delegated to the Project Implementation Team (PIT) which was established to oversee all project activities.
- 4.3.6 According to the RPF, 2011, the PIT was set up to manage and oversee all the activities of the Resettlement Action Plan. The established Resettlement Project Team comprised of an overall Project manager, a socio-economist, surveyor, way leave officer, environmentalist, transmission engineer, land valuer, legal officer, financial administrator, and other key support staff.
- 4.3.7 However, appointment letters and reports for the PIT for the Kenya-Tanzania Interconnector Project were not provided for audit. It was therefore, not possible to determine whether the PIT was constituted as per the requirements of the Resettlement Policy Framework, 2011. Further, the Audit Team could not ascertain whether the Project was implemented as per the RPF, 2011.

#### **4.4 Budget and Budgetary Control**

##### **Wayleave Compensation and Resettlement Cost**

- 4.4.1 The Resettlement Action Plan Report for the Kenya-Tanzania Interconnector, identified 258 parcels of land that were to be affected by the Project. The cost of resettlement and compensation of the affected persons, communities, public and institution's land and assets was estimated at Kshs.1,334,612,752.

##### **Project Sources of Funds and Financing**

- 4.4.2 The Kenya-Tanzania Interconnector Project was jointly funded by the Government of Kenya and the Africa Development Fund. On 30 July, 2015 Government of Kenya, through The National Treasury, signed a financing agreement with the Africa Development Bank for the construction of the Transmission Line at an amount of UA.27,500,000, approximately

Kshs.5,055,655,000, at an exchange rate of 1UA=Kshs.183.842, prevailing as at 30 June, 2023.

### Approved Budget for the Ministry of Energy and KETRACO

- 4.4.3 The Kenya Tanzania Project was financed by the Government of Kenya and the African Development Bank at a cost of UA.27,500,000, equivalent to Kshs.5,055,655,000, against the approved budget by the Ministry of Kshs. 7,195,000,000. The budget for both the donor and GOK component was factored in the Development Budgets for both the Ministry of Energy and KETRACO, as shown in **Table 18**.

**Table 18: Approved Budget for MOE and KETRACO for the Kenya - Tanzania Interconnector Project**

FY	MINISTRY OF ENERGY as per revised budget estimates			KETRACO as per audited Financial Statements		
	Donor (Kshs.)	GOK (Kshs.)	Total (Kshs.)	Donor (Kshs.)	GOK (Kshs.)	Total (Kshs.)
2015/2016	-	6,000,000	6,000,000	-	6,000,000	6,000,000
2016/2017	2,819,000,000	100,000,000	2,919,000,000	-	100,000,000	100,000,000
2017/2018	850,000,000	-	850,000,000	690,000,000	17,500,000	707,500,000
2018/2019	400,000,000	200,000,000	600,000,000	580,000,000	200,000,000	780,000,000
2019/2020	1,000,000,000	720,000,000	1,720,000,000	1,000,000,000	720,000,000	1,720,000,000
2020/2021	519,000,000	50,000,000	569,000,000	519,000,000	50,000,000	569,000,000
2021/2022	507,000,000	441,000,000	948,000,000	507,000,000	441,000,000	948,000,000
2022/2023	1,100,000,000	166,000,000	1,266,000,000	800,000,000	166,000,000	966,000,000
<b>Total</b>	<b>7,195,000,000</b>	<b>1,683,000,000</b>	<b>8,878,000,000</b>	<b>4,096,000,000</b>	<b>1,700,500,000</b>	<b>5,690,500,000</b>

- 4.4.4 It was established that the final approved budgets for both the Ministry of Energy and KETRACO for the GOK component was a single line budget. The allocation was to cater for wayleave, consultancy fees and other operating costs. The amount allocated by the Ministry of Energy amounted to Kshs.1,683,000,000 while KETRACO allocated compensation to PAPs amounting to Kshs.1,700,500,000.

### Disbursements from MOE to KETRACO

- 4.4.5 The Ministry of Energy disbursed a total of Kshs.1,308,854,692 to KETRACO between the FY 2017/2018 and 2022/2023. However, according to the Audited financial statements for the Project, KETRACO transferred Kshs.1,851,994,559 to the Project between 2017/2018 FY to 2022/2023 FY

resulting to an unexplained variance of Kshs.543,139,867. The total disbursements made by the Ministry of Energy to KETRACO for the GOK component is shown in **Table 19**.

**Table 19: Disbursement of Funds for the Kenya – Tanzania Interconnector Project**

FY/Project	MOE TO KETRACO (Kshs.)	KETRACO TO THE PROJECT (Kshs.)	VARIANCE (Kshs.)
2017/2018	31,354,692	31,354,692	-
2018/2019	200,000,000	200,000,000	-
2019/2020	590,000,000	590,000,000	-
2020/2021	100,000,000	100,000,000	-
2021/2022	346,000,000	793,205,718	447,205,718
2022/2023	41,500,000	137,434,149	95,934,149
<b>Total</b>	<b>1,308,854,692</b>	<b>1,851,994,559</b>	<b>543,139,867</b>

**Variance between the Approved Budgets and Disbursements to KETRACO**

4.4.6 Comparisons between the approved budgets and actual disbursements for the Project revealed that from the financial year 2015/2016 to 2022/2023, KETRACO received a total of Kshs.1,308,854,692 from the MOE, against the total approved budget of Kshs.1,683,000,000, resulting in an under funding of the budget by Kshs.374,145,308, as shown in **Table 20**.

**Table 20: GOK Component Budget Vs Actual Disbursement for the Kenya - Tanzania Interconnector Project**

FY/ Project	MOE			KETRACO		
	Budget Allocation (Kshs.)	Actual Disbursement (Kshs.)	Variance (Kshs.)	Final Budget Allocation (Kshs.)	Actual Disbursement (Kshs.)	Variance (Kshs.)
2015/ 2016	6,000,000	0	6,000,000	6,000,000	0	6,000,000
2016/ 2017	100,000,000	0	100,000,000	100,000,000	0	100,000,000
2017/ 2018	0	31,354,692	(31,354,692)	17,500,000	31,354,692	(13,854,692)
2018/ 2019	200,000,000	200,000,000	0	200,000,000	200,000,000	0
2019/ 2020	720,000,000	590,000,000	130,000,000	720,000,000	590,000,000	130,000,000
2020/ 2021	50,000,000	100,000,000	(50,000,000)	50,000,000	100,000,000	(50,000,000)
2021/ 2022	441,000,000	346,000,000	95,000,000	441,000,000	793,205,718	(352,205,718)
2022/ 2023	166,000,000	41,500,000	124,500,000	166,000,000	137,434,149	28,565,851
<b>Total</b>	<b>1,683,000,000</b>	<b>1,308,854,692</b>	<b>374,145,308</b>	<b>1,700,500,000</b>	<b>1,851,994,559</b>	<b>151,494,559</b>

4.4.7 In addition, KETRACO allocated Kshs.1,700,500,000 to the Kenya-Tanzania Interconnector Project. The actual disbursement made by KETRACO to the

Project amounted to Kshs.1,851,994,559 resulting to unexplained variance of Kshs.151,494,559.

- 4.4.8 The MOE transferred a total of Kshs.1,308,854,692 to KETRACO between the financial year 2017/2018 and 2022/2023 while KETRACO's disbursements to the Project as per the audited financial statements for the period 2017/2018 and 2022/2023 was Kshs.1,851,994,559. The Audit Team therefore, could not reconcile these disbursements.

#### **4.5 Assets Management and Wayleave Acquisition**

##### ***Failure to Provide the Land Scoping Report and Land Scoping Team Appointment Letters for the Isinya and Namanga Substations***

- 4.5.1 Section 1.4.1 of the Resettlement Policy Framework, 2011 (RPF, 2011) required KETRACO to identify a potential site for constructing a Substation and the price of land to be negotiated with the landowner based on existing market value. Section 7.3.1 of the Resettlement Policy Framework, 2011 states that, "*Acquisition of land will only apply to sites where Substations are to be constructed, and KETRACO will acquire this land and pay compensation, based on open market values*". The Audit Team established that the Project had two (2) Substations, namely; Isinya and Kajiado Substations.
- 4.5.2 According to the shared Transmission Asset Register, the Isinya Substation, LR. No Kajiado/Kaputiei –North/24054 of size 52.5 Acres is shared between KETRACO and KPLC. However, the ownership document was not provided for audit.
- 4.5.3 On 07 January, 2015 KETRACO acquired an additional parcel of land, LR. Number Dalakutuk/10503), measuring 2.023 Hectares, adjacent to the Kenya Power and Lighting Company land.
- 4.5.4 Review of documents provided for the Namanga Substation revealed that KETRACO acquired LR.No. Kajiado/mailu/5253 measuring 2.02 Hectares for the Namanga Substation. The land was acquired from Zinger Enterprises at a cost of Kshs.6,625,000, which was paid in two (2) instalments of Kshs.662,500 and Kshs.5,962,500 on 20 January, 2014 and 26 June, 2014, respectively.

The ownership of the parcels of land for the Namanga and Isinya Substations is as shown in **Table 21**.

**Table 21: Summary of Land Ownership Details for the Kenya - Tanzania Interconnector Project Sub-Stations**

Substation Name	LR No.	Land Size (HA)	Date of Registration	Ownership
Isinya	Dalakutuk/10503/Isinya	2.023HA	07 January, 2015	KETRACO
Namanga	Kajiado/ Mailua/5253	2.02HA	27 May, 2014	KETRACO

4.5.5 However, the land scoping report which indicates how the parcels of land for the Isinya and Namanga Substations were identified and any negotiations that were held between KETRACO and the landowner was not provided for review. The Audit Team could therefore, not ascertain how the parcels of land were identified for the two (2) Substations and whether the purchased land was the most economically viable option, in compliance with Section 1.4.1 of the RPF, 2011.

***Failure to Provide Contractual Documents for Survey, Valuation and Legal Services and the List of Prequalified Suppliers***

4.5.6 Section 1.4.1 of the Resettlement Policy Framework, 2011 provides that the Company will identify a potential site for constructing a Substation and the price of land would be negotiated with the landowner based on existing market value.

4.5.7 Section 25(3) of the Public Procurement Regulations, 2006 requires that the procuring entity shall invite tenders from only the persons who have been pre-qualified under this regulation”.

4.5.8 The Kenya Electricity Transmission Company engaged one (1) survey consultant to provide cadastral survey, four (4) valuers to carry out valuation of land and structures and three (3) law firms for legal services, as detailed in **Table 22**.

**Table 22; Contracted Surveyors, Valuers and Law Firms for the Kenya-Tanzania Interconnector**

	<b>Firms</b>	<b>Description of Service</b>	<b>Contract Date</b>
1	Primeline Surveys Limited	Cadastral Survey	Not provided
2	Njihia Muoka Rashid company Limited	Valuation of Land	19 September, 2019
3	Gimco valuers Limited	Valuation of Land	4 January, 2017
4	National Land Commission	Valuation of Land	Not provided
5	Kiragu & Mwangi Company Limited	Valuation of Land	Not provided
6	Ochieng Opiyo & Company Advocates	Legal Services	Not provided
7	Kale Maina and Bundotich Advocates	Legal Services	Not provided
8	Kipenda & Company Advocates	Legal Services	Not provided

4.5.9 The Kenya Electricity Transmission Company provided contracts signed between themselves and two (2) out of the eight (8) firms. Further, the list of prequalified suppliers for the financial year 2017/2018 to 2022/2023 was not provided for audit.

#### **Survey of the Affected Parcels of land**

4.5.10 The Resettlement Policy Framework, 2011 and the revised edition in 2021 required the surveyor to prepare a cadastral map of the route showing the plot numbers, ownership, parcel size and affected area of the individual parcels as well as the position of the towers.

4.5.11 According to the list of contractors provided by KETRACO, Prime Survey Limited was engaged to provide strip plan, cadastral data and ownership details. The surveyor issued strip plans, cadastral data and ownership details through survey reports. However, the survey reports were not provided for audit.

#### ***Failure to Gazette Forty-Eight (48) Affected Parcels of Land***

4.5.12 Section 144(4)(a) of the Land Act, 2012 states that "*a notice shall be served on all persons occupying land over which the proposed wayleave is to be created, including persons occupying land in accordance with customary pastoral rights*".

4.5.13 On 20 May, 2015, KETRACO gazetted 501 out of 549 parcels of land which would be affected by the Kenya-Tanzania Project. However, the Audit Team noted that forty-eight (48) parcels of land were not gazetted as required.

4.5.14 At the time of audit in November 2023, compensation for thirty-seven (37) out of the forty-eight (48) parcels of land had been made while eleven (11) parcels of land had their compensation pending, as detailed in **Appendix 8**.

***Failure to Degazette Thirty-Five Parcels of Land***

4.5.15 Section 52(2)(a) of the Land Regulations, 2017 provides that the National Land Commission shall visibly post the notice along the route of the proposed wayleave or communal right of way.

4.5.16 It was established that thirty-five (35) parcels of land that were initially gazetted as affected by the wayleave corridor were later not affected due to rerouting of the transmission line. However, the parcels of land had not been degazetted at the time of the audit. The details of the parcels of land are detailed in **Appendix 9**.

***Failure to Issue Gazette Corrigendum and Addendum on Nineteen Parcels of Land After Subsequent Change of Ownership***

4.5.17 Section 144(4)(a) of the Land Act, 2012 states “*that a notice shall be served on all persons occupying land over which the proposed wayleave is to be created, including persons occupying land in accordance with customary pastoral rights*”.

4.5.18 Review of the cadastral schedule, cadastral map and compensation schedule revealed that KETRACO was yet to issue gazette corrigendum and addendum on nineteen (19) parcels of land after subsequent change of ownership thereby putting the Company at a risk of future litigation by the land owners.

4.5.19 Out of the nineteen (19) parcels of land, ten (10) parcel of land which were earlier gazetted and later changed ownership had not been gazetted again (corrigendum), detailing the newly acquired registration numbers after change of ownership. Further, three (3) parcels of land had captured the registration number incorrectly, two (2) parcels of land had captured the affected acreage incorrectly, one (1) parcel of land had captured the incorrect beneficiary and three (3) parcels of land had been gazetted but could not be traced in the cadastral data and payment schedules as detailed in **Appendix 10**.

***Failure to Provide the Sampling Basis and Methodology Used in Arriving at Valuation Amounts***

- 4.5.20 Section 148(1) of the Land Act, 2012 provides that compensation for the use of land should be based on the value of land as determined by a qualified valuer.
- 4.5.21 Section 7.2.1 of the RPF, 2011 states that land is valued via the schedule of land values by zones obtained from the chief valuer and by a registered and licensed valuer.
- 4.5.22 According to the list of consultants provided by KETRACO, valuation for the Kenya - Tanzania Interconnector Project was done by Njihia Muoka Rashid Company Limited, Gimco Valuers Limited, the National Land Commission and Kiragu and Mwangi Co. Ltd, as summarized in **Table 23**.

**Table 23: List of Valuers for the Kenya – Tanzania Interconnector Project**

No.	Name of the Firm	Date of the Valuation Report	No. of Parcels Allocated for Valuation
1.	Njihia Muoka Rashid Company Limited	04 January, 2017	15
2.	Gimco Valuers Limited	Not Dated	3
3.	National Land Commission	19 September, 2017	347
4.	Kiragu and Mwangi Co. Limited	Not provided	Not provided

- 4.5.23 Review of the report by Njihia Muoka Rashid Company Limited dated 04 January, 2017 revealed that fifteen (15) parcels of land were valued. The parcels of land allocated for valuation included; Dalalekutuk/2563, Dalalekutuk/2963, Dalalekutuk/10, Ildamat/134, Ildamat/128, Purko/15, Purko/80, Purko/18, Lorngosua/1678, Lorngosua/103, Lorngosua/ 2043, Mailua/7, Mailua/3281, Mailua/690 and Kaputei North/24052.
- 4.5.24 Gimco Valuers Limited valued three (3) plots and the National Land Commission valued 347 parcels of land. However, the criteria used to determine the parcels of land that were sampled and the basis of computing the compensation amount payable to the Project Affected Persons were not provided for audit.

4.5.25 In addition, the methodology used to arrive at the value of the land was also not provided. It was therefore, not possible to confirm the accuracy, reliability and authenticity of the value of land provided by the Land Valuers.

***Non-Provision of Documentation for the Approval of 5% Increase of Affected Land by the National Land Commission***

4.5.26 In a letter dated 12 July, 2019 vide Ref: KET/4/14G/4/VOL.I/FB/MW, the Managing Director-KETRACO requested the Chief Executive Officer-National Land Commission to carry out valuation for the Kenya-Tanzania interconnector. The letter stated that there was a delay of the Project by twenty (20) months and a meeting chaired by the Cabinet Secretary- Ministry of Interior and Coordination of National Government and attended by Ministry of Energy officials and the Governor of the County Government of Kajiado resolved that the National Land Commission should undertake valuation of land.

4.5.27 In an Internal Memo dated 26 September, 2019 Ref KET/4/WA/14G/4 from the Senior Manager, Wayleave to the Managing Director, KETRACO acknowledged receipt of land valuation report from the National Land Commission. The Memo stated that on 24 June, 2019, an additional 5% compensation for affected land parcels on the Kenya-Tanzania/ Isinya Namanga Interconnector Project. The report accompanied compensation schedules showed the amount payable as derived from both KETRACO and the National Land Commission based on initial compensation rates as well as an additional 5% as agreed with leaders of the affected community and the Cabinet Secretary-Ministry of Interior and Coordination of National Government in a meeting dated 24 June, 2019.

4.5.28 However, the Audit Team was not provided with documents indicating how the increase of 5% on land compensation was arrived at.

***Absence of Contract Documents Between KETRACO and GIMCO Valuers Limited***

4.5.29 According to a letter Ref: KET/ST/022/2021/PN/6 and dated 21 September, 2021, KETRACO requested M/s GIMCO Valuers Limited to provide a professional valuation report on some parcels of land. As per the letter, Gimco Valuers Limited were to value three (3) parcels of land as follows:

- i. Parcel in Lorngosua- Registration Number Lorngosua/2874;
- ii. Parcel in Purko Location- Registration Number Purko/2001; and
- iii. Parcel in Purko Location- Registration Number Purko/886.

4.5.30 However, the Audit Team was provided with an undated valuation report for GIMCO Valuers Limited, for the selected parcels of land along the Kenya-Tanzania Interconnector Project.

4.5.31 Further, the contracts, and payment vouchers for the services rendered by Gimco Valuers Limited were not provided for audit. It was therefore, not possible to determine the expenditure incurred by the company in valuation of selected land parcels of land.

**4.6 Financial Management and Expenditure**

***Lack of a Project Implementation Guideline Issued by MOE to KETRACO***

4.6.1 Section 148 of the Land Act, 2012 states that compensation shall be payable to any person for the use of land, of which the person is in lawful or actual occupation, as a communal right of way and, with respect to a wayleave, in addition to any compensation for the use of land for any damage suffered in respect of trees crops and buildings as shall, in cases of private land, be based on the value of the land as determined by a qualified valuer. Further Section 7.3 of the RPF, 2011 required KETRACO to compensate for land acquired or encumbered, structures affected, crops/-trees destroyed and loss of income/business/employment.

4.6.2 The Audit Team engaged with the KETRACO Team and noted that MOE was supposed to issue guidelines defining the allowable expenditures to be incurred by KETRACO, the scope of work to be undertaken by KETRACO and the responsibilities of both the MOE and KETRACO, while constructing the

Kenya-Tanzania Transmission Line. However, The Audit Team was not provided with any guidelines for the implementation of the project.

#### **Approved Wayleave Compensation**

- 4.6.3 According to the RPF, 2011, KETRACO was to compensate for land acquired or encumbered, structures affected, crops/trees destroyed and loss of income/business/employment. The amount of compensation payable for land, crops and structures to the Project Affected Persons was approved by the Managing Director on various dates between April 2017 and March 2023.
- 4.6.4 The Audit Team reviewed the compensation schedule provided for land, structures and crops amounting to Kshs.1,636,575,245 and noted the following: -

#### **Wayleave Compensation Paid and Outstanding**

- 4.6.5 It was established that out of the total wayleave compensation amount of Kshs.1,636,575,245, KETRACO had paid Kshs.1,314,888,467 leaving an outstanding balance of Kshs.321,686,778 as at 30 June, 2023, as detailed in **Appendix 11, Appendix 12 and Appendix 13**, and shown in **Table 24**.

**Table 24: Compensation Amount for the Kenya-Tanzania Interconnector Project**

<b>Description</b>	<b>Number of Affected Parcels of Land, Structures and Crops</b>	<b>Total Compensation (Kshs.)</b>	<b>Amount Paid (Kshs.)</b>	<b>Amount Outstanding (Kshs.)</b>
Land	549	1,371,679,389	1,054,223,485	317,455,904
Structure	102	37,086,901	36,721,227	365,674
Crop	349	227,808,955	223,943,755	3,865,200
<b>Total</b>		<b>1,636,575,245</b>	<b>1,314,888,467</b>	<b>321,686,778</b>

#### ***Overvaluation of Fifty-Eight Parcels of Land***

- 4.6.6 The Audit Team engaged experts from the Ministry of Lands, Public Works, Housing, and Urban Development who re-calculated the size of the parcels affected by the Project, as per the cadastral strip and established that out of the five hundred and forty-nine (549) parcels of land, the actual size for fifty-eight (58) parcels varied from the recorded sizes in the valuation reports.

4.6.7 Review of the valuation reports revealed that the fifty-eight (58) parcels of land had their compensation amounting to Kshs.292,994,340 approved for payment. However, based on the recalculated size of the aforementioned parcels of land the compensation amounts payable ought to have been Kshs.159,598,811. As a result, there was an over valuation amounting to Kshs.133,395,529, as detailed in **Appendix 14**.

***Overpayment for Forty -Eight Parcels of Land***

4.6.8 The Audit Team established that KETRACO had made payment for forty-eight (48) out of the fifty-eight (58) parcels of land that were overvalued by Kshs.133,395,529. As a result of the payment, the overvaluation had crystalized into irregular payment of KShs.116,182,341, as detailed in **Appendix 15**.

4.6.9 The Audit Team established that forty-eight (48) out of the fifty-eight (58) parcels of land had been compensated for a total of Kshs.116,182,341 while compensation for ten (10) parcels of land amounting to Kshs.17,213,188 was outstanding at the time of Audit. Therefore, Kshs.116,182,341 as detailed in **Appendix 15**, was irregularly paid.

4.6.10 Compensation for ten (10) out of fifty-eight (58) parcels of land was outstanding at the time of Audit.

***Unsupported Payment Vouchers Kshs.18,304,071***

4.6.11 Review of documents provided for audit revealed that out of Kshs.1,371,679,389 payable to landowners, KETRACO had paid Kshs.1,054,223,485. However, payment vouchers for payments amounting to Kshs.18,304,071 were not supported by searches to confirm easement registration, as detailed in **Appendix 16**.

***Failure to Recover Compensation Paid for Parcels of Land Not Affected by the Project***

4.6.12 Section 148(1) of the Land Act, 2012 states that "*Subject to the provisions of this section, compensation shall be payable to any person for the use of land, of which the person is in lawful or actual occupation, as a communal right of way and, with respect to a wayleave, in addition to any compensation for the*

use of land for any damage suffered in respect of trees crops and buildings as shall, in cases of private land, be based on the value of the land as determined by a qualified valuer". Further, Section 7.2.1 of the RPF, 2021 states that "KETRACO will pay for limited loss of use of land within the wayleave corridor".

- 4.6.13 Review of the cadastral strip plan revealed that the Kenya-Tanzania Interconnector Project was rerouted as it traversed the Mailua Section of the Project corridor. As a result of the rerouting, three (3) parcels of land in the original route were no longer affected, since they were not within the new wayleave corridor as per the cadastral strip plan. However, review of compensation schedules provided for audit revealed that the three (3) parcels of land were compensated. The landowners were paid a total of Kshs.3,030,979 for the parcels of land, contrary to Section 148(1) of the Land Act, 2012 and Section 7.2.1 of the RPF, 2021 as shown in **Table 25**.

**Table 25: Compensation of Parcels of Land Not affected by the Wayleave Corridor**

S/No.	Land Registration Section	Parcel Registration Number	Registered Owner	Amount (Kshs)	Remarks
1	MAILUA	MAILUA/1765	Betty Chuma Obonyo	170,203	Paid
2	MAILUA	MAILUA/1767	Helena Rafaela Namisi	1,010,046	Paid
3	MAILUA	MAILUA/9168	Ntipapa Ole Nkomiya, Paul Milia Nkomiya	1,850,730	Paid
<b>Total</b>				<b>3,030,979</b>	

#### 4.7 Physical Verification of the Kenya-Tanzania Transmission Line

- 4.7.1 The Audit Team carried out physical verification from the Isinya Substation to the Namanga Substation and confirmed the existence of the line. The verification exercise was to establish whether the land exists, the actual acreage/sizes acquired, land occupancy and the current usage of the land within the wayleave corridor of the Project. Further, the physical verification was to ascertain the existence and occupancy status of the PAPs with outstanding claims, as detailed in **Appendix 17**.

- 4.7.2 The Audit Team applied the following approach in the exercise:

- i. Physical verification at the project site and interviews with landowners;
- ii. Actual survey of the parcels of land within the wayleave corridor; and

iii. Interviews with other PAPs with outstanding claims.

4.7.3 During the physical verification exercise held in September 2023 the Audit Team verified seventy (70) parcels of land out of 549 parcels of land. The engaged with sixty-eight (68) landowners with outstanding land claims amounting to Kshs.209,162,721, as detailed in **Appendix 17**.

4.7.4 From the verification exercise and engagement with landowners, the following were the observations relating to the wayleave acquired, as summarized in **Table 26**.

**Table 26: Summary of Key Observations During Physical Verification**

S/No	Issue	Parcel of Land Number
1	Nineteen (19) parcels of Land not located	19
2	Thirty-three (33) parcels of Land paid at the time of audit	33
3	Two (2) parcels of land were closed subdivisions	2
4	One (1) Land paid was but a public institution	1
5	Two (2) parcels of land were rejected offers	2
6	Two (2) not paid because of succession issues	2
7	Seven (7) of land had land dispute	7
8	Two (2) parcels of landowners had submitted original document to KETRACO but at the time of audit they were yet to be given back to them	2
	<b>Total</b>	<b>68</b>

**Total Claims Outstanding for Structures and Crops**

4.7.5 During the verification exercise, the Audit Team engaged with nine (9) PAPs whose structures and/or crops were destroyed as detailed in **Appendix 17**. The following observations relating to compensation for structures and crops were noted:

- a) One parcel of land owned by Mr. Sajiloni in Dalalekutuk, which was initially affected by the wayleave, was no longer affected due to the rerouting of the transmission line. However, the compensation for the structures amounting to Kshs.2,057,037 was still included in the schedule of pending compensation;
- b) The Evangelical Lutheran Church of Kenya had constructed a latrine which was within the wayleave corridor and the latrine was not compensated at the time of audit;

- c) A latrine within the wayleave corridor belonging to Mary Kwaya was still pending at the time of audit; and
- d) Six (6) PAPs who had claimed for compensation for crops were not verified since the said crops were already harvested.

#### 4.8 Irregularities, Responsibilities and Recommendations

4.8.1 The following irregularities and weaknesses, persons responsible and corresponding recommendations were identified by the Audit Team, as summarized in **Table 27**.

**Table 27: Irregularities, Responsibilities and Recommendations for the Kenya – Tanzania Transmission Line**

No.	Irregularities and Weaknesses	Amount Involved (Kshs.)	Section of the Report	Responsibility	Recommendations
1	Failure to provide documents for audit review as detailed in Appendix 1 contrary to Section 9 (1)(e)(i) of the Public Audit Act, 2015	N/A	Appendix I of the Report	PS- State Department for Energy/ KETRACO Management	The Management should comply with the Public Audit Act, 2015, in relation to audit and provision of documents
2	Variance between Approved Budget and Disbursements to KETRACO	374,145,308	4.4.7	PS- State Department for Energy/ KETRACO Management	The State Department for Energy should ensure that a project budget is fully funded.
3	Failure to Gazette Forty-Eight (48) Affected Parcels of Land contrary to Section 144(4)(a) of the Land Act, 2012	N/A	4.5.13	KETRACO Management	The Management should Gazette all the affected parcels of land
4	Failure to Degazette 35 parcels of land contrary to Section 52(2)(a) of the Land Regulations, 2017	N/A	4.5.16	KETRACO Management	Management should degazette the 35 parcels of land.
5	Failure to Issue Gazette Corrigendum	N/A	4.5.18	KETRACO Management	Management should issue gazette corrigendum and

No.	Irregularities and Weaknesses	Amount Involved (Kshs.)	Section of the Report	Responsibility	Recommendations
	and Addendum on Nineteen (19) Parcels of Land After Subsequent Change of Ownership contrary to Section 144(4)(a) of the Land Act, 2012				addendum as required.
6	Failure to Provide the Sampling Basis and Methodology Used in Arriving at Valuation Amounts.	N/A	4.5.25	KETRACO Management	The Management should provide the sampling basis and methodology used in the valuation
7	Lack of a Project Implementation Guideline Issued by the MOE to KETRACO	N/A	4.6.2	PS - State Department Energy KETRACO Management for and	The State Department for Energy should develop project implementation guidelines for projects undertaken by State Corporations within the Ministry
8	Overvaluation of value for 58 parcels of land.	133,395,529	4.6.7	KETRACO Management	The Management should take responsibility for the overpayment and should compensate the PAPs as per the actual affected valuation.
9	Overpayment for Forty -Eight (48) Parcels of Land	116,182,341	4.6.8	KETRACO Management	The Management should take responsibility for the overpayment and initiate recovery efforts from the PAPs who benefited
10	Unsupported Payment Vouchers Kshs.18,304,071	18,304,071	4.6.10	KETRACO Management	Management should ensure payments for wayleave acquisition are properly supported with land searches and other relevant documents.
11	Failure to Recover Compensation	3,030,979	4.6.12	KETRACO Management	The Management should take responsibility for the

No.	Irregularities and Weaknesses	Amount Involved (Kshs.)	Section of the Report	Responsibility	Recommendations
	Paid for Parcels of Land Not Affected by the Project				irregular compensation of land parcels not affected of Kshs.3,030,979 and initiate recovery mechanisms from the PAPs who benefited.

#### 4.9 Conclusion

- 4.9.1 The Kenya-Tanzania Interconnector Project was undertaken by KETRACO and financed by the Government of Kenya and the African Development Bank. The Kenya Electricity Transmission Company engaged RSW International Consulting Engineers to conduct a Feasibility Study and Genivar Consultancy to conduct an Environmental and Social Impact Assessment (ESIA). However, documents to support contracts were entered into with the aforementioned companies/consultants before these studies were conducted were not provided for audit.
- 4.9.2 There was poor record keeping leading to absence of documentation on conceptualization and some documentation on procurement and expenditure incurred for the Kenya-Tanzania Interconnector Project.
- 4.9.3 The cumulative project budget, as per the Ministry of Energy, was Kshs.8,878,000,000, comprising of Kshs.7,195,000,000 as the Donor Component and Kshs.1,683,000,000 as the GOK Component.
- 4.9.4 A total of Kshs.1,314,888,467 has been spent on wayleave acquisition for the Kenya Tanzania and Isinya Namanga Interconnector Project as at 30 June, 2023. Included in the Kshs.1,314,888,467 was Kshs.1,054,223,485, Kshs.36,721,227 and Kshs.223,943,755 that had been spent on land, structures and crops, respectively for both the Kenya Tanzania and Isinya Namanga Interconnector Project as at 30 June, 2023.
- 4.9.5 A total of Kshs.321,686,779 in compensation claims remained outstanding as at 30 June, 2023. Included in the Kshs.321,686,779 was a total of 230 land parcels with a total approved valuation of Kshs.317,455,904 that had not been paid as at the date of audit. Also included in the Kshs.321,686,779 was Kshs.365,674 and Kshs. 3,865,200 in outstanding compensation claims for

structures and crops, respectively. The acquisition of wayleave by the company did not adhere to the due process, leading to loss of funds as follows:

- i) Forty-eight (48) pieces of land in the cadastral data not gazetted;
- ii) Thirty-five (35) pieces of land with no addendums;
- iii) Twenty-one (21) pieces of land initially gazetted later changed ownership and no gazettelement;
- iv) Three (3) parcels of land paid and not affected by the wayleave corridor; and
- v) Fifty-seven (57) pieces of land with the actual area affected less than the stated affected area.

## **5 KENYA – UGANDA TRANSMISSION LINE**

### **5.1 Project Overview**

- 5.1.1 The Kenya-Uganda Power Interconnection Project was part of a multinational Project involving Republic of Kenya, Republic of Uganda, Republic of Rwanda and Republic of Burundi. The 400Kv transmission line originates from the Lessos Substation in Kenya and terminates at the Tororo Substation in Uganda covering approximately one hundred and forty-two (142) Kilometres with one hundred and thirty-two (132) kilometres in Kenya and ten (10) Kilometres in Uganda. The transmission line in Kenya traverses a total of 2,563 parcels of land in four (4) Counties namely; Nandi, Kakamega, Bungoma and Busia Counties.
- 5.1.2 The Kenya-Uganda Power Interconnection Project was part of construction and upgrading of interconnection lines of the grid of Nile Equatorial Lake Countries to increase their cross-border exchange and trade energy and to improve the transient stability of the system, safety and affordability of supply, as well as flexibility in the operation of the interconnected networks of these Nile basin initiatives countries. The Kenya-Uganda Transmission Line Project was initiated by the Kenya Power and Lighting Company and subsequently implemented by the Kenya Electricity Transmission Company.
- 5.1.3 Construction of the Transmission Line commenced in 20 September, 2010 and was expected to be completed by 31 December, 2017. However, upon

physical verification in September 2023, the Audit Team established that the Project had stalled.

5.1.4 According to a letter dated 25 April, 2016, Ref No. KET/4/14G/7/176/JM/RNK from the Acting Managing Director - KETRACO to the Project Manager-Istalaciones and Inabensa SA, KETRACO issued a notice of termination for the interconnection of electric grid of the Nile Equatorial Lake Countries (Kenyan part). The contractor was requested to cease all further works and to terminate all subcontractors due to persistent failure to execute the contract.

5.1.5 A letter dated 25 April, 2016, Ref No. KET/4/14G/7/176/JM/RNK, from the Acting Managing Director, Kenya Electricity Transmission Company to the Project Manager-Istalaciones and Inabensa SA, the Kenya Electricity Transmission Company issued a notice of termination for the interconnection of the electric grid of the Nile Equatorial Lake Countries (Kenyan part). The Contractor was requested by the Kenya Electricity Transmission Company to cease all further works and to terminate all subcontractors, due to persistent failure to execute the contract. On 30 July, 2019 the arbitration tribunal issued an award in favor of the Contractor, Istalaciones and Inabensa South Africa. The Kenya Electricity Transmission Company challenged the decision of the arbitration tribunal in the High Court vide case number: HC.COMM. MISC/E445/2019. The High Court upheld the decision of the arbitration tribunal by a ruling dated 15 June, 2021. The Kenya Electricity Transmission Company then challenged the decision of the High Court in the Court of Appeal, vide MISC. APPLICATION NO. E56 of 2021. However, the Court of Appeal upheld the decision of the High Court by a ruling dated 19 November, 2021. The Kenya Electricity Transmission Company further challenged the decision of the Court of Appeal by filing a notice of motion vide Petition No. 17(E024) of 2021 in the Supreme Court of Kenya. However, the Supreme Court of Kenya upheld the decision of the Court of Appeal by dismissing the notice of motion filed by KETRACO on 7 October, 2022. However, the Management did not explain why the Project had not resumed since the court ruling and the plans KETRACO had in place to complete the Project.

## Summary of Claims

- 5.1.6 As at 30 June, 2023, the total value in the compensation schedules for the Kenya-Uganda Interconnection Project amounted to Kshs. 1,835,863,715, out of which Kshs.1,357,202,952 had been paid, resulting to an outstanding wayleave compensation for the Project amounting to Kshs.478,660,763. The Audit Team reviewed and analysed the claims for the Project compensation. The following are the summarized audit findings: -

## 5.2 Conceptualization and Feasibility Study

### Project Conceptualization

#### ***Absence of Agreements on how the Project was Conceptualized***

- 5.2.1 Sessional Paper No. 4 on Energy 2004 lays the policy framework upon which cost-effective, affordable and adequate quality energy services was to be made available to the domestic economy on a sustainable basis over the period 2004-2023. It further, sets out the National Policies and strategies for Kenya's energy sector in the short to long-term.
- 5.2.2 Part 2.1.2 of the Sessional Paper No. 4 of Energy 2004 on Institutional Arrangements states that *"Government activities in the power sub-sector are limited to formulation and articulation of policies through which it provides an enabling environment to all economic operators and other stakeholders, training of manpower, preparation of the country's 20 year rolling Least Cost Electric Power Development Plan (LCPDP) revised annually to take account of new information, implementation of the rural electrification programme and to a large extent mobilization of financial resources for system expansion"*.
- 5.2.3 The Kenya-Uganda Power Interconnection Project was one of the priority Projects identified for implementation in the Least Cost Power Development Plan (LCPDP) for the period 2008 to 2028 and the Kenya Electricity Transmission Company Strategic Plan for 2010/2011-2014/2015, 2015/2016-2019/2020 and 2018-2022.
- 5.2.4 The Energy Exchange Agreement signed on 5 September, 2022 between the Uganda Electricity Transmission Company Limited (UETCL) and the Kenya Power and lighting Company (KPLC) identified the need for technical cooperation between the two countries in power generation, transmission,

rural electrification and customer-relations services. Section D of the Energy Exchange agreement varied the following supplemental agreements:

- i) First Supplemental Agreement dated 28 October, 1964;
- ii) Second Supplemental Agreement dated 28 October, 1964;
- iii) Third Supplemental Agreement dated 9 December, 1988;
- iv) Fourth Supplemental Agreement dated 6 June, 1997;
- v) Fifth Supplemental Agreement dated 15 January, 2002;
- vi) Sixth Supplemental Agreement dated 10 June, 2004; and
- vii) Seventh Supplemental Agreement dated 1 February, 2005.

