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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – THIRD SESSION – 2024

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

DIRECTORATE OF AUDIT, APPROPRIATIONS & GENERAL-PURPOSE COMMITTEES

CLERK'S CHAMBERS

PARLIAMENT BUILDINGS

NAIROBI

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 30 JUL 2024 DAY: TUESDAY
TABLED BY: HON. EMMANUEL WANGWE (CHAIRPERSON)
CLERK-AT-THE-TABLE: INZOFU MWALE

JULY, 2024

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List of Abbreviations/Acronyms

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

Ag. - Acting

AG - Attorney General

CEO - Chief Executive Officer

CS - Cabinet Secretary

DCI - Directorate of Criminal Investigations

DG - Director General

EACC - Ethics and Anti-Corruption Commission

FY - Financial Year

GoK - Government of Kenya

IAS - International Accounting Standards

ICT - Information, Communications & Technology

KNH– Kenyatta National Hospital

KEMSA – Kenya Medical Supplies Authority

KVB-Kenya Veterinary Board

NACADA– National Authority for the Campaign Against Alcohol and Drug Abuse

KBC- Kenya Broadcasting Corporation

CHAIRPERSON'S FOREWORD

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

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

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

There are more than four hundred (400) State Corporations undertaking different mandates in their respective sectors. Due to this large number, the previous Public Investments Committees had been unable to conclude examination of the accounts of the Auditor General of these State Corporations.

Considering the workload and the backlog, the National Assembly resolved to amend the standing orders by splitting the Public Investment Committee into three committees, Public Investments Committee on Social Services, Administration and Agriculture (PIC-SSAA) being one of them.

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

This report contains observations, findings and recommendations arising from examination of reports of the Auditor-General for five (5) state corporations for different financial years. The

report is structured as follows:

i) general observations to each of the cross-cutting queries;

ii) recommendations to each of the cross-cutting queries;

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

iv) management responses to each of the queries;

v) committee observations/ findings on each query; and

vi) Committee recommendations to each query raised

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

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

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

On behalf of the Public Investments Committee on Social Services, Administration and Agriculture and pursuant to National Assembly Standing Order 199(6), it is my pleasant duty and honour to present the 3rd Report of the Public Investments Committee on Social Services Administration and Agriculture on the examination of the Reports of the Auditor General on the Financial Statements of five (5) State Corporations.

25/7/2024

HON. EMMANUEL WANGWE CBS, MP

CHAIRPERSON – PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICE, ADMINISTRATION AND AGRICULTURE

EXECUTIVE SUMMARY

The 3rd Report of the Public Investments Committee on Social Services, Administration and Agriculture contains the Committee examination of five (5) State Corporations.

In its examination and scrutiny of the audited financial statements of the various State Corporations, the Committee primary approach was to elicit background information as to why particular course of financial and/or management actions were or were not taken. This was done with the relevant laws in mind including, the Constitution, the Public Finance Management Act, 2012 and the attendant Regulations, the Public Audit Act, 2015, the State Corporations Act, and the Public Procurement & Asset Disposal Act, 2015.

The preface of the report contains preliminaries on the establishment of the Committee, its Membership and Secretariat, mandate and the guiding principles governing the Committee while undertaking its mandate.

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

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

CHAPTER ONE

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

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

    i) examine the reports and accounts of public investments;

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

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

2. The Committee, in considering the audited accounts of State Corporations, was guided by the Constitution of Kenya and the following statutes and regulations in carrying out its mandate;

    i) The Public Finance Management Act, 2012;

    ii) The Public Audit Act, 2015;

    iii) The State Corporations Act, 1986;

    iv) The Public Procurement and Assets Disposal Act, 2015;

    v) The National Assembly Standing Orders; and

    vi) The National Assembly (Powers and Privileges) Act, 2017.

1.2 Committee Membership

3. The Committee membership comprises -

S/No	Member's Name	Constituency	Party
1.	Hon. Emmanuel Wangwe, MP CBS– **Chairperson**	Navakholo	ODM
2.	Hon. Caleb Amisi Luyai, MP- **Vice Chairperson**	Saboti	ODM
3.	Hon. Ferdinand Kevin Wanyonyi, MP	Kwanza	FORD-K
4.	Hon. Martin Peters Owino, MP	Ndhiwa	ODM
5.	Hon. Mary Wamaua Njoroge, MP	Maragua	UDA
6.	Hon. Nixon Nicholas Ngikor Ngikolong, MP	Turkana East	Jubilee
7.	Hon. (Dr.) Peter Francis Masara, MP	Suna West	ODM
8.	Hon. Abdi Jehow Fatuma,MP	Wajir	ODM
9.	Hon. Bernard Kibor Kitur, MP	Nandi Hills	UDA
10.	Hon Elijah Njore Njoroge Kururia, MP	Gatundu North	Independent
11.	Hon. Geoffrey Wandeto Mwangi, MP	Tetu	UDA
12.	Hon. Bishop Emeritus (Dr.) Jackson Kipkemoi Kosgei, MP	Nominated	UDA
13.	Hon. Joshua Kivinda Kimilu, MP	Kaiti	WDM
14.	Hon. Michael Wambugu Wainaina, MP	Othaya	UDA
15.	Hon. Paul Nabuin Ekwom, MP	Turkana North	ODM

1.3 Committee Secretariat

The following members of the Secretariat facilitated the Committee:

Mr. Aden Abdullahi

Principal Clerk Assistant I-Head of Secretariat

Ms. Christine Mariita

Clerk Assistant III

Ms. Mercy Kinyua

Legal Counsel II

Mr. Enock Manwa

Clerk Assistant III

Mr. Thomas Ogwel

Fiscal Analyst II

Ms. Esther Kariuki

Hansard Officer III

Mr. Wesley Abugah

Research Officer III

Mr. Moses Esamai

Audio Officer

Ms. Maryan Gabow

Communication Officer

Mr. Stanley Langat

Sergeant-At-Arms

Mr. Yakub Ahmed

Media Relations Officer

1.4 Committee Proceedings

4. In its inquiry into whether the affairs of public investments are managed in accordance with sound business principles and prudent commercial practices, the Committee received both oral and written evidence from Chief Executive Officers of various State Corporations.
5. To produce this report, the Committee held twenty (20) sittings in which it examined the evidence adduced by the accounting officers of the five (5) State Corporations.
6. The recommendations are found under various sections of the report on each of the State Corporations examined.
7. The recommendations on the issues raised by the Auditor General for the various State Corporations are found under appropriate sections of the report for each of the State Corporations covered
8. These observations and recommendations, if considered and implemented, will enhance accountability, effectiveness, transparency, efficiency, prudent management, commercial viability and value for money in State Corporations and the public investments sector as a whole.

1.5 General Committee Observations and Recommendations

1.5.1 Lack of ownership documents on land and buildings.

9. The Committee observed and noted with concern that Kenyatta National Hospital(KNH), Kenya Medical Kenya Medical Supplies Authority(KEMSA) and Kenya Broadcasting Corporation (KBC) did not possess title documents for land and buildings in their occupation. Kenyatta National Hospital does not possess title deed for various parcels of land, some were illegally and unprocedurally curved out and registered in the name of private developers who were compensated by the government after compulsory acquisition. Further, KEMSA did not possess title deeds for seven (7) parcels of land spread across the country and valued at Kshs.158,000,000 for which the Authority. In addition, KBC does not have title deeds or other legal documents of ownership for 32 parcels of land. Also, the title deed for LR.NO. 209/5918 -Broadcasting house Nairobi measuring 2.8 acres in which the KBC headquarters are situated,

was in the name of Chief Secretary, Colony And Protectorate of Kenya a body corporate duly established by the chief secretary (incorporation) ordinance 1958

It should be noted that under the International Public Sector Accounting Standards, an entity can only recognize assets in its books of accounts if it has ownership documents to those assets. In the absence of ownership documents, the accuracy of presented financial statements by state corporations may be in doubt.

Committee Recommendations

10. The Committee recommended that –

i. Within three (3) upon adoption of this report, the Accounting Officers should liaise with relevant government agencies such as the Ministry of Lands and the National Land Commission, to ensure that they secure ownership documents for all Corporation land and report back to the National Assembly.
ii. Within two (2) upon adoption of this report, the Cabinet Secretary for Land, Housing and Urban Development and the Chairman, National Land Commission should put caveats on all the parcels of State Corporations land that are in private hands and report back to the National Assembly.
iii. Within six (6) upon adoption of this report, the Accounting Officers through the National Land Commission should prioritize and expedite resolving ownership issues surrounding parcels of land belonging to State Corporations and report back to the National Assembly.
iv. The National Assembly should enact a law prescribing that all public land ownership documents should centrally held under the custody of the National Treasury for safekeeping.

1.5.2 Delay in availing documents to the Auditor-General

11. The Committee observed that some accounting officers did not avail complete and reconciled financial and accounting records/documentation in time for audit review and verification during the audit exercise leading to unnecessary queries. This is contrary to the provisions of

Article 226 of the Constitution and Section 68(2) of the PFM Act 2012 which requires that the financial and accounting records are presented within three (3) months after the close of the financial year. Section 62 of the public Audit Act of 2015 obligates accounting officers to provide required documents for audit failure to which they be sanctioned.

Committee Recommendations

12. The Committee recommended that;

i. Accounting officers should comply with the provisions of Section 68(2) of the Public Finance Management Act of 2012 by submitting all the required information for audit within the stipulated timelines.
ii. The Accounting Officer who fails to provide required information for audit pursuant to Section 62(1) of the Public Audit Act, 2015 should be prosecuted for the offence pursuant to Section 62(2) of the Public Audit Act of 2015.

1.5.3 Poor Governance and weak internal controls

Delay in appointments of Board of Directors

The Committee observed that some State Corporations were operating without properly constituted Board of Directors for too long. The anomaly was attributed to delays by the appointing authority to fill up vacancies once they arise. For example KEMSA did not have a substantive board chair since 9th October, 2015, following the expiry of the second term of the then Chairman and did not have a substantive Chief Executive Officer from 1st January 2017 to 30th June 2018. Further, Kenya Veterinary Board's' tenure for Board of Directors ended on 20th March 2021 and a new Board had not been appointed as at 30th June 2021. The absence of substantive holders of those charged with governance posed various operational challenges in the strategic management of the organization and thus poor governance.

Committee Recommendations

The Committee recommended that;

i. Within three months upon adoption of this report, the Inspector-general, Inspectorate of State Corporations with the help of the National Assembly should initiate the process of

amending the State Corporations Act to make it clear that no entity should be allowed to make any financial commitment without a properly constituted Board of Directors.

ii. The Committee reprimands the appointing authorities for the delays in constituting or failing to fill the existing vacancies in the Boards of various State Corporations promptly.

1.5.4 Irregular Procurement Processes and Management of Contracts

The Committee observed and noted with concern that some State Corporations undertook irregular procurement processes, contrary to the provisions of the Public Procurement and Assets Disposal Act, 2015, Regulations, Legal Notices and government circulars leading to inflated costs of projects. Additionally, some contracts were poorly managed leading to delays in project completion, irregular cost variations and thus causing unnecessary escalation of costs.