5.2.5 However, the Audit Team was not provided with the Project agreements prior to 2010 regarding the Project.

### **Project Feasibility and Environmental and Social Impact Assessment Studies**

#### **Environment and Social Impact Assessment**

5.2.6 Section 2.1.7 of the Sessional Paper No. 4 of 2004 on Energy requires that a comprehensive environmental impact assessment is conducted for all Projects prior to implementation. Kenya Power and Lighting Company (KPLC) in 2007, engaged SOGREAH Consultants, RSW International Inc, Hydro Quebec International and Hifab to undertake the Environmental and Social Impact Assessment (ESIA) study.

5.2.7 Section 1.2 of the ESIA Report stated the following general objectives:

- i. To identify the potential impacts environmental and social, as well positive as negative of the interconnection;
- ii. To develop an Environmental and Social Management Plan (ESMP), including mitigation measures of the impacts and program of environmental monitoring; and
- iii. The ESIA was prepared in concordance with the guidelines of the governments of Uganda and Kenya, as well as the policies and procedures of the African Bank of Development.

5.2.8 The Report recommended that KPLC adhere to all the proposed mitigation measures outlined in the study, the various relevant guidelines and legislation governing resettlement and compensation, sensitive ecosystems, labour force

management, public and worker health and safety, management of hazardous and contaminating material and management of waste. The ESIA Report resulted in a NEMA License No. 0000180 dated 26 November, 2011 for the Kenya-Uganda Transmission Line.

### Resettlement Action Plan

- 5.2.9 Section 6.1 of the Resettlement Policy Framework, 2011 identified the need to carry out a social economic survey (census) of the persons who were to be affected by the Project to determine their eligibility for assistance and benefits, determine level of asset loss and assign economic values to them. The survey was to involve review of tenure documents owned by occupants and interviews with individual households and groups in the affected area(s). Further, it required the Kenya Electricity Transmission Company (or their designated consultant) to hold discussions with local authorities and the Ministry of Lands and Settlement.
- 5.2.10 The Resettlement Action Plan (RAP) Report for the Kenya-Uganda Transmission Line was prepared by Log Associates in May 2011. The RAP identified households that would be affected by the Project.
- 5.2.11 The RAP Report stated that the Project would affect 1,478 persons, 1,055 business structures and crops at an estimated cost of Kshs.215,276,650, as shown in **Table 28**.

**Table 28: Number of Affected Household, Business Structures and Trees for the Kenya-Uganda Power Interconnection Project**

S/No	Item	Number of PAPs	Amount (Kshs.)
1	Land	Not indicated	74,928,782
2	Affected households	1478	56,113,389
3	Business structures	1055	19,956,399
4	Tree	Not indicated	44,707,476
	<b>Total</b>		<b>215,276,650</b>

### 5.3 Governance and Related Issues

#### Roles and Responsibilities as per the Law/ Guidelines in the Project Cycle

##### ***Failure to provide Board Committee Charters prior to 2019***

- 5.3.1 Section 1.7 of Mwongozo, the Code of Governance for State Corporations of 2015, states that “*the Board should establish not more than 4 committees with the Audit Committee being one of them*”.
- 5.3.2 According to the Board committee Charter of 2019, the Kenya Electricity Transmission Company had four (4) Board committees namely; Staff and Remuneration Committee, Audit and Risk Assurance Committee, Finance, Strategy & Risk Management Committee and Technical Committee. The Audit Team reviewed the committee charter for each of the four (4) Board committees developed in 2019.
- 5.3.3 The technical committee had the primary responsibilities for implementing Projects. The main roles and responsibilities of the Technical Committee were:
- i) To oversee the operationalization and implementation of the Company Transmission Master Plan;
  - ii) To receive regular reports on Power System Planning, Project Progress, System availability and Operations and Maintenance and make necessary recommendations to the Board as may be appropriate;
  - iii) To ensure that Projects are planned, implemented in accordance with the Strategic Plan Priorities, Performance Contract, approved Budgets, Procurement Plans, national policies and priorities and engineering best practice; and
  - iv) To receive and consider the reports of all proposed new projects, policies, and capital developments.
- 5.3.4 However, the Audit Team was not provided with the Board Charter and committee charter prior to 2019. The Audit Team therefore, could not ascertain whether the committees were established prior to 2019 were in line with Section 1.7 of Mwongozo, the Code of Governance for State Corporations of 2015.

### ***Non-Provision of Appointment Letters for the Project Implementation Team***

- 5.3.5 Section 9.1 of the Resettlement Policy Framework, 2011, provides that the Ministry of Energy was to offer administrative input and make decisions about the policy direction of the Projects undertaken by the Kenya Electricity Transmission Company. The execution of the Project was delegated to the Project Implementation Team (PIT), which was established to oversee all Project activities. The size of the team, its formation, its functions and terms of reference depend on the extent of the land acquisition, challenges of the transmission line in question, and number of PAPs.
- 5.3.6 The Project Implementation Team members appointment letters and minutes of meetings held were not provided for audit review. Consequently, it was not possible to establish whether a PIT was in place to oversee implementation of the Project as required by the Resettlement Policy Framework, 2011.

## **5.4 Budget and Budgetary Control**

### **Wayleave Compensation and Resettlement Cost**

- 5.4.1 According to the Project's RAP Report of 2011, the cost for the resettlement and compensation of the affected persons, communities, public and institution land and assets was Kshs.215,276,650.

### **Source of Funds**

- 5.4.2 The Kenya-Uganda Interconnection Project was jointly funded by the Government of the Republic of Kenya, through the Ministry of Energy and Petroleum, and The National Treasury, and the Africa Development Bank.
- 5.4.3 The Government of the Republic of Kenya and the Africa Development Bank (ADB) entered into a financing agreement dated 20 September, 2010 for the construction of the Project. The loan agreement amounted to UA.39,770,000 (equivalent to Kshs.7,311,396,340 at an exchange rate of 1UA= Kshs.183.842 prevailing as at 30 June, 2023) with a counterpart funding from the Government amounting to Kshs.1,643,000,000, as summarized in **Table 29**.

**Table 29: Source of Financing for the Kenya-Uganda Power Interconnection Project**

Source of funds	Amount Allocated UA	Amount allocated in (Kshs.)
African Development Bank	39,770,000	7,311,396,340
Government of Kenya	-	1,643,000,000
<b>Total Costs</b>	<b>39,770,000</b>	<b>8,954,396,340</b>

**Approved Budget for the Ministry of Energy and Kenya Electricity Transmission Company**

5.4.4 Kenya-Uganda interconnection Project was financed by the Government of Kenya and African Development Bank. The budget for both the donor and GOK component was factored in the Development Budgets for both the Ministry of Energy and Kenya Electricity Transmission Company. The cumulative budget for the Project from 2013/2014 financial year to 2022/2023 financial year is as shown in **Table 30**.

**Table 30: Approved Budget by the Ministry of Energy and the Kenya Electricity Transmission Company for the Kenya-Uganda Power Interconnection Project**

FY	MOE			KETRACO		
	Budget Allocation In (Kshs.)	Actual Disbursement in (Kshs.)	Variance in (Kshs.)	Budget Allocation in (Kshs.)	Actual Disbursement in (Kshs.)	Variance in (Kshs.)
2013/2014	Not Itemized	34,773,299	34,773,299	23,000,000	34,773,299	-11,773,299
2014/2015	500,000,000	178,030,550	178,030,550	215,000,000	178,030,550	36,969,450
2015/2016	1,200,000,000	214,348,147	167,651,853	234,000,000	214,348,147	19,651,853
2016/2017	695,000,000	86,394,490	98,605,510	215,000,000	86,394,490	128,605,510
2017/2018	0	83,945,327	-4,570,327	165,000,000	83,945,327	81,054,673
2018/2019	0	75,000,000	25,000,000	200,000,000	75,000,000	125,000,000
2019/2020	1,959,000,000	573,250,000	-6,250,000	567,000,000	573,250,000	-6,250,000
2020/2021	0	18,750,000	481,250,000	731,000,000	18,750,000	712,250,000
2021/2022	0	500,000,000	-500,000,000	500,000,000	500,000,000	0
2021/2023	0	0	0	0	0	0
<b>Total</b>	<b>4,354,000,000</b>	<b>1,764,491,813</b>		<b>2,850,000,000</b>	<b>1,764,491,813</b>	<b>1,085,508,187</b>

5.4.5 The approved budget for the Ministry of Energy for the 2013/2014 financial year was not program-based, therefore, the Audit Team could not establish the budgeted amount for Kenya-Uganda Power Interconnection Project.

5.4.6 The audit established that the final approved budgets for both the Ministry of Energy and Kenya Electricity Transmission Company for the GOK component was a single line budget. The allocation was to cater for wayleave, consultancy fees and other operating costs. The amount allocated for compensation to PAPs from the Ministry of Energy was Kshs.4,354,000,000 while the amount allocated for payment of PAPs by Kenya Electricity Transmission Company was Kshs.2,850,000,000. Therefore, the Audit Team could not reconcile the compensation amount estimated by the RAP with the compensation amount budgeted by the Ministry of Energy and KETRACO.

#### **Disbursements from the Ministry of Energy to the Kenya Electricity Transmission Company**

5.4.7 Review of the amounts disbursed for the Project in the period under review indicated that total disbursements amounted to Kshs.4,354,000,000 against a budget allocation of Kshs.1,764,491,813 as per the Project's audited financial statements, as shown in **Table 31**.

**Table 31: Actual Disbursement from MOE to KETRACO and KETRACO to the Kenya-Uganda Power Interconnection Project**

<b>Financial Year</b>	<b>Disbursement from MOE to KETRACO (Kshs.)</b>	<b>Disbursement from KETRACO to the Project (Kshs.)</b>
2013/2014	34,773,299	34,773,299
2014/2015	178,030,550	178,030,550
2015/2016	214,348,147	214,348,147
2016/2017	86,394,490	86,394,490
2017/2018	83,945,327	83,945,327
2018/2019	75,000,000	75,000,000
2019/2020	573,250,000	573,250,000
2020/2021	18,750,000	18,750,000
2021/2022	500,000,000	500,000,000
2022/2023	-	-
<b>Total</b>	<b>1,764,491,813</b>	<b>1,764,491,813</b>

## GOK Component Budget Vs Actual Disbursement

### *Variance Between the Approved Budget and Disbursements to KETRACO Kshs.1,085,508,187*

5.4.8 Review of the approved budgets and actual disbursements made for the Project revealed that from financial year 2013/2014 to 2022/2023, Kenya Electricity Transmission Company received a total of Kshs.1,764,491,813 from MOE against the total approved budget of Kshs.2,850,000,000. This resulted in under funding of the budget by Kshs.1,085,508,187, as detailed in Table 32.

**Table 32: GOK Component Budget Vs Disbursed Amounts for the Kenya-Uganda Power Interconnection Project**

FY	MOE			KETRACO		
	Budget Allocation In (Kshs.)	Actual Disbursement in (Kshs.)	Variance in (Kshs.)	Budget Allocation in (Kshs.)	Actual Disbursement in (Kshs.)	Variance in (Kshs.)
2013/2014	Not Itemized	34,773,299	34,773,299	23,000,000	34,773,299	(11,773,299)
2014/2015	500,000,000	178,030,550	178,030,550	215,000,000	178,030,550	36,969,450
2015/2016	1,200,000,000	214,348,147	167,651,853	234,000,000	214,348,147	19,651,853
2016/2017	695,000,000	86,394,490	98,605,510	215,000,000	86,394,490	128,605,510
2017/2018	0	83,945,327	(4,570,327)	165,000,000	83,945,327	81,054,673
2018/2019	0	75,000,000	25,000,000	200,000,000	75,000,000	125,000,000
2019/2020	1,959,000,000	573,250,000	(6,250,000)	567,000,000	573,250,000	(6,250,000)
2020/2021	0	18,750,000	481,250,000	731,000,000	18,750,000	712,250,000
2021/2022	0	500,000,000	(500,000,000)	500,000,000	500,000,000	0
2021/2023	0	0	0	0	0	0
<b>Total</b>	<b>4,354,000,000</b>	<b>1,764,491,813</b>		<b>2,850,000,000</b>	<b>1,764,491,813</b>	<b>1,085,508,187</b>

## 5.5 Assets Management and Wayleave Acquisition

### *Failure to Provide Land Scoping Report and Land Scoping Team Appointment Letters for Purchase of Land*

5.5.1 Section 1.4.1 of the Resettlement Policy Framework, 2011 (RPF, 2011), provides that the Company identifies a potential site for constructing a Substation and the price of land was to be negotiated with the landowner based on existing market value. The Audit Team established that the Project had one Substation namely; Lesso Substations.

5.5.2 Review of the shared Transmission Asset Register, KPLC had bought land for the construction of Lesso Substation. However, documents of ownership document supporting this information was not provided for audit. The Audit established that Kenya Electricity Transmission Company Bought additional three (3) parcel of land for the expansion of the Substation, as summarized in **Table 33**.

**Table 33: Land Acquired for the Kenya-Uganda Power Interconnection Project**

Substation Name	LR No.	Land Size (HA)	Date Registration	of	Ownership
Lessos	Nandi/Songoliet/533	0.83	29 August, 2016		KETRACO
Lessos	Nandi/Songoliet/212	1.5	1 February, 2019		
Lessos	Nandi/Songoliet/588	0.405	20 September, 2019		
Lessos	Ownership document not provided				KPLC

5.5.3 However, the land scoping report which indicates how the parcels of land were identified and any negotiations that were held between the Kenya Electricity Transmission Company and the landowners were not provided to the Audit Team for review. In addition, the letters appointing the land scoping team, for the acquisition of land were not provided for review. It was therefore, not possible to determine how the land was identified and whether the acquired land was the most economically viable option.

***Failure to Provide Contractual Documents for Survey, Valuation and Legal Services and List of Prequalified Suppliers for FY 2013/2014 and 2014/2015***

5.5.4 Section 25(3) of the Public Procurement Regulations, 2006 states that “*the procuring entity shall invite tenders from only the people who have been pre-qualified under this regulation*”.

5.5.5 The Audit Team established that the Kenya Electricity Transmission Company engaged two (2) survey consultants to provide cadastral survey, three (3) valuers and two (2) law firms for litigation services, as shown in **Table 34**.

**Table 34:List of Consultants for the Kenya-Uganda Power Interconnection Project**

	<b>Firm</b>	<b>Description of Service</b>	<b>Date of the Report</b>
1.	Gimco Valuers Limited	Cadastral Survey	Not provided
2.	Advent surveyors	Cadastral Survey	Not provided
3.	National Land Commission	Valuation Report for Land	Not provided
4.	Njihia Muoka Rashid Company Limited	Valuation Report for Land	29 August, 2017
5.	Capital valuers Limited	Valuation Report for Land	29 October, 2015
6.	Otieno Okeyo & Co. Advocates	Litigation services	Not provided
7.	Kale Maina and Bundotich Advocates	Litigation services	Not provided

5.5.6 However, the Kenya Electricity Transmission Company did not provide the list of prequalified suppliers for FY 2011/2012 and 2016/2017 for the procurement of the three (3) consultancy services; the contracts between the Kenya Electricity Transmission Company and all seven (7) consultants engaged; and reports for the two (2) survey consultants, one (1) valuer and the two (2) law firms were not provided for audit review.

#### **Survey of the Affected Parcels of Land**

5.5.7 The Resettlement Policy Framework, 2011 and 2021 required the surveyor to prepare a cadastral map of the route showing the plot numbers, ownership, parcel size and affected area of the individual parcels as well as the position of the towers. The Kenya Electricity Transmission Company engaged Gimco Valuers Limited and Advent Surveyors Limited to provide strip plan, cadastral data and ownership details. The two (2) survey companies issued strip plans, cadastral data and ownership details through survey reports.

#### ***Failure to Gazette 316 Parcels of Land along the Wayleave Corridor***

5.5.8 Section 144(4)(a) of the Land Act, 2012 states that "*a notice shall be served on all persons occupying land over which the proposed wayleave is to be created, including persons occupying land in accordance with customary pastoral rights*".

5.5.9 The Audit Team established that the Kenya Electricity Transmission Company did not gazette a total of three hundred and sixteen (316) parcels of land, out of 2,581 parcels of land along the wayleave corridor. This thereby contravenes Section 144(4)(a) of the Land Act, 2012, as detailed in **Appendix 18**.

***Failure to De-gazette Four Parcels of Land no Longer Affected by the Project***

5.5.10 Section 52(2)(a) of the Land Regulations, 2017 provides that the National Land Commission shall visibly post the notice along the route of the proposed wayleave or communal right of way.

5.5.11 Comparison of the gazette notices and the cadastral schedule provided to the Audit Team revealed that a total of four (4) parcels of land which were initially affected by the Project and had been gazetted were later not affected. However, at the time of audit, the four (4) parcels had not been de-gazetted and the landowners had been paid Kshs.1,666,020, as shown in **Table 35**.

**Table 35: Parcels of Land not De-gazetted**

	Registration Section	Original Parcel No.	Ref on Map/ New Parcel No.	Registered Owner	Registered Area (Ha)	Registered Area (Acres)	Amount Paid (Kshs.)
1	Bunyala/Namirama	982	Not Provided	Tittle not Provided	4.807	11.878097	194,368
2	Bunyala/Namirama	1193	Not Provided	Tittle not Provided	0.3982	0.9839522	222,547
3	Bunyala/Namirama	432	Not Provided	Tittle not Provided	2.2745	5.6202895	1,204,624
4	Bunyala/Namirama	Not Provided	1656	Bonface Novala Khachio	0.4044	0.9992724	44,478
	<b>Total Amount</b>						<b>1,666,020</b>

5.5.12 Management did not provide an explanation regarding why the four (4) parcels of land which were not degazetted thereby, putting the Company at a risk of future litigation by the landowners.

***Failure to Provide the Sampling basis and Methodology Used in Arriving at Valuation Amounts***

5.5.13 Section 148(1) of the Land Act, 2012 provides that compensation for the use of land should be based on the value of land as determined by a qualified valuer.

5.5.14 Section 7.2.1 of the RPF, 2011 states that land is valued via the schedule of land values by zones obtained from the chief valuer and by registered and licensed valuer.

5.5.15 According to the list of consultants provided, the Kenya Electricity Transmission Company engaged Njihia Muoka Rashid Company Limited, Capital Valuers Limited and the National Land Commission to carry out valuation of land parcels within the Kenya-Uganda 400 kV, 132km line corridor, as summarized in **Table 36**.

**Table 36: List of Valuers for the Kenya-Uganda Transmission Line**

No.	Name of the Firm	Date of the Valuation Report	No. of Parcels Valued
1.	Njihia Muoka Rashid Company Limited	23 November, 2013	22
2.	Capital Valuers Limited	Not provided	Not provided
3.	National Land Commission	Not provided	Not provided

5.5.16 Out of the three (3) valuers engaged, the Kenya Electricity Transmission Company provided a valuation report by Njihia Muoka Rashid Company Limited. Upon review of the valuation report it was established that a sample of twenty-two (22) parcels of land were used as a basis in computing the market value of the land along the Kenya – Uganda Line Corridor. However, the valuation method used to arrive at value of the land was not provided for audit.

5.5.17 In the absence of valuation reports from Capital Ventures Limited and the National Land Commission, it was not possible to confirm the accuracy and authenticity of the value of land provided by the Kenya Electricity Transmission Company.

***Overpayment for Twenty Parcels of Land, Kshs.7,661,576***

5.5.18 Section 148(1) of the Land Act, 2012 provides that compensation for the use of land should be based on the value of land as determined by a qualified valuer.

5.5.19 Review of the cadastral data and documents revealed that the Managing Director and General Manager, Project Management Services approved payment for twenty (20) parcels of land whose actual affected area was less

than the stated affected area resulting to an overpayment of Kshs.7,661,576, as detailed in **Appendix 19**.

## **5.6 Financial Management and Expenditure**

### ***Lack of a Project Implementation Guideline Issued by MOE to the Kenya Electricity Transmission Company***

5.6.1 Section 148 of the Land Act, 2012 provides that compensation shall be payable to any person in lawful or actual occupation of land used as a communal right of way. In the case of a wayleave, compensation is also payable for any damage to trees, crops, and buildings. For private land, such compensation shall be based on the value of the land as determined by a qualified valuer. Further, Section 7.3 of the RPF, 2011 required the Kenya Electricity Transmission Company to compensate for land acquired or encumbered, structures affected, crops/-trees destroyed and loss of income/business/employment.

5.6.2 The Audit Team engaged with the KETRACO Team and noted that MOE was supposed to issue guidelines defining the allowable expenditures to be incurred by KETRACO, the scope of work to be undertaken by KETRACO and the responsibilities of both MOE and KETRACO, while constructing the Kenya-Uganda Transmission Line. However, The Audit Team was not provided with any guidelines for the implementation of the project.

#### **Approved Wayleave Compensation**

5.6.3 Section 7.3 of the RPF, 2011 required the Kenya Electricity Transmission Company to compensate for land acquired or encumbered, structures affected, crops/-trees destroyed and loss of income/business/employment.

5.6.4 The amount of compensation payable for land, crops and structures to the Project Affected Persons, and approved by the Managing Director on various dates was Kshs.1,835,863,715.

#### **Wayleave Compensation Paid and Outstanding**

5.6.5 Review of the payment schedules provided for audit revealed that out of the total compensation payable for land, structures and crops for the Kenya-Uganda Transmission Line amounting to Kshs.1,835,863,715, the Kenya

Electricity Transmission Company paid Kshs.1,357,202,952, leaving a balance of Kshs.478,660,763 as at 30 June, 2023, as detailed in **Appendix 20, Appendix 21 and Appendix 22** and summarized in **Table 37**.

**Table 37: Total Compensation Payable Vs. Total Amount Paid for the Kenya-Uganda Power Interconnection Project**

Description	Number of Parcels Affected/ Structure and Crop	Total Wayleave Compensation Amount (Kshs.)	Amount Paid (Kshs.)	Amount Outstanding (Kshs.)
Land	2573	832,334,219	378,553,887	453,780,332
Structures	1453	728,977,849	705,185,008	23,792,841
Crops/Trees	1667	274,551,647	273,464,057	1,087,590
<b>Total</b>		<b>1,835,863,715</b>	<b>1,357,202,952</b>	<b>478,660,763</b>

***Lack of Documentation for the Outstanding Wayleave Compensation***

5.6.6 Supporting documents for the outstanding wayleave compensation amount of Kshs.478,660,763 were not provided for audit. Review of the total payments amounting to Kshs.1,357,202,952 revealed that a total of Kshs.17,801,746 was paid to sixty-five (65) PAPs who had rejected offer letters, as detailed in **Appendix 23**. The amount of Kshs.17,801,746 should not have been paid, since compensation should be paid upon acceptance of the offer and execution of the necessary agreements.

**5.7 Physical Verification of the Kenya – Uganda Transmission Line**

**Land Verification**

5.7.1 The Audit Team carried out physical verification for the Kenya-Uganda Interconnector Transmission Line Project in Nandi, Kakamega, Bungoma and Busia Counties. The purpose of the verification exercise was to confirm that the parcels of land exist, the actual acreage/sizes affected and land occupancy. In addition, the physical verification exercise was to ascertain the existence and occupancy status of the structures and crops, if possible, with outstanding claims. The Audit Team applied three (3) approaches in the exercise as follows:

- i. Actual survey of the parcels of land;
- ii. Interviews with PAPs with outstanding claims for structures and crops; and

iii. Use of experts.

5.7.2 During the physical verification exercise held in September 2023, the Audit Team sampled one hundred and thirty-two (132) PAPs with outstanding compensation for land. Out of the one hundred and thirty-two (132) PAPs, the team engaged one hundred and twenty-four (124) PAPs and noted the following issues, as summarized in **Table 38** and detailed in **Appendix 24**.

**Table 38: Summary of Key Issues Raised During Field Verification**

No.	Issue Raised	Number of Land Parcels
1	19 PAP owners were paid at the time of audit between March 2023 and September 2023	19
2	91 PAPs owners had outstanding claims at the time of physical verification	91
3	7 PAPs owner with closed subdivisions at the time of audit	7
4	4 PAPs had rejected offers letters	4
5	One PAPs owner (LR. No West Bukusu/South Mateka/2745) was paid more than the valued amount	1
6	One PAP with LR No. Bukhayo/Ludida /327 later subdivided his land into two other parcels; Bukhayo /Ludida 327A and 327B and claimed for the two parcels of land instead on one	2
	<b>Total</b>	<b>124</b>

5.7.3 The Audit Team assisted by a surveyor from the Kenya Electricity Transmission Company carried out survey to confirm the accuracy of sizes of the wayleave acquired for the Project. The Audit Team established that most of the landowners interviewed were given offers in 2015 and some of them had subdivided their land after receipt of the letters of offer.

#### **Verification of Crops/Trees**

5.7.4 The Audit Team sampled five (5) Project Affected Persons (PAPs) with outstanding compensation claims of Kshs.1,016,590, for crops/trees for physical verification. However, claims for the five (5) sampled PAPs could not be verified since the affected crops/trees, had been destroyed, as detailed in **Appendix 25**.

## Verification of Structures

- 5.7.5 The Audit Team carried out physical verification for twenty-seven (27) Project Affected Persons (PAPs) with outstanding compensation claims for structures amounting to Kshs.6,848,351.
- 5.7.6 Out of the twenty-seven (27) PAPs, twenty-one (21) PAPS were traced, out of which six (6) PAPs confirmed that they had been paid, fifteen (15) PAPs had not been paid at the time of audit, while six (6) PAPs could not be traced. It was therefore, not possible to corroborate the amount of compensation payable to the PAPs. The details of the sampled PAPs and those interviewed by the Audit Team are detailed in **Appendix 25**.

## 5.8 Irregularities, Responsibilities and Recommendations

- 5.8.1 The following irregularities and weaknesses, persons responsible and corresponding recommendations were identified by the Audit Team as summarized in **Table 39**.

**Table 39: Irregularities, Responsibilities and Recommendations Matrix for the Kenya-Uganda Transmission Line**

	Irregularities and Weaknesses	Amount Involved (Kshs.)	Section of the Report	Responsibility	Recommendations
1	Failure to provide documents for audit review as detailed in Appendix 1 contrary to Section 9 (1)(e)(i) of the Public Audit Act, 2015	N/A	Appendix I of the Report	PS – State Department for Energy and KETRACO Management	The Management should comply with the Public Audit Act, 2015, in relation to audit and provision of documents
2	Variance between Approved Budget and Disbursements to KETRACO	1,085,508,187	5.4.9	PS – State Department for Energy and KETRACO Management	The State Department for Energy should ensure that a project budget is fully funded.
3	Failure to Gazette 316 Parcels of Land along the wayleave corridor	N/A	5.5.9	KETRACO Management	The Management should ensure that all the parcels of land on the wayleave corridor are gazetted.
4	Failure to de-gazette 4 parcels of land no longer affected by the project contrary to Section to 52(2)(a) of the Land Regulations, 2017	1,666,020	5.5.11	KETRACO Management	Management should de-gazette and initiate the recovery process of the four (4) parcels

	Irregularities and Weaknesses	Amount Involved (Kshs.)	Section of the Report	Responsibility	Recommendations
					of land irregularly paid.
5	Failure to Provide the Sampling basis and Methodology Used in Arriving at Valuation Amounts	N/A	5.5.16	KETRACO Management	The Management should provide the sampling basis and methodology used in the valuation
6	Overpayment for Twenty (20) Parcels of Land	7,661,576	5.5.19	KETRACO Management	The Management should take responsibility for the overpayment and initiate recovery efforts from the PAPs who benefited
7	Lack of a Project Implementation Guideline Issued by the MOE to Kenya Electricity Transmission Company	N/A	5.6.2	PS – State Department for Energy and KETRACO Management	The State Department for Energy should develop project implementation guidelines for projects undertaken by State Corporations under the State Department
8	Lack of supporting documentation for payment vouchers Amounting to Kshs.17,801,746	17,801,746	5.6.7	KETRACO Management	The Management should ensure payments for wayleave acquisition are properly supported with land searches and other relevant documents

## 5.9 Conclusion

5.9.1 The Kenya-Uganda Project involved the construction of a 132 KMS, 400 KV line from Lessos to Tororo in Uganda, and Substations at Lessos. The Project commenced in 20 September, 2010 and was to be completed in 31 December, 2017, while the Substations at Lessos, was completed in 2017. At the time of the audit, the transmission line had stalled and Lessos Substations was also incomplete.

- 5.9.2 The Project was undertaken by the Kenya Electricity Transmission Company and financed by the Government of Kenya and the African Development Bank and the total Project cost amounted to UA 39770,000, approximately Kshs.8,954,340. The feasibility study for the Project was undertaken in September 2010, the Environmental and Social Impact Assessment (ESIA) was undertaken in September 2007 and the Resettlement Action Plan (RAP) was carried out and the report issued in May 2011.
- 5.9.3 Comparison between the approved budgets and actual disbursements made for the Project revealed that from the financial year 2014/2015 to 2022/2023, the Kenya Electricity Transmission Company received a total of Kshs.1,764,491,813, instead of the total approved budget of Kshs.2,850,000,000, resulting in underfunding/ or the disbursement being above the budget allocation by Kshs.1,085,187 for the GOK component.
- 5.9.4 The Kenya Electricity Transmission Company identified parcels of land, structures and crops that affected 2,573, 1,474 and 1,667 Project Affected Persons (PAPs), respectively. The total valuation for the land, structures and crops that had been encumbered, affected or destroyed amounted to Kshs1,835,863,715, out of which, the Kenya Electricity Transmission Company paid Kshs.1,357,202,952, leaving an outstanding balance of Kshs478,660,763. Out of the paid wayleave compensation amount of Kshs.1,357,202,952, Kshs.17,801,746 was paid without supporting documentation.
- 5.9.5 The major irregularities noted by the Audit Team included failure to provide documents, poor record keeping, unexplained variances, non-disbursement of funds, failure to provide the sampling basis, non-provision of the methodology used in arriving at valuation and unsupported schedules, among others.

## **6 KENYA POWER TRANSMISSION SYSTEM IMPROVEMENT PROJECT**

### **6.1 Project Overview**

- 6.1.1 Kenya Power Transmission System Improvement Project (KPTSIP) was designed for construction of 431km of 132kv lines, the extension of six

Substations and construction of eight new Substations that would contribute to the capacity of Kenya to increase the number of new connections by 200,000 annually, as well as the rural electricity connectivity from 23% to 40% by the year 2020. The six transmission lines under this project are as detailed in **Table 40**.

**Table 40: Transmission Lines under KPTSIP**

No	Transmission Line	Distance in KM
1	Ishiara – Embu	33
2	Lessos-Kabarnet	65
3	Nanyuki-Rumuruti	79
4	Olkaria-Narok	68
5	Sotik-Bomet	33
6	Mwingi-Kitui-Wote-Sultan Hamud	153
	<b>Total Distance</b>	<b>431</b>

- 6.1.2 The six (6) transmission lines under KPTSIP traverse a total of 3,092 parcels of land.
- 6.1.3 The key objective of the project was to contribute to the delivery of adequate and reliable power supply, which would catalyse the growth and competitiveness of rural economy and the development of social institutions such as schools and hospitals.
- 6.1.4 The project was financed by the African Development Fund (ADF) and the Government of Kenya, through the Ministry of Energy and Petroleum, and The National Treasury.
- 6.1.5 The Project commenced in April 2013 and was expected to end on 30 June, 2015. However, it was not complete as at the time of audit. According to a letter from the donor to KETRACO Ref. AfDB/EARC/LTR/2017/05/030 and dated 18 May, 2017 the donor terminated funding for KPTSIP before completion.

#### **Summary of Claims**

- 6.1.6 As at 30 June, 2023 the total value in the compensation schedules for the Kenya Power Transmission System Improvement Project amounted to Kshs. 2,265,413,334, out of which KETRACO had paid Kshs. 2,001,731,829 (88%), leaving an outstanding balance of Kshs.263,681,505. The Audit Team

reviewed and analysed the claims for the Project compensation. The following are the audit findings: -

## **6.2 Conceptualization and Feasibility Study**

### **Project Conceptualization**

- 6.2.1 The Sessional Paper No. 4 of 2004 on Energy, lays the policy framework upon which cost-effective, affordable and adequate quality energy services would be made available to the domestic economy on a sustainable basis over the period 2004-2023. It further, sets out the national policies and strategies for Kenya's energy sector in the short to long-term.
- 6.2.2 Part 2.1.2 of the Sessional Paper No. 4 of Energy 2004 on Institutional Arrangements states that Government activities in the power sub-sector are limited to formulation and articulation of policies through which it provides an enabling environment to all economic operators and other stakeholders, training of manpower, preparation of the country's 20 year rolling Least Cost Electric Power Development Plan (LCPDP) revised annually to take account of new information, implementation of the rural electrification programme and to a large extent mobilization of financial resources for system expansion.
- 6.2.3 The six (6) KPTSIP transmission lines were identified in the Least Cost Power Development Plan 2011-2030 for improving the performance of the West Kenya network to cater for the increasing load growth and meet the 2030 vision objectives.
- 6.2.4 Section 4(2) of the Energy Act, 2019 requires each National energy service provider to develop and submit to the Cabinet Secretary plans for provision of energy services in accordance with its mandate. KETRACO therefore, developed a Transmission Masterplan to comply with the Energy Act, 2019.
- 6.2.5 According to the Transmission Master Plan, the Project was anticipated to enhance supply capacity that is reliable and alleviate loss of load hence ensure compliance with the requirements stipulated in the Transmission Grid Code. Additionally, the project was to improve efficiency by reducing over reliance to long Medium Voltage (MV) lines thereby reducing power system losses.
- 6.2.6 Further, a review of the Strategic Plan 2010/2011 to 2014/2015 established that Sotik-Bomet, Olkaria-Narok, Nanyuki-Rumuruti and Lessos-Kabarnet

were listed as some of the transmission lines whose commencement had delayed due to lack of funds. The six (6) transmission lines under KPTSIP were also discussed in the Strategic Plan 2015/2016 to 2019/2020 as Committed and Planned Transmission Projects.

### **Project Feasibility and Environmental and Social Impact Assessment Studies**

#### **Feasibility study**

- 6.2.7 The feasibility study for extension of 132 kV lines of the Power Transmission System Improvement Project was conducted by two (2) consultants namely; Norconsult ASA for the sections Ishiara-Kieni, Mwingi-Kitu-Wote-Sultan Hamud, Lessos-Kabarnet and Nanyuki-Rumuruti and SMEC International Pty for sections Olkaria-Narok and Bomet-Sotik.
- 6.2.8 Summary of the consultant companies for each of the transmission lines and the dates of the reports is as shown in **Table 41**.

**Table 41: Consultants Engaged for KPTSIP Feasibility Study**

<b>Firm</b>	<b>Transmission Line</b>	<b>Date of the report</b>
SMEC International Pty	Sotik – Bomet 132kV line	April 2009
SMEC International Pty	Olkaria - Narok 132kV line	April 2009
Norconsult ASA	Mwingi – Kitui – Wote – Sultan Hamud 132Kv	August 2009
Norconsult ASA	Ishiara – Kieni 132kV line	August 2009
Norconsult ASA	Nanyuki – Rumuruti 132Kv	September 2009
Norconsult ASA	Lessos - Kabarnet 132kV line	September 2009

#### **Environmental Social and Impact Assessment**

- 6.2.9 Section 2.1.7 of the Sessional Paper No. 4 of 2004 on Energy requires that a comprehensive environmental impact assessment is conducted for all Projects prior to their implementation.
- 6.2.10 Kenya Transmission Company undertook ESIA for each transmission line segment of the project which were approved by NEMA between November 2009 and April 2010, as shown in **Table 42**.

**Table 42: Environmental and Social Impact Assessment for KPTSIP**

<b>Transmission line</b>	<b>Consultant</b>	<b>Date of ESIA Report</b>
Sotik – Bomet 132kV line	Log Associates	November 2009
Olkaria - Narok 132kV line	Log Associates	November 2009
Mwingi – Kitui – Wote – Sultan Hamud 132Kv	Repcon Associates	April 2010
Ishiara – Kieni 132kV line	Repcon Associates	April 2010
Nanyuki – Rumuruti 132Kv	Africa Waste and Environment Management Centre	March 2010
Lessos - Kabarnet 132kV line	Africa Waste and Environment Management Centre	March 2010

6.2.11 According to the ESIA Report, the justification of the Project was to stabilize power supply and thus cushion current consumers against losses occasioned by power failures and blackouts.

#### **Resettlement Action Plan**

***Failure to indicate the number of PAPs or the number of affected households in the RAPs***

6.2.12 Section 1.1 of the Resettlement Policy Framework, 2011 states that specific Resettlement Action Plan (RAP) will be developed for each project. KETRACO would manage the RAP process including outsourcing consultancy services. For each project a Resettlement Project Team (RPT) would be formed comprising of social economics, surveyor, wayleave officer, environmental specialist, transition engineer, land valuer, legal office and building technician. The Resettlement Action Plans for the six (6) Transmission Lines under KPTSIP were developed between May and November, 2013 by different consultants, as shown in **Table 43**.

**Table 43: Consultants of the Resettlement Action Plan for KPTSIP**

Firm	Transmission Line	Description	Number of Cases	Cost Estimates for All Resettlement Activities	Date of the RAP Report
NAJJ Consultants Ltd	Sotik – Bomet 132kV line	Land	Not indicated	177,889,250	May 2013
		Structures	164	51,360,265	
		Crops/trees	Not indicated	49,035,200	
		Sub total	Not indicated	218,284,715	
NAJJ Consultants Ltd	Olkaria - Narok 132kV line	Land	Not indicated	89,332,770	September 2012
		Structures	89	24,183,925	
		Crops/trees	Not indicated	11,336,600	
		Sub total	166	124,853,295	
Log Associates	Mwingi – Kitui – Wote – Sultan Hamud 132kV	Land	990	123,264,346	Not dated
		Structures	676	127,624,309	
		Crops/trees	9,365	17,881,850	
		M & E and Contingencies		59,877,051	
		Sub total	11,031	328,647,555	
NAJJ Consultants Ltd	Nanyuki – Rumuruti 132Kv	Land	Not indicated	243,582,368	September 2013
		Structures	44	21,839,995	
		Crops/trees	Not indicated	1,793,750	
		Sub total	Not indicated	267,216,113	
Log Associates	Ishara – Kieni 132kV line	Land	252	48,058,557	August 2013
		Structures	585	133,644,390	
		Crops/trees	5,040	9,912,000	
		Other Costs		41,381,495	
		Sub total	5,877	232,996,441	
Najj Consultant	Lessos - Kabarnet 132kV line	Land	Not indicated	230,966,000	November 2013
		Structures	349	103,608,253	
		Crops/trees	Not indicated	122,287,000	
		Sub total		456,861,253	
			<b>Total</b>	<b>1,628,859,371</b>	

6.2.13 It was established that although the objective of all the RAPs was indicated as identifying the Project Affected Persons (PAPs), its only Ishara -Kieni and Mwingi- Kitui-Wote-Sultan Hamud that had indicated the number of PAPs in all the categories namely; Land, Structures and crops. The total cost for the resettlement and compensation of the affected persons, communities, public and institution land and assets in the six transmission lines was estimated at Kshs.1,628,859,373.

### 6.3 Governance and Related Issues

#### Roles and Responsibilities as per the Law/ Guidelines in the Project Cycle

##### *Failure to provide Board Committee Charters prior to 2019*

- 6.3.1 Section 1.7 of Mwongozo, the Code of Governance for State Corporations of 2015, states that the Board should establish not more than four (4) committees with the Audit Committee being one of them.
- 6.3.2 The Kenya Transmission Company has four (4) Board committees namely; Staff and Remuneration Committee, Audit and Risk Assurance Committee, Finance, Strategy & Risk Management Committee and Technical Committee. The Audit Team reviewed the committee charter for each of the 4 Board committees developed in 2019.
- 6.3.3 However, committee charters prior to 2019 were not provided for review. Therefore, the Audit Team could not ascertain whether the committees established prior to 2019 were in line with Section 1.7 of Mwongozo.
- 6.3.4 According to the committee charters developed in 2019, the Technical Committee had the primary responsibilities with regards to implementation of projects. The main roles and responsibilities of the Technical Committee are:
- i. To oversee the operationalization and implementation of the Company Transmission Master Plan;
  - ii. To receive regular reports on Power System Planning, Project Progress, System availability and Operations and Maintenance and make necessary recommendations to the Board as may be appropriate;
  - iii. To ensure that Projects are planned, implemented in accordance with the Strategic Plan Priorities, Performance Contract, approved Budgets, Procurement Plans, national policies and priorities and engineering best practice; and
  - iv. To receive and consider the reports of all proposed new projects, policies, and capital developments.
- 6.3.5 Section 5.01 of the Loan Agreement required KETRACO to furnish evidence of the establishment of the Project Implementation Team (PIT), a Management Committee comprising; the project coordinator, three site

managers, one civil engineer, one accountant, one procurement expert, one socio-economist, and one environmentalist; the qualification of whom would be acceptable to the African Development Fund.

- 6.3.6 The PIT members were appointed through letter Ref No: KETRACO/1/8B/1-J/JM/lmt dated 4 May, 2011. The composition of the aforementioned PIT members was compliant with Section 5.01(i) of the funding agreement on conditions preliminary to the first disbursement. There was, however, no communication from the African Development Fund to show that the nine (9) members of the PIT was acceptable to the Fund.

***Failure to Complete the Transmission Lines on Time***

- 6.3.7 The funding by the African Development Fund was based on the agreed completion timelines for the six (6) transmission lines by 30 June, 2015. However, due to several extensions of the project completion time, the donor terminated funding which was communicated to KETRACO vide letter referenced AfDB/EARC/LTR/2017/05/030 dated 18 May, 2017. As at the time of termination of the funding, ADF had disbursed Kshs.5,881,919,739, equivalent to 84.1% of the loan amount. The financing timelines for the project are as detailed in **Table 44**.

**Table 44: Financing Timelines for KPTSIP**

Description of Disbursement	Timeline of disbursement	Amount in Kshs.
Date loan was declared effective	14 December, 2011	N/A
Date of first disbursement	20 June, 2012	1,250,983,851
Date of expected last disbursement	30 June, 2015	1,417,637,933
Funding closure /termination date	31 July, 2017	N/A

- 6.3.8 The Kenya Power Transmission System Improvement Project management was unable to meet the completion timelines for Lot 1 that involved construction of the Lessos-Kabarnet, Nanyuki-Rumuruti, Olkaria-Narok and Sotik-Bomet Transmission Lines; and Lot 2 which involved construction of the Ishiara-Kieni and Mwingi-Wote-Sultan Hamud Transmission Lines. According to the Board approval for the budget of the financial year 2017/2018, the Government of Kenya took over the responsibility to meet contractual pending payments and the consultancy fees previously financed by ADF loan. There

was no progress report to show the percentage of completion as at the time of termination of funding.

**Termination of Lot 1 and Lot 2 KPTSIP Contracts Between Jyoti Structures Limited and GOK**

- 6.3.9 Jyoti Structures limited was contracted to construct six (6) transmission lines under KPTSIP. The contract was in two lots; Lot 1 was for construction of four (4) transmission lines while Lot 2 was for construction of two (2) transmission lines. The initial completion dates were 05 July, 2015 and 10 July, 2015 for LOT 1 and LOT 2, respectively. The contractor was to be paid using donor funds.
- 6.3.10 China CAMCE Company Limited was also contracted for construction of eight (8) new 132/33Kv Substations and extension of the six (6) existing Substations. SMEC International PTY LTD was contracted as a consultant for contract management services.
- 6.3.11 The total contract price for the three (3) companies was quoted in both US Dollar and Kenya Shillings, as USD.56,068,307 and Kshs.922,408,411, respectively, as shown in **Table 45**.

**Table 45: Summary of Contracts Awarded for KPTSIP**

S/N	Company	Description	Contract Amount USD	Contract Amount Kshs.
1	Jyoti Structures Limited	Construction of transmission lines: Lessos-Kabarnet, Nanyuki-Rumuruti Olkaria-Narok and Sotik-Bomet	15,191,619	488,538,396
2	Jyoti Structures Limited	Construction of transmission lines; Ishiara-Kieni and Mwingi-Wote-Sultan Hamud	10,028,916	403,309,135
3	China CAMCE Company Limited	Construction of 132/33 KV Substations: Bomet, Rumuruti, Narok- and Kabarnet  Extensions of Substations: Olkaria, Sotik, Lessos and Nanyuki	13,835,047	15,280,440
4	China CAMCE Company Limited	Construction of 132/33 KV Substations: Kieni, Mwingi, Wote and Sultan Hamud  Extensions of Substations: Ishiara and Mwingi	14,036,793	15,280,440
5	SMEC International PTY LTD	Contract Management Services	2,975,932	
		<b>TOTAL</b>	<b>56,068,307</b>	<b>922,408,411</b>

- 6.3.12 On 25 July, 2018 the Indian National Company Law Tribunal (NCLT) ordered for the liquidation of Jyoti structures after the company was referred to the bankruptcy courts. Following this incidence, KETRACO issued notices of termination of contracts for both LOT 1 and LOT 2 on 17 September, 2018.
- 6.3.13 The contract for completion of both Lot 1 and Lot 2 was later awarded to China CAMCE Company Limited for a Contract sum of USD7,173,395 and Kshs.163,618,363. The contract between GOK and China CAMCE Company Limited was signed on 18 April, 2019. The completion date was rescheduled to 7 February, 2020. As at the time of audit, sections of the Lessos-Kabarnet and Mwingi-Kitui-Wote-Sultan Hamud transmission lines were not yet complete as scheduled.

#### **6.4 Budget and Budgetary Control**

##### **Wayleave Compensation and Resettlement Cost**

- 6.4.1 According to the Resettlement Action Plan (RAP) reports for the six lines under the KPTSIP, the cost of resettlement and compensation of the affected persons, communities, public and institution land and assets was estimated at Ksh.1,628,859,373.

##### **Project Sources of Funds and Financing**

- 6.4.2 The Kenya Power Transmission System Improvement Project was financed by the Government of Kenya and Africa Development Fund. The Government of Kenya, through The National Treasury, entered into a Loan agreement with the Africa Development Fund on 23 March, 2011 to finance construction of the transmission lines at an amount of Units of Account (UA)46,700,000equivalent to Kshs.5,928,191,400, at a rate of 1 UA to Kshs.126.94 (Rate as at 23 March, 2011).
- 6.4.3 Section 5.01(ii) further required GOK to furnish evidence of actual compensation to the PAPs as set out in the RAPs before handing over the sites to the contractors or establishment of an escrow account in which the same amounts (or their outstanding part) will be deposited for the purposes of payments indicated in the RAPs.

## Approved Budget for MOE and KETRACO

- 6.4.4 The Kenya Power Transmission System Improvement Project was funded by the Government of Kenya and African Development Fund. The budget was factored in the development budgets for both the Ministry of Energy and KETRACO, as shown in **Table 46**.

**Table 46: Approved Budget for the Ministry of Energy and KETRACO for KPTSIP**

FY	MOE Budget as per the Revised Budget Estimates			KETRACO Budget as per the Audited Financial Statements		
	Donor (Kshs.)	GOK (Kshs.)	Total (Kshs.)	Donor (Kshs.)	GOK (Kshs.)	Total (Kshs.)
2013/2014	Not Itemized	Not Itemized	N/A	N/A	N/A	N/A
2014/2015	Not Itemized	Not Itemized	N/A	2,966,000,000	400,000,000	3,366,000,000
2015/2016	3,058,167,540	290,000,000	3,348,167,540	3,058,167,539	290,000,000	3,348,167,540
2016/2017	1,474,156,375	195,000,000	1,669,156,375	1,474,156,375	195,000,000	1,669,156,375
2017/2018	0	126,875,000	126,875,000	0	126,875,000	126,875,000
2018/2019	0	825,000,000	825,000,000	0	825,000,000	825,000,000
2019/2020	0	462,000,000	462,000,000	0	462,000,000	462,000,000
2020/2021	0	135,000,000	135,000,000	0	135,000,000	135,000,000
2021/2022	0	90,000,000	90,000,000	0	90,000,000	90,000,000
2022/2023	0	0	0	0	0	0
<b>Total</b>	<b>4,532,323,915</b>	<b>2,123,875,000</b>	<b>6,656,198,915</b>	<b>7,498,323,914</b>	<b>2,523,875,000</b>	<b>10,022,198,915</b>

- 6.4.5 The approved budget for the Ministry of Energy for the FY 2013/2014 and 2014/2015 were not program-based. The Audit Team could therefore, not establish the budgeted amount for KPTSIP in those financial years.
- 6.4.6 It was established that the final approved budgets for both the Ministry of Energy and KETRACO for the GOK component was a single line budget. The allocation was to cater for wayleave, consultancy fees and other operating costs. The amount allocated by KETRACO for compensation to PAPs out of the GOK component of Kshs.2,397,000,000 could not be established. The Audit Team therefore, could not compare the compensation amount estimated by the RAP of Kshs.1,628,859,373 with the compensation amount budgeted by KETRACO.

## Disbursement of Funds from MoE to KETRACO

- 6.4.7 Cumulative disbursements from the Ministry of Energy to KETRACO and from KETRACO to the Project are summarized in **Table 47**.

**Table 47: Total Disbursements for KPTSIP**

<b>FY</b>	<b>MOE TO KETRACO (Kshs.)</b>	<b>KETRACO TO THE PROJECT (Kshs.)</b>
2013/2014	Not Itemized	254,063,890
2014/2015	Not Itemized	141,992,974
2015/2016	290,000,000	275,354,798
2016/2017	195,000,000	278,427,138
2017/2018	126,875,000	234,668,521
2018/2019	825,000,000	743,750,000
2019/2020	462,000,000	543,250,000
2020/2021	109,375,000	109,375,000
2021/2022	90,000,000	115,625,000
2022/2023	40,000,000	0
<b>Total</b>	<b>2,138,250,000</b>	<b>2,696,507,321</b>

- 6.4.8 The Ministry of Energy transferred a total of Kshs.2,138,250,000 to KETRACO between financial years 2015/2016 and 2022/2023, while KETRACO's disbursements to the project according to the audited financial statements for the period 2013/2014 to 2022/2023 was Kshs.2,696,507,321.
- 6.4.9 Disbursements from the MOE to KETRACO for 2013/2014 and 2014/2015 financial years could not be established since the vote book for the period was not program based. The Audit Team therefore could not reconcile the disbursements from MOE to KETRACO and to the project.

**GOK Component Budget Vs Funds Disbursed to KETRACO for the Kenya Power Transmission System Improvement Project**

***Unexplained Variance Between Approved Budget and Disbursements to the Project Kshs.81,431,569***

- 6.4.10 A comparison between the approved budgets and actual disbursements made for the Project revealed that from 2014/2015 to 2022/2023 KETRACO disbursed a total of Kshs.2,442,443,431 to the project against the total approved budget of Kshs.2,523,875,000, resulting in under funding of the budget by Kshs.81,431,569, as shown in **Table 48**.

**Table 48: Comparison of the Approved Budget and Actual Disbursements for KPTSIP**

FY	MOE			KETRACO		
	Budget Allocation Kshs.	Actual Disbursement from MOE Kshs.	Variance Kshs.	Budget Allocation According to Financial Statements Kshs.	Actual Disbursement According to Financial Statements Kshs.	Variance Kshs.
2013/2014	Not Itemized	Not Itemized	N/A	N/A	N/A	N/A
2014/2015	Not Itemized	Not Itemized	N/A	400,000,000	141,992,974	258,007,026
2015/2016	290,000,000	290,000,000	0	290,000,000	275,354,798	14,645,202
2016/2017	195,000,000	195,000,000	0	195,000,000	278,427,138	(83,427,138)
2017/2018	126,875,000	126,875,000	0	126,875,000	234,668,521	(107,793,521)
2018/2019	825,000,000	825,000,000	0	825,000,000	743,750,000	81,250,000
2019/2020	462,000,000	462,000,000	0	462,000,000	543,250,000	(81,250,000)
2020/2021	135,000,000	109,375,000	(25,265,000)	135,000,000	109,375,000	25,625,000
2021/2022	90,000,000	90,000,000	0	90,000,000	115,625,000	(25,625,000)
2022/2023	0	40,000,000	40,000,000	0	0	0
<b>Total</b>	<b>2,123,875,000</b>	<b>2,138,250,000</b>	<b>14,735,000</b>	<b>2,523,875,000</b>	<b>2,442,443,431</b>	<b>81,4321,569</b>

## 6.5 Assets Management and Wayleave Acquisition

### Failure to Provide Appointment Letters of the Land Acquisition Scoping Team

- 6.5.1 Section 1.4.1 of the Resettlement Policy Framework, 2011 provides that the Company will identify a potential site for constructing a Substation and the price of land will be negotiated with the landowner based on the existing market value.
- 6.5.2 The Kenya Power Transmission Systems Improvement Project involved construction of six (6) transmission lines, construction of eight (8) new sub-stations and extension of six (6) pre-existing sub-stations. The six (6) pre-existing Substations which were extended and the eight (8) newly constructed Substations are as shown in **Table 49**.

**Table 49: Extended and Newly Constructed Substations for KPTSIP**

<b>Project transmission line</b>	<b>Km</b>	<b>Existing Substation Route</b>	<b>New Substation</b>
Sotik – Bomet 132kV line	33	Sotik	Bomet
Olkaria - Narok 132kV line	68	Olkaria	Narok
Mwingi – Kitui – Wote – Sultan Hamud 132Kv	153	Mwingi	Kitui, Wote and Sultan Hamud
Nanyuki – Rumuruti 132Kv	79	Nanyuki	Rumuruti
Ishiara – Kieni 132kV line	33	Ishiara	Kieni
Lessos - Kabarnet 132kV line	65	Lessos	Kabarnet
<b>Total KM</b>	<b>431</b>		

6.5.3 The scoping team was responsible for identifying and carrying out due diligence on the potential available lands for constructing the Substations, rank and value the land. However, the management did not provide documentation on appointment of the scoping team or the report issued by the team.

***Absence of Procurement Documentation for Acquisition of Land for KPTSIP Sub-stations***

6.5.4 Section 44 (1) and (2) of the PPADA, 2015 requires that the accounting officer of a public entity shall ensure proper documentation of procurement proceedings and safe custody of all procurement records in accordance with the Act.

6.5.5 Kenya Electricity Transmission Company Ltd acquired eight (8) parcels of land for construction of new Substations as shown in **Table 50**.

**Table 50: Summary of Land Acquired for Construction of KPTSIP Sub-Stations**

S/N	Route	Sub-station	Title Number	Size of land in Acres	Amount per Acre	Amount paid (Kshs.)	Ownership
1	Sotik – Bomet 132kV line	Bomet	Kericho East/Sotik/871	5.73	3,000,000	17,191,200	Not provided
2	Olkaria - Narok 132kV line	Narok	III mashariani/morijo/3196	5	Not indicated	Not indicated	KETRACO
3	Mwingi – Kitui –	Kitui	Kyangwithya/muluti/918	5.9	500,000	2,950,000	KETRACO
4	Wote – Sultan Hamud 132Kv	Wote	Kako/561	5.78		9,500,000	Not provided
5		Sultan Hamud	Not Provided	Not Provided	Not Provided	Not Provided	Not provided
6	Nanyuki – Rumuruti 132kV	Rumuruti	Rumuruti/block 2/5	11.33	200,000	2,264,990	KETRACO
7	Ishiara – Kieni 132kV line	Kieni	Evurore/Nthambu/2218	4.94	Not indicated	Not indicated	KETRACO
8	Lessos - Kabarnet 132kV line	Kabarnet	Baringo/kapropita/299	5	Not indicated	Not indicated	Not provided
			<b>Total Acres</b>	<b>38.74</b>			

6.5.6 However, the Management did not provide records relating to identification and procurement of land for the eight (8) Substations. The Audit Team therefore, could not determine whether the prescribed method of identification and procurement of land was followed.

6.5.7 The compensation schedules provided showed amounts paid for two (2) out of the eight (8) parcels of land namely; Kitui (Kyangwithya/muluti/918) and Wote (Kako/561). However, records of payment for all the eight parcels of land were not provided for audit review. It was therefore, not possible to ascertain the actual amounts incurred on acquisition of land for construction of new Substations. In addition, sale agreements were also not provided for audit review.

### ***Absence of Ownership Documents for Sub-Station Land***

- 6.5.8 Title deeds for four (4) out of the eight (8) parcels of land acquired by KETRACO for KPTSIP sub-stations were not provided for audit review. The Audit Team therefore could not confirm transfer of ownership upon acquisition of the parcels of land.

### **Wayleave Acquisition Process**

- 6.5.9 Wayleave acquisition process for KETRACO is guided by the Resettlement Policy Framework (RPF) 2011. A wayleave is a right of way (ROW) over the land of another and is registered as an easement.

### **Survey of the Affected Parcels of Land**

#### ***Failure to Provide Contracts signed with Surveyors for KPTSIP Transmission Lines***

- 6.5.10 The Kenya Transmission Company engaged private surveyors who developed a Cadastral data schedule for all the routes identified for the wayleave. The Cadastral data was used by the land economist to generate the value of each parcel of land affected and for gazettelement purpose. **Table 51** shows surveyors that were engaged by KETRACO.

**Table 51: Surveyors Engaged in the KPTSIP**

<b>Surveyor</b>	<b>Transmission Line</b>	<b>Date of Engagement</b>
Ramani Geosystems Limited	Sotik – Bomet 132kV line	21 February, 2018
Ramani Geosystems Limited	Olkaria - Narok 132kV line	21 February, 2018
GeoMaps (Africa) Limited	Mwingi – Kitui – Wote – Sultan Hamud 132Kv	Not provided
Geodev Kenya Limited	Nanyuki – Rumuruti 132Kv	Not provided
Geosurv Systems Limited	Ishara – Kieni 132kV line	Not provided
Digimap Geosystems Limited	Lessos - Kabarnet 132kV line	30 November, 2012

- 6.5.11 However, contracts signed between KETRACO and GeoMaps (Africa) Limited, Geodev Kenya Limited and Geosurv Systems Limited were not provided for audit. It was therefore not possible to confirm the date and terms of engagement.

## Gazettement of Land Parcels

### *Failure to Gazette Nanyuki – Rumuruti Transmission Line*

- 6.5.12 Section 144 (4) (a) of the Land Act, 2012 requires an applicant for creation of wayleave to serve a notice on all persons occupying land over which the proposed wayleave is to be created.
- 6.5.13 Notice of intention by the National Land Commission was placed in the gazette notices for the acquisition of wayleave for the 132KV transmission line on behalf of the Kenya Electricity Transmission Company Limited (KETRACO) as indicated in **Table 52**.

**Table 52: Gazettement of Land Parcels for KPTSIP**

Route	No of Land Parcels Gazetted	Date of Gazettement
Sotik – Bomet 132kV line	171	20 May, 2015
Olkaria - Narok 132kV line	208	03 June, 2015
Mwingi – Kitui – Wote – Sultan Hamud 132kV	1387	15 April, 2016
Nanyuki – Rumuruti 132Kv	N/A	Not gazetted
Ishiara – Kieni 132kV line	358	20 May, 2015
Lessos - Kabarnet 132kV line	258	20 May, 2015
<b>Total</b>	<b>2,382</b>	

- 6.5.14 However, gazettement for the Nanyuki-Rumuruti Transmission Line was not provided for audit. It was therefore, not possible to confirm if Management complied with Section 144 (4) (a) of the Land Act, 2012. In addition, the owners of the land could also not be confirmed.

## Valuation of the Affected Parcels of Land, Crops and Structures

### *Failure to Provide the Sampling basis and Methodology Used in Arriving at Valuation Amounts*

- 6.5.15 Section 148(1) of the Land Act, 2012 provides that compensation for the use of land should be based on the value of land as determined by a qualified valuer. Further, Section 7.2.1 of the RPF, 2011 states that land is valued via the schedule of land values by zones obtained from the chief valuer as well as by a registered and licensed valuer.

6.5.16 The valuation exercise was undertaken by registered valuers contracted by KETRACO who were to value land, crops and structure on the wayleave corridor. KETRACO contracted valuers for the various transmission lines as indicated in **Table 53**.

**Table 53: Contracted Valuers for KPTSIP**

Valuer	Route	Date of Engagement	Number of Land Parcels Valued
Value Zone Limited	Sotik - Bomet 132kV line	25 January, 2016	9
M/S Ebony Estate Company Limited	Olkaria - Narok 132kV line	Not Indicated	13
Quince Real Estate Limited		Not Indicated	7
Icon Valuers Limited		Not Indicated	2
Advent Valuers Limited		Not Indicated	1
Njihia Muoko Rashid Co-Limited		Mwingi – Kitui - Wote - Sultan Hamud 132kV	23 June, 2015
M/s Lloyd Masika Limited		30 May, 2016	18
Realmast Limited		1 March, 2016	25
Gallant Valuers Limited		19 November, 2019	2
Milestone Land Access Limited		25 August, 2021	1
Njihia Muoko Rashid Co-Limited		Nanyuki - Rumuruti 132kV	5 June, 2015
Ebony Estate Limited	Ishiara - Kieni 132kV Line	27 November, 2015	9
Realmast Limited		19 June, 2015	5
M/s Lloyd Masika Limited		26 May, 2014	0
Gimco Limited	Lessos - Kabarnet 132kV Line	23 May, 2014	16
Njihia Muoko Rashid Co-Limited		1 October, 2015	16
M/s Amazon Valuers Limited		3 August, 2016	8
Axis Real Estate Limited		19 November, 2018	7
		<b>Total</b>	<b>159</b>

6.5.17 However, the contracts signed between KETRACO and the valuers were not provided for review. It was therefore, not possible to ascertain the cost incurred and the terms of contract.

6.5.18 Further, it was established that KETRACO valued 159 parcels of land out of a total of 3,092 affected parcels of land, representing 5.1% as a basis of computing the compensation amount payable to the Project Affected Persons. However, the criteria used to determine the 159 parcels of land that were sampled and valued was not provided for audit. It was therefore, not possible to confirm if the 159 parcels of land were fairly sampled and valued. In

addition, the methodology used to arrive at the value of the land was not provided to the Audit Team. It was therefore, not possible to confirm the accuracy, reliability and authenticity of the value of land provided by the Land Valuers.

6.5.19 Further, instruction letters for M/S Ebony Estate Company Limited, Quince Real Estate Limited, Icon valuers Limited and Advent Valuers Limited who were contracted to value Olkaria - Narok 132kV Transmission Line were not provided for audit review.

#### ***Valuation of Fewer Parcels of Land than Required***

6.5.20 It was established that Milestone Land Access Limited, Realmast Limited, and M/s Lloyd Masika valued fewer parcels of land than they were assigned, as shown in **Table 54**.

**Table 54: Variance on Number of Parcels of Land Valued for KPTSIP**

<b>Name of Valuer</b>	<b>Name of Transmission Line</b>	<b>Number of Land Parcels Assigned</b>	<b>Number of Land Parcels Valued</b>	<b>Variance</b>
Milestone Land Access Limited	Mwingi – Kitui - Wote - Sultan Hamud 132Kv	3	1	2
Realmast Ltd	Ishiara - Kieni 132kV Line	14	5	9
M/s Lloyd Masika	Ishiara - Kieni 132kV Line	14	0	14

6.5.21 The Management did not explain why the three (3) valuers valued fewer parcels of land than they were contracted to and the cost implication.

## **6.6 Financial Management and Expenditure**

### **Approved Wayleave Compensation**

6.6.1 According to the RPF 2011, KETRACO was to compensate for land acquired or encumbered, structures affected, crops/trees destroyed and loss of income/business/employment. Review of the compensation schedules provided revealed that Kshs.2,265,413,334 was identified and approved for compensation of land, crops and structures.

6.6.2 It was established that, KETRACO had paid a total of Kshs.2,001,731,829 out of Kshs.2,265,413,334 payable to PAPs for wayleave, crops and structures

under KPTSIP as at 30 June, 2023 leaving an outstanding balance of Kshs.263,681,505, as summarized in **Table 55** and detailed in **Appendix 26**.

**Table 55: Compensation Amount for KPTSIP**

Payment Component	Number of Cases	Compensation Amount (Kshs.)	Amount Paid (Kshs.)	Amount Outstanding (Kshs.)
Land	3,092	781,745,103	552,495,649	229,249,454
Crops	6,136	558,299,064	538,110,349	20,188,715
Structures	878	925,369,166	911,125,830	14,243,336
	<b>10,106</b>	<b>2,265,413,334</b>	<b>2,001,731,829</b>	<b>263,681,505</b>

#### **Outstanding Compensation for Crops and Structures**

##### ***Failure to Provide Reasons for Outstanding Crops and Structures Compensation***

- 6.6.3 The total outstanding compensation for crops and structures along the six (6) transmission lines under KPTSIP was Kshs.20,188,715 and Kshs.14,243,336 respectively. KETRACO did not provide explanation as to why compensation for crops and structures were still outstanding.

#### **Outstanding Land Compensation for the KPTSIP Transmission Lines**

- 6.6.4 The audit established that KPTSIP had 1,311 cases of outstanding land compensation amounting to Kshs.229,249,454 as at 30 June, 2023. The outstanding wayleave compensation for land was reviewed and the reasons obtained as to why the PAPs had not been compensated are as summarized in **Table 56** and detailed in **Appendix 27 to Appendix 32**.

**Table 56: Reasons for Outstanding Land Compensation for KPTSIP**

	Remarks	Sotik-Bomet	Olkaria-Narok	MKWSH	Nanyuki-Rumuruti	Ishara-Kieni	Lessos-Kabarnet	Total
1	Offer Letter Not Returned	21	0	201	9	57	46	334
2	Offer letter not delivered	11	3	0	0	0	2	16
3	Rejected Offer	4	2	21	0	4	0	31
4	Pending Negotiation	0	10		4	0	28	42
5	Incomplete Documentation	3	14	60	0	0	0	77
6	New offer letters issued	0	0	127	0	0	0	127
7	Absentee Landowners	0	0	0	53	0	8	61
8	Survey issues	2	22	31	8	2	7	72
9	Family Disputes	15	9	19	5	3	1	52
10	Succession Issues	0	0	4	0	0	20	24
11	Caution/Restriction	1	0	0	0	0	0	1
12	Pending Court Cases	0	0	6	0	0	0	6
13	Accepted Offer letters -	0				19		19
14	Signed Negotiations awaiting Approval	0	0	0	1	0	0	1
15	Signed Easement	0	0	55	3	39	33	130
16	Pending in Finance	16	1	79	1		17	114
17	Pending in Legal/Complete for Easement signing	21	17	40	1	0	12	91
18	Public Land/County Government	2	2	1	41	0	6	52
19	Not Payable/Minimally affected	2	1	5	13	0	8	29
20	Not affected	0	11	0	0	0	1	12
21	Duplicate claims	0	0	1	0	0	0	1
22	Partially paid	0	0	16	0	0	0	16
23	No reason given	1	0	0	0	2	0	3
	<b>Total</b>	<b>99</b>	<b>92</b>	<b>666</b>	<b>139</b>	<b>126</b>	<b>189</b>	<b>1311</b>

#### **Outstanding compensation for Sotik-Bomet Transmission Line**

6.6.5 The audit established that out of the total amount of Kshs.314,466,115 due for wayleave compensation, KETRACO had paid Kshs.268,762,966 as at 30 June, 2023 leaving an outstanding balance of Kshs.45,703,149 comprising Kshs.45,691,749 and Kshs.11,400 outstanding for land and crops respectively.

### *Failure to Develop a Negotiation Framework*

- 6.6.6 Section 148 of the Land Act, 2012 states that if the person entitled to compensation under this Section and the body under a duty to pay that compensation are unable to agree on the amount or method of payment of that compensation or if the person entitled to compensation is dissatisfied with the time taken to pay compensation, to make, negotiate or process an offer of compensation, that person may apply to the Court to determine the amount and method of payment of compensation and the Court in making any award may, make any additional costs and inconvenience incurred by the person entitled to compensation.

### *Irregular Compensation for Land along the Nanyuki - Rumuruti and Sotik - Bomet Based on the Negotiated Value*

- 6.6.7 Section 148(1) of the Land Act, 2012 provides that compensation for the use of land should be based on the value of land as determined by a qualified valuer. Further, Section 7.2.1 of the RPF, 2011 states that land is valued via the schedule of land values by zones obtained from the chief valuer as well as by a registered and licensed valuer.
- 6.6.8 Review of the compensation schedules revealed that, 101 out of the 229 parcels of land which were along the Nanyuki-Rumuruti transmission line did not have an initial value. It was noted that the Management negotiated for settlement of 74 out of the 101 parcels of land and a total negotiated value of Kshs.91,635,082 attached to them. Twenty-seven of these parcels were yet to be negotiated for as at the time of the audit. These parcels of land are as detailed in **Appendix 33** of the report.
- 6.6.9 Further, it was noted that compensation amount for 249 parcels of land along the Sotik-Bomet transmission line amounting to Kshs.128,624,313 was based on negotiation rather than valuation. These parcels did not have an initial assessed value. Additionally, the compensation value for 124 parcels along the Ishiara-Kieni line increased by Kshs.17,576,976 from an initial amount of Kshs.13,208,379 to Kshs.30,785,355 as a result of negotiation. These parcels of land are analysed in **Appendix 34**.

6.6.10 The Audit Team was unable to confirm whether negotiations along the three (3) transmission lines were carried out in the prescribed manner as there was no negotiation policy or guidelines on which the negotiations were based. In addition, the approval for the negotiations were not provided by the KETRACO Management.

#### **Outstanding Compensation for the Olkaria-Narok Transmission Line**

6.6.11 The audit established that out of the total amount of Kshs.287,377,311 due for wayleave compensation, KETRACO had paid Kshs.253,676,576 as at 30 June, 2023 leaving an outstanding balance of Kshs.33,700,735. This represented outstanding amount of Kshs.33,634,985, Kshs.32,750 and Kshs. 33,000 for land, crops and structures, respectively.

6.6.12 The audit established that twenty-two (22) parcels of land had survey issues due to irregular sub-division. As a result, only one (1) parcel out of the twenty-two (22) had a compensation amount of Kshs.4,869,000 allocated to it. The remaining twenty-one (21) parcels had no values.

6.6.13 Compensation for ten (10) parcels of land had not been done due to the pending negotiations between KETRACO and the landowners. As at the time of audit in November 2023 Management had concluded negotiation for one (1) parcel of land at Kshs.202,500, leaving the remaining nine (9) parcels whose compensation amount had not been determined.

#### **Outstanding Compensation for the Mwingi-Kitui-Wote-Sultan Hamud 132 kV Transmission Line**

6.6.14 The audit established that out of the total amount of Kshs.929,408,896 due for wayleave compensation, KETRACO had paid Kshs.849,347,332 as at 30 June, 2023, leaving an outstanding balance of Kshs.80,061,563. This represented an outstanding amount of Kshs.70,088,887, Kshs.6,983,995 and Kshs.2,988,681 for land, crops and structures, respectively.

#### **Outstanding Compensation for the Nanyuki - Rumuruti 132 kV Transmission Line**

6.6.15 The audit established that out of the total amount of Kshs.130,373,345 due for wayleave compensation, KETRACO had paid Kshs.102,916,314 as at

30 June, 2023, leaving an outstanding balance of Kshs.27,457,031. This represented outstanding amounts of Kshs.16,451,672, Kshs.4,160 and Kshs.11,001,199 for land, crops and structures, respectively.

- 6.6.16 The audit noted that forty-one (41) parcels of land were identified as Government land that had not been adjudicated. In addition, fifty-three (53) absentee landowners in Salama, Pesi and Segera areas who were awarded compensation amount of Kshs.3,690,649 had not been identified as at the time of audit in November 2023.

**Outstanding Compensation for the Ishiara-Kieni 132kV Transmission Line**

- 6.6.17 The audit established that out of the total amount of Kshs.272,130,062 due for wayleave compensation, KETRACO had paid Kshs.257,416,112 as at 30 June, 2023 leaving an outstanding balance of Kshs.14,713,950. This represented an outstanding compensation amounting to Kshs.14,464,775, Kshs.70,120 and Kshs.179,055 for land, crops and structures, respectively.

**Outstanding compensation for the Lessos-Kabarnet 132 kV Transmission Line**

- 6.6.18 The audit established that out of the total amount of Kshs.331,657,605 due for wayleave compensation, KETRACO had paid Kshs.269,612,529 as at 30 June, 2023 leaving an outstanding balance of Kshs.62,045,077. This represented an outstanding amounting of Kshs.48,917,387, Kshs.13,086,290 and Kshs.41,400 for land, crops and structures, respectively.

***Construction of the Transmission Lines Under KPTSIP by KETRACO Before Fully Compensating the Project Affected Persons***

- 6.6.19 Section 9.2 of the RPF states that, the PAPs will need to be compensated in accordance with the RPF and the project-specific RAP(s) before project civil works can begin. For activities involving land acquisition, loss of land, loss of access to land or restriction of access to resources, provision will be made for compensation and for other assistance required for relocation prior to displacement.
- 6.6.20 The Audit Team noted that KETRACO began construction of the six (6) KPTSIP Transmission Lines before fully compensating the PAPs as required. Compensation amounting to Kshs.229,249,454 for 1,311 out of the 3,092 total

affected parcels of land was still outstanding at the time of audit, as detailed in **Table 57**.

**Table 57: Outstanding Wayleave Compensation for KPTSIP**

<b>Transmission Line</b>	<b>Number of Parcels of Land with Pending Compensation</b>	<b>Amount Outstanding (Kshs.)</b>
Sotik – Bomet 132kV Line	99	45,691,749
Olkaria - Narok 132kV Line	92	33,634,985
Mwingi – Kitui – Wote – Sultan Hamud 132kV	666	70,088,887
Nanyuki – Rumuruti 132kV	139	16,451,672
Ishiara – Kieni 132kV Line	126	14,464,775
Lessos - Kabarnet 132kV Line	189	48,917,387
<b>Total</b>	<b>1,311</b>	<b>229,249,454</b>

***Failure to Provide Bank Statements for the Escrow Account***

- 6.6.21 The Resettlement Policy Framework, 2021 states that in the case of absentee PAPs, an escrow account will be set up, where the allocated funds will be deposited to remain available for payment whenever the PAP(s) present themselves to KETRACO. Further, it also states that all monies due for compensation as at the project completion date will be secured in the escrow account.
- 6.6.22 The Board in a meeting held on 16 March, 2012 approved opening of an escrow account at Co-operative Bank of Kenya Ltd. The escrow account for KPTSIP was opened at the Co-operative Bank of Kenya. However, the bank statement for the Escrow account was not provided for audit.
- 6.6.23 According to the KPTSIP audited financial statements for the year ended 30 June, 2023, the Project had an amount of Kshs.7,885,292 in its Escrow account held at Co-operative Bank of Kenya.