Committee Recommendations

The Committee recommended that –

i) The Accounting Officers of the State Corporations should ensure adherence to the budget, proper procurement planning and project management is undertaken with credible feasibility studies are done to prevent irregular variations during contract implementation.

ii) The Accounting Officers of the State Corporations should comply with the provisions of Section 139 of the Public Procurement and Asset Disposal Act, 2015. The relevant authority should take action against those who may have contravened the sections of the Act.

1.5.5 Matters pending in Court

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

Committee Recommendations

The Committee recommended that –

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

1.5.6 Delayed Accountability of Imprest.

The Committee noted that some State Corporations were in breach of Section 71 of the Public Finance Management Act 2012 and the attendant regulations that require surrender of imprests within seven days upon conclusion of the assignment for which the said imprest was issued.

Committee recommendations

The Committee recommended that: -

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

Declining Financial Performance

The Committee observed that, some of the Corporation recorded net losses over the years. Further, the Corporation's financial position reflected negative working capital or negative net worth This implies that the Corporations were unable to pay its financial commitments as they fell due and are technically insolvent and its existence as a going concern is dependent upon the support from

the Government and its creditors. The corporation's corporate governance is considerably weak thereby exposing the corporation to potential losses in addition reputational and operational risks. This may point to possible revenue leakages and if strategies are not put in place to reverse the position, the Corporations may not be able to meet their financial obligations as and when they fall due.

Committee Recommendations

i. Within three months after the adoption of the Report, the entities which include KBC, KNH and KEMSA should submit a comprehensive report on the strategies put in place to revive the corporations and reverse the position. The strategies should be approved by the respective cabinet secretaries and the Cabinet as whole after considering the financial implications of any of the said strategies and the respective financial capacities of these entities and posibility for grants from the National government.
ii. Within three months after the adoption of the Report, the Ethics and Anti-Corruption to investigate whether there are any financial leakages/ financial improprieties in KBC and KNH. Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the financial leakages/ financial impropriety.

1.0 KENYATTA NATIONAL HOSPITAL

1.1 CONSIDERATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED FINANCIAL STATEMENTS OF STATE CORPORATION FOR THE FINANCIAL YEAR 2018/2019 AND 2019/2020

Dr. Evanson N. Kamuri the Chief Executive Officer of Kenyatta National Hospital (KNH) was accompanied by Mr. Michael Kihuga (Director of Finance) and Mr. Calvin Nyachoti, Director of Legal appeared before the committee to adduce evidence on the Audited accounts of the Kenyatta National Hospital for the Financial Year 2018/2019 and 2019/2020.

FINANCIAL YEAR 2018/2019

1.0 Unconfirmed Borrowing Balance

1. The Committee heard that, as had been previously reported, the borrowings balance totalling Kshs.1,199,863.000 reflected in the statement for financial position as at 30 June 2019 related to a loan received in 2007/2008 from the Kingdom of Spain. Records provided for audit indicated that the loan was disbursed in kind through the supply of medical equipment and was intended to be repaid by the Hospital with effect from 1st July 2008 at an interest rate of 3 % per annum on a reducing balance or the first six (6) years and thereafter the interest plus principal for the next nine (9) years. However, the records indicated that no principal sum or interest liability was paid or accrued by the Hospital in the eleven financial years from 2008/2009 to 2018/2019. Further, Management had indicated that no on-lending agreement was signed between the Hospital and The National Treasury.
2. Besides, National debt records at the Public Debt Management Office of The National Treasury indicated commitments for the loan totalling Euro.14,000,000, were booked on 31st January 2006 and the first disbursement amounting to Euros. 2,100,000 was received on 23rd June, 2006. The records indicated that The National Treasury commenced repayment of interest on the loan and the principal sum in 2006/2007 and 2010/2011 financial years respectively. As at 30th June 2019, there were no interest arrears outstanding, whereas only Euro 3,111,111 (then equivalent to Kshs. 361,839,630) of the principal sum remained unpaid.

3. Based on the citation provided in Note 35 to the financial statements, the Auditor noted that the Hospital Management did not appear to be aware that The National Treasury has been repaying the loan. As a result, the loan continued to be reflected in the books of the Hospital.

4. In the circumstances, the borrowing balance amounting to Kshs. 1,199,863,000 reflected in the statement of financial position as at 30th June, 2019 may not be a fair statement of the status of the loan as at 30 June 2019.

Management Response:

5. The management informed the Committee that, in compliance with Public Investment Committee recommendations, the National Treasury and Planning, Ministry of Health and Kenyatta National Hospital jointly commenced the process of resolving the matter. Consequently, the subsidiary grant agreement, converting the Euro 14 million Loan from an on-Lend loan to an on-Grant to the Hospital was fully signed on 4th August 2022 and a copy of a duly signed agreement was adduced.

6. It was also pointed out that the KNH Board approved the passing of necessary book entries that extinguished the long-term borrowing in the Hospital's books of account and recognized the Euro 14 Million as a capital grant from the Government in the FY2021/22 and the supporting documentary evidence of Board approvals and book entries in the financial statements were submitted.

Committee observations

i) The Issue was addressed in the previous Public Investment Committee of the National Assembly as contained in the 24th PIC's report. In the report, it was recommended that the National Treasury and the KNH should share information on the loan repayments to ensure that the KNH reflects accurate status of the loan.

ii) It has taken a long (Since 2006) to have the Subsidiary Grant Agreement to be converted from an on-Lend Loan to an On-Grant Loan as fully signed on 4th August 2022. However,

the Board's approval for passing of the necessary book entries to correct the anomaly in the Financial Statements was granted much later on 06/09/2022.

iii) KNH was neither consulted nor involved in the signing of the Loan Agreement. The National Treasury unilaterally initiated and conclusively processed the Loan. Further, the establishment of the KNH under a Legal Notice impairs its independence for enhanced service delivery. the hospital needs to be established under an Act of Parliament.