**6.7 Physical Verification of the Kenya Power Transmission System Improvement Project**

- 6.7.1 The Audit Team carried out field verification exercise for the six (6) 132kV Transmission Lines, namely: Mwingi-Kitui-Wote-Sultan Hamud, Sotik-

Bomet, Olkaria-Narok, Lessos-Kabarnet, Nanyuki-Rumuruti and Ishiara-Kieni. The purpose of the verification exercise was to confirm that the parcels of land exist, the actual acreage/sizes affected and land occupancy. In addition, the physical verification exercise was to ascertain the existence and occupancy status of the structures and crops, if possible, with outstanding claims. The Audit Team applied three (3) approaches in the exercise as follows:

- i. Physical verification at the Transmission Line and interviews with landowners;
- ii. Actual survey of the parcels of land;
- iii. Interviews with PAPs with outstanding claims for structures and crops; and
- iv. Use of experts.

#### **Physical Verification at the Transmission Line and Interviews with Landowners**

6.7.2 During the physical verification exercise held in September 2023, the Audit Team was able to verify 265 out of 3,092 parcels of land and engaged with the landowners along the six (6) Transmission Lines, as detailed in **Table 58**.

**Table 58: Physical Verification for KPTSIP**

<b>Transmission Line</b>	<b>Number of Land Cases</b>	<b>Number of Crop Cases</b>	<b>Number of Structures Cases</b>
Mwingi-Kitui-Wote-Sultan Hamud	36	16	9
Sotik-Bomet	43	20	5
Olkaria-Narok	47	0	0
Lessos-Kabarnet	57	0	0
Nanyuki-Rumuruti	39	0	0
Ishiara-Kieni	47	18	11
<b>Total</b>	<b>265</b>	<b>54</b>	<b>25</b>

6.7.3 The following observations relating to the wayleave acquired were made, as detailed in **Appendix 35**:

- i) Twenty-two (22) land parcels were fully compensated;
- ii) Seventy-three (73) landowners from the Olkaria - Narok and Nanyuki - Rumuruti Transmission Lines could not be traced. However, the audit

team confirmed that those parcels of land exist and had been affected by the project;

iii) Seventeen (17) land parcels had not been compensated due to lack of sufficient documents and or information to support their claims out of which fifteen (15) had not returned the signed offer letters while two (2) indicated that they had submitted the wrong information of their land registration number and had not attached all the supporting documentation required. These compensations were still outstanding as at the time of audit:

- i. Three (3) of the landowners claimed not to have received offer letters;
- ii. Twenty-five (25) land parcels had not been paid due to family disputes;
- iii. Forty-nine (49) land parcels had not been paid due to pending or ongoing succession issues;
- iv. Nineteen (19) landowners were yet to be paid due to survey and land subdivision issues;
- v. Fifty-four (54) PAPs explained that despite having submitted all the documents required from them by KETRACO, compensation was still pending; and
- vi. One (1) of the PAPs had renegotiated the compensation amount following discovery of murram soil on his parcel of land and hence his payment had delayed while two (2) others had been informed that their parcels would not be compensated as the affected area was negligible. The Resettlement Policy Framework, however, does not provide for how to go about parcels of land whose compensation is negligible.

6.7.4 To establish the actual sizes affected by the wayleave, the surveyor mapped the coordinates and calculated the size affected for the parcels of land sampled for verification. From the data provided by the surveyor, The Audit Team established that there was no variance between the trace area provided by KETRACO and the area measured during the physical verification.

### **Crops**

- 6.7.5 A total of fifty-four (54) PAPs whose crops were affected by the project were interviewed along the six (6) transmission lines. The audit noted that, all the PAPs interviewed had been compensated for the damaged crops. In addition, it was confirmed that all the fifty-four (54) parcels whose crops were affected were within the wayleave corridor.
- 6.7.6 However, compensation amount payable for crops was not disclosed to all the fifty-four (54) PAPs interviewed. The Crop Damage Reports issued to the PAPs did not indicate the amount payable. It was therefore, not possible to ascertain whether the amount assessed was the actual amount paid. Details of the PAPs interviewed for crops cases are in **Appendix 36**.

### **Structures**

- 6.7.7 The Audit Team visited twenty-five (25) PAPs whose structures were affected by the six transmission lines under the project. The audit noted that 70% of the value of the structures was supposed to be paid before the properties were demolished, in order to facilitate demolition and relocation cost. The remaining 30% was to be paid once a team from KETRACO confirmed that the structures had been demolished.
- 6.7.8 The audit noted that all the twenty-five (25) PAPs visited had been fully compensated as at the time of the field visit and all the affected structures were within the wayleave corridor along the six transmission lines as detailed in **Appendix 37**.

### **Sub-stations**

- 6.7.9 The Audit Team visited 9 Substations namely: Sultan-Hamud, Wote, Kitui, Kieni, Bomet, Sotik, Rumuruti, Kabarnet and Narok. The audit findings on the status of the Substations are as summarized in **Table 59**.

**Table 59: Status of KPTSIP Sub-stations**

No.	Name of Sub-Station	Status	Remarks
1	Sultan-Hamud	Construction Ongoing	Title not provided
2	Wote	Complete and in use	Title issued
3	Kitui	Complete and in use	Title deed not provided.
4	Kieni	Complete and in use	Title issued
5	Sotik	Extension complete	Title issued
6	Bomet	Complete and in use	Title not provided
7	Rumuruti	Complete and in use	Title issued
8	Kabarnet	Complete and in use	Title not provided
9	Narok	Complete and in use	Title not provided

6.7.10 Out of the nine (9) Substations visited, eight (8) were complete and in use. However, only four (4) of the title deeds were provided to the Audit Team for review. The other four title deeds were not provided. Sultan-Hamud was the only Substation that was incomplete but construction was ongoing as at the time of the audit. Its title deed was also not provided.

## 6.8 Irregularities, Responsibilities and Recommendations

6.8.1 The irregularities and weaknesses, responsibility and corresponding recommendations identified by the Audit Team are as detailed in **Table 60**.

**Table 60: Irregularities, Responsibilities and Recommendations Matrix for KPTSIP**

No	Irregularities and Weaknesses	Amount Involved (Kshs.)	Section of Report	Responsibility	Recommendations
1	Failure to provide documents for audit review as detailed in <b>Appendix 1</b> contrary to Section 9 (1)(e)(i) of the Public Audit Act, 2015	N/A	Appendix I of the Report	KETRACO Management	The Management of KETRACO should always comply with the Public Audit Act
2	Failure to indicate the number of PAPs or the number of affected households in the RAPs	N/A	6.2.14	KETRACO Management	KETRACO should ensure the number of PAPs are identified during development of the RAPs to smooth management of the resettlement process.
3	Failure to complete the transmission lines on time	N/A	6.3.7	The PS – MOE and KETRACO Management	The Management should put in place a monitoring and evaluation system and improve on contract management to ensure timely completion of projects
4	Unexplained Variance Between Approved Budget	81,431,569	6.4.10	The PS, State Department for	The State Department for Energy should ensure

No	Irregularities and Weaknesses	Amount Involved (Kshs.)	Section of Report	Responsibility	Recommendations
	and Disbursements to the Project			Energy and KETRACO Management	that a project budget is fully funded.
5	Failure to gazette the Nanyuki-Rumuruti Transmission Line contrary to Section 144 (4) (a) of the Land Act, 2012	N/A	6.5.15	KETRACO Management	The Management should ensure notice is served to all persons occupying land over which the proposed wayleave is to be created in compliance with the Land Act, 2012
6	Failure to Provide the Sampling basis and Methodology Used in Arriving at Valuation Amounts	N/A	6.5.19	KETRACO Management	The Management of KETRACO should provide the sampling basis and methodology used in the valuation
7	Valuation of fewer parcels of land than required.	N/A	6.5.21	KETRACO Management	The Management should put in place mechanisms to ensure proper contract management so that valuers deliver valuation services as per the contract terms.
8	Failure to Provide Reasons for Outstanding Crops and Structures Compensation	20,188,715 And 14,243,336 r	6.6.3	KETRACO Management	The Management should ensure prompt payment of the PAPs as per the provisions of the RPF.
9	Irregular Compensation for Land Based on Negotiated Value	91,207,591	6.6.8	KETRACO Management	KETRACO management should develop and follow a negotiation framework in accordance with PFM Act,2012 Land Act,2012 and internal policies.
10	Failure to develop a negotiation framework	128,624,313 and 30,785,335	6.6.9 and 6.6.10	KETRACO Management	The Management should develop a framework to guide on land negotiations.
11	Construction of the Transmission Lines Under KPTSIP by KETRACO Before Fully Compensating the PAPs contrary to Section 9.2 of the RPF	229,249,454	6.6.21	KETRACO Management	The Management should ensure PAPs are compensated in full before commencement of construction of the transmission lines
12	Failure to provide bank statement for the escrow account	N/A	6.6.23	KETRACO Management	The Management should ensure opening and proper management of the escrow bank account for prompt compensation of PAPs

## 6.9 Conclusion

6.9.1 The Kenya Power Transmission Systems Improvement Project (KPTSIP), consisting of six (6) line segments, is part of eighteen (18) Transmission

Lines that was submitted to development partners for funding. The key objective of the Project was to contribute to the delivery of adequate and reliable power supply, which would catalyse the growth and competitiveness of rural economy and the development of social institutions such as schools and hospitals.

- 6.9.2 The Kenya Power Transmission System Improvement Project was jointly funded by the African Development Bank (ADB) and the Government of Kenya, through the Ministry of Energy and Petroleum, and The National Treasury. The budgeted amount from ADB was UA 46,700,000, equivalent to Kshs.5,928,191,400 and GOK Kshs.2,397,000,000 which covered compensation of the Project Affected Persons (PAPs).
- 6.9.3 A comparison between the approved budgets and actual disbursements made for the Project revealed that from the financial year 2014/2015 to 2022/2023, KETRACO disbursed a total of Kshs.2,442,443,431 to the Project, against the total approved budget of Kshs.2,523,875,000, resulting in under funding of the budget by Kshs.81,431,569.
- 6.9.4 The total payable compensation for land, crops and structures for all the six (6) lines under the Project was Kshs.2,265,413,334, out of which KETRACO had paid Kshs.2,001,731,829 (88%), leaving an outstanding balance of Kshs.263,681,505.
- 6.9.5 The outstanding wayleave compensation was reviewed and the reasons obtained as to why the PAPs had not been compensated include, absentee landowners, court case/ succession cases, disputed/ rejected offer letters, Government of Kenya land awaiting payment, PAPs who did not have ownership documents and PAPs with survey issues.
- 6.9.6 The major irregularities noted during the audit were: Failure to provide documents, failure to indicate the number of PAPs or the number of affected households in the RAPs, failure to complete the transmission lines on time, failure to gazette the Nanyuki-Rumuruti Transmission Line, failure to provide the sampling basis and methodology used in arriving at valuation amounts, valuation of fewer parcels of land than required, irregular compensation for land based on negotiated value, and

commencement of construction of the transmission lines before the PAPs were fully compensated.

## 7 INDIA FUNDED PROJECT

### 7.1 Project Overview

- 7.1.1 The India Funded Project was jointly funded by the Government of Kenya through the Ministry of Energy and The National Treasury, and a Line of Credit obtained from the Exim Bank of India. The Line of Credit agreement was signed on 16 November, 2010 for USD61,600,000, approximately Kshs.4,956,163,520 (at an exchange rate of Kshs.80.4572). The Project comprises two (2) Transmission Lines, namely; 220 kV Turkwel-Ortum-Kitale and 132 kV Machakos-Konza-Kajiado-Namanga; and five (5) sub stations, namely Turkwel, Ortum, Kitale, Machakos and Konza.
- 7.1.2 The Project commenced in November 2013 and it was at various levels of completion at the time of audit in November 2023, as summarized in **Table 61**.

**Table 61: Current Status of the India Funded Project**

Project	Status
Lot 1A - Turkwel-Ortum-Kitale Substations	94% Complete
Lot 1B- Turkwel-Ortum-Kitale Transmission Line	100 % Complete-30 March, 2020
Lot 3A- Machakos-Konza-Kajiado-Namanga Transmission Line	97% Complete
Lot 3B- Machakos-Konza-Kajiado-Namanga Substations	100% Complete

- 7.1.3 The Transmission Line affected a total of 3,241 PAPs.

#### Summary of Claims

- 7.1.4 As at 30 June, 2023 the final valuation in the compensation schedules for the Turkwel-Ortum-Kitale Transmission Line amounted to Kshs.865,295,956 out of which KETRACO had paid Kshs.650,773,989, leaving an outstanding balance of Kshs.214,521,967. The total compensation payable for the Machakos-Konza Transmission Line amounted to Kshs.55,401,311 out of which KETRACO had paid Kshs.29,805,031 leaving an outstanding balance

of Kshs.25,596,280. The Audit Team reviewed and analysed the claims for the Project compensation. The following are the audit findings: -

## **7.2 Conceptualization and Feasibility Study**

- 7.2.1 Section 2.1.1 of the Sessional Paper No. 4 of Energy 2004 discusses power as one of the sub-sectors that is crucial to Kenya's economic growth. The paper highlights the need to develop a 20-year rolling Least Cost Electric Power Development Plan (LCPDP). The Plan is supposed to be revised annually to take account of new information, to identify existing potential in generation, possible investments in transmission as well as carefully forecasting on future demand for power and how best it can be met at the minimum cost.
- 7.2.2 Documents provided for audit revealed that the Ministry of Energy developed a Least Cost Power Development Plan dated March, 2011 (LCPDP, 2011) for the study period between 2011 and 2031 therefore, adhering to the requirements of the Sessional Paper No.4 of Energy 2004.
- 7.2.3 Section 2.3 of KETRACO's Strategic Plan 2010/2011 to 2014/2015 of June, 2010 outlined the need to provide a reliable, efficient and effective electricity infrastructure through developing new transmission infrastructure. Further, Section 2.3.4 of the LCPDP, 2011 outlined that the Kenyan electricity supply industry structure is of the single buyer model with all generators selling power in bulk to Kenya Power and Lighting Company Ltd (KPLC) for dispatch and onward transmission and distribution to consumers. Section 2.3.4.1 of the LCPDP further states that Kenya had experienced demand in electricity consumption in the last 5 years prior to development of the Plan, and the rise in consumption required a corresponding increase in generation capacity and transmission network. Therefore, based on the abovementioned section of the Plan, there was need to come up with a planned transmission network for the India Funded Project.

### ***Lack of Documentation on the Involvement of the Ministry of Energy, Prior to Signing Financial Agreements***

- 7.2.4 Section 9.1 of the Resettlement Policy Framework, 2011 required that the Transmission Line Projects would be under the administrative authority of the Ministry of Energy, with KETRACO as the implementing agent and the

execution of a Project would be delegated to a Project Implementation Team (PIT), which was a management committee established to oversee all project activities.

7.2.5 The Audit Team requested documents and correspondence on the involvement of the Ministry of Energy prior to the signing of the Project's financing agreement on 16 November, 2010, by the Cabinet Secretary, The National Treasury and the financiers. However, the information and documents were not provided.

7.2.6 The Audit Team could therefore, not confirm the involvement of the Ministry of Energy prior to signing the Project's financing agreement, thereby complying with Section 9.1 of the RPF, 2011.

***Lack of Documentation on Identification of the Project's Financiers***

7.2.7 Correspondences and other documents between the donors, Ministry of Energy and KETRACO on donor identification, were not provided for audit review. The Audit Team was, therefore, not able to establish how the financiers were identified.

7.2.8 The Audit Team established that the feasibility and viability, Environment and Social Impact Assessments and the Resettlement Action Plans were undertaken for each of the two (2) Transmission Lines (TOK and Machakos-Konza), as detailed below.

**a) Turkwel-Ortum-Kitale 220 kV Transmission Line**

**Feasibility and Viability**

7.2.9 According to Section 1.4.2 of the Resettlement Policy Framework, 2011, a feasibility study was to be undertaken.

7.2.10 The Audit Team noted that an Initial and Final Definition feasibility studies were carried out in May and 21 June, 2012, both by Fichtner Group.

7.2.11 According to Section 2.8 of the Final Definition Feasibility Study Report, the proposed 220 kV overhead Transmission Line from Turkwel to Kitale through Ortum was approximately 98 km and its final route was to be detailed in a final design.

- 7.2.12 Based on the abovementioned reports, it was noted that KETRACO adhered to the Resettlement Policy Framework, 2011, by undertaking the feasibility study for the TOK Transmission Line.
- 7.2.13 Further, Section 1.8 of the feasibility study report indicated that an assessment of the Project's viability was done, which included analysis of the economic, technical, and financial analysis of the Project. Based on the study report, the Project was viable and justification of the same specified in the report.

### **Environment and Social Impact Assessments**

- 7.2.14 According to Part III 12 (1) of the Legal Notice No.101 of the Environmental (Impact Assessment and Audit) Regulations, 2003, an environmental assessment study was required to be conducted in accordance with the set out general environmental impact assessment guidelines and sector environmental impact assessment guidelines set out in the third schedule of the Regulations.
- 7.2.15 The Audit Team noted that an Environmental and Social Impact Assessment study was carried out by E-Cue Associate Limited dated April 2013. According to the Environmental and Social Impact Assessment (ESAI) study, it was established that the proposed Project would have significant, long-lasting social economic benefits at local and national scales.
- 7.2.16 Based on the abovementioned report, it was therefore, noted that KETRACO adhered to Part III 12 (1) of Legal Notice No. 101, by undertaking the Project feasibility.

### **Resettlement Action Plan**

- 7.2.17 Section 6.1 of the Resettlement Policy Framework, 2011 (RPF, 2011) identified the need to carry out a social economic survey (census) of the persons who will be affected by the Project to determine who is eligible for assistance and benefits, determine level of asset loss and assign economic values to them. The survey was to involve review of tenure documents owned by occupants and interviews with individual households and groups in the affected area(s). Further it required KETRACO (or their designated consultant) to hold discussions with local authorities and the Ministry of Lands and Settlement.

7.2.18 The Resettlement Action Plan (RAP) was carried out and the report issued by Charchi Githinji and Partners Consulting Engineers for the proposed Turkwel-Ortum-Kitale (TOK) Transmission Line in July, 2013. The report outlined that the Project required approximately 1,368.95 acres of land which was owned by approximately 608 Project Affected Households amounting to Kshs.721,000,000. Further, two hundred and forty-nine (249) structures amounting to Kshs.320,213,035 would be affected and crops and trees valued at Kshs.157,552,500 whose number of PAPs were not indicated, would be affected. Kshs.10,000,000 was to be used for assistance to vulnerable people and implementation of the RAP. The total RAP estimated cost of Kshs.1,208,765,535 for the Transmission Line is detailed in **Table 62**.

**Table 62: Summary Budget of the RAP for the Turkwel-Ortum-Kitale Line**

<b>Item</b>	<b>Quantity</b>	<b>Total Cost (Kshs)</b>
<b>Land Total</b>	608 households	721,000,000
<b>Structures</b>		
Residential/Commercial structures	249 structures	278,446,117
Disturbance Allowance		41,766,918
<b>Structures Total</b>	<b>249 structures</b>	<b>320,213,035</b>
<b>Crops and Trees</b>	Not indicated	157,552,500
<b>SUB TOTAL</b>		<b>1,198,765,535</b>
Assistance to Vulnerable People		5,000,000
RAP Implementation		5,000,000
<b>GRAND TOTAL</b>		<b>1,208,765,535</b>

7.2.19 The RAP report indicated that not all PAPs were found during the study and the budget indicated above may change due to delay in implementation.

**b) Machakos-Konza 132 kV Transmission Line**

**Feasibility Study**

7.2.20 According to Section 1.4.2 of the Resettlement Policy Framework, 2011, a feasibility study was to be undertaken.

The Audit Team noted that a feasibility study was carried out by M/s Norconsult ASA in April, 2012 for the Konza-Machakos Transmission Line to cover an approximate 20Kms single circuit of 132kv Transmission Line from

Konza to Machakos and establishment of a 132/33, 23 MVA Substation at Machakos

### **Environment and Social Impact Assessments**

- 7.2.21 According to Part III 12(1) of the Legal Notice No.101 of the Environmental (Impact Assessment and Audit) Regulations, 2003, an environmental assessment study is required to be conducted in accordance with the set out general environmental impact assessment guidelines and sector environmental impact assessment guidelines set out in the third schedule of the regulations.
- 7.2.22 The Audit Team noted that an Environmental and Social Impact Assessment (ESIA) of Machakos-Konza-Kajiado-Namanga, 132 kV Transmission Line was carried out by a Consultant, Envag Associates (K) Limited. The purpose of the study was to identify potential environmental and social impacts of the Project.
- 7.2.23 Section 6.4 of the ESIA report mentioned that after assessing and studying the proposed development by KETRACO for both positive and negative impacts and comparing it to possible alternatives it was found out that there were no foreseeable adverse effects that would justify the non-execution of the Project therefore, the long-term benefits of the Project warrant its commission. The benefits included increased supply of electricity to the broader population, the resultant effects of this for domestic and commercial use of electricity and the consequential enhancement of wellbeing of Kenyans. Further, according to Chapter 11 of the ESIA report, the consultant outlined that the entire Projects' activities would not have any adverse effects on the environment.

### **Resettlement Action Plan**

- 7.2.24 The Resettlement Action Plan for the Proposed Machakos-Konza-Kajiado-Namanga 132kV Single Circuit Transmission Line was carried out and report issued by Panafcon Limited Development consultants, dated January, 2013. The outlined analysis of costs of the affected land, structures and trees are as detailed in **Table 63**.

**Table 63: RAP Analysis of Estimated Costs for Machakos-Konza Transmission Line**

Item	Description	No. of Items Affected	Amount (Kshs)
Land	Land	273	636,197,000
Structures	Structures	116	44,728,905
Trees	Trees	8,385	9,881,000
<b>Total</b>			<b>690,806,905</b>

7.2.25 The Audit Team therefore established that the RAP reports estimated the resettlement costs for the India Funded Project at Kshs.1,899,572,440, comprising of Kshs.1,208,765,535 and Kshs.690,806,905 for the Turkwel-Ortum-Kitale and Machakos-Konza Transmission Lines, respectively, which were to be financed by the Government of Kenya.

### **7.3 Governance and Related Issues**

#### **Roles and Responsibilities as per the Law/ Guidelines in the Project Cycle**

7.3.1 Documents provided for audit revealed that the Board was responsible for approving the Project budgets and appointing the technical committee to oversee the implementation of the India Funded Project.

7.3.2 According to KETRACO's 2018-2022 Strategic Plan, the Board of Directors are at the top of KETRACO's organogram. Further, Section 1.7 of the Mwongozo guidelines requires the Board to establish not more than four (4) committees of the Board.

#### ***Non- Provision of Board, Audit and Risk Committee Board Minutes***

7.3.3 The Audit Team was provided with the Board Audit and Risk Committee Charter for 2019, which mandated the Committee to examine internal and external audit reports and recommendations after management's response, thereby ensuring that action has been taken. However, the Committee minutes were not provided. The Audit Team therefore, could not ascertain whether the Committee's activities complied with the Charter.

#### ***Absence of Board Approval Minutes and Reports on Project's Implementation***

7.3.4 Section 9.1 of the Resettlement Policy Framework, 2011 assigned the administrative authority for the Project to the Ministry of Energy, with KETRACO being the implementing agent. Further, the execution of the Project

was delegated to a Project Implementation Team (PIT) which is a management committee established to oversee all project activities. According to the RPF 2011, the PIT was to be set up to manage and oversee all the activities of the Resettlement Action Plan. The established Resettlement Project Team was to comprise of an overall Project manager, a socio-economist, surveyor, way leave officer, environmentalist, transmission engineer, land valuer, legal officer, financial administrator, and other key support staff.

- 7.3.5 However, the appointment letters and the reports for the PIT for the India Funded Project were not provided. It was therefore, not possible to determine whether the PIT was constituted as per the requirements in the Resettlement Policy Framework, 2011, which may have led to challenges in Project management and accountability. Further, the Audit Team could not ascertain whether the Projects were implemented as per RPF, 2011.

#### **7.4 Budget and Budgetary Control**

##### **Wayleave Compensation and Resettlement Cost**

- 7.4.1 According to the RAP reports, Turkwel-Ortum-Kitale and Machakos-Konza Transmission Lines were estimated to cost Kshs.1,208,765,535 and Kshs.690,806,905, respectively. This amount was to cater for wayleave compensation for land, structures, crops/ trees and other costs related to the Project Affected Persons (PAPs).

##### **Project Source of Funds and Financing**

- 7.4.2 According to the finance agreement signed on 16 November, 2010, the India Funded Project was jointly funded by the Exim Bank of India and the Government of Kenya.
- 7.4.3 The credit extended to the Government of Kenya amounted to USD61,600,000 which is approximately Kshs.4,956,163,520 (Based on the prevailing Exchange Rate 1USD= Kshs.80.4572 on 16 November, 2010 the date of signing the financing agreement). The Audit Team noted that funding for the India Funded Project was not apportioned between Turkwel-Ortum-Kitale and Machakos-Konza-Kajiado-Namanga Transmission Lines. The Audit Team therefore, could not establish the proportion for each

Transmission Line. Further, the GOK component which was to cater for compensation of PAPs was not indicated.

#### **Budget Process at the Ministry of Energy and KETRACO**

- 7.4.4 The budget process for the Projects was guided by the Public Finance Management Act, 2012, Public Finance Management (National Government) Regulations, 2015 and the Resettlement Action Plan (RAP) Reports.
- 7.4.5 The Resettlement Action Plan (RAP) Report provided the costs on compensation for loss of income, assistance to vulnerable people, RAP implementation which were used in the preparation of the Project budget by KETRACO.

#### **Approved Budgets by the Ministry of Energy and KETRACO**

- 7.4.6 The India Funded Project was budgeted for under Ministry of Energy-Development Vote for the period under review. It comprised of Donors' amounts representing the external loan component from the Exim Bank of India, for implementation of the Project and GOK component used for Wayleave Compensation of the PAPs, as shown in **Table 64**.

**Table 64: Approved Budget for MOE and KETRACO for the India Funded Project**

FINANCIAL YEAR	MINISTRY OF ENERGY (Kshs)			KETRACO (Kshs)		
	Donor	GOK	Total	Donor	GOK	Total
2014/2015	Not itemized	Not Itemized	N/A	3,192,000,000	330,000,000	3,522,000,000
2015/2016	2,301,000,000	0	2,301,000,000	3,140,000,000	560,000,000	3,700,000,000
2016/2017	665,424,000	126,000,000	791,424,000	665,242,000	126,000,000	791,242,000
2017/2018	612,000,000	110,250,000	722,250,000	612,000,000	110,250,000	722,250,000
2018/2019	294,000,000	551,115,000	845,115,000	690,115,000	155,000,000	845,115,000
2019/2020	411,000,000	370,000,000	781,000,000	411,000,000	370,000,000	781,000,000
2020/2021	974,204,897	737,000,000	1,711,204,897	974,204,897	737,000,000	1,711,204,897
2021/2022	364,000,000	100,000,000	464,000,000	364,000,000	100,000,000	464,000,000
2022/2023	718,000,000	457,000,000	1,175,000,000	715,078,370	457,000,000	1,172,078,370
<b>Total</b>	<b>6,339,628,897</b>	<b>2,451,365,000</b>	<b>8,790,993,897</b>	<b>10,763,640,267</b>	<b>2,945,250,000</b>	<b>13,708,890,267</b>

- 7.4.7 The approved budget for the Ministry of Energy for the FY 2014/2015 was not itemized. The Audit Team therefore, could not establish the budgeted amount for the India Funded Project in that financial year.
- 7.4.8 It was established that the final approved budgets for both the Ministry of Energy and KETRACO for the GOK component was a single line budget, thereby not appropriated to the Project's work plans. The allocation was to

cater for wayleave, consultancy fees and other operating costs. Therefore, the amount allocated for compensation to PAPs out of Kshs.2,451,365,000 and Kshs.2,945,250,000 for the MOE and KETRACO respectively could not be established. The Audit Team therefore, could not reconcile the compensation amount estimated by the RAP with the compensation amount budgeted by the Ministry of Energy and KETRACO.

- 7.4.9 Comparison between the amounts allocated for payment of wayleave in KETRACO's approved budget of Kshs.2,945,250,000 with the estimated costs in the RAPs of Kshs.1,899,572,440, revealed an unexplained variance of Kshs.1,045,677,560.

#### **Amounts Disbursed for the India Funded Project**

- 7.4.10 Review of the amounts disbursed for the Project for financial years 2014/2015 and 2022/2023 indicated total disbursements amounting to Kshs.1,274,627,066 against a budget allocation of Kshs.2,945,250,000 as per the Project's audited financial statements.

#### **7.4.11 *Unexplained Variance between Approved Budget and Disbursements***

Comparison of the approved budgets and actual disbursements made for the Project revealed the following variances as detailed in **Table 65**.

**Table 65: Approved Budget and Disbursements for the India Funded Project**

FY	MOE to KETRACO			KETRACO to the Project		
	Budget Allocation (Kshs.)	Actual Disbursement (Kshs.)	Variance (Kshs.)	Budget Allocation (Kshs.)	Actual Disbursement (Kshs.)	Variance (Kshs.)
2014/2015	Not Itemized	391,370,775	N/A	330,000,000	208,779,856	121,220,144
2015/2016	0	391,598,698	-391,598,698	560,000,000	232,010,991	327,989,009
2016/2017	126,000,000	153,549,011	-27,549,011	126,000,000	129,770,665	-3,770,665
2017/2018	110,250,000	72,962,738	37,287,262	110,250,000	51,888,234	58,361,766
2018/2019	551,115,000	435,836,250	115,278,750	155,000,000	105,638,320	49,361,680
2019/2020	370,000,000	392,778,750	-22,778,750	370,000,000	104,729,307	265,270,693
2020/2021	737,000,000	498,125,000	238,875,000	737,000,000	280,605,581	456,394,419
2021/2022	100,000,000	338,875,000	-238,875,000	100,000,000	106,342,936	-6,342,936
2022/2023	457,000,000	457,000,000	0	457,000,000	54,861,176	402,138,824
<b>Total</b>	<b>2,451,365,000</b>	<b>3,132,096,222</b>	<b>N/A</b>	<b>2,945,250,000</b>	<b>1,274,627,066</b>	<b>1,670,622,934</b>

7.4.12 The Audit Team noted that the total disbursements for the Project exceeded the budget allocation by Kshs.1,670,622,934.

7.4.13 **Unaccounted-for Project Funds**-The amount disbursed by the Ministry of Energy to KETRACO for financial years 2014/2015 to 2022/2023 and subsequent disbursement of the funds to the India Funded Project by KETRACO is detailed in **Table 66**.

**Table 66: Actual Project Disbursements for India Funded Project**

Financial Year	MOE to KETRACO (Kshs)	KETRACO to Project (Kshs)	Variance (Kshs)
2014/2015	391,370,775	208,779,856	(182,590,919)
2015/2016	391,598,698	232,010,991	(159,587,707)
2016/2017	153,549,011	129,770,665	(23,778,346)
2017/2018	72,962,738	51,888,234	(21,074,504)
2018/2019	435,836,250	105,638,320	(330,197,930)
2019/2020	392,778,750	104,729,307	(288,049,443)
2020/2021	498,125,000	280,605,581	(217,519,419)
2021/2022	338,875,000	106,342,936	(232,532,064)
2022/2023	457,000,000	54,861,176	(402,138,824)
<b>Total</b>	<b>3,132,096,222</b>	<b>1,274,627,066</b>	<b>(1,857,469,156)</b>

7.4.14 The Audit Team noted a cumulative amount of Kshs.3,132,096,222 was disbursed by the Ministry of Energy to KETRACO. However, out of the total disbursements, Kshs.1,274,627,066 was disbursed to the Project by KETRACO, resulting to an unexplained variance of Kshs.1,857,469,156.

## 7.5 Assets Management and Wayleave Acquisition

### Acquisition of Land for Substations

7.5.1 Section 1.4.1 of the Resettlement Policy Framework (RPF) 2011 provides that the Company will identify a potential site for constructing a Substation and the price of land will be negotiated with the landowner based on existing market value.

7.5.2 According to Section 7.3.1 of the Resettlement Policy Framework, 2011, acquisition of land was to apply to sites where Substations are to be constructed, and KETRACO was to acquire the land and pay compensation based on open market values.

7.5.3 According to the tender committee minutes Min. TC/113/2012 dated 13 December, 2012 on the discussion of the evaluation report for the construction of Exim Bank of India Funded Project, the committee recommended the award of two construction contracts for seven (7) Substations: -

- i) LOT 1A-Construction of 220/33 kV Substations: The contract for the construction of Substations in Turkwel, Ortum, and Kitale was recommended to be awarded to M/s Jyoti Structures Limited, an Indian company, at a cost of USD20,589,012, approximately Kshs.1,771,523,888 (At an exchange rate of 1USD=Kshs.86.0422 prevailing as at 13 December, 2012), exclusive of any import duties.
- ii) LOT 3B-Construction of 132/33 kV Substations: The contract for the construction of Substations in Machakos, Konza, Kajiado, and Namanga was recommended to be awarded to M/s Shyama Power Limited, an Indian company, at a cost of USD16,774,497, approximately Kshs.1,443,314,626 (at an exchange rate of 1USD=Kshs.86.0422 prevailing as at 13 December, 2012), exclusive of any import duties.

7.5.4 The Substations indicated in the minutes for LOT 3B included the extension line from Konza Substation to Kajiado and to Namanga Substations. It was established that Machakos and Konza, the Substations under audit review, were constructed.

***Absence of Appointment Letters for the Scoping Team who Identified the Land for Substations***

7.5.5 Section 1.4.1 of the RPF, 2011 provided that KETRACO would identify the potential site for the construction of a Substation. It further required that an outright purchase of land would apply to sites where Substations were to be constructed, and payment of the land be in full compensation based on open market values or as guided by rates from the Ministry of Lands or consultations with local leaders within the Project area.

7.5.6 Engagement with KETRACO established that the CEO or a senior manager in the organization was to appoint a land scoping team, who were responsible for identifying the land and carrying out due diligence on the potential available lands for constructing the Substations. The scoping team would rank the

various plots identified for the parcels of land and issue a report on the most suitable land to be purchased and prepare a valuation report outlining the factors like location, size, soil quality, topography, and market value of the preferred land for the Substation.

- 7.5.7 However, the appointment letters for the scoping team that were to identify the land to construct Substations under the India Funded Project were not provided for audit.

***Non-Provision of Payment Records on Acquisition of Land for Substations***

- 7.5.8 Out of the Turkwel, Ortum, Kitale, Machakos and Konza Substations, records indicating payments made to landowners for the land acquired for Turkwel, Ortum, Kitale and Machakos Substations, were not provided for audit. The Audit Team therefore, could not establish the total costs for the four (4) Substations.

- 7.5.9 According to the payment voucher No. KETRACO/00/13, it was noted that KETRACO had not completed payment for the purchase of land for Konza Substation, which was valued at Kshs.6,750,000. The Audit Team visited the Substation and engaged with a representative of Kapiti Plains, the owners of the land, who informed the Audit Team that KETRACO had paid an amount of Kshs.750,000, being the deposit for the purchase of land, but was yet to pay the balance of Kshs.6,000,000. Further, the Audit Team noted that the outstanding balance was not included in the schedule of outstanding compensation.

**Ownership of Substation Land**

***Non-Provision of Ownership Documents for the Machakos and Konza Substation Land***

- 7.5.10 The ownership of the land parcels for the Ortum, Kitale, Turkwel, Machakos and Konza Substations is detailed in **Table 67**.

**Table 67: Substations Ownership Details for India Funded Project**

Transmission Line	Location	Title Number	Approximate Area (HA)	Date of Registration	Owner
Turkwel-Ortum-Kitale	Ortum	WEST POKOT/ORTUM EAST/202	2.14	14 July, 2014	KETRACO
	Kitale	KITALE MUNICIPALITY BLOCK 15/KOITOGOS/3115	8.10	14 September, 2012	KETRACO
	Turkwel	Not Provided	Indicated 0.5 Acres as per the Asset Register	To be leased to KETRACO at peppercorn terms for a period of 50 years minimum	Shared between KETRACO and KENGEN
Machakos-Konza	Machakos	Not Provided	Not Known	Not Known	Not Known
	Konza	Not Provided	Not Known	Not Known	Not Known

7.5.11 According to the title deeds provided for audit review, the parcels of land for Ortum and Kitale Substations belonged to KETRACO. However, title deeds for parcels of land for Machakos and Konza Substations were not provided, therefore, ownership could not be confirmed.

7.5.12 In a letter from KETRACO Ref no. KET/2/LS/6/B/LS dated 19 January, 2021 addressed to the Principal Secretary-Ministry of Energy on formalization of occupancy in Substations owned by Kenya Power and KENGEN, it was noted that the Substation in Turkwel was shared between KETRACO and KENGEN. However, documentary evidence supporting this shared agreement was not provided for audit.

### **Wayleave Acquisition**

#### **Survey of the Affected Parcels**

7.5.13 Section 1.4.2 of KETRACO Resettlement Policy Framework dated October, 2011 (RPF, 2011), required KETRACO to survey the area of land and plots falling within the wayleave trace by commissioning a land survey. The output of the land survey as per the RPF, 2011 was a cadastral map of the route showing the plot numbers, ownership, parcel size and affected area of individual parcels as well as the position of the towers. The RPF, 2011 further required the cadastral map to be prepared by a surveyor.

7.5.14 The Kenya Electricity Transmission Company engaged various consultants to carry out a topographical line route survey and wayleaves cadastral data

acquisition survey services and valuation of selected parcels of land traversed as shown in **Table 68**.

**Table 68: Survey Consultants Engaged in the India Funded Project**

Transmission Line	Name of Consultant	Description of Service	Contract Date
Turkwel-Ortum-Kitale	Jooyata Surveys	Cadastral Survey	21 May, 2013
Machakos-Konza	GeoMaps Africa Limited	Aerial Survey	Not provided

***Absence of Consultant's Contract and Reports on Survey of the Turkwel-Ortum-Kitale and Machakos-Konza Transmission Lines***

- 7.5.15 Review of KETRACO Tender documents revealed that M/s Jooyata Surveys was awarded an Offer Ref No. KETRACO/10/ST/036/2012/PN/fa to carry out cadastral survey service along the Turkwel-Ortum-Kitale Transmission Line on 8 May, 2013. M/s Jooyata Surveys accepted the offer vide a Letter Ref No.JS/060/2013 of 10 May, 2013.
- 7.5.16 According to the Contract documents signed on 21 May, 2013 between KETRACO and Jooyata Surveys, the consultant was to provide an updated register of affected parcels of land along the proposed Transmission Line. Further, the Consultant was to undertake cadastral surveys for the affected parcels of land, carry out searches, prepare cadastral strip plans and carryout as built surveys showing abutting properties and specific areas affected.
- 7.5.17 However, the detailed consultant's report on the work done was not provided for audit.
- 7.5.18 Further, review of KETRACO Tender Committee Minutes Min.TC/010/2012 held on 29 March, 2012 revealed that GeoMaps Africa Limited was contracted to carry out an aerial survey of Machakos-Konza Transmission Line.
- 7.5.19 However, the contract document and report on the work done by GeoMaps Africa Limited were not provided for audit. It was therefore, not possible to confirm whether the consultant provided the services.

**Gazettement of the Affected Parcels of land**

***Failure to Publicize the Affected Land Parcels***

- 7.5.20 Section 1.4.2 of the Resettlement Policy Framework, 2011 states that "*a public notification is issued to inform the PAPs occupying the land on the proposed*

*Transmission Line, that the line would traverse their property and in the interest of the public development, request access and entry to the land for survey and valuation by the land economists”.*

7.5.21 However, documentary evidence indicating whether the affected parcels of land along the Turkwel-Ortum-Kitale and Machakos-Konza proposed Transmission Lines were publicized was not provided for audit review. Further, the Audit Team could not establish whether the landowners along the wayleave corridor were informed of the upcoming Project.

**Valuation of Land for the India Funded Project**

7.5.22 Section 148 (1) of Land Act, 2012 provides that compensation for the use of land should be based on the value of land as determined by a qualified valuer. Further, Section 7.2.1 of the Resettlement Policy Framework, 2011 states that land is valued via the schedule of land values by zones obtained from Chief Valuer, as well as by registered and licensed valuer commissioner of lands office, ministry of lands and settlement.

7.5.23 The Audit Team reviewed the valuation reports for Milestone Land Access Limited, Afriland Valuers Limited, Sedco Valuers (K) Limited and Njihia Muoka Rashid Co. Limited. It was established that valuation of the affected parcels of land along the Turkwel-Ortum-Kitale and Machakos-Konza Transmission Lines was done on sample basis as detailed in **Table 69**.

**Table 69: Valuation Reports for India Funded Project**

<b>Transmission Line</b>	<b>Name of the Firm</b>	<b>Date of Valuation Report</b>	<b>No. of Parcels Valued</b>
Turkwel-Ortum-Kitale	Milestone Land Access Limited	06 February, 2018	07
	Afriland Valuers Limited	14 May, 2019	10
	Sedco Valuers (K) Limited	29 November, 2018	04
<b>Sub total</b>			<b>21</b>
Machakos-Konza	Njihia Muoka Rashid Company Limited	24 March, 2015	18
<b>Sub total</b>			<b>18</b>
<b>Total</b>			<b>39</b>

***Failure to Provide Justification for Sampled Land Parcels***

7.5.24 KETRACO valued thirty-nine (39) parcels of land in the India Funded Project. This sample was used as a basis of computing the compensation amount

payable to 1,651 and ninety-five (95) PAPs along the Turkwel-Ortum-Kitale and Machakos-Konza Transmission Lines, respectively. The criteria used to determine the thirty-nine (39) parcels of land sampled and the methodology used to arrive at the value of land were not provided to the Audit Team. It was therefore, not possible to confirm if the thirty-nine (39) sampled parcels of land were fairly sampled and valued.

***Non- Provision of the Prequalified List of Suppliers and Consultants' Valuation Contracts***

7.5.25 The contracts between KETRACO and the consultants who provided valuation services for the Turkwel-Ortum-Kitale and Machakos-Konza Transmission Lines, were not provided for audit. The Audit Team therefore, was not able to determine the contract sum (cost of the services), contract period (duration of the engagement), and the specific scope of work outlined in the contracts for each consultant firm engaged.

7.5.26 Further, the list of the pre-qualified suppliers for the period under review was not provided. The Audit Team, therefore, could not confirm whether the engaged valuers were among the approved pre-qualified suppliers.

**Valuation of Land for the India Funded Project**

7.5.27 The Audit Team reviewed valuation schedules for affected parcels of land amounts totalling Kshs.631,566,540, as detailed in **Table 70**.

**Table 70: Valuation of Land for India Funded Project**

<b>Transmission Line</b>	<b>No. of Valuations</b>	<b>No. of PAPS</b>	<b>Amount (Kshs.)</b>
Turkwel-Ortum-Kitale	47	1,651	591,171,919
Machakos-Konza	01	95	40,394,621
<b>Total</b>	<b>48</b>	<b>1,746</b>	<b>631,566,540</b>

**Valuation of Structures for the India Funded Project**

7.5.28 According to Section 7.2.2 the Resettlement Policy Framework, 2011, KETRACO was required to review and synchronize the costs to the relevant types of construction materials used for buildings at the various rural regions of Kenya. According to the RPF, 2011 a disturbance allowance of 15% was to be added to the final gross replacement cost of the structure.

7.5.29 The valuation for structures along the Transmission Lines was done by the Project development services department of KETRACO. Valuation amounts totalling Kshs.237,337,068 were submitted by the respective Land Economists and Surveyors as detailed **Table 71**.

**Table 71: Valuation of Structures for India Funded Project**

<b>Transmission Line</b>	<b>No. of Valuations</b>	<b>No. of PAPS</b>	<b>Amount (Kshs.)</b>
Turkwel-Ortum-Kitale	15	324	234,641,396
Machakos-Konza	01	05	2,695,672
<b>Total</b>	<b>16</b>	<b>329</b>	<b>237,337,068</b>

**Valuation of Crops/Trees for the India Funded Project**

7.5.30 Section 7.2.3 of the Resettlement Policy Framework, 2011 states that vegetation damage shall be compensated at the value assessed on the basis of prevailing Government rates for crops and trees are revised from time to time.

7.5.31 The valuation of Crops/Trees along the Transmission Lines was undertaken by the Project Development Department of KETRACO, the valuation amounts totalling Kshs.151,629,620 were submitted by the respective valuers along the Transmission Lines as detailed **Table 72**.

**Table 72: Valuation of Crops/Trees for India Funded Project**

<b>Transmission Line</b>	<b>No. of Valuations</b>	<b>No. of PAPS</b>	<b>Amount (Kshs.)</b>
Turkwel-Ortum-Kitale	30	1,980	146,797,114
Machakos-Konza	07	58	4,832,506
<b>Total</b>	<b>37</b>	<b>2,038</b>	<b>151,629,620</b>

**i. Valuations for Turkwel-Ortum-Kitale Transmission Line**

7.5.32 According to the valuation schedules provided for audit, the total value of land, structures, and crops/trees associated with the Turkwel-Ortum-Kitale Transmission Line amounted to Kshs.972,610,429. This amount represented the collective value of all land, structures, and crops/trees that were affected by the Transmission Line as detailed in **Appendix 38** and shown in **Table 73**.

**Table 73: Summary of Valuations for the Turkwel-Ortum-Kitale Transmission Line**

<b>Compensation Type</b>	<b>No. of Valuations</b>	<b>No. of PAPs</b>	<b>Amount (Kshs.)</b>
Land (Wayleave)	47	1,651	591,171,919
Structures	15	324	234,641,396
Crops/Trees	30	1,980	146,797,114
<b>Total</b>			<b>972,610,429</b>

### **Land**

7.5.33 The Audit Team reviewed forty-seven (47) valuation schedules provided for audit, for the Turkwel-Ortum-Kitale Transmission Line. The valuation was guided by the value per acre given by the various valuers involved in determining the value of land per acre of respective areas along the corridor. The valuations were carried out to determine the compensation amounts for the land that would be affected by the Transmission Line. From the valuations, it was determined that a total of 1,651 Project Affected Persons (PAPs) would be impacted by the Transmission Line. The individuals or entities were entitled to compensation for their land affected by the Project, the total value of the land being Kshs.591,171,919. This figure represented the estimated cost of the wayleave to be compensated for the Project.

#### ***Lack of Cut-off date for Land Identified for Wayleave Compensation***

7.5.34 Section 6.3 of the RPF, 2011 states that, “*Notice of a cut-off date will be posted both in the local media and at appropriate locations within the footprint of the Project.... Establishing this cut-off date is essential in the process, as new inhabitants coming to the Project affected areas after the cut-off date will not be considered for compensation. The eligible cut-off date should be set immediately following the socio-economic survey*”.

7.5.35 However, documents/information indicating the cut-off date(s) for affected parcels of land along the Transmission Line wayleave corridor were not provided for audit. There was therefore, a risk of duplication of ownership, where multiple owners might have been registered for the same parcel of land in different sections. This could occur due to subdivision of land, where a single piece of land is divided into multiple parcels, each with a different owner.

Subdivision of land within the Transmission Line wayleave corridor without a clear cut-off date could lead to inflated compensation.

#### ***Lack of Guidelines on Land Revaluations***

7.5.36 The Audit Team noted that land revaluation amounting to Kshs.88,907,633 was undertaken, and resulted in reduction of the initial value of the land, from Kshs.591,171,919 to Kshs.502,264,286 for 1,651 PAPs, as detailed in **Appendix 38**.

7.5.37 The Audit Team noted that KETRACO did not have clear guidelines or policies to guide in the process of land renegotiations for wayleave compensation. The absence of clear guidelines raised several concerns:

- i) Possibility of unfair treatment: Without clear guidelines, there was risk of unfair treatment of landowners and property owners affected by KETRACO's Projects. This implied that some landowners might not have received just and equitable compensation for the land, structures, and crops affected by the Transmission Line; and
- ii) Possible increase in compensation costs: The lack of a structured policy could result in inconsistencies in the compensation process, which may lead to increase in the cost of compensation.

#### **Structures**

7.5.38 According to Section 7.2.2 the Resettlement Policy Framework, 2011, KETRACO was required to review and synchronize the costs to the relevant types of construction materials used for buildings at the various rural regions of Kenya. According to the RPF, 2011 a disturbance allowance of 15% was to be added to the final gross replacement cost of the structure.

7.5.39 According to the schedules provided for valuations of structures along Turkwel-Ortum-Kitale Transmission Line, there were fifteen (15) valuations of structures carried out for three hundred and twenty-four (324) PAPs totalling Kshs.234,641,396 along the Transmission Line, as detailed in **Appendix 38**.

#### ***Unsupported Rerouting of the Transmission Line***

7.5.40 According to the initial approved valuation of structures amounting to Kshs.234,641,396, the Audit Team noted that KETRACO rerouted the Transmission Line, which led to a total of nine (9) structures being eliminated from the valuation schedule, whose value amounted to Kshs.17,744,580. The

names of individuals and the corresponding amounts associated with the structures, are detailed in **Table 74**.

**Table 74: Unsupported Rerouted Structures for the TOK Transmission Line**

Name	Amount (Kshs.)
Petro Kide	9,880,572
Isaac Kide	1,724,425
Peter Kiptoo Kendagor/Jane Chepkite Lokomu	873,195
Alex Lochatum	328,900
Benjamin Kibet Lotam	410,550
Paul Lomwai	2,555,905
Samwel Ruto/Irene Chebet	380,650
Yusuf Kaitobok	553,641
Robert Kaitobok	1,036,742
<b>Total</b>	<b>17,744,580</b>

- 7.5.41 As a result of this rerouting, the total valuation of structures was reduced from the initial amount of Kshs.234,641,396 for three hundred and twenty-four (324) PAPs to Kshs.216,896,816 for three hundred and fifteen (315) PAPs.
- 7.5.42 However, no documentary evidence was provided to support the rerouting of the Transmission Line.

#### **Crops/Trees**

- 7.5.43 Section 7.2.3 of the Resettlement Policy Framework, 2011 states that vegetation damage shall be compensated at the value assessed on the basis of prevailing Government rates for crops and trees and shall be revised from time to time.
- 7.5.44 According to the valuation reports provided for crops/trees for the Turkwel-Ortum-Kitale Transmission Line, there were thirty (30) valuations of crops/trees carried out for 1,980 PAPs with an initial valuation amount of Kshs.146,797,114. However, a reconciliation was undertaken of Kshs.662,260, resulting in the final valuation amount of Kshs.146,134,854, as detailed in **Appendix 38**.

#### **ii. Valuations for the Machakos-Konza Transmission Line**

- 7.5.45 According to the valuation schedules provided for audit, the total value of land, structures, and crops/trees for the Machakos-Konza Transmission Line amounted to Kshs.47,922,799 as detailed in **Table 75**.

**Table 75: Summary of Valuations for the Machakos-Konza Transmission Line**

Compensation Type	No. of Valuations	No. of PAPs	Valuation Amount (Kshs.)
Land	01	95	40,394,621
Structures	01	05	2,695,672
Crops/Trees	07	58	4,832,506
<b>Total</b>	<b>09</b>	<b>158</b>	<b>47,922,799</b>

## Land

### *Lack of Guidelines on Renegotiations*

7.5.46 The Management of KETRACO undertook an initial valuation of eighteen (18) sampled parcels of land that was used to value ninety-five (95) parcels of land, valued at Kshs.40,394,621. Out of the ninety-five (95) parcels, fifteen (15) parcels were renegotiated upwards by Kshs.7,290,512 as detailed in **Table 76**.

**Table 76: Parcels of Land Renegotiated for the Machakos-Konza Transmission Line**

Parcel Number	Owner	Initial Valuation Amount (Kshs.)	Top Up Amount (Kshs.)	Negotiated Offer (Kshs.)
Machakos Municipality Block 5/340	Dr. Daniel Muindi	1,015,542	784,458	1,800,000
Machakos Municipality Block 5/346	Jeniffer Mudinyu	557,288	953,979	1,511,267
Machakos Municipality Block 5/345	Philip Mulwa	790,788	169,542	960,330
Machakos Municipality Block 5/66	Joseph Kisolo	560,401	56,040	616,441
Machakos Municipality Block 5/61	Josephine Mbula David	452,546	547,454	1,000,000
Machakos Municipality Block 4/297	Ben Mutiso	370,265	1,629,735	2,000,000
Machakos Municipality Block 4/295	Antony Muli	513,701	986,299	1,500,000
Konza Ranch/160	Muoki Muthangya	354,328	162,797	517,125
Konza Ranch/161	Fredrick Mbondo Mutisya	177,905	372,095	550,000
Konza Ranch/162	Fredrick Mbondo Mutisya	10,554	389,446	400,000
Konza Ranch/1022	J. Mutua Nguma	2,226,780	222,480	2,449,260
Konza Ranch/1017	Mutua Musau	3,419,115	342,060	3,761,175
Konza Ranch/990	John Musyoka Musembi	687,159	45,801	732,960
Konza Ranch/969	Nzuki Nzeveya	901,757	500,976	1,402,733
Konza Ranch/1466	Priscila K. Mutwiwa	636,752	127,351	764,103
<b>Total</b>		<b>12,674,882</b>	<b>7,290,512</b>	<b>19,965,394</b>

7.5.47 The renegotiation amount of Kshs.7,290,512 resulted in an increase of the valuation amount from Kshs.40,394,621, to Kshs.47,685,133, being the final compensation amount. The Audit Team established that KETRACO did not have guidelines or policies that guided the process of land renegotiations for wayleave compensation contrary to Section 9.1 of the RPF, 2011 which

provides for an operational policy to guide staff negotiating compensation on behalf of KETRACO, indicating the details on conduct of the process, appointment of such staff and the allowable price variation limits.

**Increased Land Compensation Costs due to Renegotiations  
Kshs.7,290,512**

- 7.5.48 The Audit Team was not provided with documents that showed how KETRACO carried out the renegotiations for the parcels of land. The Audit Team therefore, was not able to ascertain whether the renegotiations were based on open market values. Further, the lack of renegotiation documents maybe an avenue for loss of funds by increasing the compensation.

**Structures**

- 7.5.49 The Audit Team noted that the one (1) valuation of Kshs.2,695,672 for five (5) PAPs, were renegotiated upwards by Kshs.138,000, resulting to a final compensation amount of Kshs.2,883,672.

**Crops/Trees**

- 7.5.50 The Audit Team noted that the valuations for crops/trees of Kshs.4,832,506 did not have adjustments, therefore being the amounts payable for compensation.

**7.6 Financial Management and Expenditure**

- 7.6.1 According to Section 7 of RPF, 2011, KETRACO was required to compensate for land acquired or encumbered, structures affected, crops/trees destroyed and loss of income/business/employment.

**Payment of Compensation Funds- Wayleave Acquisition**

- 7.6.2 KETRACO has a Finance Manual approved in February, 2022 that guides on the procedures of the process of payment to PAPs for the wayleave acquisition. The Audit Team therefore, reviewed the payments made after February, 2022 against the procedures in the Finance Manual.
- 7.6.3 It was established that Turkwel-Ortum-Kitale and Machakos-Konza Transmission Lines had a total compensation amount of Kshs.865,295,956 and Kshs.55,401,311, respectively. The approved, paid and outstanding amounts are detailed in **Appendix 38** and summarized in **Table 77**.

**Table 77: Compensation Amount for the India Funded Project**

Transmission Line	No of PAPs	Payment Component	Approved Amount (Kshs.)	Paid Amount (Kshs.)	Outstanding Amount (Kshs.)	Outstanding (%)
Turkwel-Ortum-Kitale	1,651	Land	502,264,286	309,029,887	193,234,399	38.47%
	315	Structures	216,896,816	210,135,158	6,761,658	3.12%
	1,980	Crops/Trees	146,134,854	131,608,944	14,525,910	9.94%
	<b>Sub Total</b>		<b>865,295,956</b>	<b>650,773,989</b>	<b>214,521,967</b>	<b>24.79%</b>
Machakos-Konza	95	Land	47,685,133	26,495,955	21,189,178	44.44%
	5	Structures	2,883,672	1,040,106	1,843,566	63.93%
	58	Crops/Trees	4,832,506	2,268,970	2,563,536	53.05%
	<b>Sub Total</b>		<b>55,401,311</b>	<b>29,805,031</b>	<b>25,596,280</b>	<b>46.20%</b>
<b>Total</b>			<b>920,697,267</b>	<b>680,579,020</b>	<b>240,118,247</b>	
<b>Total</b>	1,746	Land	549,949,419	335,525,841	214,423,577	38.99%
	320	Structures	219,780,488	211,175,264	8,605,224	3.92%
	2,038	Crops/Trees	150,967,360	133,877,914	17,089,446	11.32%

- 7.6.4 The Audit Team noted that the total compensation for land, structures and crops/trees for the Turkwel-Ortum-Kitale project after revaluations, rerouting and re-negotiation, amounted to Kshs.865,295,956 out of which, Kshs.650,773,989 was paid, leaving an outstanding balance of Kshs.214,521,967, approximately 24.79% for the Project.
- 7.6.5 Further, the total compensation for land, structures and crops/trees for Machakos-Konza Transmission Line, amounted to Kshs.55,401,311, out of which, Kshs.29,805,031 was paid to PAPs, leaving an outstanding balance of Kshs.25,596,280, approximately 46.2% for the Project.

#### **Irregularities in the Compensation for the Project**

##### ***Failure to Maintain a Separate Bank Account for the Project***

- 7.6.6 Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015 states that, *“For the purpose of disbursement of Project funds, there shall be opened and maintained a Project account for every Project at Central Bank of Kenya unless it is exempted by the Cabinet Secretary, in writing, into which all funds shall be kept and such an account shall be known by the name of the Project for which it is opened and each Project shall maintain only one bank account”*.
- 7.6.7 The Audit Team noted that payments for compensation of the Project were done through a bank account operated by KETRACO at KCB. This bank account and its cashbook were also used for other operations of KETRACO, resulting in co-mingling of Project funds with funds meant for KETRACO operations. The Project did not have a separate Project bank account and

therefore, resulted in the co-mingling of Project funds with funds meant for KETRACO operations.

- 7.6.8 Further, the Audit Team reviewed the bank statements and cashbook and noted that the documents lacked unique reference information which could be used to trace and confirm the payments. Due to this internal control weakness, the Audit Team therefore, was not able to confirm that all payments were in the bank statements.

***Variance between RAPs and Compensation Amount for the Project***

- 7.6.9 It was noted that the estimated cost of resettlement as per the RAPs was Kshs.1,899,572,440 while the total compensation was Kshs.920,697,267, resulting to a variance of Kshs.978,875,173. There was a likelihood that the variance was as a result of poor planning and budgeting in the initial planning phase.

***Comparison between Funds Disbursed and Compensation Amounts for the Project***

- 7.6.10 Further, the Audit Team was not able to ascertain the consistency between the total amount paid of Kshs.680,579,019 with the project's disbursement of Kshs.1,274,627,066, due to lack of a schedule indicating how the amount disbursed was to be utilized within the Project.

**7.7 Physical Verification of the India Funded Project**

- 7.7.1 The Audit Team carried out a field visit for the India Funded Project. The verification exercise was to confirm that the parcels of land existed, the actual acreage/sizes acquired, land occupancy and the current usage of the land within the wayleave corridor. Further, the field exercise was to ascertain the existence and occupancy status of the structures and crops/trees with outstanding claims.

- 7.7.2 The Audit Team applied the following approaches during the exercise:

- i) Physical verification at the project site and confirmation of project Substations;
- ii) Physical verification of affected parcels of land and interviews with landowners;
- iii) Actual survey of the parcel of land; and
- iv) Interviews with crops/ structures PAPs with outstanding claims.

## **Physical Verification at the Project Site and Confirmation of Project Substations**

7.7.3 During the site verification exercise held in August and September 2023, the Audit Team verified the Turkwel-Ortum-Kitale Transmission Line Project. It was noted that the Project has three (3) Substations out of which, the Audit Team visited two (2) Substations and noted the following: -

### **Kitale Substation**

- i. The Audit Team was informed that the land on which the Substation was constructed, was acquired by KETRACO but under another Project; the Eldoret to Kitale Transmission Line. Therefore, KETRACO did not acquire the land specifically for the TOK Project. The Transmission Line terminates at the Substation.
- ii. The Audit Team was not provided with any documents to show approval to use the Substation for the TOK Project.
- iii. The expert surveyor determined the land size to be 20 Acres, which tallied with the 8.10 Hectares (approximately 20 Acres) indicated in the title deed provided for audit, which was in the name of KETRACO.

### **Ortum Substation**

- i. The contractor was on site, finalizing works before the line could be energized. The Transmission Line passed through the Substation and proceeded to terminate at Kitale Substation.
- ii. Survey beacons and a perimeter wall to secure the land were in place on the portion where the Substation is constructed. However, a portion of the land remained outside the perimeter wall posing a risk to the security of the land.
- iii. The land was acquired and a title deed in the name of KETRACO provided for audit.
- iv. Payment details of the land acquisition transaction were however, not provided to the Audit Team. It was therefore, not possible to establish the cost of the land.

#### **a. Turkwel Substation**

- i. The Audit Team was not able to visit the Substation due to security challenges.

- ii. The Audit Team was informed that the land on which the Substation is constructed is owned by KENGEN and that KETRACO did not acquire the land.
- iii. The Audit Team was not provided with any documents pertaining to the agreement between KETRACO.

**Physical Verification of Affected Parcels of Land and Interviews with Landowners**

7.7.4 During the site verification exercise held in August and September, 2023, the Audit Team verified ninety-three (93) land parcels out of the total four hundred and thirty-nine (439) parcels of land with outstanding compensation claims for Turkwel-Ortum-Kitale Transmission Line. Further, the Audit Team verified three (3) parcels of land that had been compensated. **Appendix 39**

7.7.5 Out of the ninety-three (93) parcels of land visited, the Audit Team noted the following;

- i. Ten (10) PAPs could not be located on the parcels of land. However, the Audit Team confirmed that the parcels of land existed and had been affected by the Project.
- ii. Six (6) PAPs had family disputes- the family members with a total outstanding claim of Kshs.1,790,229 had not agreed on the succession and are detailed in **Table 78**.

**Table 78: PAPs with Outstanding Claims Due to Family Disputes**

No.	Parcel Number	Registered Owner	Amount (Kshs)
1	Sinyerere/Sitatunga Block 3/75b	Daniel Karanja	774,659
2	Sinyerere/Sitatunga Block 3/75a	Aaron Chege	401,128
3	Sinyerere/Sitatunga Block 3/75c	Zakariah Rugiri	11,142
4	W/P/Keringet 'A'/428 A	Florence Cherotich	438,731
5	W/P/ Morobus/2/92	Chapchap Perimo	97,852
6	W/P/ Morobus/2/93	Rotich Lomuken Gareii Katilia	66,717
<b>Total</b>			<b>1,790,229</b>

- iii. Seven (7) PAPs had identified and engaged with lawyers to initiate the succession process, and the compensation amount of Kshs.10,259,517 remained outstanding due to the absence of title deeds for the parcels with informal subdivisions. Details of the seven (7) PAPs are shown in **Table 79**.

**Table 79: PAPs with Outstanding Claims Due to Absence of Title Deeds**

No.	Parcel Number	Name of the PAP	Amount (Kshs)
1	SINYERERE/SITATUNGA BLOCK 1/470	Daniel Macharia Njoroge	147,080
2	W/P/KERINGET 'A'/355A	Joseph Rotich Kalimor	439,755
3	W/P/KERINGET 'A'/355B	Joseph Kerker Maket	1,069,675
4	W/P/KERINGET 'A'/355D	James Kudian Kalimor	980,536
5	W/P/KERINGET 'A'/355E	Francis Kamoro Kudian	1,069,675
6	WEST POKOT CHEPARERIA/2057A	Selina Chepocheponyo Kite	3,326,732
7	WEST POKOT CHEPARERIA/2057B	Chemota Lemakwang /Joseph Rotich	3,226,064
<b>Total</b>			<b>10,259,517</b>

- iv. Eleven (11) PAPs had no title documents to forward to KETRACO for payment
- v. Fifty-nine (59) PAPs felt that the compensation amount was lower than the current market value, therefore rejected the offer.
- vi. One (1) PAP, Galibityei Primary School, was within the wayleave corridor. The school was not to be compensated but KETRACO was expected to undertake a social responsibility activity at the school, in lieu of the compensation. This had not been done by KETRACO.

7.7.6 Further, the Audit Team noted communication weaknesses by KETRACO, that may have contributed to the long outstanding wayleave compensation;

- i. Poor communication with the PAPs- During the interviews with the PAPs, it was noted that KETRACO did not have a structured way of communicating with the PAPs in terms of receiving updates at every stage of the wayleave compensation process and lacked channels for inquiries.
- ii. Documents' Requirement Checklist for PAPs- It was noted that the PAPs were not provided with a written checklist that details all the documents required for the wayleave compensation process.

#### **Actual Survey of the Parcel of Land**

7.7.7 Out of the 1,651 PAPs affected, the Audit Team surveyed a sample of twelve (12) parcels of land, approximately 1.49%, as detailed in **Appendix 39b**.

7.7.8 From the survey data provided by the surveyor and results therein, comparison between the affected land area and the measured land area was carried out and the following was noted: -

- i. Two (2) parcels had the difference between the affected land and measured land area lower than 5% of the area affected. According to the Surveyor, a difference of 5% may have arisen due to surveying errors such as systematic and accidental errors, which were allowable.
- ii. Seven (7) parcels had their affected land area less than the surveyed land area, and these differences were more than the allowable 5% surveying errors. These differences implied that survey may have not been properly undertaken, thereby leading to undervaluation of the affected area and under compensation to the landowners. Based on the valuation amounts undertaken for the seven (7) parcels of land, the total undervaluation amounted to Kshs.8,312,669. The undervaluation of Kshs.8,312,669 comprised of one (1) parcel of land whose landowner had been underpaid by Kshs.57,000 and six (6) parcels of land whose compensation amount had been undervalued by Kshs.8,255,669, remained outstanding.
- iii. Three (3) parcels had their affected land area more than the surveyed land area, and these differences were more than the allowable 5% surveying errors. These differences implied that survey was not properly undertaken, thereby leading to overvaluation of the affected area, resulting in loss of public funds due to overcompensation to the landowners. Based on the valuation amounts undertaken for the three (3) parcels of land, the possible total loss of public funds amounted to Kshs.245,035. This overvaluation of Kshs.245,035 comprised of one (1) parcel of land whose landowner had been overpaid by a possible Kshs.82,834 and two (2) parcels of land whose compensation amount had been overvalued by Kshs.162,201, remained outstanding.

#### **Interviews with PAPs with Outstanding Claims for Crops**

- 7.7.9 Out of the thirty-four (34) PAPs with outstanding claims for crops, the Audit Team engaged with twelve (12) PAPs who confirmed non-payment for the crop damages at the time of the field visit as detailed in **Appendix 39**.
- 7.7.10 However, the existence of the crops was not confirmed as they had been destroyed. The land where the crops had been, were within the TOK Transmission Line corridor.

- 7.7.11 The audit also noted that none of the twelve (12) PAPs had a compensation amount included in their Property Damage Report as issued to them by KETRACO. It was noted that KETRACO visited PAPs for inventory of the damaged crops but did not return the report comprising the compensation amount to be awarded to the PAPs. It was therefore, not possible to verify the amount of compensation awarded from the PAPs.
- 7.7.12 The Audit Team noted that the PAPs signed on the Property Damage Reports before the valuation amount for the damaged crops were indicated. The PAPs did not therefore, have an opportunity to agree/disagree with the valuation amount for the crops to be compensated.

### **Physical Verification of Affected Parcels of Land and Interviews with Landowners**

- 7.7.13 During the site verification exercise held in August and September, 2023, out of the total thirty-one (31) parcels of land with outstanding compensation, the Audit Team verified seventeen (17) parcels of land. Further, the Audit Team verified two (2) parcels that had been compensated, as detailed in **Appendix 39**.
- 7.7.14 Among the seventeen (17) parcels of land visited, the Audit Team noted the following: -
- i. Succession Issues- Six (6) PAPs with outstanding claims of Kshs.2,996,175 had not begun the succession process as detailed in **Table 80**.

**Table 80: PAPs with Outstanding Claims Due to Succession Issues**

<b>Parcel No.</b>	<b>Registered Owner</b>	<b>Amount (Kshs)</b>
Konza Ranch/1502	Juda Mulela Kasivu	287,272
Machakos Municipality Block 4/294	Paul Mutungi	703,837
Machakos Municipality Block 5/67	Paul Muthoka(Lazarus Nyenge, Brigadier Kakenyi, Justus Muthama, Francis Nzangi Kituto)	833,931
Konza Ranch/1035	Monika Mumbua Mutungi	530,380
Konza Ranch/1034	Frederick Phillip Muema	393,615
Konza Ranch/1537	Mumbika Sammy Wambua	247,140
<b>Total</b>		<b>2,996,175</b>

- ii. Family Dispute- One (1) Parcel of No. KONZA RANCH/1503 registered under Andrew Ndambuki had an ongoing dispute and a legal matter in court.
- iii. Delays in Payment Processing- Three (3) PAPs with outstanding claims amounting to Kshs.451,435 stated that they had completed and forwarded the required documentation to KETRACO for processing but had not received their payments, their details detailed in **Table 81**.

**Table 81: PAPs with Outstanding Claims Due to Payment Delays**

Parcel No.	Registered Owner	Amount (Kshs)
Konza Ranch/294	Danson Mutunga Mwaula	85,617
Konza Ranch/289	Raphael Kioko Maseki	182,353
Konza Ranch/288	Sammy Maithya Mwambi	183,465
<b>Total</b>		<b>451,435</b>

#### **Interviews with PAPs with Outstanding Claims for Crops**

- 7.7.15 Out of the seven (7) PAPs with outstanding claims, three (3) PAPs confirmed that they had not been paid for the crop damages at the time of the field visit. The balance of four (4) PAPs could not be traced by the Audit Team. However, the existence of the crops was not confirmed as they had been destroyed. However, the parcels of land were within the Machakos-Konza Transmission Line corridor, as detailed in **Appendix 39**.
- 7.7.16 The audit also noted that none of the three (3) PAPs had the compensation amount included in their Property Damage Report as issued by KETRACO. Therefore, it was not possible to verify the amount of compensation.

#### **Interviews with PAPs with Outstanding Claims for Structures**

- 7.7.17 The Audit Team visited four (4) PAPs whose structures were demolished to allow construction of the Transmission Line. The PAPs had not been paid at the time of the field visit, despite their structures being demolished, as detailed in **Appendix 39**.

### **7.8 Irregularities, Responsibilities and Recommendations**

- 7.8.1 The irregularities and weaknesses, responsibility and corresponding recommendations identified by the Audit Team are as detailed in **Table 82**.

**Table 82: Irregularities, Responsibilities and Recommendations for India Funded Project**

No	Irregularities and Weaknesses	Amount Involved (Kshs)	Section of the Report	Responsibility	Recommendation
1	Failure to provide documents for audit review contrary to Section 9(1)(e)(i) of the Public Audit Act, 2015	N/A	Appendix I of the Report	KETRACO Management	The KETRACO Management should always comply with the Public Audit Act, 2015, in relation to audit and provision of documents.
2	Unexplained Variances between RAP reports and approved Project Budgets	1,045,677,560	7.4.9	KETRACO Management	The KETRACO Management should: Provide training for staff on effective budgeting  Implement a process for regular budget reviews and variance analysis throughout the lifecycle of the Project
3	Variances between approved Project Budgets and disbursements	1,670,622,934	7.4.12	KETRACO Management	The KETRACO Management should: Provide training for staff on effective budgeting  Implement a process for regular budget reviews and variance analysis throughout the lifecycle of the Project
4	Unaccounted for Project Funds	1,857,469,156	7.4.14	KETRACO Management	The KETRACO Management should account for the Project funds in compliance with the law and undertake administrative action in line with the Entity's instruments on the officers found culpable for the unaccounted-for funds.
5	Failure to publicize affected land parcels contrary to Section 1.4.2 of the RPF (Resettlement Policy Framework)	N/A	7.5.21	KETRACO Management	The KETRACO Management should ensure that procedures including timelines for publicizing affected land parcels are developed and adhered to, in line with the relevant frameworks and Legislation in the future.
6	Failure to Provide Justification for Sampled Land Parcels	N/A	7.5.24	KETRACO Management	The KETRACO Management should develop and approve procedures and guidelines for wayleave valuation, which should include criteria for selection for valuation, of land affected by Projects
7	Lack of Cut-off date for Land Identified for Wayleave Compensation	N/A	7.5.34-7.5.35	KETRACO Management	The KETRACO Management should develop and approve procedures on cut-off periods for parcels land affected by Projects
8	Lack of Guidelines on Land Revaluations	88,907,633	7.5.36	KETRACO Management	The KETRACO Management should develop and approve procedures and guidelines for valuation of land affected by Projects, which should include fair land valuations and criteria for revaluations
9	Lack of Guidelines on renegotiations	7,290,512	7.5.46	KETRACO Management	The KETRACO Management should develop and approve procedures and guidelines for valuation of land affected by Projects, which should include fair land valuations and criteria for negotiations
10	Unsupported Rerouting of Transmission Line	17,744,580	7.5.40	KETRACO Management	The KETRACO Management should develop and approve procedures and guidelines to cater for rerouting of

No	Irregularities and Weaknesses	Amount Involved (Kshs)	Section of the Report	Responsibility	Recommendation
					transmission line once survey and valuation has been undertaken
11	Failure to maintain a Separate Bank Account for the Project	N/A	7.6.7	KETRACO Management	The KETRACO Management should: Have proper funds utilization mechanisms for Projects in place, to ensure that Project funds are held in separate accounts and are available whenever obligations fall due. Implement real-time monitoring systems for Project bank account balances, to immediately detect and address shortfalls.
12	Lack of unique reference information used to trace and confirm payments in the bank statements and cashbook	N/A	7.6.8	KETRACO Management	The KETRACO Management should: Maintain proper books of accounts for all Projects, in compliance with the Law. Ensure that all records have sufficient information for Projects' affected parcels of land such as landowner, parcel number and size
13	Variance between RAPs and Compensation Amount for the Project	978,875,173	7.6.9	KETRACO Management	The KETRACO Management should: Provide training for staff on effective budgeting  Implement a process for regular budget reviews and variance analysis throughout the lifecycle of the Project  Use the budget as a control tool when making payments
14	Weaknesses in the communication process between KETRACO and PAPs	N/A	7.7.6	KETRACO Management	The KETRACO Management should: Develop and approve procedures and guidelines to be applied while communicating with the PAPs before, during and after the process of wayleave compensation.  Develop checklists/ templates to be shared with the PAPs, that have information required during the process of wayleave compensation
15	Undervaluation of land resulting from the affected land area in schedules being less than the surveyed land area	8,312,669	7.7.8	KETRACO Management	The KETRACO Management should: Reconcile and recalculate the valuations for land acquired in the wayleave compensation, payments and outstanding balances.  Compensate the PAPs affected by the undervaluation and undertake administrative action in line with the Entity's instruments on the officers found culpable for the undervaluation.
16	Overvaluation of land resulting from the affected land area in schedules being more than the surveyed land area	245,035	7.7.8	KETRACO Management	The KETRACO Management should: Reconcile and recalculate the valuations for land acquired in the wayleave compensation, payments and outstanding balances.  Undertake administrative action in line with the Entity's instruments on the

No	Irregularities and Weaknesses	Amount Involved (Kshs)	Section of the Report	Responsibility	Recommendation
					officers found culpable for the overvaluation.