Committee Recommendations

i) Within three months upon the adoption of this report, the Accounting Officer, KNH and the other affected Officers should implement the recommendations in the 24th PIC's report to ensure that at any time there is no information asymmetry between the Hospital and the National Treasury on Loans.

ii) Within three months upon adoption of this report, the Ministry of Health in collaboration with the Office of Attorney General to initiate the drafting of a legislative proposal establishing the KNH under an Act of Parliament.

2.0 Property, plant and equipment

2.1 Excised Parcels of Land

7. The Committee was informed that as previously reported, the property, plant and equipment balance totaling Kshs.12,364,842,000 reflected in the statement of financial position as at 30th June, 2019 included three (3) plots of land in Nairobi measuring 0.763 hectares on total size and valued at Kshs. 49,000,000. Details of the three plots were provided as:

LR No.	**Location**	**Size (Hectares**	**Value Kshs.**
LRN-209/11460	Nairobi	0.316	23,000,000
LRN-209/12767		0.226	17,000,000
LRN-209/12822		0.221	9,000,000
Total		**0.763**	**49,000,000**

Management Response

8. The Committee was informed that there was no loss incurred in respect to the three (3) parcels of land irregularly allocated- LR.No.209/12822; LR.No.209/12767; and LR.No.209/11460. The Hospital took upon itself, since the matter came to its attention in the year 2005, to pursue the placement of caveats on the said parcels of land with the relevant authorities so as to have the titles revoked. This process commenced in 2006 and has been ongoing to date. In February 2012, the Ministry of Lands confirmed that KNH had placed caveats on LR.No.209/12767 on 26th January 2007 and LR.No.209/12822 on 28th February 2000. The caveats are still in place to date.

9. The Committee was made aware of a civil suit No. 599 of 2014 filed by Chai Developers Limited against NQCL seeking orders to withdraw the caveat placed on LR.No.209/12767. From the Court file, it was established that the parties had entered a consent order to withdraw the caveat. The Hospital requested NLC to place a caveat on LR.No.209/12767, revoke the title and investigate the authenticity of the said title. Further, vide the Management letter 24th September 2019, the Hospital requested the President's Delivery Unit to facilitate the NLC acting in concert with the Chief Lands Registrar to review with a view of revoking these titles which had been irregularly/illegally allocated. It was pointed out that the feedback was yet to be received.

10. The Committee was made aware that on June 4, 2020, EACC wrote to KNH to furnish them with all documents relating to the parcels of land and appoint a competent officer to record a statement. The documents were submitted and the statement was recorded on or about 30th June 2020. EACC has yet to inform the Hospital of the outcome of their investigations.

11. Further, it was reported that portions of parcels of land LRN-209/11460 and LRN-209/12822 were compulsorily acquired for the construction of Hospital Road- Mbagathi Way Link Road. Details of the value of land after excision was provided as:

No	LRN. No	Initial Land Area in KNH Books before excision Ha	Excised for Mbagathi Way Link Road (Ha)	Land Area in KNH Books after excision (Ha)	Current Land value in KNH Books after excision (Kshs)	Status in KNH Books
1	209/11460	0.316	0.2173	0.0987	7,183,861	0.2173 hectares were excised for construction of Hospital Road-Mbagathi Way Link Road and adjusted in the books in FY 2018/19.
2	209/12767	0.226	0	0.226	17,000,000	Not excised
3	209/12822	0.1221	0.0308	0.0913	6,729,730	0.0308 hectares was excised for construction of Hospital Road-Mbagathi Way Link Road and adjusted in

No	LRN. No	Initial Land Area in KNH Books before excision Ha	Excised for Mbagathi Way Link Road (Ha)	Land Area in KNH Books after excision (Ha)	Current Land value in KNH Books after excision (Kshs)	Status in KNH Books
						the books in FY 2018/19.
	Total	0.6641	0.1295	0.5346	30,913,591	

Committee observations

i. The Committee observed that the plots were irregularly excised and allocated to third parties in previous years. The matter was discussed by the Public Investment Committee (PIC) of the National Assembly which, in its 19th Report, recommended that the National Land Commission (NLC) to revoke the title deeds irregularly issued to the private entities.

ii. Further the report recommended that, the Ethics and Anti-Corruption Commission to investigate the irregular allocation of the land, and the Inspector-General of State Corporations to surcharge the then Accounting Officer for any loss that may have been incurred. However, there was no indication of the results of the actions, if any, taken to comply with Parliament's recommendations. As a result, ownership and custody of the three parcel of land as at 30th June, 2019 had not been confirmed.

Committee recommendations

Within three months upon adoption of this report, the Accounting officers for the National Land Commission, the Ethics and Anti-Corruption Commission, the Inspector General of State Corporations, the KNH and the Committee on Implementation should fast-track the process of implementing the Committee recommendations and report to the National Assembly on the status.

2.2 Unconfirmed Ownership of contested Land

12. The Committee heard that, as indicated at Note 28(a) (ii) to the financial statements, the value of property, land and equipment as at 30 June, 2019 had been adjusted by removal of land identified as LR No. 209/13319, measuring 0.0217 hectares with a book value of Kshs.1,600,000. The adjustment was explained as having resulted from the National Land Commission making a determination on 21 January, 2019 that directed the Chief Registrar of Lands to uphold the title to the land in the name of a private individual that the Hospital had contested. However, the resolution of the Board that approved the removal of the land from the Hospital's books was not presented for audit verification.

13. Consequently, the regularity of the adjustment and the ownership status of the land as at 30 June, 2019, could not be confirmed.