## 7.9 Conclusion

- 7.9.1 The India Funded Project involved the construction of two (2) Transmission Lines, namely; 220 kV Turkwel-Ortum-Kitale and 132 kV Machakos-Konza Transmission Lines; and five (5) Substations, namely; Turkwel, Ortum, Kitale, Machakos and Konza Substations.
- 7.9.2 The Project commenced in November 2013 and at the time of audit, the two (2) lines were in different levels of completion as follows; Turkwel, Ortum and Kitale Substations-94% complete; Turkwel-Ortum-Kitale Transmission Line-100% complete; Machakos and Konza Substations-100% complete; and Machakos-Konza Transmission Line-97% complete.
- 7.9.3 The Project was jointly funded by the Government of Kenya through the Ministry of Energy and The National Treasury, and a Line of Credit obtained from the Exim Bank of India. The Line of Credit agreement was signed on 16 November, 2010 for USD61,600,000, approximately Kshs.4,956,163,520.
- 7.9.4 The Resettlement Action Plans (RAP) were carried out and reports issued for the Machakos-Konza-Kajiado-Namanga and Turkwel-Ortum-Kitale Transmission Lines in January and July, 2013, respectively. The reports outlined that the households, structures and trees/crops that were to be affected had an estimated cost of Kshs.690,806,905 and Kshs.1,208,765,535 for the Machakos-Konza-Kajiado-Namanga and Turkwel-Ortum-Kitale Transmission Lines, respectively.
- 7.9.5 Comparison between the approved budgets and actual disbursements made for the Project revealed that from the financial year 2014/2015 to 2022/2023, KETRACO received a total of Kshs.1,274,627,066 instead of the total approved budget of Kshs.2,945,250,000 resulting in underfunding of the Project by Kshs.1,670,622,934 for the GOK component.
- 7.9.6 The Kenya Electricity Transmission Company identified parcels of land, structures and crops that affected 1,651, 315 and 1,980 Project Affected Persons (PAPs) respectively, for the Turkwel-Ortum-Kitale Transmission Line.

Further, parcels of land, structures and crops that affected ninety-five (95), five (5) and fifty-eight (58) Project Affected Persons (PAPs) were identified respectively, for the Machakos-Konza Transmission Line.

- 7.9.7 The final valuation in the compensation schedules for the Turkwel-Ortum-Kitale Transmission Line amounted to Kshs.865,295,956 out of which KETRACO had paid Kshs.650,773,989 leaving an outstanding balance of Kshs.214,521,967.
- 7.9.8 The total compensation payable for the Machakos-Konza Transmission Line amounted to Kshs.55,401,311 out of which KETRACO had paid Kshs.29,805,031 leaving an outstanding balance of Kshs.25,596,280.
- 7.9.9 The reasons for non-payment of the compensation included but were not limited to PAPs having succession issues; PAPs with no title documents; rejected offers by PAPs; ongoing legal matters in court; PAPs awaiting payment with all documents taken to KETRACO.
- 7.9.10 The major irregularities noted by the Audit Team included failure to provide documents, unexplained variances, unaccounted-for amounts disbursed by Ministry, failure to publicize affected land parcels, absence of criteria and methodology for selection of valued parcels of land, lack of guidelines on renegotiations and revaluations of land values, failure to maintain a separate bank account for the Project, lack of landowner details in the outstanding claims schedule, variances in valuations, among others.

## **8 NAIROBI RING PROJECT (SUSWA-ISINYA TRANSMISSION LINE)**

### **8.1 Project Overview**

- 8.1.1 The Nairobi Ring Project involved the construction of a 100 KM (Kilometres) 400 kV double circuit Transmission Line from Suswa Substation to Isinya Substation and three (3) Substations at Suswa and Isinya, Kimuka.
- 8.1.2 The cost of the Project was estimated at €146,800,000, approximately Kshs.16,003,455,000, which was to be jointly funded by the French Development Bank (AFD), European Investment Bank (EIB), and the Government of Kenya (GOK). An agreement was signed between the French Development Bank and the Government of Kenya on 08 June, 2012, for €78,500,000 while the remaining cost of €68,300,000 was to be funded

through a subsidiary agreement signed between GOK and KETRACO dated 13 December, 2012 from the surplus funds from the Mombasa-Nairobi line.

- 8.1.3 The Nairobi Ring Project- Suswa-Isinya (100KM 400 kV double circuit) Transmission Line commenced in October 2012 and was completed in August 2017. The Suswa-Isinya Transmission Line affected a total of 1,471 PAPs.

#### **Summary of Claims**

- 8.1.4 As at 30 June, 2023, the total value in the compensation schedules for the Nairobi Ring Project amounted to Kshs.2,160,697,705 out of which KETRACO had paid Kshs.2,014,339,790 leaving an outstanding balance of Kshs.146,357,915. The Audit Team reviewed and analysed the compensation claims for the Project. The following are the audit findings: -

### **8.2 Conceptualization and Feasibility Study**

- 8.2.1 Section 2.1.1 of the Sessional Paper No. 4 of Energy 2004 discussed power as one of the sub-sectors that was crucial to Kenya's economic growth. The paper highlighted the need to develop a 20-year rolling Least Cost Electric Power Development Plan (LCPDP) which was to be revised annually to take account of new information, identify existing potential in generation, possible investments in transmission as well as carefully forecasting on future demand for power and how best it was to be met at least cost.
- 8.2.2 The Ministry of Energy developed a Least Cost Power Development Plan dated March, 2011 (LCPDP, 2011) for the study period between 2011 and 2031, thereby adhering to the requirements of the Sessional Paper No.4 of Energy 2004.
- 8.2.3 Section 2.3.4 of the LCPDP, 2011 outlined that the Kenyan electricity supply industry structure was of the single buyer model with all generators selling power in bulk to Kenya Power and Lighting Company Ltd (KPLC) for dispatch and onward transmission and distribution to consumers. Section 2.3.4.1 of the LCPDP further stated that Kenya had experienced demand in electricity consumption in the last five (5) years prior to development of the Plan, and the rise in consumption required a corresponding increase in generation capacity and transmission network. The Audit Team established that KETRACO adhered to the abovementioned section of the Plan.

***Lack of Documentation on Involvement of the Ministry of Energy, Prior to Signing Financial Agreements***

8.2.4 However, documents and correspondence on the involvement of the Ministry of Energy prior to signing of the Project's financing agreements by the Cabinet Secretary-The National Treasury and the financiers were not provided for audit. The Audit Team therefore, could not confirm the involvement of the Ministry of Energy, prior to signing the Project's financing agreements.

**Project Identification**

8.2.5 According to Section 2.5 of the Kenya Medium Plan 2008-2012, one of the structural reforms geared to achieving vision 2030 is providing reliable and accessible energy. Further, Section 3.1.5 (g) of the Kenya Vision 2030 flagship programs and Projects progress report highlights Nairobi Ring 220/66 kV as one of the key Projects to help in increasing electricity access by strengthening the system and increasing transformation capacity through removing excess load from the overloaded Substations in the Nairobi metropolitan Region.

**Feasibility Study**

8.2.6 According to Section 1.4.2 of the Resettlement Policy Framework, 2011, a feasibility study was to be undertaken.

8.2.7 The feasibility study for 220 kV ring around Nairobi Metropolitan was conducted in March, 2011 by Parsons Brinckerhoff. Section E.2.1.2 of the report states that new 400/220 kV Substations were required at Suswa and Isinya. The Substations were to be developed in stages as follows;

i) Suswa 220 kV Substation was required by 2013 to allow evacuation of additional geothermal power from Olkaria and wind power from Turkana thereby delivering power into Nairobi.

ii) Isinya 220 kV Substation was required by 2013 for delivery of power into Nairobi and for termination of the Mombasa-Nairobi transmission line.

8.2.8 It was therefore noted that KETRACO adhered to the Resettlement Policy Framework, 2011, by undertaking the feasibility study for the Suswa-Isinya transmission line.

8.2.9 Section E.2.1.7 of the study report outlined the cost benefit analysis of the Project. Comparison of the net financial and economic benefits for two cases

was made; one involving the proposed transmission investment; and the other, if the investment did not take place. The net financial and economic benefits of the 'with investment' case was found to be greater than the net benefits for the 'without investment' case, which provided both financial and economic justification for the proposed investment, thereby justifying the Project implemented by KETRACO for the Suswa-Isinya transmission line.

### **Environment and Social Impact Assessment (ESIA)**

- 8.2.10 According to Part III 12 (1) of the Legal Notice No.101 of the Environmental (Impact Assessment and Audit) Regulations, 2003, an environmental assessment study was required to be conducted in accordance with the set out general environmental impact assessment guidelines and sector environmental impact assessment guidelines set out in the third schedule of the Regulations.
- 8.2.11 The Audit Team noted that an Environmental and Social Impact Assessment (ESIA) study for the Project was carried out in March, 2011 by Parsons Brinckerhoff.
- 8.2.12 According to the ESIA report, the study involved carrying out an assessment of the proposed Project to determine whether the Project and associated activities would have any adverse impacts on the environment, including environmental, social, cultural, economic and legal considerations.
- 8.2.13 The KETRACO therefore, adhered to Part III 12 (1) of Legal Notice No. 101, by undertaking the Project environmental assessment study.

### **Resettlement Action Plan**

- 8.2.14 Section 6.1 of the Resettlement Policy Framework, 2011 identified the need to carry out a social economic survey (census) of the persons who will be affected by the Project to determine who is eligible for assistance and benefits, determine level of asset loss and assign economic values to them. The survey was to involve review of tenure documents owned by occupants and interviews with individual households and groups in the affected area(s). Further it required KETRACO (or their designated consultant) to hold discussions with local authorities and the Ministry of Lands and Settlement.

- 8.2.15 Lesson 3 of the World Bank's Operational Manual-OP 4.12 on Involuntary Settlement provides that the Bank policy allows for the preparation of an Abbreviated Resettlement Action Plan (ARAP) when the PAPs are fewer than 200. Further the Policy Statement on page 2 of the Resettlement Policy Framework, 2011 states that "*KETRACO will undertake Abbreviated Resettlement Action Plans (ARAPs); those which require relocation of less than fifty (50) households as defined in this RPF, by KETRACO's internal resources*".
- 8.2.16 Further, Appendix 2 of the RPF, 2011 outlined the minimum requirements for the preparation of ARAP which included a census survey of displaced persons and valuation of assets, description of compensation and other resettlement assistance, consultations with displaced people about acceptable alternatives, institutional responsibility for implementation and procedure for grievance redress, arrangements for monitoring and implementation, and a timetable and budget.
- 8.2.17 An Abbreviated Resettlement Action Plan (ARAP) was carried out and the report issued by KETRACO for the proposed Suswa-Isinya transmission line. The report outlined that the total ARAP estimated resettlement cost for the transmission line was Kshs.283,100,000. The land required for the Project was owned by approximately forty-eight (48) Project affected households, covering 101 Kms and amounting to Kshs.135,000,000. Further, fifty (50) structures amounting to Kshs.50,000,000 and crops and trees amounting to Kshs.20,000,000 were affected. The remaining amount of Kshs.2,000,000, Kshs.76,000,000 and Kshs.100,000 was to cater for public consultation and sensitization, acquisition of Substation land, and information dissemination respectively.

### **8.3 Governance and Related Issues**

#### **Roles and Responsibilities as per the Law/Guidelines in the Project Cycle**

- 8.3.1 Review of documents provided for audit including the Technical Committee Charter, Board Audit and Risk Committee Charter and the Finance Strategy and Risk Committee Charter for the year 2019 confirmed the involvement of the Board in the Nairobi Ring Project.

8.3.2 According to the KETRACO organogram as outlined in its 2018-2022 Strategic Plan, the Board of Directors are at the top of the organogram. Further, Section 1.7 of the Mwongozo guidelines requires the Board to establish not more than four (4) committees of the Board.

***Non-Provision of Board, Audit and Risk Committee Minutes***

8.3.3 Review of the Board Audit and Risk Committee Charter for 2019, revealed that the Committee was mandated to examine internal and external audit reports and recommendations. However, the minutes for the Committee were not provided for audit. The Audit Team therefore, could not ascertain whether the Committee complied with the Charter.

***Absence of Board Approval Minutes for the Implementation of the Project***

8.3.4 Section 9.1 of the Resettlement Policy Framework, 2011 (RPF, 2011) stated that the transmission line Project was under the administrative authority of the Ministry of Energy with KETRACO as the implementing agent and the execution of a Project was delegated to a Project Implementation Team (PIT) which was a management committee established to oversee all project activities. According to the RPF, 2011, the PIT was set up to manage and oversee all the activities of the Resettlement Action Plan. The established Resettlement Project Team comprised of an overall Project manager, a socio-economist, surveyor, way leave officer, environmentalist, transmission engineer, land valuer, legal officer, financial administrator, and other key support staff.

8.3.5 However, appointment letters and reports for the PIT for the Nairobi Ring Project were not provided for audit. It was therefore, not possible to determine whether the PIT was constituted as per the requirements of the Resettlement Policy Framework, 2011. Further, the Audit Team could not ascertain whether the Project was implemented as per the RPF, 2011.

## 8.4 Budget and Budgetary Control

### Wayleave Compensation and Resettlement Cost

- 8.4.1 According to the ARAP Report, the Nairobi Ring (Suswa-Isinya) cost estimate for resettlement amounted to Kshs.283,100,000 which was to cater for public consultation and sensitization, acquisition of Substation land, acquisition of wayleave from agricultural land, structures, crops and trees and information dissemination related to the Project Affected Persons (PAPs). The costs outlined in the ARAP estimated at Kshs.283,100,000 are detailed in **Table 83**.

**Table 83: Summary ARAP Report for the Suswa-Isinya Transmission Line**

Item	Quantity in Units	Total Cost (Kshs)
Public Consultation and Sensitization	20 Consultative Engagements	2,000,000
Acquisition of Substation Land	02 Substations	76,000,000
Acquisition of wayleave from Agricultural Land (Covering 101 Kms)	48 Project affected households	135,000,000
Structures	50 structures	50,000,000
Crops and Trees	Not indicated	20,000,000
Information Disseminations	Not indicated	100,000
<b>GRAND TOTAL</b>		<b>283,100,000</b>

### Project Source of Funds and Financing

- 8.4.2 Nairobi Ring (Suswa-Isinya transmission line) Project was jointly funded by French Development Bank, European Investment Bank and Government of Kenya (GOK) at €146,800,000, approximately Kshs.16,003,455,000 as detailed in **Table 84**.

**Table 84: Financing for Nairobi Ring (Suswa-Isinya) Transmission Line**

Donor	Date of Financing Agreement	Loan Amount in Euro (€)	Exchange Rate as at Agreement Date (Kshs.)	Approximate Loan Amount (Kshs.)	Remarks
French Development Agency (AFD)	8 June, 2012	78,500,000	105.94	8,316,290,000	The total cost of the Project was estimated at €146.8 million. The balance of €68.3 million to be financed by remaining funds from Mombasa-Nairobi line, funded by EIB and AFD.
European Investment Bank (EIB)	13 December, 2012	17,800,000	112.55	2,003,390,000	Balance from funds for Mombasa-Nairobi line as detailed in the Subsidiary Financing agreement between GOK and KETRACO dated 13, December, 2012.
French Development Agency (AFD)	13 December, 2012	20,000,000	112.55	2,251,000,000	Balance from funds for Mombasa-Nairobi line as detailed in the Subsidiary Financing agreement between GOK and KETRACO dated 13, December, 2012.
GOK	13 December, 2012	30,500,000	112.55	3,432,775,000	Subsidiary Financing agreement between GOK and KETRACO dated 13, December, 2012.
<b>Total</b>		<b>146,800,000</b>		<b>16,003,455,000</b>	

### **Budget Process at the Ministry of Energy and KETRACO**

- 8.4.3 The budget process for the Project was guided by the Public Finance Management Act, 2012, Public Finance Management (National Government) Regulations, 2015 and the Abbreviated Resettlement Action Plan (ARAP) Report.
- 8.4.4 The Abbreviated Resettlement Action Plan (ARAP) Report provided the costs, estimates and budgets for wayleave acquisition related costs, legal framework and entitlement policy, compensation policy in line with the RPF, 2011 Project affected scope and inhabitant's status, Project affected area and inhabitants,

public consultation, disclosure and grievance mechanism, which were used in the preparation of the Project budget by KETRACO and the Ministry of Energy.

8.4.5 Section 2.5 of the subsidiary agreement outlined that the Government of Kenya was to finance the Project with a total of €30,500,000, approximately Kshs.3,432,775,000 (t the exchange rate of 1 Euro (€) at Kshs.112.55 prevailing on 13 December, 2012). However, the Agreement did not indicate the specific areas and costs of the Project that GOK was to finance. As a result, the Audit Team was not able to reconcile the GOK funding of Kshs.3,432,775,000 with the wayleave related costs and estimates in the ARAP, amounting to Kshs.283,100,000.

#### Approved Budget for the Ministry of Energy and KETRACO

8.4.6 The budget for both the donor and GOK component was factored in the Development Budgets for both the Ministry of Energy and KETRACO as shown in **Table 85**.

**Table 85: Approved Budget for MOE and KETRACO for the Nairobi Ring Project**

FY	Ministry of Energy as per Revised Budget Estimates			KETRACO as per Project Audited Financial Statements		
	Donor (Kshs)	GOK (Kshs)	Total (Kshs)	Donor (Kshs)	GOK (Kshs)	Total (Kshs)
2014/ 2015	Not itemized	Not Itemized	0	2,083,000,000	416,000,000	2,499,000,000
2015/ 2016	0	197,000,000	197,000,000	2,700,000,000	480,738,585	3,180,738,585
2016/ 2017	915,412,000	1,069,100,000	1,984,512,000	1,827,000,000	1,069,000,000	2,896,000,000
2017/ 2018	303,000,000	361,375,000	664,375,000	303,000,000	361,375,000	664,375,000
2018/ 2019	2,553,878,712	0	2,553,878,712	2,553,878,712	103,000,000	2,656,878,712
2019/ 2020	191,000,000	0	191,000,000	191,000,000	125,000,000	316,000,000
2020/ 2021	3,100,000,000	0	3,100,000,000	3,100,000,000	0	3,100,000,000
2021/ 2022	1,387,000,000	0	1,387,000,000	1,387,000,000	0	1,387,000,000
<b>Total</b>	<b>8,450,290,712</b>	<b>1,627,475,000</b>	<b>10,077,765,712</b>	<b>14,144,878,712</b>	<b>2,555,113,585</b>	<b>16,699,992,297</b>

8.4.7 The approved budget for the Ministry of Energy for the FY 2014/2015 was not program-based, therefore, the Audit Team could not establish the budgeted amount for the Nairobi Ring Transmission Line in that financial year.

8.4.8 It was established that the final approved budgets for the Ministry of Energy and KETRACO for the GOK component was a single line budget. The allocation was to cater for wayleave, consultancy fees and other operating costs. Therefore, the amount allocated for compensation to PAPs out of Kshs.1,627,475,000 and Kshs.2,555,113,585 respectively could not be established. The Audit Team could therefore, not reconcile the compensation amount estimated by the ARAP of Kshs.283,100,000 with the compensation amount budgeted by the Ministry of Energy and KETRACO.

#### **Amounts Disbursed for the Nairobi Ring Project**

8.4.9 Review of the amounts disbursed for the Project in the period under review indicated that total disbursements amounted to Kshs.3,014,703,361 against a budget allocation of 2,555,113,585 as per the Project's audited financial statements, as shown in **Table 86**.

#### ***Unexplained Variance between Approved Budget and Disbursements Kshs.459,589,776***

8.4.10 Comparison of the approved budgets and actual disbursements made for the Project revealed the following variances as detailed in **Table 86**.

**Table 86: Approved Budget and Disbursements for Nairobi Ring Project**

FY	MOE to KETRACO			KETRACO to the Project		
	Budget Allocation (Kshs.)	Actual Disbursement (Kshs.)	Variance (Kshs.)	Budget Allocation (Kshs.)	Actual Disbursement (Kshs.)	Variance (Kshs.)
2014/ 2015	0	Not Itemized	N/A	416,000,000	475,804,210	59,804,210
2015/ 2016	0	0	0	480,738,585	480,738,585	0
2016/ 2017	1,069,100,000	1,069,100,000	0	1,069,000,000	1,139,593,094	70,593,094
2017/ 2018	361,375,000	361,375,000	0	361,375,000	690,567,472	329,192,472
2018/ 2019	103,000,000	103,000,000	0	103,000,000	77,250,000	(25,750,000)
2019/ 2020	125,000,000	125,000,000	0	125,000,000	119,500,000	(5,500,000)
2020/ 2021	0	0	0	0	31,250,000	31,250,000
2021/ 2022	0	0	0	0	0	0
<b>Total</b>	<b>1,658,475,000</b>	<b>1,658,475,000</b>	<b>0</b>	<b>2,555,113,585</b>	<b>3,014,703,361</b>	<b>459,589,776</b>

8.4.11 The Audit Team noted that the total disbursements for the Nairobi Ring Project exceeded the budget allocation by Kshs.459,589,776.

#### ***Comparison between Amounts Disbursed by MoE and KETRACO***

8.4.12 Review of the Financial Statements and the Disbursement Release forwarding letters revealed the total disbursements made by the Ministry of Energy to

KETRACO and from KETRACO to the Project for the GOK component as summarized in **Table 87**.

**Table 87: Variance between Amounts Disbursed by MOE and KETRACO for the Nairobi Ring Project**

Financial Year	MOE to KETRACO (Kshs)	KETRACO to Project (Kshs)	Variance (Kshs)
2014/2015	Not Itemized	475,804,210	N/A
2015/2016	0	480,738,585	480,738,585
2016/2017	1,069,100,000	1,139,593,094	70,493,094
2017/2018	361,375,000	690,567,472	329,192,472
2018/2019	103,000,000	77,250,000	(25,750,000)
2019/2020	125,000,000	119,500,000	(5,500,000)
2020/2021	0	31,250,000	31,250,000
2021/2022	0	0	0
<b>Total</b>	<b>1,658,475,000</b>	<b>3,014,703,361</b>	<b>N/A</b>

8.4.13 The disbursements from the Ministry of Energy (MOE) to KETRACO for 2014/2015 could not be established since the schedules for the period were not program based, thus not itemized. The MOE transferred a total of Kshs.1,658,475,000 to KETRACO between the financial year 2015/2016 and 2021/2022 while KETRACO's disbursements to the Project as per the audited financial statements for the period 2014/2015 to 2021/2022 was Kshs.3,014,703,361. The Audit Team therefore, could not reconcile these disbursements.

## 8.5 Assets Management and Wayleave Acquisition

8.5.1 Section 7.3 of the RPF, 2011 required KETRACO to compensate for land acquired or encumbered, structures affected, crops/-trees destroyed and loss of income/business/employment.

### Acquisition of Land for Substations

8.5.2 Section 1.4.1 of the Resettlement Policy Framework, 2011 (RPF, 2011) required KETRACO to identify a potential site for constructing a Substation and the price of land to be negotiated with the landowner based on existing market value.

8.5.3 Section 7.3.1 of the Resettlement Policy Framework, 2011 states that, "Acquisition of land will only apply to sites where Substations are to be

*constructed, and KETRACO will acquire this land and pay compensation, based on open market values".* The Audit Team noted that the Project had three (3) Substations, namely; Isinya, Kimuka and Suswa Substations.

- 8.5.4 According to the shared Transmission Asset Register, the Isinya Substation on LR. No. Kajiado/Kaputiei –North/24054 of size 52.5 Acres, is shared between KETRACO and KPLC, though ownership document supporting this information was not provided for audit.
- 8.5.5 According to the Professional Opinion Ref No: KET/LP/18/2018/PK/fa/1 dated 29 November, 2018, the Kimuka Substation was to be constructed on 27.32 acres of land purchased from Siamanta ole Olodomirik, Land Parcel Number Kajiado/Ntashart/3700, at a negotiated cost of Kshs.54,640,000.
- 8.5.6 According to Tender Committee Minutes No. TC/022/2012 dated 27 March, 2012, it was noted that KETRACO required 200 acres of land for a main Substation at Suswa. The minutes indicated that a multidisciplinary team was established to assist in identifying the land, and the team conducted a site visit on 05 January, 2012. Parcel No. Kajiado/Ewaso-Kedong/3348 from Mr. Moriaso Ole Kindi was identified as the most suitable. The valuation of the land was conducted by M/S Njihia Muoka Rashid Company Limited, which assessed the value at Kshs.320,000 per acre, resulting in a total value of Kshs.64,000,000 for the 200 acres. However, the owner of the parcel declined the initial offer. Following negotiations, a price of Kshs.650,000 per acre was agreed upon, resulting in a total value of Kshs.130,000,000 for the 200 acres, approximately 80.9 Hectares (Ha).

***Absence of Appointment Letters for the Scoping Team***

- 8.5.7 Engagement with KETRACO established that a scoping team was to be appointed by the CEO or a senior manager in the organization. The scoping team was responsible for identifying the land and carrying out due diligence on the potential available lands for constructing the Substations. The scoping team was required to rank the identified various parcels of lands and issue a report on the most suitable land to be purchased. The team was also to do a valuation report outlining the factors like location, size, soil quality, topography and market value to arrive at the preferred land for the Substation.

8.5.8 The appointment letters of the scoping team for the Kimuka and Suswa Substations were not provided for audit.

***Absence of Land Scoping Reports for Substations Land***

8.5.9 The land scoping reports indicating how the land for Substations were identified and any negotiations that were held between KETRACO and the landowners were not provided for audit review. The Audit Team therefore, could not determine whether the scoping of land was undertaken, how the parcels of land were identified and whether the acquired parcels of land were the most economically viable.

***Absence of Comparable Amounts for Land within the Kimuka and Suswa Substation***

8.5.10 Section 1.4.1 of the RPF, 2011 required KETRACO to identify a potential site for constructing a Substation and the price of land be negotiated with the landowner, based on the existing market value. The land scoping reports which indicated the market/comparative prices for land within the Substations at Kimuka and Suswa were not provided for audit. The Audit Team therefore, was not able to ascertain whether the negotiated prices were based on open market values.

**Ownership of Substation Land**

***Non-Provision of Ownership Documents for the Kimuka Substation Land***

8.5.11 The Audit Team reviewed the shared Transmission Asset Register and the title deed for the Suswa Substation in order to establish ownership of land for Suswa, Kimuka and Isinya Substations, as detailed in **Table 88**.

**Table 88: Substations Ownership Details for the Suswa-Isinya Transmission Line**

<b>Sub-station</b>	<b>Title Number</b>	<b>Area (HA)</b>	<b>Date of Registration</b>	<b>Landowner</b>
Suswa	KJD/EWUASO KEDONG/3952	80.9	14 August, 2012	KETRACO
Kimuka	Not Provided	Not Provided	Not Provided	Not Provided
Isinya	Kajiado/Kaputiei -North/24054	52.5 Acres	Not Indicated	Shared between KETRACO and KPLC

8.5.12 The title deeds for the Kimuka and Isinya Substations were not provided for audit review. However, according to shared Transmission Asset Register, the Isinya Substation is co-owned by KETRACO and KPLC.

8.5.13 At the time of audit, the Audit Team established that Isinya and Suswa Substations were completed in June 2018 and April 2016, respectively and were energized. However, although the Kimuka Substation was complete at the time of audit, it was awaiting to be energized. The supporting evidence giving reasons why the station had not been energized, was not provided.

### **Gazettement of the Affected Parcels of Land**

#### ***Failure to Publicize the Affected Land Parcels***

8.5.14 Section 144(4)(a) of the Land Act, 2012 states that "*The applicant shall serve a notice on all persons occupying land over which the proposed wayleave is to be created, including persons occupying land in accordance with customary pastoral rights*".

8.5.15 Further, Section 1.4.2 of the Resettlement Policy Framework, 2011 (paragraph 4) states that a public notification should be issued to inform the PAPs occupying the land on the proposed transmission line that the line would traverse their property and in the interest of the public development, request access and entry to the land for survey and valuation by land economists.

8.5.16 The Audit Team noted that the Nairobi Ring Project affected parcels of land for seven hundred and seven (707) PAPs. However, information on publicizing the parcels of land on the wayleave corridor was not provided for audit. It was therefore, difficult for the Audit Team to determine whether the landowners of the affected parcels were informed of the proposed transmission line in Suswa and Isinya, in compliance with Section 1.4.2 of the RPF, 2011.

### **Survey of the Affected Parcels of Land**

#### ***Non-Provision of the Survey Report for the Nairobi Ring Project***

8.5.17 Paragraph 3 of Section 1.4.2 in the KETRACO Resettlement Policy Framework of October, 2011 (RPF, 2011), required KETRACO to survey the area of land and plots falling within the wayleave trace by commissioning a land survey. The output of the land survey as per the RPF, 2011 was a cadastral map of the route showing the plot numbers, ownership, parcel size

and affected area of individual parcels, as well as the position of the towers. A surveyor prepared the cadastral map.

- 8.5.18 KETRACO engaged three (3) consultants/surveyors to carry out a topographical line route survey and wayleaves cadastral data acquisition survey services, as shown in **Table 89**.

**Table 89: Surveyors Engaged for the Suswa-Isinya Transmission Line**

Transmission Line	Consultant	Section	Cost (Kshs.)
Suswa-Isinya	Geosurv Systems Limited	Ntashart, Ewaso Kedong	9,860 per registered easement
	Harunani and Associates	Ndeiya Settlement	748,695
	DigiMaps Geosystems Limited	Kipeto, Olchiro Onyore and Loldariak	10,434.20 per registered easement

- 8.5.19 The Survey reports for the consultants were however, not provided for audit review. It was therefore, difficult to ascertain the number of parcels surveyed and billed by each consultant.

#### **Valuation of Land**

- 8.5.20 Section 7.2.1 of the Resettlement Policy Framework, 2011 states that “*land is valued via the schedule of land values by zones obtained from the Chief Valuer, as well as by a registered and licensed valuer in the Commissioner of Lands Office, Ministry of Lands and Settlement*”.

#### ***Non-Provision of Consultants Contracts***

- 8.5.21 The contracts between KETRACO and the consultants engaged to provide valuation services for the Suswa-Isinya Transmission Line, were not provided. The Audit Team was therefore, not able to ascertain the names of the consultants who carried out the valuation services, contract sum (cost of the services), contract period (duration of the engagement), and the specific scope of work for each consultant firm engaged.

#### ***Non-Provision of the Prequalified List of Suppliers***

- 8.5.22 The list of pre-qualified suppliers for the period under review was not provided for audit review. The Audit Team therefore, could not confirm whether the engaged consulting firms were in the list of pre-qualified suppliers.

### ***Non-Provision of Valuation Reports for the Project***

- 8.5.23 The reports that the valuers presented to KETRACO after carrying out valuation of land for the Suswa-Isinya Transmission Line, were not provided for audit. The Audit Team was therefore, not able to ascertain the valued land and total valuation amounts.
- 8.5.24 In the absence of the valuation reports, the Audit Team relied on the valuation schedules provided for audit, which indicated that sixteen (16) parcels of land were valued at a total of Kshs.24,500,000, as summarized in **Table 90**.

**Table 90: Valuation Schedules for the Suswa-Isinya Transmission Line**

<b>Valuation Schedule</b>		
<b>No.</b>	<b>Land Details</b>	<b>Value Per Acre (Kshs.)</b>
1	Kajiado/Ntashart/57	1,400,000
2	Kajiado/Ntashart/5577	1,200,000
3	Kajiado/loodariak/52	1,500,000
4	Kajiado/loodariak/208	1,000,000
5	Kajiado/Ewaso Kedong/398	500,000
6	Kajiado/Ewaso Kedong/3398	450,000
7	Kajiado/Olchore Onyore/54	2,900,000
8	Kajiado/Olchore Onyore/7361	2,000,000
9	Kajiado/Olchore Onyore/6056	1,600,000
10	Kajiado/Kipeto/3787	2,500,000
11	Kajiado/Kipeto/4426	2,000,000
12	Kajiado/Kipeto A/1229	1,800,000
13	Kajiado/Kipeto/2513	1,650,000
14	Kajiado/Kipeto/8375	1,600,000
15	Nachu/Mikuyu-ini/242	1,200,000
16	Nguirubu/Ndiuni/530	1,200,000
<b>Total</b>		<b>24,500,000</b>

### ***Absence of Criteria for Selection of the Valued Parcels of Land***

- 8.5.25 Due to the non-provision of the valuation report, the Audit Team could not ascertain whether there was a criterion the valuer applied in the selection of the sixteen (16) parcels of land that were valued, and whether the criterion used was just across the Suswa-Isinya Transmission Line.

### Valuation of Structures

- 8.5.26 According to Section 7.2.2 the Resettlement Policy Framework, 2011, KETRACO was required to review and synchronize the costs to the relevant types of construction materials used for buildings at the various rural regions of Kenya. According to the RPF, 2011 a disturbance allowance of 15% was to be added to the final gross replacement cost of the structure.
- 8.5.27 The valuation for structures along the transmission line was done by KETRACO's Project Development Services Department. Valuation figures were submitted by the respective Land Economists and Surveyors and the Audit Team noted that there were five (5) valuations amounting to Kshs.60,032,929, that were undertaken for the Suswa-Isinya Transmission Line, as shown in **Table 91**.

**Table 91: Valuations of Structures for the Suswa-Isinya Transmission Line**

No.	Number of PAP(s)	Total Valuation (Kshs.)
1	29	21,717,359
2	30	23,319,884
3	10	7,822,473
4	02	6,002,235
5	02	1,170,978
<b>Total</b>	<b>73</b>	<b>60,032,929</b>

### Valuation of Crops/Trees

- 8.5.28 Section 7.2.3 of the Resettlement Policy Framework, 2011 states that vegetation damage shall be compensated at the value assessed on the basis of prevailing government rates for crops and trees, as revised from time to time.
- 8.5.29 Review of the valuation reports for crops/ trees revealed that there were twenty-seven (27) valuations amounting to Kshs.178,023,345, along the transmission line, as detailed in **Appendix 40**. The following anomalies were noted: -

#### ***Variances in the Valuation Documents***

- 8.5.30 The Audit Team noted that a valuation (valuation number 28) for crops with a value of Kshs.9,649,500 provided for audit was not included in the summary

of approved valuations, thereby leading to an understatement of the total valuation amount by Kshs.9,649,500.

### **Wayleave Compensation**

8.5.31 Section 7.2.1 of the Resettlement Policy Framework, 2011 states that “*land is valued via the schedule of land values by zones obtained from the Chief Valuer, as well as by a registered and licensed valuer in the Commissioner of Lands Office, Ministry of Lands and Settlement*”.

8.5.32 According to the valuation schedules provided for audit, the total value of Land, Structures and Crops/Trees affected by the Nairobi Ring (Suswa-Isinya 220 kV) Project amounted to Kshs.2,278,847,215, as detailed in **Appendix 41** and summarized in **Table 92**.

**Table 92: Summary of Valuations for the Suswa-Isinya Transmission Line**

<b>Compensation Type</b>	<b>No. of PAPs</b>	<b>No. of Valuations</b>	<b>Amount (Kshs)</b>
Land (Wayleave)	707	51	2,040,790,942
Structures	73	05	60,032,928
Crops/Trees	691	27	178,023,345
<b>Total</b>	<b>1,471</b>		<b>2,278,847,215</b>

### **Land (Wayleave Compensation)**

8.5.33 The total approved schedules of fifty-one (51) valuations amounted to Kshs.2,040,790,942 for seven hundred and seven (707) PAPs. The Audit Team noted that the fifty-one (51) valuations amounting to Kshs.2,040,790,942, were based on sixteen (16) sampled parcels of land. However, valuation reports for the sixteen (16) parcels were not provided for audit. It was therefore, not possible to ascertain how the sixteen (16) sampled parcels of land were used in the valuation of the parcels of land for the seven hundred and seven (707) PAPs, and whether the criterion used was based on open market values across the Suswa-Isinya Transmission Line.

### ***Lack of Guidelines on Land Negotiations***

8.5.34 The Audit Team noted that out of the affected parcels of land for seven hundred and seven (707) PAPs valued at Kshs.2,040,790,942, fourteen (14) land parcels with an initial value of Kshs.65,866,895 were renegotiated to

Kshs.128,631,615, thereby increasing the valuation by Kshs.62,764,720 (95.29%). Details of the fourteen (14) parcels of land are shown in **Table 93**.