Management Response

14. The Management informed the Committee that, the Hospital made the adjustment for the land that was declared as not belonging to the hospital based on the written NLC Report dated 21st January 2019.
15. The Board of management was informed of the same in its meeting of 25th September, 2019 that approved the financial statements for the year 2018 2019 for submission to the Office of the Auditor-General

Committee observations

i. The Committee observed that, the land LR No. 209/13319, measuring 0.0217 hectares with a book value of Kshs.1,600,000 as at 30 June, 2019 had been removed from the

financial statements based on the directive of the National Lands Commission on 21st January, 2019 that directed the Chief Registrar of Lands to uphold the title to the land in the name of a private individual. However, although the Hospital reported having contested the matter, there was no documentary proof in form of correspondences or legal suit to contest the matter.

ii. It is not clear how the private developer acquired title to the land already owned and occupied by Kenyatta National Hospital.

Committee recommendations

Within three months upon the adoption of this report, the EACC and DCI should investigate the matter on how the private developer acquired KNH land and the basis upon which the National Land Commission issued the directive to KNH to cede ownership of the land in question. Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible parties accountable for the land loss.

2.3 Failure to Adjust Records on Surrendered Lands

16. The Committee was informed that, as previously reported the Kenya Urban Roads Authority (KURA) through gazette Notice No. 9340 of 18 December 2015 and 6441 of August 2016 compulsorily acquired seven (7) acres of Kenyatta National Hospital (KNH) land valued by the Hospital at Kshs.4, 219,257,210.

17. The land was acquired for the construction of Hospital Road and Mbagathi Way Link Road both located in the Hospital's neighborhood. Available records indicated that KURA was to pay the Hospital Kshs. 1,859,297,000 as compensation. However, despite the start of the road construction work, the payment had not been made by the time of audit in April, 2020.The excised land had been included in the property, plant and equipment balance of Kshs. 12,364,842,000 reflected in the statement of financial position. In view of that, ownership of the land by the Hospital as at 30th June 2019 is uncertain.

Management Response

18. The management informed the Committee that, the Hospital made necessary adjustments in the books to recognize the land excised for construction of Hospital Road and Mbagathi Way

Link Road in the FY 2018/2019. Further, it was pointed out that the same was reflected and disclosed in the financial statements for the period ending June 30, 2019, and the subsequent financial years under the notes to the financial statements on property, plant and equipment.

Committee observations

The Committee observed that there was ready donor funding available for projects on the acquired land. However, Section 111 (1D) of the Land Act, Cap 280 provides that compensation for compulsorily acquired public land shall not be paid to a public body unless it is demonstrated that the land was purchased and developed by that public body. Therefore, the projects planned to be implemented by KNH on the land may have been hampered.

Committee Recommendations

Within three months upon adoption of this report, the National Assembly should initiate amendments to section 111(1D) of the Land Act, Cap 280 to the effect that;

i. Considerations should be made where such matters affecting international funding takes precedence.
ii. where there are such matters involving compulsory acquisition of land, there should be proper inter-agencies consultations including the affected public entity.

2.4 Inconsistency in Depreciation of Assets

19. The attention of the Committee was drawn to Section 7.3.4 of the approved Hospital Finance Manual which prescribes that the Straight- line Method of depreciation shall be applied in charging depreciation for the Hospital's property, plant and equipment. However, the assets in the year under review were depreciated using the Reducing Balance Method as reflected in the assets movement schedule in note 28 to the financial statements and significant Accounting Policy No 4(c). In addition, although computers and related devices should, as prescribed in the policy, have been depreciated within three years at the rate of 33.33% using Straight –line Method of depreciation, a reducing balance rate of 30% was applied instead. No explanation has been provided to the Auditor for these anomalies.

20. In view of the inconsistent asset depreciation policies, the carrying value of the properties, plant and equipment balance totaling Kshs.12, 364,842,000 as at June 30, 2019 may not be fairly stated.

Management Response

21. The management informed the committee that, the re-computation of the depreciation amount was carried out using straight line method as stipulated in the finance manual and passed the necessary adjustments in the books of account in the FY 2019/2020.

22. Further, the Committee was informed that with the concurrence of the Auditor General, the financial statements for the FY 2018/2019 were restated. The notes to the Financial Statements were adduced to verify the reinstatement.

23. Subsequently, the Hospital confirmed that since then, it has been using the straight-line method of depreciation as per the approved Hospital Finance Manual.

Committee Observations

i) The hospital erred in applying the reducing balance rate of 30% instead of the prescribed Straight- line Method of depreciation which misrepresented the carrying value of computers and related accessories. This is an indication of incompetence of the accounting function in the Hospital and deviation from the accounting policies reflected in the notes to the financial statements and also contrary to the form prescribed in templates prescribed by the International Accounting Standards Board.

ii) The Internal Audit Function of the Hospital ought to have identified the anomaly and instituted corrective measures. This points to a weak internal audit function.

iii) The fact that, the financial statements for the FY2018/2019 were restated through re-computation of the depreciation of the Computers and related accessories to correct the anomaly with the concurrence of Auditor General could not be substantiated since it is the responsibility of the audited entity to prepare accurate financial statements that present a true and fair view.

Committee recommendations

i) The Committee reprimands the then Accounting officer and the then officers in the accounting and internal audit departments involved in preparation and review of financial statements for failing to adhere to the requirements of International Public Sector Accounting Standards as prescribed in the PFM Act, Cap 412A.

3.0 Unconfirmed National Hospital Insurance Fund Receivables Balance

24. The Committee heard that, that as previously reported, the medical services receivables balance totaling Kshs.8, 663,813,000 as at 30th June, 2019, as disclosed in Note 25 to the financial statements included Kshs.903, 098,855 due from the National Hospital Insurance Fund (NHIF). However, the financial statements of the NHIF for the year ended 30th June, 2019 reflected debts owed to the Hospital totaling Kshs, 149,533,123 resulting to a variance of Kshs. 753,565,732 between data held by the two entities. No explanation has been provided by the Management for failure to reconcile the data.

25. In view of the discrepancy, the accuracy of the medical services receivables balance totaling Kshs 8,663,813,000 as at 30 June, 2019 could not be confirmed.

Management Response

26. The KNH management informed the Committee that it carries out regular reconciliation with NHIF and discrepancies found are resolved on time. A reconciliation joint report between the KNH and NHIF team for the period ending June 2019 was attached in their written submissions.

Committee Observations

i) There was a delay in the reconciliation of the inter-entity records and reports thus resulting in reporting inconsistent and misleading balances in the financial statements of the two institutions.
ii) There existed a huge variance in the financial statements of the KNH and NHIF on receivable balances. This had the effect of inflating the receivables (current assets) of the KNH and understating the payables (current liabilities) of NHIF thus misrepresenting the fact.

Committee recommendations

Within three months upon the adoption of this report, the Accounting Officer of KNH to initiate the debtor records reconciliation process for the two institutions (KNH and NHIF-transitioning to SHA), and report to the National Assembly and to the Auditor-General for verification and reporting in the subsequent audit cycle.

4.0 Unanalyzed Impairment Allowance

27. The Committee heard that as similarly reported in the previous years, the receivables from exchange transactions balance totaling Kshs. 2,039,875,000 reflected in the statement of financial position as at 30th June, 2019 was derived from the gross balance of Kshs. 9,030,003,000 less impairment allowances totaling Kshs. 6,990,128,000, as indicated in Note 25 to the financial statements. The impairment allowance includes long outstanding debts totaling Kshs, 6,531,163,000 whose recoverability is doubtful, and an un-analyzed provision amounting to Kshs 1,248,877,758.

28. In view of these issues, the accuracy and validity of the receivables from exchange transactions balance totaling Kshs 2,039,875,000 reflected in the statement of financial position as at 30 June, 2019 could not be confirmed.

Management response

29. The provision for bad and doubtful debts that was made relates to receivables assessed to be impaired in line with the requirements of International Public Sector Accounting Standards (IPSAS) and the Hospital's Finance and Procedures Manual.
30. The listing for provision for bad and doubtful debts that was made in the year 2018/2019 and subsequent years was provided to the auditors and the issue satisfactorily cleared.

Committee Observations

The Committee observed that a similar issue was discussed in the 24th PIC report where the committee observed that the matter arose due to KNH's management failure to provide a schedule of beneficiaries to the auditors. However, the recoverability of the impaired receivables is doubtful noting the circumstances under which it arose and lack of collateral. This could be manipulated with the view to defraud the Hospital.

Committee recommendations

Within three months upon adoption of this report, the Accounting Officer- KNH, Board of Directors- KNH and Principal Secretary State Department Medical Services should come up with

an approved policy detailing the mechanisms under which credit services will be rendered to needy cases.

OTHER MATTERS

1.0 Budgetary Performance

31. The Committee heard that during the year under review, the Hospital's actual receipts amounted to Kshs.13, 575,990,000 against budgeted receipts of Kshs. 14,289,468,000 resulting in a revenue shortfall of Kshs.713, 478,000. Further, actual expenditure for the year amounted to Kshs.13, 214,939,000 against budgeted expenditure of Kshs.13, 577,799,000 resulting in an overall under –expenditure of Kshs.362, 861,000. Consequently, the Committee was informed that the Hospital may not have achieved some of the service delivery and development objectives for the year under review.

Management response

32. The management informed the committee that it realized 90% of the planned budget in revenue generation for the under review. This was due to the effective implementation of the balance scorecard performance management measure that involved cascading of the overall revenue targets to the heads of divisions, departments and units. The Hospital gave its Commitment that going forward, it has targeted to achieve 100% as per the Board performance contract.

33. As a remedial action, the hospital demonstrated that it is in the process of automating budget-making and monitoring. Management has enhanced monitoring of the budget performance by heads of departments/units on a quarterly basis by including the targets in their performance contracts, enhanced training of hospital budgeting committees and monthly review of budget performance by the Hospital Budget Implementation Committee.

Committee observations

i) The under absorption of Kshs.362, 861,000 and the under-funding of Kshs.713, 478,000 may have affected the planned activities and might have impacted negatively on the service delivery to the public.

ii) The Hospital relied on unrealistic projections of revenue and expenditure leading to underperformance of the budget.

Committee Recommendation

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

2.0 Declining Financial Performance

34. The Committee heard that, during the year under review, the Hospital reported an income deficit of Kshs.435,969,000(2017/2018-deficit Kshs.1,091,284,000) resulting in increase in the accumulated deficit form Kshs. 3,276,527,000 as at 30 June, 2018 to Kshs. 3,712,496,000 as at 30 June, 2019.

35. The data confirms that the Hospital's performance is on a downward trend and if an effective strategy is not executed to reverse the situation, the Hospital may experience severe financial and operational difficulties in the near future.

Management response

36. The Management informed the Committee that deficit position reported in the FY 2018/19 was as a result of provision for bad and doubtful debts made for receivables relating to services rendered to indigent patients who are unable to settle medical bills upon discharge, NHIF Medical Service Contract Loss where the reimbursement rates for the free maternity services and the NHIF comprehensive care contract had been below the cost of service provision.

Committee Observations

The accumulated income deficit of the Hospital is widening and could impair the hospital's capacity to settle its obligations as and when they fall due resulting in unnecessary penalties, interest and legal costs. The downward trend in performance, if not addressed through an effective strategy, the Hospital may experience severe financial and operational difficulties in the near future.