**Table 93: Renegotiated Parcels for the Suswa-Isinya Transmission Line**

Registered Owner	Parcel No.	Initial Offer (Kshs.)	Revised Offer (Kshs.)	% Increase
Emily Karimi Metha	Kajiado/Olchore/22332	1,000,000	1,800,000	80.00%
Faith Waceke Muturi	Kajiado/Olchore/22333	29,652	70,560	137.96%
David Kimari Nga'ng'a	Nachu/Mikuyu-ini/88	923,363	1,667,183	80.56%
Grace Muthoni Ngethe	Kajiado/Kipeto 3786&87	6,228,000	25,000,000	301.41%
John Semat-Ole Musei	Kajiado/Loodariak/52	808,727	1,213,200	50.01%
Joel Ngiroyia	Kajiado/Olchoro-Onyore/54	15,000,000	22,422,221	49.48%
Peter Lekumok Ole Sadera	Kajiado/kipeto/3698	9,766,800	15,952,440	63.33%
Peter Lekumok Ole Sadera	Kajiado/kipeto/786	8,169,000	13,342,700	63.33%
Peter Lekumok Ole Sadera	Kajiado/kipeto/787	8,169,000	13,342,700	63.33%
Peter Lekumok Ole Sadera	Kajiado/kipeto/788	8,167,200	13,339,760	63.33%
Muico Ltd	Kajiado/kipeto/2191	5,172,600	12,500,450	141.67%
James V. Kiruma Michuki	Kajiado/Olchoro-onyore/219	1,091,193	1,909,600	75.00%
Eunice Nemonto Kuraru	Kajiado/Olchoro-onyore/6056	998,880	5,500,000	450.62%
Francs Kahura Kehiu	Kajiado/Olchoro-onyore/2513	342,480	570,801	66.67%
<b>Total</b>		<b>65,866,895</b>	<b>128,631,615</b>	<b>95.29%</b>

8.5.35 The Audit Team noted that KETRACO's land renegotiation process for wayleave compensation was not governed by policies or guidelines, which may have posed the following risks: -

- i) **Inequitable Treatment:** In the absence of standard operating procedures or guidelines, affected individuals may receive inconsistent/unfair/unjust treatment. Stakeholders may perceive unfairness and resentment if some PAPs receive more compensation than others for comparable impacts.
- ii) **Financial Uncertainty:** there is a risk of unrealistic budgets for wayleave compensation in the absence of clear guidelines. This may have led to the long outstanding wayleave compensation claims.
- iii) **Project Implementation Delays:** Compensation disputes may cause delays in obtaining the land rights required for Project implementation. The

absence of clear policies and guidelines may have led to negotiations that took long, therefore, delaying the execution of the Project.

### ***Non-Provision of Approved Valuations***

8.5.36 Out of the Kshs.2,040,790,941 for the Suswa-Isinya Line, the Audit Team was not provided with approved memos for eleven (11) valuations of land, amounting to Kshs.125,729,566. It was therefore, not possible to ascertain the authenticity of the eleven (11) valuations.

### **Compensation for Structures**

8.5.37 The total approved valuations schedules for structures amounted to Kshs.60,032,928, for five (5) valuations, along the Suswa-Isinya Transmission Line.

8.5.38 Out of the five (5) valuations, the Audit Team determined that a total of seventy-three (73) Project-Affected Persons (PAPs) were affected by the Transmission Line and were entitled to compensation amounting to Kshs.60,032,928.

8.5.39 However, the valuation report was not provided for audit. It was therefore, not possible to ascertain how the amounts in the five (5) approved valuation schedules were arrived at.

### **Compensation of Crops/Trees**

8.5.40 The total approved valuations schedules for crops/trees amounted to Kshs.178,023,345 for twenty-seven (27) valuations, along the Suswa-Isinya Transmission Line.

8.5.41 Out of the twenty-seven (27) valuations, the Audit Team determined that a total of six hundred and ninety-one (691) Project-Affected Persons (PAPs) were affected by the Transmission Line and were entitled to compensation amounting to Kshs.178,023,345.

8.5.42 However, the valuation report was not provided for audit. It was therefore, not possible to ascertain how the amounts in the twenty-seven (27) approved valuation schedules were arrived at.

### **Non-Provision of Approved Valuations**

8.5.43 Out of the total compensation amount for crops of Kshs.178,028,345 for the Suswa-Isinya Transmission Line, the Audit Team was not provided with approved memos for eleven (11) valuations, amounting to Kshs.63,797,780. It was therefore, not possible to ascertain the authenticity of the eleven (11) valuations schedules.

## **8.6 Financial Management and Expenditure**

8.6.1 Section 7.3 of the RPF, 2011 required KETRACO to compensate for land acquired or encumbered, structures affected, crops/-trees destroyed and loss of income/business/employment.

8.6.2 Review of the valuation schedules provided for audit revealed that out of the total compensation amount for land, structures and crops for the Nairobi Ring Transmission Line of Kshs.2,278,847,215, adjustments of Kshs.118,149,508 were made due to rerouting, resulting to the final compensation amount of Kshs.2,160,697,705. As at 30 June, 2023, KETRACO had paid an amount of Kshs.2,014,339,790 leaving an outstanding balance of Kshs.146,357,915, as detailed in **Appendix 42** and summarized in **Table 94**.

**Table 94: Outstanding Claims for the Suswa-Isinya Transmission Line**

Compensation Type	Total Valuation Amount (Kshs)	Adjustments (Kshs)	Final Compensation Amount (Kshs)	Amount Paid (Kshs)	Outstanding Compensation (Kshs)	% Paid
Land	2,040,790,942	118,149,508	1,922,641,433	1,776,283,517	146,357,915	92.39
Structures	60,032,928	0	60,032,928	60,032,928	0	100
Crops/Trees	178,023,345	0	178,023,345	178,023,345	0	100
<b>Total</b>	<b>2,278,847,215</b>	<b>118,149,508</b>	<b>2,160,697,705</b>	<b>2,014,339,790</b>	<b>146,357,915</b>	<b>93.23</b>

8.6.3 According to the payments made, the Project compensation payment was at 93.23% of the total compensation payable, leaving an outstanding balance of 6.77%.

### **Outstanding Wayleave Compensation**

8.6.4 The total outstanding claims, according to the summary of land payments amounted to Kshs.146,357,915. The Audit Team was provided with payment schedules with outstanding compensation claims totalling Kshs.143,045,908, for three hundred and forty-two (342) PAPs. The reasons as to why the PAPs had not been compensated are detailed in **Appendix 43** and summarized in **Table 95**.

**Table 95: Reasons for Outstanding Wayleave Compensation Claims for the Suswa-Isinya Transmission Line**

Reasons for Non-Payment	Land	Structures	Crops/Trees	Grand Total
	Amount (Kshs.)	Amount (Kshs.)	Amount (Kshs.)	Amount (Kshs.)
Pending in finance	1,303,149	0	0	1,303,149
Accepted with Incomplete documentation	141,742,759	0	0	141,742,759
<b>TOTAL</b>	<b>143,045,908</b>	<b>0</b>	<b>0</b>	<b>143,045,908</b>

8.6.5 Out of the total outstanding compensation amount of Kshs.143,045,908 for the Project, the following irregularities were noted: -

***Discrepancy in Outstanding Compensation Claims***

8.6.6 Comparisons between the outstanding compensation amounts in the summary of land payments amounting to Kshs.146,357,915 and payment schedules amounting to Kshs.143,045,908 revealed an unexplained variance of Kshs.3,312,008.

***Inconsistencies in the Outstanding Compensation Claims***

8.6.7 The Audit Team noted inconsistencies in the outstanding claims. According to the Audited Financial Statements for 2021/2022, the total compensation to landowners was Kshs.2,558,971,379, out of which, Kshs.2,436,063,243 was paid, leaving an outstanding balance of Kshs.122,908,136. According to the summary of land payments, the outstanding amount was Kshs.146,357,915. Further, the payment schedules provided for audit indicated that the outstanding amount was Kshs.143,045,908.

***Lack of Supporting Information in the Outstanding Claims Schedule***

8.6.8 Information in the schedule for outstanding claims amounting to Kshs.143,045,908, included the names of the PAPs and the amounts owed. However, the schedule lacked information that could be linked to the affected parcels of land, such as the Land Registration Number. The Audit Team therefore, could not track the outstanding claims, identify and trace the PAPs.

## **Other Irregularities in the Compensation of the Project**

### ***Failure to Maintain a Separate Bank Account for the Project***

- 8.6.9 Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015 states that, *“For the purpose of disbursement of Project funds, there shall be opened and maintained a Project account for every Project at Central Bank of Kenya unless it is exempted by the Cabinet Secretary, in writing, into which all funds shall be kept and such an account shall be known by the name of the Project for which it is opened and each Project shall maintain only one bank account”*.
- 8.6.10 The Audit Team noted that payments for compensation of the Project were done through a bank account operated by KETRACO at KCB. This bank account and its cashbook were also used for other operations of KETRACO. This resulted in co-mingling of Project funds with funds meant for KETRACO operations. The Project lacking a separate Project bank account, therefore caused the co-mingling of Project funds with funds meant for KETRACO operations.
- 8.6.11 Further, the Audit Team reviewed the bank statements and cashbook and noted that the documents lacked unique reference information which could be used to trace and confirm the payments. Due to this internal control weakness, the Audit Team therefore, was not able to confirm that all payments were in the bank statements.

### ***Variance between ARAP and the Compensation Amount for the Project***

- 8.6.12 It was noted that the estimated cost of resettlement as per the ARAP was Kshs.283,100,000 while the final compensation was Kshs.2,160,697,705, resulting to an increase of Kshs.1,877,597,705, approximately 663.22%. There was a likelihood that the increase was as a result of poor planning and budgeting in the initial planning phase.

### ***Comparisons between Disbursed and Compensation Amounts***

- 8.6.13 The Audit Team was not able to reconcile the total paid compensation amount of Kshs.2,014,339,790, with the disbursements from KETRACO to the Project of Kshs.3,014,703,361, since the Financial Statements did not indicate the specific areas/items of the Project that the disbursed amounts were to fund.

### **Irregular Payment of Top-Up**

- 8.6.14 Section 7.3.3 of the Resettlement Policy Framework 2011 outlines the basis for valuation and sets out the condition that where a parcel of land is more than an acre, and less than 50% of the land is affected, the compensation percentile will be 30% of the open market value.
- 8.6.15 The Audit Team noted that in six (6) valuations, valuation numbers 1, 2, 5, 8, 9 and 11, the initial compensation was Kshs.1,619,338,182, which was 30% of the open market value. However, it was noted that KETRACO made a 20% top-up of Kshs.659,509,033, resulting in an increase of the wayleave compensation amount to Kshs.2,278,847,215, as shown in **Table 96**. However, documentary evidence to support the top-up was not provided for audit.

**Table 96: Top-up Amount for the Suswa-Isinya Transmission Line**

<b>Valuation</b>	<b>Number of PAPs</b>	<b>Top-Up Amount (Kshs.)</b>
Valuation 1	489	555,877,026
Valuation 2	50	92,927,636
Valuation 5	10	5,630,101
Valuation 8	2	680,497
Valuation 9	2	926,268
Valuation 11	2	3,467,505
<b>Total</b>	<b>555</b>	<b>659,509,033</b>

## **8.7 Physical Verification of the Suswa-Isinya Transmission Line**

### **Suswa Substation**

- 8.7.1 The Audit Team noted that survey beacons were not in place. The Audit Team could therefore, not distinguish the land occupied by the Suswa-Isinya Transmission Line from the other transmission lines in the Suswa Substation.

### **Physical Verification of Affected Parcels of Land**

- 8.7.2 The Audit Team carried out a field visit to the Suswa-Isinya Transmission Line. The verification exercise was to establish whether the land exists, the actual acreage/sizes acquired, land occupancy and the current usage of the land within the wayleave corridor of Project. Further, the field exercise was to ascertain the existence and occupancy status of the PAPs with outstanding claims. The Audit Team applied the following approach in the exercise:

- i. Physical verification at the project site and interviews with landowners;
- ii. Interviews with other PAPs with outstanding claims; and
- iii. Interviews with some PAPs who were already compensated.

8.7.3 The Audit Team sampled eighty-one (81) land parcels for physical verification out of which, eighteen (18) had no outstanding compensation claims, while sixty-three (63) had outstanding compensation claims amounting to Kshs.108,288,321.

8.7.4 Out of the eighty-one (81) land parcels, the following issues were noted:

- i) Landowners for fifty-seven (57) parcels of land could not be traced. However, it was confirmed that the fifty-seven (57) parcels of land existed and had been affected by the Project;
- ii) Landowners for seventeen (17) parcels of land had been paid and therefore, had no outstanding claims;
- iii) Seven (7) parcels of land were no longer affected after re-routing was undertaken; and
- iv) Most of the landowners interviewed did not have the offer letters and could not remember the exact amount indicated in the offer letters. It was therefore, not possible to corroborate the amounts in the compensation schedules provided for audit, with the amounts in the offer letters provided by KETRACO to the landowners.

## **8.8 Irregularities, Responsibilities and Recommendations**

8.8.1 The irregularities and weaknesses, responsibility and corresponding recommendations identified by the Audit Team are as detailed in **Table 97**.

**Table 97: Irregularities, Responsibilities and Recommendations for the Suswa – Isinya Transmission Line**

No	Irregularities and Weaknesses	Amount Involved (Kshs.)	Section of the Report	Responsibility	Recommendation
1	Failure to provide documents for audit review contrary to Section 9(1)(e)(i) of the Public Audit Act, 2015	N/A	Appendix I of the Report	KETRACO Management	The KETRACO Management should always comply with the Public Audit Act, 2015, in relation to audit and provision of documents.
2	Unexplained Variance between Approved Budget and Disbursements	459,589,776	8.4.10, 8.4.11	KETRACO Management	The KETRACO Management should: Provide training for staff on effective budgeting  Implement a process for regular budget reviews and variance analysis throughout the lifecycle of the Project
3	Absence of Comparable Amounts for Land within Kimuka, and Suswa Substation	N/A	8.5.10	KETRACO Management	The KETRACO Management should develop and approve procedures and guidelines for wayleave valuation, which should include templates where open market values for land during the period of acquisition are indicated
4	Failure to publicize affected land parcels contrary to Section 1.4.2 of the RPF (Resettlement Policy Framework) and Section 144(4)(a) of the Land Act, 2012	N/A	8.5.14	KETRACO Management	The KETRACO Management should ensure that procedures including timelines for publicizing affected land parcels are developed and adhered to, in line with the relevant frameworks and Legislation in the future.
5	Absence of Criteria for Selection of Valued Parcels of Land	N/A	8.5.25	KETRACO Management	The KETRACO Management should develop and approve procedures and guidelines for wayleave valuation, which should include criteria for selection for valuation, of land affected by Projects
6	Variances in the Valuation Documents	9,649,500	8.5.30	KETRACO Management	The KETRACO Management should reconcile and record all amounts in the valuation documents.
7	Lack of Guidelines on Land Negotiations	62,764,720	8.5.34	KETRACO Management	The KETRACO Management should develop and approve procedures and guidelines for valuation of land affected by Projects, which should include fair land valuations and criteria for negotiations and/or renegotiations
8	Discrepancy in Outstanding Compensation claims	3,312,008	8.6.6	KETRACO Management	The KETRACO Management should: Reconcile and settle the correctly computed outstanding amounts and undertake administrative action in line with KETRACO's internal procedures on the officers found culpable for any irregularly computed outstanding amounts.

No	Irregularities and Weaknesses	Amount Involved (Kshs.)	Section of the Report	Responsibility	Recommendation
					Budget for obligations and provide for unexpected eventualities and reasons therein, in future Projects.
9	Inconsistencies in the Outstanding Compensation Claims	N/A	8.6.7	KETRACO Management	The Management should: Undertake a reconciliation of the outstanding claims and undertake administrative action in line with KETRACO's internal procedures on the officers found culpable for any irregularly computed outstanding amounts.  Establish well documented approval structures for variations and the reasons therein.
10	Lack of Supporting Information in the Outstanding Claims Schedule	143,045,908	8.6.8	KETRACO Management	The KETRACO Management should: Maintain proper books of accounts for all Projects, in compliance with the Law  Ensure that all records have sufficient information for Projects' affected parcels of land such as landowner, parcel number and size
11	Failure to Maintain a Separate Bank Account for the Project	N/A	8.6.10	KETRACO Management	The KETRACO Management should: Have proper funds utilization mechanisms for Projects in place, to ensure that Project funds are held in separate accounts and are available whenever obligations fall due.  Implement real-time monitoring systems for Project bank account balances, to immediately detect and address shortfalls.
12	Lack of unique reference information in bank statements and cashbooks	N/A	8.6.11	KETRACO Management	The KETRACO Management should maintain proper and complete books of accounts in compliance with the law.
13	Variance between ARAP and Compensation Amount for the Project	1,877,597,705	8.6.12	KETRACO Management	The KETRACO Management should: - Provide training for staff on effective budgeting.  Implement a process for regular budget reviews and variance analysis throughout the lifecycle of the Project.  Use the budget as a control tool when making payments.
14	Irregular Payment of Top-Up	659,509,033	8.6.15	KETRACO Management	The KETRACO Management should develop and approve procedures and guidelines on top-ups for land affected by Projects.

## 8.9 Conclusion

- 8.9.1 The Nairobi Ring Project involved the construction of a 100 KMS, 400 kV double circuit line from Suswa to Isinya, and Substations at Suswa, Isinya and Kimuka.
- 8.9.2 The Project commenced in October 2012 and the Suswa-Isinya Transmission Line was completed in August 2017, while the Substations at Suswa and Isinya were completed in April 2016 and June 2018, respectively. At the time of audit, Suswa, Isinya and Kimuka Substations were complete and only the Kimuka Substation was yet to be energized.
- 8.9.3 The Project was jointly funded by the European Investment Bank, French Development Bank, and the Government of Kenya and the total project cost amounted to €146,800,000, approximately Kshs.16,003,455,000.
- 8.9.4 An Abbreviated Resettlement Action Plan (ARAP) was carried out and the report issued by KETRACO in November 2011. The report outlined that the households, structures and trees/crops that were to be affected by the Project had an estimated cost of Kshs.283,100,000 within the transmission line.
- 8.9.5 Comparison between the approved budgets and actual disbursements made for the Project revealed that from the financial year 2014/2015 to 2021/2022, KETRACO received a total of Kshs.3,014,703,361, instead of the total approved budget of Kshs.2,555,113,585, resulting in overfunding of the Project by Kshs.459,589,776 for the GOK component.
- 8.9.6 The Kenya Electricity and Transmission Company identified parcels of land, structures and crops that affected 707, 73 and 691 PAPs, respectively. The total valuation for the land, structures and crops that had been encumbered, affected or destroyed amounted to Kshs.2,278,847,215, out of which, adjustments were made amounting to Kshs.118,149,508, thereby reducing the total valuation amount to Kshs.2,160,697,705. Out of the total compensation, KETRACO had paid Kshs.2,014,339,790, leaving an outstanding balance of Kshs.146,357,915.
- 8.9.7 The outstanding wayleave compensation amounting to Kshs.146,357,915 was supported with payment schedules amounting to Kshs.143,045,908, for three hundred and forty-two (342) PAPs, leaving an unsupported balance of

Kshs.3,312,008. The supported outstanding balance of Kshs.143,045,908 was reviewed, and the reasons obtained as to why the three hundred and forty-two (342) PAPs were not compensated included; the payment process was ongoing for five (5) PAPs for an amount of Kshs.1,303,149.36 and absentee landowners for 337 PAPs for Kshs.141,742,758.75.

8.9.8 The outstanding claims in the Audited Financial Statements for 2021/2022 were Kshs.122,908,136. However, inconsistencies were noted with the computed outstanding amount of Kshs.146,357,915, and the schedules provided supporting the outstanding claims, which indicated a total outstanding amount of Kshs.143,045,908.

8.9.9 The major irregularities noted by the Audit Team included failure to provide documents, unexplained variances and discrepancies, absence of comparable amounts while acquiring substation land, failure to publicize affected land parcels, absence of criteria and methodology for selection of valued parcels of land, lack of guidelines on renegotiations of land values, failure to maintain a separate bank account for the Project, lack of supporting information in the outstanding claims schedule, irregular payment of top-ups, inconsistencies and unsupported outstanding wayleave compensation, among others.

## **9 OLKARIA – LESSOS – KISUMU TRANSMISSION LINE**

### **9.1 Project Overview**

9.1.1 The Olkaria-Lessos-Kisumu (OLK) Project is a 400kV double circuit transmission line from Olkaria II Substation to Lessos Substation, 220kV double circuit transmission line from the Lessos Substation to Kibos Substation, and 132kV from the Kibos Substation to Kisumu (Mamboleo Substation). The transmission line traverses a total of three thousand one hundred and thirty-two (3,132) parcels of land.

9.1.2 The Project was undertaken in three (3) Lots, as detailed in **Table 98**. Further, review of the audited financial statements for the year 2021/2022 indicated the project start and completion dates, as indicated in **Table 98**.

**Table 98: Olkaria-Lessos-Kisumu Project Start and End Dates**

<b>Lot</b>	<b>Description</b>	<b>Start Date</b>	<b>Estimated End Date</b>
Lot 1	400kV line from Olkaria II to Lessos Substation	23 February, 2016	30 June, 2021
Lot 2	220kV/132kV lines from Lessos to Kibos and from Kibos to Kisumu (Mamboleo Substation), respectively	15 February, 2016	31 May, 2021
Lot 3	Construction of a new 220/132kV Kibos Substation and extension of the existing 400/220kV Lessos and 220kV Olkaria II Substations	16 February, 2016	31 March, 2022

9.1.3 As at the time of audit, construction of the Olkaria-Lessos-Kisumu Transmission Line was complete and in use. However, extension of the 400/220kV Lessos Substation under Lot 3 was yet to be undertaken.

#### **Summary of Claims**

9.1.4 As at 30 June, 2023, the total value in the compensation schedules for the OLK Project amounted to Kshs.5,582,359,371, out of which, KETRACO had paid Kshs.3,312,217,328 (59%), leaving an outstanding balance of Kshs.2,270,142,043. The Audit Team reviewed and analysed the claims for the project compensation. The following are the audit findings: -

## **9.2 Conceptualization and Feasibility Study**

### **Project Conceptualization**

9.2.1 Part 2.1.2 of the Sessional Paper No. 4 of 2004 on Energy states that Government activities in the power sub-sector are limited to formulation and articulation of policies through which it provides an enabling environment to all economic operators and other stakeholders, training of manpower, preparation of the country's 20 year rolling Least Cost Electric Power Development Plan (LCPDP) revised annually to take account of new information, implementation of the rural electrification programme and to a large extent mobilization of financial resources for system expansion.

- 9.2.2 The Least Cost Power Development Plan (LCPDP) dated March 2011 acknowledges that the electric power sub-sector has been preparing LCPDP as the sub-sector indicative plan. Part 2.3.4.1 of the LCPDP on the Extension of the National Transmission Network notes that Kenya has experienced increased demand in electricity consumption in the last 5 years. This rise in consumption requires a corresponding increase in generation capacity and transmission network. Consequently, the LCPDP has put up the requisite plan to implement various plans on both generation and transmission.
- 9.2.3 As per Section 2.3.4.1 of LCPDP 2011-2030 dated March 2011, Olkaria-Lessos- Kisumu 220kV, double circuit transmission line with a length of 300km was one of the committed and planned transmission network projects.
- 9.2.4 Review of the KETRACO Strategic Plan for 2010/2011- 2014/2015 dated June, 2010 revealed that the Lessos-Olkaria was identified as one of the priority projects for implementation. Further, Part 3.1.1 of the Strategic Plan for 2015/2016- 2017/2018 lists the 300km 400/220kV Olkaria-Lessos-Kisumu Transmission Line Project as one of the important projects that were under construction or committed for implementation during the period 2017- 2020.
- 9.2.5 The Olkaria- Lessos- Kisumu (OLK) Transmission Line Project was therefore, in line with the LCPDP and KETRACO's strategic plans.

### **Project Feasibility Study, Environmental and Social Impact Assessment and Resettlement Action Plan**

#### **Project Feasibility Study**

- 9.2.6 The Audit Team reviewed the preparatory survey on the OLK Transmission Line Upgrading Project dated January 2010 that was prepared by Nippon Koei Co. Ltd., Tokyo Electric Power Services Co. Ltd and IC Net Limited.
- 9.2.7 Review of Section 1.1 of the Report revealed that the Ministry of Energy planned to construct a new transmission line connecting through Kisumu, Lessos and Olkaria. Further, the Report notes that, the Government of Kenya applied for an Overseas Development Assistance (ODA) loan from the Government of Japan, through the Japan International Cooperation Agency (JICA) for construction of the transmission lines. Section 1.2 of the Report indicates that the aim of the preparatory survey was to evaluate the

justification of the project implementation from the viewpoints of technical, economic and financial aspects.

- 9.2.8 Section 8.1.1 of the Preparatory Survey describes the various transmission line routes considered. The recommendation from the survey for the transmission line route is as summarized in **Table 99**.

**Table 99: Recommendation for the OLK Transmission Line Route**

<b>Transmission Line Section</b>	<b>Alternative 1</b>	<b>Alternative 2</b>	<b>Recommended Alternative</b>
Olkaria- Lessos	The route running parallel to the existing 132kV line	The route runs through specially protected Eastern Mau Forest	Alternative 1
Lessos-Kisumu	The route is 25% shorter than alternative 2	The line runs parallel to the existing 132kV line	Alternative 1

- 9.2.9 Section 11.2 (1) of the Preparatory Survey recommended construction of a new 220Kv transmission line of 2 circuits from Olkaria to Kisumu via Lessos, based on alternative 1. It was further noted that KETRACO implemented alternative 1.

**Change of Transmission Line Along the Olkaria-Lessos Section from 220 kV to 400 kV**

- 9.2.10 The Kenya Electricity Transmission Company Limited vide letter Ref No. KETRACO/5/OLK/06/JMM, dated 25 June, 2012 to the Japan International Cooperation Agency (JICA), proposed a change of scope of works for the Olkaria-Lessos-Kisumu Transmission Line Project, from 220kV double circuit to 400kV double circuit in the Olkaria-Lessos Section.
- 9.2.11 Further, according to a Letter Ref No. TC-24-139(BO), dated 06 September, 2012 from JICA to the Permanent Secretary, Ministry of Energy, JICA informed it would raise no objection to the requested change in scope of work from 220kV to 400kV. Letter Ref No: KET/5/14G/6/42/jmm, dated 20 December, 2013 from KETRACO to JICA confirmed that the change of scope would not result in additional budget for the project. Further, the letter confirmed that for any unforeseen bid price escalations outside the original

budget, KETRACO will request additional financial allocation from The National Treasury. Based on the letter Ref No: KET/5/14G/6/42/jmm from KETRACO to JICA, JICA wrote a No Objection Letter, Ref No: TC-25-261(BO), dated 21 February, 2014, to KETRACO for change of scope of works for the Olkaria-Lessos-Kisumu Transmission Line Project.

- 9.2.12 Based on the abovementioned correspondences, it was therefore, confirmed that variation of the transmission line along the Olkaria- Lessos Section, from 220kV to 400kV was sought and granted.

### **Environmental and Social Impact Assessment**

- 9.2.13 The Audit Team reviewed an Environmental and Social Impact Assessment (ESIA) Study Report dated 22 December, 2009 undertaken by GIBB Africa Ltd. As per Section 1.1 of the ESIA Report, GIBB Africa Ltd was engaged by the Kenya Power and Lighting Company (KPLC) to conduct the ESIA study for the proposed OLK Transmission Line Upgrading Project.

- 9.2.14 Review of Section 1.5.2 of the ESIA Study Report indicated that the objectives of the ESIA were to:

- i. Identify and assess the potential environmental and social impacts of the proposed project;
- ii. Identify and recommend measures for mitigation of potential adverse impacts;
- iii. Verify compliance with the environmental regulations and industry standards;
- iv. Generate baseline data for monitoring and evaluation of how well the mitigation measures will be implemented during the project cycle;
- v. Recommend cost effective measures to be implemented to mitigate against expected measures; and
- vi. Prepare an environmental and social impact assessment report, compliant with the Environmental Management and Coordination Act, 1999 and detailing findings and recommendations.

- 9.2.15 The audit established that at the time the consultant was being engaged to undertake the ESIA study, the project was under KPLC. However, the project

was later transferred to KETRACO with effect from 24 August, 2015 as per the NEMA License No. NEMA/EIA/CTL/73, dated 25 August, 2015.

- 9.2.16 Chapter 9 of the ESIA Study Report recommended that KPLC adhere to all the proposed mitigation measures outlined in the study, the relevant guidelines and legislation governing resettlement and compensation, sensitive ecosystems, labour force management, public and worker health and safety, management of hazardous and contaminating material and management of waste.
- 9.2.17 The National Environment Management Authority (NEMA) issued a License No. 0006709, dated 06 September, 2010 to KPLC for the construction of a 220 kV Kisumu-Lessos-Olkaria Transmission Line Upgrading Project after receiving and reviewing the ESIA Study Report. Further, as per the NEMA License No. 0000267, dated 19 November, 2012, License No. 0006709 was varied to construction of a 400 kV double circuit transmission line in the Olkaria-Lessos Section, with the variation taking effect from 12 November, 2012.
- 9.2.18 A review of NEMA License No. NEMA/EIA/CTL/73, dated 25 August, 2015 revealed that License No. 0006709 that was issued to KPLC was transferred to the Kenya Electricity Transmission Company with effect from 24 August, 2015.

#### **Resettlement Action Plan**

- 9.2.19 Eco Plan Management Limited was engaged by KPLC to prepare the RAP for the proposed 220 kV Olkaria-Lessos-Kisumu Transmission Line.
- 9.2.20 According to Section 1.1 of the RAP Report dated May 2010, the specific activities undertaken included; identification of project impacts and affected populations, a compensation framework, a description of resettlement assistance and restoration of livelihood activities, a detailed budget, an implementation schedule, a description of public consultation and participation and a description of provisions for redress of grievances.
- 9.2.21 The total resettlement cost of land, structures and trees as per the RAP Report was estimated at Kshs.381,192,065, where land was to be Kshs.278,543,267, while structures and trees were Kshs.95,217,318 and Kshs.7,431,480,

respectively. However, the number of PAPs or households linked to the costs was not indicated in the Resettlement Action Plan.

### **9.3 Governance and Related Issues**

#### **Roles and Responsibilities as per the Law/Guidelines in the Project Cycle**

##### ***Failure to Provide Board Committee Charters Prior to Commencement of the Project***

- 9.3.1 The Ministry of Energy in Kenya is responsible for creating policies to ensure the efficient operation and growth of the energy sector, setting strategic directions, and offering a long-term vision for all participants in the sector.
- 9.3.2 Section 1.7 of Mwongozo Code of Governance for State Corporations of 2015 mandates that State Corporations' Boards establish up to four committees, including an Audit Committee.
- 9.3.3 The Kenya Electricity Transmission Company Limited (KETRACO) has four (4) Board Committees: Staff and Remuneration; Audit and Risk Assurance; Finance, Strategy and Risk Management; and Technical Committee. Committee Charters prior to 2016 were not provided for review, so the Board's involvement in the OLK project and the publication of PAPs in 2015 could not be ascertained.

##### ***Absence of Appointment Letters for PIT Committee Members***

- 9.3.4 Section 9.1 of the Resettlement Policy Framework, 2011, provides that the Ministry of Energy will offer administrative input and make decisions about the policy direction of the projects undertaken by KETRACO. Execution of a project is delegated to the Project Implementation Team (PIT), a management committee established to implement the Resettlement Action Plan and oversee all project activities. The size of the team, its formation, its functions and terms of reference depend on the extent of the land acquisition, challenges of the transmission line in question, and number of PAPs.
- 9.3.5 Project Implementation Team (PIT) members' appointment letters and minutes of meetings held were not provided to the audit team for review. Consequently, the Audit Team could not establish whether a PIT was in place

to oversee implementation of the project as required by the Resettlement Policy Framework, 2011.

#### 9.4 Budget and Budgetary Control

##### Wayleave Compensation and Resettlement Cost

- 9.4.1 The Resettlement Action Plan estimated the total resettlement cost for the Olkaria-Lessos-Kisumu Transmission Line at Kshs. 381,192,065 for land, structures and trees, as summarized in **Table 100**.

**Table 100: Estimated Resettlement Cost for OLK Project**

No.	Item	Amount (Kshs.)
1.	Land	278,543,267
2.	Structures	95,217,318
3.	Trees	7,431,480
	<b>Total</b>	<b>381,192,065</b>

##### Project Financing

- 9.4.2 The Olkaria-Lessos-Kisumu Transmission Line Construction Project was jointly funded by the Government of Kenya and the Japan International Co-operation Agency (JICA).
- 9.4.3 The Government of Kenya, through the National Treasury, signed a financing agreement with JICA on 10 December, 2010 for a loan amounting to Japanese Yen (JPY) 12,410,000,000 equivalent to Kshs.10,256,198,347 at an exchange rate of Ksh.1= Yen 1.21, as per Section 2 of the Financing Agreement.
- 9.4.4 According to the Agreement, the GOK Component was to cater for general administration expenses, taxes and duties, purchase of land and other real property, compensation and other indirect items.

##### Approved Budget for the Ministry of Energy and KETRACO

- 9.4.5 The budget for both the donor and GOK component for the Project was factored in the development budgets for the Ministry of Energy and KETRACO, as shown in **Table 101**.

**Table 101: Approved Budget for the Ministry of Energy and KETRACO**

FY	MINISTRY OF ENERGY as per the revised budget			KETRACO as per the audited Financial Statements		
	Donor (Kshs.)	GOK (Kshs.)	Total (Kshs.)	Donor (Kshs.)	GOK (Kshs.)	Total (Kshs.)
2015/2016	750,000,000	197,000,000	947,000,000	2,550,000,000	197,000,000	2,747,000,000
2016/2017	978,000,000	400,000,000	1,378,000,000	4,750,000,000	408,000,000	5,158,000,000
2017/2018	1,112,000,000	262,500,000	1,374,500,000	1,112,000,000	262,500,000	1,374,500,000
2018/2019	1,042,000,000	480,000,000	1,522,000,000	1,042,000,000	480,000,000	1,522,000,000
2019/2020	881,500,000	1,350,000,000	2,231,500,000	882,000,000	1,350,000,000	2,232,000,000
2020/2021	4,968,000,000	1,600,000,000	6,568,000,000	3,467,559,158	1,600,000,000	5,067,559,158
2021/2022	1,300,000,000	800,000,000	2,100,000,000	1,000,000,000	800,000,000	1,800,000,000
2022/2023	1,600,000,000	25,000,000	1,625,000,000	1,600,000,000	25,000,000	1,625,000,000
<b>Total</b>	<b>12,631,500,000</b>	<b>5,114,500,000</b>	<b>17,746,000,000</b>	<b>16,403,559,158</b>	<b>5,122,500,000</b>	<b>21,526,059,158</b>

9.4.6 The audit established that the approved budgets for the Ministry of Energy and KETRACO for the GOK component was a single line budget. The amount allocated by KETRACO for compensation to PAPs, out of Kshs.5,122,500,000 could not be established. The Audit Team could therefore, not reconcile the compensation amount estimated by the RAP of Kshs.381,192,065, with the GOK Component amount budgeted by KETRACO of Kshs.5,122,500,000.

**Disbursements from MOE to KETRACO for the Project**

***Unexplained Variance Between Disbursements from MOE to KETRACO and to the Project- Kshs.83,082,118***

9.4.7 Review of the Vote Books and project audited financial statements for the period under review revealed that the total disbursements made by the Ministry of Energy to KETRACO and from KETRACO to the Project for the GOK Component was as summarized in **Table 102**.

**Table 102: Disbursements for the Olkaria-Lessos-Kisumu Project**

FY	MOE to KETRACO (Kshs.)	KETRACO to the Project (Kshs.)	Variance (Kshs.)
2015/2016	197,000,000	409,278,446	212,278,446
2016/2017	400,000,000	211,474,395	(188,525,605)
2017/2018	262,500,000	321,829,277	59,329,277
2018/2019	480,000,000	375,000,000	(105,000,000)
2019/2020	1,350,000,000	1,455,000,000	105,000,000
2020/2021	1,600,000,000	1,300,000,000	(300,000,000)
2021/2022	800,000,000	1,100,000,000	300,000,000
2022/2023	25,000,000	25,000,000	0
<b>Total</b>	<b>5,114,500,000</b>	<b>5,197,582,118</b>	<b>83,082,118</b>

9.4.8 From the analysis, there was an unexplained variance of Kshs.83,082,118, between disbursements of Kshs.5,114,500,000 from MOE to KETRACO and Kshs.5,197,582,118 from KETRACO to the Project.

#### **GOK Component Budget Vs Amount Disbursed for the Olkaria- Lessos- Kisumu Project**

9.4.9 Comparison between the approved budgets and actual disbursements made for the Project revealed that from the financial year 2015/2016 to 2022/2023, KETRACO disbursed to the OLK Project a total of Kshs.5,197,582,118, compared to the total approved budget of Kshs.5,122,500,000, resulting in an unexplained variance of Kshs.75,082,118. However, there was no variance between the approved budget and actual disbursement from the Ministry of Energy to KETRACO. A detailed analysis is as shown in **Table 103**.

**Table 103: GOK Component Budget Vs Disbursements for the Olkaria-Lessos-Kisumu Project**

FY/Project	MOE			KETRACO		
	Budget Allocation (Kshs.)	Actual Disbursement (Kshs.)	Variance (Kshs.)	Budget Allocation (Kshs.)	Actual Disbursement (Kshs.)	Variance (Kshs.)
2015/2016	197,000,000	197,000,000	0	197,000,000	409,278,446	212,278,446
2016/2017	400,000,000	400,000,000	0	408,000,000	211,474,395	(196,525,605)
2017/2018	262,500,000	262,500,000	0	262,500,000	321,829,277	59,329,277
2018/2019	480,000,000	480,000,000	0	480,000,000	375,000,000	(105,000,000)
2019/2020	1,350,000,000	1,350,000,000	0	1,350,000,000	1,455,000,000	105,000,000
2020/2021	1,600,000,000	1,600,000,000	0	1,600,000,000	1,300,000,000	(300,000,000)
2021/2022	800,000,000	800,000,000	0	800,000,000	1,100,000,000	300,000,000
2022/2023	25,000,000	25,000,000	0	25,000,000	25,000,000	0
<b>Total</b>	<b>5,114,500,000</b>	<b>5,114,500,000</b>	<b>0</b>	<b>5,122,500,000</b>	<b>5,197,582,118</b>	<b>75,082,118</b>

## 9.5 Assets Management and Wayleave Acquisition

### Substations Land

- 9.5.1 Section 1.4.1 of the Resettlement Policy Framework, 2011 provides that the Company will identify a potential site for constructing a substation and the price of land will be negotiated with the landowner based on the existing market value.
- 9.5.2 Review of project audited financial statements revealed that construction of the Olkaria-Lessos-Kisumu Transmission Line Project was undertaken in Lot 1, Lot 2 and Lot 3. Lot 1 involved design, manufacture, supply, erection, testing and commissioning of 400kV transmission lines; Lot 2 involved design, manufacture, supply, erection, testing and commissioning of 220kV and 132kV transmission lines, while Lot 3 involved design, manufacture, supply, erection, testing and commissioning of substation extensions at Olkaria, Lessos and Kisumu (Mamboleo) and a new 220/132/33kV Substation at Kibos.

### Process of Acquisition of Land for Substations

- 9.5.3 Section 1.4.1 of the Resettlement Policy Framework, 2011 provides that the Company will identify a potential site for constructing a substation and the price of land will be negotiated with the land owner based on the existing market value.

### ***Absence of Land Scoping Reports for Purchase of Land for Construction of Project Substations***

- 9.5.4 The Kenya Electricity Transmission Company Limited acquired two (2) parcels of land for construction of Substations for the OLK Project at Lessos and Kibos. Review of documents provided for audit, including extracts of Tender Committee Minutes approving the purchase of land for construction of the Lessos and Kibos Substations revealed the information shown in **Table 104**.

**Table 104: Approvals for Purchase of Land for OLK Substations**

Substation	Land Parcel No.	Date of Tender Committee Meeting	Land Size (Acres) to be Acquired	Rate per Acre (Kshs.)	Total Purchase Price (Kshs.)
Lessos	Nandi/Songoliet/211	27 February, 2014	15	2,800,000	42,000,000
Kibos	L.R 10419/27	10 July, 2014	15	1,700,000	25,500,000

9.5.5 However, land scoping reports which indicate how the land was identified and any negotiations that were held between KETRACO and the landowners were not provided to the Audit Team for review. The Audit Team could therefore, not determine how the parcels of land were identified and whether the purchased parcels of land were the most economically viable options.

#### **Ownership Documents for Substations Land**

9.5.6 The Audit Team confirmed that the ownership of the Kibos and Lessos Substation Land was under KETRACO. In addition, KETRACO was utilizing two (2) Substations owned by the Kenya Electricity Generating Company (Kengen) and the Kenya Power and Lighting Company (KPLC) at Olkaria and Mamboleo, respectively for the OLK Transmission Line Project, as summarized in **Table 105**.

**Table 105: OLK Substation Land Ownership Details**

Substation Name	LR No.	Land Size (HA)	Date of Registration	Ownership
Lessos	Nandi/Songoliet/523	6.07	26 September, 2014	KETRACO
	Nandi/Songoliet/533	0.83	29 August, 2016	
	Nandi/Songoliet/212	1.5	01 February, 2019	
	Nandi/Songoliet/588	0.405	20 September, 2019	
Kibos	10419/68	6.07	25 May, 2016	
Olkaria	Title Deeds Not Provided			Kengen
Mamboleo				KPLC

9.5.7 Out of the four (4) parcels of land owned by KETRACO for the construction of the Lessos Substation, the Audit Team reviewed Tender Committee Minutes dated 27 February, 2014 and confirmed that Parcel Number Nandi/Songoliet/523 that was excised from Title Number Nandi/Songoliet/211 was purchased under the Olkaria-Lessos-Kisumu Transmission Line Project. No documentation was provided to link the other acquired parcels of land,

namely: Nandi/Songoliet/533; Nandi/Songoliet/512; and Nandi/Songoliet/588 to the OLK Project.

### **Wayleave Acquisition**

#### **Survey of Affected Parcels**

- 9.5.8 The Kenya Electricity Transmission Company Limited surveyed the area of land and plots within the wayleave trace by commissioning a land survey in accordance with Section 1.4.2 of the Resettlement Policy Framework, 2011. The output of the land survey as per the RPF, 2011 was a cadastral map of the route showing the plot numbers, ownership, parcel size and affected area of individual parcels, as well as the position of the towers. The cadastral map was prepared by a surveyor.
- 9.5.9 A review of tender committee minutes dated 30 May, 2012 revealed that KETRACO awarded tenders for provision of survey services for the OLK Project to three (3) firms, namely Kiplan Consultants; Juliko Geospatial and Jooyato Surveys. Further, it was established that the firms were among the approved prequalified surveyors. In addition, KETRACO signed contracts with Jooyato Survey on 03 July, 2012 and Kiplan Surveyors and Juliko Geospatial on 06 July, 2012, respectively.
- 9.5.10 Based on the above reviewed documents, the Audit Team confirmed that due process was followed in identification of consultants engaged to provide survey services for the Olkaria-Lessos-Kisumu Transmission Line.

#### ***Failure to Provide Application to the National Land Commission for Creation of a Wayleave***

- 9.5.11 Section 144(1) of the Land Act, 2012 requires a public authority to make an application for creation of a wayleave to the National Land Commission (NLC).
- 9.5.12 However, Management did not provide the application done to NLC for creation of the project wayleave corridor, in compliance with Section 144(1) of the Land Act, 2012.

***Publication of Notice of Intention to Create a Right of Way After the Construction of the Transmission Line and Payment of Project Affected Persons Begun***

- 9.5.13 Section 144 (4) (a) of the Land Act, 2012 requires an applicant for creation of wayleave to serve a notice on all persons occupying land over which the proposed wayleave is to be created.
- 9.5.14 The National Land Commission (NLC) issued a notice on behalf of KETRACO to the landowners affected by the construction of the Olkaria- Lessos- Kisumu Transmission Line, whose purpose was to inform the listed landowners of the plan to construct towers and conductors overlying their land. As per Gazette Notice No. 1717, dated 22 February, 2019, NLC issued notice of intention to compulsorily create a right of way for the construction of the Olkaria-Lessos-Kisumu Transmission Line on behalf of KETRACO.
- 9.5.15 The audit noted that Gazette Notice No. 1717 dated 22 February, 2019 was publicized after the construction of the Transmission Line had already begun in February 2016. Further, some Project Affected Persons had already been paid, with a payment dated 14 June, 2017 reviewed.

**Tender for Consultancy Services for Updated Valuation and Census Study**

- 9.5.16 A review of KETRACO Tender Committee Minutes of a meeting held on 10 July, 2013 revealed that the Committee approved award of tender for consultancy services for an updated valuation and census study for the Olkaria- Lessos- Kisumu (OLK) Transmission Line to M/S Lloyd Masika Limited. As per the minutes, the Line was divided into three (3) Lots for the purpose of the Tender. Further, the objective of the study was to value land, structures and crops/trees to be affected, household census, and preparation of an entitlement matrix. The Tender Committee approved a total award of Kshs.41,606,880 to M/s Lloyd Masika Limited, for the consultancy service for the three (3) Lots, as shown in **Table 106**.

**Table 106: Tender Award to M/S Lloyd Masika Limited for OLK Project**

Lot	Section Affected	Consultancy Firm Engaged	Tender Award (Kshs.)
1	Olkaria II to Ngata (Nakuru)	M/S Lloyd Masika Limited	14,712,280
2	Ngata (Nakuru) to Lessos Substation		13,641,600
3	Lessos Substation to Mamboleo (Kisumu)		13,253,000
			<b>41,606,880</b>

***Failure to Provide the List of Pre-Qualified Consultants for the Financial Year 2013/2014 and Study Report by M/s Lloyd Masika Limited***

9.5.17 As per the Tender Committee Minutes, the tender for consultancy services for an updated valuation and census study for the Project was awarded on 10 July, 2013 to M/S Lloyd Masika Limited. However, a list of pre-qualified consultants for the financial year 2013/2014 (the year of tender award) was not provided for audit. The Audit Team therefore, could not establish if the firm was in the list of pre-qualified consultants. In addition, the report on the study by M/s Lloyd Masika Limited was not provided for audit.

**Valuation for Wayleave Acquisition**

9.5.18 Section 148 (1) of the Land Act, 2012 provides that compensation for the use of land be based on the value of land, as determined by a qualified valuer. Further, Section 7.2.1 of RPF, 2011 states that land is valued via the schedule of land values by zones obtained from the chief valuer, as well as by a registered and licensed valuer.

9.5.19 According to Letters of Instructions provided for audit review, KETRACO issued instructions to three (3) valuation firms to undertake valuation of sampled parcels along the Olkaria-Lessos-Kisumu Transmission Line. The valuation firms and details of the Letters of Instructions issued are as indicated in **Table 107**.

**Table 107: Olkaria-Lessos-Kisumu Project Valuers**

No.	Letter of Instructions Ref. No.	Dates of Instructions	Valuation Firm
1	KET/10/18/PN/fa/46	02 March, 2016	M/s Capital Valuers
2	KET/10/18/PN/fa/45	02 March, 2016	M/s Realmast Limited
3	KET/10/18/PN/fa/56	15 August, 2017	M/s Icon Valuers

9.5.20 The following anomalies were noted: -

***Irregular Engagement of a Valuer***

9.5.21 Section 57 (1) of the Public Procurement and Asset Disposal Act, 2015 states that *“the head of the procurement function of a procuring entity shall maintain and update lists of registered suppliers, contractors and consultants in the categories of goods, works or services according to its procurement needs”*.

9.5.22 The audit established that as per Letter Ref No: KET/10/18/PN/fa/45, dated 02 March, 2016, M/s Realmast Limited was issued with a letter of instructions to undertake valuation of sampled parcels of land along the Olkaria-Lessos-Kisumu Transmission Line. However, a review of the list of pre-qualified firms for provision of valuation services for the period 2015-2017 revealed that M/s Realmast Limited had not been pre-qualified under this category.

***Failure to Provide a List of Pre-Qualified Consultants for the Financial year 2017/2018***

9.5.23 As per the Letter of Instructions Ref. No: KET/10/18/PN/fa/56, dated 15 August, 2017, M/s Icon Valuers was issued with a letter of instructions to undertake valuation of sampled parcels along the Olkaria-Lessos-Kisumu Transmission Line. A list of pre-qualified consultants for the financial year 2017/2018, the year the letter of instructions was issued, was not provided for review. The Audit Team could therefore, not establish if M/s Icon Valuers was in the list of pre-qualified consultants for the financial year 2017/2018.

**Valuation Reports for the Sampled Parcels of Land**

***Failure to Provide Criteria Used in Sampling Parcels of Land to be Valued***

9.5.24 The Audit Team reviewed the valuation reports provided by Realmast Ltd, Capital Valuers Ltd, Icon Valuers Ltd and the National Land Commission and

noted that valuation of the affected parcels of land along the OLK Transmission Line Project were done on a sample basis. Values obtained from the sampled parcels were applied on the other parcels depending on location. Details of the number of parcels valued are as shown in **Table 108**.

**Table 108: List of Valuers for the Olkaria-Lessos-Kisumu Project**

No.	Date of the Valuation Report	Name of the Firm	No. of Parcels Valued
1.	08 March, 2016	Realmast Ltd	7
2.	05 May, 2016	Capital Valuers Ltd	64
3.	17 August, 2016	Realmast Ltd	37
4.	18 December, 2017	Icon Valuers Ltd	44
5.	04 July, 2019	NLC	37
6.	Undated	NLC	70
	<b>Total</b>		<b>259</b>

9.5.25 The audit established that KETRACO valued two hundred and fifty-nine (259) parcels of land out of a total of three thousand one hundred and thirty-two (3,132) affected parcels of land, representing 8%, which was used as a basis of computing the compensation amount payable to the Project Affected Persons. The criteria used to determine the two hundred and fifty-nine (259) parcels of land that were sampled and valued was not provided for audit. It was therefore, not possible to confirm the fairness of the sampling criteria.

#### **Valuation Schedules for Land, Structures and Crops/Trees**

9.5.26 The valuation schedules were approved by the Company's Managing Director before issuance of offer letters to the affected persons. For the OLK Project, KETRACO provided one hundred and fifty-one (152) valuation schedules for land, forty-eight (48) valuation schedules for structures, and fifty-nine (59) valuation schedules for crops/trees, as detailed in **Appendix 44. Table 109** gives a summary of the valuation schedules, number of PAPs, initial valuation amounts and the total compensation payable after taking into consideration adjustments to the initial valuation amount for land, structures and crops/trees. Adjustments were as a result of revaluations where revalued land parcels and structures were removed from initial valuation schedules and included in new valuation schedules.

**Table 109: Valuations and Total Compensation Payable for OLK Project**

Compensated Item	No. of Valuation Schedules	No. of PAPs	Total Initial Valuation Amount (Kshs.)	Less Adjustments (Kshs.)	Total Compensation Payable (Kshs.)
Land	152	3,132	5,351,172,703	1,645,535,651	3,705,637,052
Structures	48	1,414	1,708,610,081	173,978,820	1,534,631,262
Crops/Trees	59	2,489	342,184,327	93,270	342,091,057
<b>TOTAL</b>	<b>259</b>	<b>7,035</b>	<b>7,401,967,111</b>	<b>1,819,607,740</b>	<b>5,582,359,371</b>

***Un - approved Valuation Schedules***

9.5.27 Review of valuation schedules provided revealed that three (3) valuations for land and structures were not approved by the Managing Director. Details are as shown in **Table 110**.

**Table 110: Project Valuation Schedules Without Approval**

Compensated Item	Valuation Number	Total Valuation Amount (Kshs.)	Amount Paid (Kshs.)
Land	Valuation 152	265,706,528	0
Structures	Valuation 13	14,597,353	14,597,353
	Valuation 27	34,424,434	34,424,434
<b>Total</b>		<b>314,728,315</b>	<b>49,021,787</b>

9.5.28 The audit noted that out of the total unapproved valuation schedules of Kshs.314,728,315, a total of Kshs.49,021,787 had been paid to PAPs as at the time of audit.

**9.6 Financial Management and Expenditure**

**Payment for Land Acquired for Substations**

9.6.1 Review of Tender Committee Minutes approving the purchase of land for construction of the Lessos and Kibos Substations revealed that two (2) parcels of land were acquired under the Olkaria-Lessos-Kisumu Transmission Line Project; one (1) parcel each for the Lessos Substation and Kibos Substation. Further, the Audit Team was provided with payments records for the

landowners. A summary of the parcels of land, purchase price and amount paid is as indicated in **Table 111**.

**Table 111: Payment for Land Acquired for the OLK Substations**

Substation	LR No.	Registered Owner	Land Size Purchased (Acres)	Purchase Price (Kshs.)	Amount Paid (Kshs.)	Outstanding Balance (Kshs.)
Lessos	Nandi/Songolie t/211	Clementina Cheruto Kirui	15	42,000,000	42,000,000	0
Kibos	L.R 10419/27	Osango Farmers' Co-operative Society Ltd	15	25,500,000	19,658,963	5,841,037

9.6.2 From the above analysis, it was noted that KETRACO had an outstanding balance of Kshs.5,841,037 for the Kibos Substation land. This balance was not included in the schedules of outstanding compensation provided.

#### **Payment of Compensation Funds- Wayleave Acquisition**

9.6.3 A review of the payment schedules provided for audit revealed that out of the total compensation payable for land, structures and crops for the Olkaria-Lessos-Kisumu Transmission Line of Kshs.5,582,359,371, KETRACO had as at 30 June, 2023 paid an amount of Kshs.3,312,217,328, leaving an outstanding balance of Kshs.2,270,142,043, as summarized in **Table 112** and detailed in **Appendix 45**.

9.6.4 An analysis of the compensation schedules shows that the total compensation payment is at 59% of the total compensation payable, with compensation for land being the least, at 43%.

**Table 112: Compensation Amount for the OLK Project**

Compensated Item	Total Compensation Payable (Kshs.)	Total Amount Paid (Kshs.)	Outstanding Amount (Kshs.)	% of Amount Paid
Land	3,705,637,052	1,587,605,941	2,118,031,111	43
Structures	1,534,631,262	1,495,174,175	39,457,087	97
Crops/Trees	342,091,057	229,437,212	112,653,845	67
<b>TOTAL</b>	<b>5,582,359,371</b>	<b>3,312,217,328</b>	<b>2,270,142,043</b>	<b>59</b>

- 9.6.5 The audit noted that the Project did not have its own bank account. Payments for compensation of the Project were done through a KETRACO KCB bank account that was also used for other operations of the Company.
- 9.6.6 Since there was no unique identifier for each payment in the bank statements, the Audit Team was not able to verify all payments in the bank statements. Out of the total payments amounting to Kshs.3,312,217,328, the Audit Team was able to verify payments amounting to Kshs.659,697,360, approximately 20%, to the bank statement. However, all payments were confirmed using the payments schedules provided. The following issues were noted from the review of the payment records provided: -

***Valuation and Payment for a Parcel of Land After Cut Off Dates***

- 9.6.7 The Resettlement Policy Framework, 2011 defines the cut-off date as date of completion of the socio-economic survey/census and asset inventory of PAPs. The RPF also provides that persons entering and/or occupying land in the project area after the cut-off date and not included in the inventory of PAPs will not be considered eligible for compensation or resettlement assistance. Further, page xviii of the Resettlement Policy Framework (RPF), 2021 defines cut-off date as the date of the gazette notice of intention to create wayleave.
- 9.6.8 Parcel No. LR. No. 3967 was gazetted as per Gazette Notice No. 1717, dated 22 February, 2019. As per the Gazette Notice, the area of the parcel of land to be affected by the OLK Project was 0.9391 Hectares. Further, as per the Valuation Schedule approved on 04 February, 2022, provided for review, the parcel had three (3) new parcels of land; LR No. 3967/450, LR. No. 3967/451 and LR. No. 3967/452). The three (3) parcels of land were valued at Kshs.3,836,227.
- 9.6.9 As at the time of audit, one (1) of the parcels of land, LR No. 3967/450, had a payment made on 28 September, 2022 in its favour, amounting to Kshs.2,464,823, with the title document supporting the payment indicating that the subdivision was done on 17 December, 2021, as shown in **Table 113**. The subdivision and subsequent payment are contrary to the Resettlement Policy Framework of 2011.

**Table 113: Valuation and Payment After Cut Off Dates for the OLK Project**

Gazette Notice Details			Valuation/Payment Details			
Date Gazetted	Original Parcel No.	Date of Subdivision	Valuation Date	New Parcel No(s).	Compensation Amount (Kshs.)	Amount Paid (Kshs.)
22-Feb-19	LR No. 3967	17-Dec-21	4-Feb-22	LR No. 3967/450	2,464,823	2,464,823
			4-Feb-22	LR No. 3967/451	1,186,080	0.00
			4-Feb-22	LR No. 3967/452	185,325	0.00
<b>Total</b>					<b>3,836,228</b>	<b>2,464,823</b>

***Irregular Compensation Based on Revaluation***

9.6.10 Nineteen (19) parcels of land, as detailed in **Appendix 46**, with an initial compensation amount of Kshs.27,868,902 were paid a total of Kshs.41,728,323, resulting in excess payment of Kshs.13,859,421. Review of payments records for the nineteen (19) parcels of land revealed that revaluations engagements were not attached as part of supporting documentation. As a result, the regularity of the excess payment of Kshs.13,859,421 could not be authenticated.

9.6.11 Further, the Audit Team noted that KETRACO did not have guidelines or procedures prescribing how it should undertake revaluations for compensation.

**Outstanding Compensation for OLK Project**

9.6.12 The total compensation claims for the Project as at the time of audit was Kshs.2,270,142,044. The outstanding compensation is made up of Kshs.2,118,031,111 for Land, Kshs.39,457,088 for Structures and Kshs.112,653,845 for Crops/Trees.

9.6.13 The reasons for non-compensation of PAPs as per the reviewed schedules of outstanding compensation are summarized in **Table 114** and detailed in **Appendix 47(a-c)**.

**Table 114: Summary of Outstanding Compensation Claims for the OLK Project**

Reasons for Non-Payment	Land	Structures	Crops/Trees	Grand Total
	Amount (Kshs.)	Amount (Kshs.)	Amount (Kshs.)	Amount (Kshs.)
Budget Constraints	924,147,609	4,654,575	111,872,780	1,040,674,964
Undergoing Process of Easement Registration	1,193,883,502	0	0	1,193,883,502
Payment Process Ongoing	0	32,843,681	0	32,843,681
Owner not Found/Unknown	0	1,383,178	0	1,383,178
Rejected Offer/Disputed	0	575,653	773,681	1,349,334
Bank Details not Provided by the PAP	0	0	7,383	7,383
<b>TOTAL</b>	<b>2,118,031,111</b>	<b>39,457,088</b>	<b>112,653,845</b>	<b>2,270,142,044</b>

## 9.7 Physical Verification of the Olkaria-Lessos-Kisumu Transmission Line

9.7.1 The Audit Team carried out physical verification of the Olkaria-Lessos-Kisumu Transmission Line Project. The verification exercise was to establish whether the land exists, the actual acreage/sizes acquired, land occupancy and the current usage of the land within the wayleave corridor of the Project. Further, the field exercise was to ascertain the existence and occupancy status of PAPs with outstanding claims. The Audit Team applied the following approach in the exercise:

- i. Physical verification at the project site and interviews with landowners;
- ii. Actual survey of the parcels of land;
- iii. Interviews with other PAPs with outstanding claims; and
- iv. Interviews with some PAPs who were already compensated

### Physical Verification of Land for Substations

9.7.2 The Audit Team visited four (4) Substations, namely, Lessos, Kibos, Mamboleo and Olkaria, and noted that with the exception of the Lessos Substation whose issues are highlighted below, no issues were noted in the other Substations.

### **Lessos Substation**

- 9.7.3 The audit noted that the Sub-station was yet to be constructed, yet the Project completion date was 31 March, 2022. Further, the audit established that beaconing was done on the acquired land but some portion of the land was yet to be secured with a fence. The previous landowners were still residing on the land where they were carrying out farming activities.

### **Physical Verification of the Project Wayleave Corridor**

- 9.7.4 The Audit Team sampled two hundred and twenty-eight (228) land parcels for physical verification. Out of which twenty-nine (29) had no outstanding compensation claims, while one hundred and ninety-nine (199) had outstanding compensation claims amounting to Kshs.1,334,435,273.
- 9.7.5 From the verification exercise and engagement with landowners, the following issues were noted and are detailed in **Appendix 48**:
- i. One hundred and seventy-four (174) landowners were not present on their parcels of land. However, the Audit Team confirmed that those parcels of land exist and had been affected by the Project;
  - ii. One (1) landowner had been listed as a person with outstanding compensation claim but had acquired the land after the Transmission Line traversed the said parcel of land. The previous owner had not been compensated;
  - iii. Two (2) landowners had not been paid because they had rejected the offer letters. One (1) landowner who had rejected the offer, claimed that KETRACO had revised the offer to a higher figure, but they had no documents to support this claim. The other landowner contested the size of the affected land. According to KETRACO, the landowner had subdivided the land after the survey had been conducted. No documents were provided to support the claim by the landowner; and
  - iv. Four (4) PAPs had not been compensated because of land succession issues.
- 9.7.6 Most of the landowners interviewed did not have the offer letters and could not remember the exact amount they should have been compensated. As a result,

it was not possible to corroborate the amount in the offer letters provided by KETRACO.

#### **Actual Survey of Parcels of Land**

- 9.7.7 The Audit Team carried out survey of parcels of land to confirm the accuracy of sizes of the wayleave acquired for the Project, with the assistance of a surveyor from KETRACO. Out of the two hundred and twenty-eight (228) parcels of land visited during physical verification, the Audit Team surveyed a sample of one hundred (100) parcels of land, representing approximately 44%.
- 9.7.8 From the survey data provided by the surveyor, the Audit Team noted that there were no variances between the trace area provided by KETRACO in the compensation schedule and the trace area measured during the physical verification.

#### **Crops/Trees**

- 9.7.9 The Audit Team sampled forty-three (43) Project Affected Persons (PAPs) with outstanding compensations claims for crops/trees in the physical verification exercise. Out of the forty-three (43), twenty-five (25) PAPs confirmed that they had not yet been paid for the crops damaged, while eighteen (18) PAPs were not found. However, the existence for all the forty-three (43) PAPs sampled was confirmed, as the land parcels with the affected crops were all in the Olkaria-Lessos-Kisumu Transmission Line Project Corridor. The details of the sampled PAPs and those that the Audit Team interviewed is as detailed in **Appendix 49**.
- 9.7.10 Other issues noted in the audit from PAPs whose crops were damaged included: -
- i. The Property Damage Reports (PDRs) issued by KETRACO to the PAPs did not reflect the compensation amounts. Although valuations of the damaged crops were carried out, the reports containing the assessed amounts were not returned to the PAPs. Consequently, it was not possible to verify the compensation amounts determined for each PAP.

- ii. The Audit Team noted that PAPs signed the PDR before the valuation amount for the damaged crops was populated. The PAPs therefore, did not have an opportunity to agree or disagree with the valuation amount for the crops that they would be compensated for later.
- iii. Most of the PAPs whose trees were cut along the Transmission Line Corridor in the Nandi-Lessos-Timboroa Section had not been paid, while the trees that were cut had since grown and were almost touching the transmission cables.

### **Structures**

9.7.11 The Audit Team sampled seventeen (17) Project Affected Persons (PAPs) with outstanding compensation claims for structures. Out of the seventeen (17), six (6) PAPs confirmed that they had not yet been paid, while eleven (11) PAPs were not found. However, the existence for all the seventeen (17) PAPs sampled was confirmed, as the land parcels with the affected structures were all in the Olkaria-Lessos-Kisumu Transmission Line Project Corridor. The details of the sampled PAPs and those that the Audit Team interviewed are detailed in **Appendix 50**.

- 9.7.12 Other issues noted from PAPs whose structures were demolished include:
- i. Four (4) PAPs did not have an acknowledgement letter issued by KETRACO. It was therefore, not possible to verify the amount of compensation due to the PAPs; and
  - ii. The Naivasha GK Prison had received an offer of Kshs.13,998,938 from KETRACO for demolished structures along the OLK Transmission Line Project. However, the Naivasha GK Prison disagreed with the offer and countered it with a revalued amount of Kshs.18,908,204, for the same structures. A discussion was held between KETRACO and the Naivasha GK Prison, the two (2) institutions agreed that KETRACO would rebuild the demolished structures using their own contractors. However, the structures had not been constructed as at the time of audit.

## 9.8 Irregularities, Responsibilities and Recommendations

9.8.1 The irregularities and weaknesses, responsibilities and the corresponding recommendations are as detailed in **Table 115**.

**Table 115: Irregularities, Responsibility and Recommendations for the OLK Project**

No	Irregularities and Weaknesses	Amount Involved (Kshs.)	Section of Report	Responsibility	Recommendations
1	Failure to provide documents for audit review as detailed in Appendix 1	N/A	Appendix I of the Report	KETRACO Management	The Management of KETRACO should comply with the Public Audit Act, 2015, in relation to audit and provision of documents
2	Unexplained Variance Between Disbursements from MOE to KETRACO and to the Project	83,082,118	9.4.8	PS- State Department for Energy and KETRACO Management	The Management of the State Department for Energy and KETRACO should reconcile their disbursements figures and ensure that proper budget records are kept both at the Ministry and at KETRACO
3	Publication of Notice of Intention to Create a Right of Way After the Construction of the Transmission Line and Payment of Project of Affected Person had Begun	N/A	9.5.15	KETRACO Management	The Management of KETRACO should ensure compliance with its resettlement policy in relation to cut-off dates for the purpose of compensation of PAPs.
4	Irregular Engagement of a valuer contrary to Section 57 (1) of the Public Procurement and Asset Disposal Act, 2015	N/A	9.5.22	KETRACO Management	Management should ensure compliance with procurement laws and regulations
5	Unapproved Valuation Schedules	314,728,315	9.5.28	KETRACO Management	The Management of KETRACO should ensure all internal processes are compiled with in relation to approval of valuation schedules
6	Valuation and Payment of Parcel of Land After Cut Off Dates	3,836,227	9.6.9	KETRACO Management	The Management of KETRACO should ensure compliance with its resettlement policy in relation to

No	Irregularities and Weaknesses	Amount Involved (Kshs.)	Section of Report	Responsibility	Recommendations
					cut-off dates for the purpose of compensation of PAPs.
7	Irregular Compensation Based on Revaluation	13,859,420	9.6.10	KETRACO Management	The Management should support all revaluations and develop policy guidelines/procedures on revaluations.
8	Failure to secure purchased land for construction of Lessos Substation	N/A	9.7.3	KETRACO Management	KETRACO Management should secure by fencing land purchased for the construction of the Substation to avoid future conflict with the current occupants of the said land
9	Delay in valuation, disclosure of compensation payable and payments to PAPs whose crops/trees were damaged/destroyed	N/A	9.7.10	KETRACO Management	KETRACO Management should expedite valuation of damaged/destroyed crops/trees, disclosure of compensation payable and actual payment to the affected persons


## 9.9 Conclusion

- 9.9.1 The Olkaria-Lessos-Kisumu (OLK) Project was undertaken in three (3) Lots. Lot 1 is a 400kV double circuit transmission line from Olkaria II Substation to Lessos Substation; Lot 2 is 220kV double circuit transmission line from Lessos Substation to Kibos Substation and 132kV from Kibos Substation to Kisumu (Mamboleo Substation) while Lot 3 is construction of a new 220/132kV Kibos Substation, and extension of the existing 400/220kV Lessos and 220kV Olkaria II Substations. As at the time of audit, construction of the Olkaria-Lessos-Kisumu Transmission Line was complete, with the exception of Lot 3 extension of the existing 400/220Kv Lessos Substation, which was yet to be constructed.
- 9.9.2 The Olkaria-Lessos-Kisumu Transmission Line Project was jointly financed by the Government of Kenya and the Japan International Co-operation Agency

(JICA). A financing agreement was signed on 10 December, 2010 between the Government of Kenya, through The National Treasury and JICA, for a loan amounting to Japanese Yen (JPY) 12,410,000,000, equivalent to Kshs.10,256,198,347, at an exchange rate of Kshs.1= Yen 1.21. The GOK component was to cater for general administration expenses, taxes and duties, purchase of land and other real property, compensation and other indirect items.

- 9.9.3 The Resettlement Action Plan (RAP) Report for the Olkaria-Lessos-Kisumu Project dated May 2010 specifies the activities undertaken, including; identification of project impacts and affected populations, a compensation framework, a description of resettlement assistance and restoration of livelihood activities, a detailed budget, an implementation schedule, a description of public consultation and participation, and a description of provisions for grievance redress. As per the RAP Report, the total resettlement cost of land, structures and trees was estimated at Kshs.381,192,065, where land was an amount of Kshs.278,543,267 while structures and trees were Kshs.95,217,318 and Kshs.7,431,480, respectively. However, the number of PAPs or households linked to the costs was not indicated in the Resettlement Action Plan.
- 9.9.4 Comparison between the approved budgets and actual disbursements made for the Project revealed that from the financial year 2015/2016 to 2022/2023, KETRACO disbursements to the OLK Project totalled Kshs.5,197,582,118, compared to the total approved budget of Kshs.5,122,500,000. This resulted in an unexplained variance of Kshs.75,082,118. However, there was no variance between the approved budget and actual disbursements from the Ministry of Energy to KETRACO.
- 9.9.5 As at 30 June, 2023 the total value in the compensation schedules for the OLK Project amounted to Kshs.5,582,359,371, out of which KETRACO had paid Kshs.3,312,217,328, representing 59%, leaving an outstanding balance of Kshs.2,270,142,043.

- 9.9.6 The outstanding wayleave compensation amounting to Kshs.2,270,142,043 was reviewed and the reasons obtained as to why the PAPs had not been compensated included; budget constraints, delays in easement registration, delays in payments, unknown owners, disputed or rejected offer letters and non-provision of bank details by Project Affected Persons.
- 9.9.7 The major irregularities noted in the audit included: failure to provide documents; unexplained variances; publication of notice of intention to create a right of way after the construction of the Transmission Line and payment of Project of Affected Persons had begun; irregular engagement of a valuer; unapproved valuation schedules; valuation and payment of a parcel of land after cut off dates; irregular compensation based on revaluation; failure to secure the purchased land for construction of the Lessos Substation; and delay in valuation, disclosure of compensation payable and payments to PAPs whose crops or trees were either damaged or destroyed.

  
FCPA Nancy Gathungu, CBS  
AUDITOR- GENERAL

12 September, 2025

## 10 APPENDICES

The Appendices are bulky and will be provided in soft copy.

### **ETHIOPIA - KENYA TRANSMISSION LINE**

- 10.1 Appendix 1-List of Documents Not Provided
- 10.2 Appendix 2-List of Affected Land Parcels Not Publicized
- 10.3 Appendix 3-Land Compensation Schedule
- 10.4 Appendix 4-Structures Compensation Schedule
- 10.5 Appendix 5-Crops Compensation Schedule
- 10.6 Appendix 6-Payment of Top Up
- 10.7 Appendix 7a-Field Verification for Parcels of Land Affected
- 10.8 Appendix 7b-Field Verification for Landowners Interviewed
- 10.9 Appendix 7c-Land Parcels with Succession Issues
- 10.10 Appendix 7d-Field Verification for Parcels of Land Recomputed
- 10.11 Appendix 7e-Field Verification for Crops and Structures Affected

### **KENYA- TANZANIA TRANSMISSION LINE**

- 10.12 Appendix 8-Parcels of Land Not Publicized
- 10.13 Appendix 9-Parcels of Land Not Degazetted
- 10.14 Appendix 10-Parcels of Land without Corrigendum and Addendum
- 10.15 Appendix 11-Paid and Outstanding Land Compensation
- 10.16 Appendix 12-Valuation of Structures
- 10.17 Appendix 13-Paid and Outstanding Compensation for Crops

### **KENYA - UGANDA TRANSMISSION LINE**

- 10.18 Appendix 14-Paps Whose Affected Land Area Is Less Than Compensated Land Area
- 10.19 Appendix 15-Over Payment of Compensation
- 10.20 Appendix 16-Unsupported Payments
- 10.21 Appendix 17-Physical Verification-General Findings
- 10.22 Appendix 18-Parcels of Land Not Gazetted
- 10.23 Appendix 19- Overpayment of Wayleave Compensation
- 10.24 Appendix 20-Paid and Outstanding Compensation for Land
- 10.25 Appendix 21-Paid and Outstanding Compensation for Structures
- 10.26 Appendix 22-Paid and Outstanding Compensation for Crops
- 10.27 Appendix 23-Payment to PAPs who Rejected Offers
- 10.28 Appendix 24-Physical Verification for Land
- 10.29 Appendix 25-Physical Verification for Structures and Crops

### **KENYA POWER TRANSMISSION SYSTEM IMPROVEMENT PROJECT**

- 10.30 Appendix 26-Compensation Per Transmission Line
- 10.31 Appendix 27-Outstanding Wayleave Compensation in Sotik-Bomet
- 10.32 Appendix 28-Outstanding Wayleave Compensation in Olkaria - Narok

- 10.33 Appendix 29-Outstanding Wayleave Compensation in Mwingi-Kitui-Wote-Sultan-Hamud
- 10.34 Appendix 30-Outstanding Wayleave Compensation in Nanyuki-Rumuruti
- 10.35 Appendix 31-Outstanding Way-leave Compensation in Lessos-Kabarnet
- 10.36 Appendix 32-Outstanding Way-leave Compensation in Ishiara-Kieni
- 10.37 Appendix 33-Unvalued Land along Nanyuki-Rumuruti
- 10.38 Appendix 34-Negotiated Land along Ishiara-Kieni
- 10.39 Appendix 35-Physical Verification - Land
- 10.40 Appendix 36-Physical Verification - Crops
- 10.41 Appendix 37-Physical Verification – Structures

#### **INDIA FUNDED PROJECT**

- 10.42 Appendix 38-Value of Land, Structures and Crops/Trees Affected Within India Funded Project
- 10.43 Appendix 39a-Physical Verification - India Funded Project
- 10.44 Appendix 39b-Difference Between Affected Land Area and Measured Land Area

#### **NAIROBI RING PROJECT**

- 10.45 Appendix 40-Valuations for Crops/trees In the Suswa-Isinya Transmission Line
- 10.46 Appendix 41-Approved Land Valuations for Suswa-Isinya Line as at 31 March 2023
- 10.47 Appendix 42-Outstanding Claims for Suswa-Isinya Line as at 31 March 2023
- 10.48 Appendix 43-Reasons for Non-Payment of Outstanding Claims for Suswa-Isinya Transmission Line

#### **OLKARIA-LESSOS-KISUMU TRANSMISSION LINE**

- 10.49 Appendix 44-Valuation Schedules for Land, Structures and Crops
- 10.50 Appendix 45-Payments of Compensation Funds
- 10.51 Appendix 46-Revaluations Paid Without Supporting Revaluation Engagements
- 10.52 Appendix 47a-Outstanding Compensation-Land
- 10.53 Appendix 47b-Outstanding Compensation-Structures
- 10.54 Appendix 47c-Outstanding Compensation Claims-Crops
- 10.55 Appendix 48-Physical Verification-Sampled Affected Land Parcels
- 10.56 Appendix 49-Physical Verification-Sampled Affected Crops
- 10.57 Appendix 50-Physical Verification-Sampled Affected Structures

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