Committee Recommendations

Within three months upon adoption of this report, the Accounting Officer- KNH, Board of Directors of KNH and the Principal Secretary State Department for Medical Services should come up with a mechanism for setting the reimbursement rates for free maternity services in the NHIF comprehensive care contract that covers the real costs incurred.

3.0 Unresolved Previous Years' Issues

37. The committee heard that, contrary to the reporting format prescribed by the Public Sector Accounting Standards Board, the financial statements did not include a report on the progress made in resolving issues reported in the audit reports for the previous year. Among these was the following matter discussed by the Public Investment Committee of the National Assembly.

Management response

38. The Management informed the Committee that the Hospital included the progress on follow-up of Auditor General's recommendations.

Committee Observations

The Committee observed that the Hospital failed to include a report on the progress made in resolving issues reported in the audit reports for the previous year. This was contrary to the reporting format prescribed by the Public Sector Accounting Standards Board and Section 81 (3) of the PFMA CAP 412 A.

Committee Recommendations

The Committee recommended that;

i. The Committee reprimands the then Accounting Officer for failure to comply with provisions of the Public Sector Accounting Standards Board and Section 81 (3) of the PFMA CAP 412A that provides that a public entity shall prepare financial statement in a

form that complies with the relevant accounting standards prescribed and published by the Accounting Standards Board from time to time.

ii. Within three months after adoption of this report, the National Treasury to institute a mechanism for reprimanding State Corporations that fail to include a report on the progress made in resolving issues reported in the audit reports for the previous year.

3.1 Unresolved Supply Contracts

39. The Committee heard that, the receivables from the exchange transaction balance totaling Kshs.2,039,875,000 reflected in the statement of financial position as at 30 June, 2019 included prepayments totaling Kshs.311,702,000 out of which Kshs.31,734,000 relates to supply contracts awarded to three firms at Kshs.15,793,000, Kshs.2,213,000 and Kshs.13,728,000. It was brought to the attention of the Committee that as reported in the previous year, the first prepayment was disputed whereas the second one was under investigation. The third one was for a micro-filming project at the Hospital which, however, had not been completed as at 30 June, 2019.

40. The Public Investments Committee upon discussing the matters, recommended that the three companies be investigated and prosecuted if found culpable and the Chief Executive Officer of the Hospital then be held accountable and surcharged for the loss.

41. It was pointed out that in the absence of any disclosure on tangible action on the recommendation, the irregular and ineffective use of the public funds totaling Kshs. 31,734,000 remains unresolved.

Management response

42. The Management stated that as a State Corporation, the Hospital is subject to the State Corporations Act and the regulations made thereunder. It is the Inspector- General State Corporations who has the statutory mandate to review any claim submitted, in order to determine the adequacy and reliability of the evidence submitted in support of the surcharge. The Committed was informed that the management still awaits the outcome of the process.

43. Further, pursuant to the powers conferred on the Inspector General State Corporations by Section 19 of the State Corporations Act, Cap 446 of the Laws of Kenya, the Hospital has submitted the claim for surcharge of Dr. Onguti to the Inspectorate of State Corporations for direction and a letter to that effect was adduced to the Committee.

Committee Observations

The Public Investments Committee in their 24th report observed that the matters, have been pending since the 19th PIC report which was adopted in 2015 and the related recommendations have never been implemented.

Committee Recommendations

i) Within three months upon the adoption of this report, the Inspector-General (State Corporations) to initiate and fast-track the process of surcharging Dr.Meshack Onguti for the loss of Ksh.31,733,576 plus the accrued interest at the CBK rates applicable in accordance with the State Corporations Act, Cap 446.
ii) Within three months upon the adoption of this report, the EACC should fast track the investigations as recommended in the 19th and 24th PIC reports and submit the findings to the National Assembly.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN THE USE OF PUBLIC RESOURCES.

1.0 Persistent Losses on NHIF Medical Services Contract

44. The Committee heard that, the statement of financial performance reflected losses totaling Kshs. 337,262,000 made on medical services contracts out of which a sum of Kshs 169,141,000 related to loss from a contract with the National Hospital Insurance Fund (NHIF). The loss was net of rebate received from the NHIF and the Hospital's total surcharge on treatment services provided to NHIF members. Available records indicated that the Hospital entered into a two –year renewable medical service contract with the NHIF that ran from 1st August, 2008 to 31 July, 2010. The contract was renewed on the same terms with effect from 1 August, 2010.

45. Further, the records indicated that Management had in 2013 and 2014 highlighted losses incurred from the contract and eventually sought to discontinue it though notices sent to the NHIF and the Ministry of Health in April 2014. In response, the NHIF explained its inability to increase the rebate payable to the Hospital. The Ministry of Health in May, 2014 instructed the Hospital to continue offering the services on the same terms.

46. Although a renegotiated contract signed in March, 2019 had enhanced the number of claimable services and had a positive effect on the Hospital's revenue from the contract, the loss totaling Kshs 169,141,000 recorded in the year under review is still significant. Consequently, the Hospital may not reverse the losses unless the inefficiencies, if any, embedded in the contract and the process applied in executing it, are not eliminated.

Management response

47. The management informed the Committee that, the current contract (2022-2024) which commenced operations on July 2022 provides for continuous engagement between the lives of the contract by both parties. The hospital Management has been monitoring the losses and areas of improvement within the contract with a view of engaging NHIF on any clause in the contract that is unfavorable to the hospital.

48. The Management reported that the making of the current contract resulted in improvement of several reimbursement packages in the categories of medical services as:

i. Outpatient services: reimbursement is on fee for service on managed schemes.
ii. Surgical services: More procedures were introduced up to 645 and majority of procedures reimbursement package was improved.
iii. Intensive care services: The cover is not comprehensive and the hospital was allowed to co-charge the difference between the bill and the daily rebate.
iv. Oncology services: Complex chemotherapy cover was improved from four cycles to six cycles at a rate of Kshs 100,000.
v. Radiology Services: additional services were introduced which includes Bone scans, Radio Nucleoid scans, Echocardiogram, E.E.G, fluoroscopy etc.
vi. Renal Services: fixing of A/V fistulas was introduced as surgical benefit package.

vii. Dental services: Outpatient services were introduced for managed schemes based on preauthorization.

49. The Management provided a summarized sample of the improved surgical packages in the current contract as indicated in the table:

Procedures	**Old Rate Kshs.**	**New Rate Kshs.**	**Change Kshs.**
Aortic Valve Replacement (Open Heart Surgery)	350,000	450,000	100,000
Congenital Heart Defects (Closed Heart Surgery) PDA	120,000	370,000	250,000
Total Oesophagectomy	400,000	450,000	50,000
Peg Tube and Insertion	40,000	80,000	40,000
Creation of AV Fistula Graft	30,000	150,000	120,000
Adenoidectomy	40,000	64,500	24,500
Adenotonsillectomy (Ts&As) - Child	45,000	69,500	24,500
Excision Of PAROTIDS Gland (Total Parotidectomy)	80,000	150,000	70,000
Laryngectomy (Partial)	150,000	180,000	30,000
Tracheal Reconstruction	200,000	320,000	120,000
Anterior Cervical Fusion - AO Plating	150,000	400,000	250,000
Cranioplasty	130,000	200,000	70,000

Procedures	Old Rate Kshs.	New Rate Kshs.	Change Kshs.
BurrHole(S)For Brain Abscess	130,000	240,000	110,000
Craniotomy For Brain Tumor	210,000	450,000	240,000
Craniotomy For Intracerebral Hematoma	100,000	300,000	200,000
Excision Of Intracranial Nerve Lesion	200,000	250,000	50,000
Laparotomy: Metroplasty / Uteroplasty	50,000	120,000	70,000
Neuro-embolization (IR)	NIL	350,000	350,000
Flush Aortogram/Renal Artery/Hepatic (with embolization material and micro catheter	NIL	220,000	220,000
Embolization/Carotid/Renal/Hepatic (no micro catheter)	NIL	250,000	250,000
Biliary stenting	NIL	100,000	100,000

50. Furthermore, the hospital reported that it has been monitoring the areas which may require midterm review and has already engaged the fund on services such as oxygenator machine which the fund is now extending approval on case by case, Oxygen package per day for critical care units and other specialties which have been identified.

51. Based on the above improved rates, the hospital expressed its optimism that the new contract will reduce the losses in the future.

Committee Observations

(i) improved surgical packages have since been instituted with higher rates as a way of addressing the persistent losses on NHIF Medical Services Contract.

(ii) The persistent losses were occasioned by poor contract management on the part of the Hospital as the terms of the contract could have stipulated avenues for renegotiations.

Committee Recommendations

The Committee recommended that;

ii) Within three months upon adoption of this report, the Accounting Officer KNH should submit a comprehensive report on NHIF Medical Services Contract performance in respect of the new contract (2022-2024) and a trend analysis of the performance before and during the implementation of the new contract to the National Assembly.

iii) The committee cites the management of the Hospital for the poor contract management.

2.0 Long Outstanding Debt

2.1 Entity Debts and Return to Drawer Cheques

52. The Committee heard that, included in the receivables from exchange transactions balance totaling Kshs 2,039,875,000 as at 30th June, 2019 were NHIF rebates (Kshs. 71,410,322) Ministry of Health disaster debts (Kshs. 95,658,100) and return to drawer (RD) Cheques (Kshs 3,286,110). The three balances had been outstanding for more than two years but no explanation had been provided by Management for the failure to recover them.

Management response

53. The Committee was informed that NHIF outstanding balance amounting to Kshs 71,410,322 out of the Kshs 71, 410, 322 long outstanding claims owed by the Fund as at 30th June 2019, the hospital adduced evidence of how its efforts on following -up have yielded recovery of debts of Kshs 39,896,910.

54. The management emphasized that it is continuously following up on payment of the outstanding claims as well as engaging the NHIF to improve on settlement of the claims within the credit period as per existing contract.

55. On the Ministry of Health Disasters Debt of Kshs. 95,658,100, the Management reported that debt this relates to hospital bills for victims of disasters that have occurred across the country in diverse dates from 1998 to 2019 and who were treated in the hospital. Upon discharge, the patients were released without paying medical bills incurred based on the Government's directive that the Hospital will be reimbursed. The hospital has been making follow-ups with the parent ministry for settlement, but these bills have not been settled to date. The Hospital Management stated that it shall initiate the process of write off.

56. The Committee was informed that the Return to drawer (RD) cheques –KSHS. 3,286,110 this relates to personal cheques that were received in the year 2004 and prior years for patients' medical bills. These cheques were drawn by well-wishers who were helping patients to meet their medical bills obligations but were unfortunately dishonored upon presentation to the bank. Efforts to have the drawers replace the cheques were not fruitful.

57. Currently, it was reported that the hospital no longer accepts personal cheques as a mode of payment to avoid recurrence of the same. The long outstanding debts whose recoverability is doubtful have been properly provided for in the financial statements as impaired in line with International Public Sector Accounting Standards (IPSAS).

Committee Observations

i. The Hospital had long outstanding debts made up of NHIF rebates Kshs. 71,410,322, Ministry of Health disaster debts Kshs. 95,658,100 and return to drawer (RD) Cheques Kshs 3,286,110 which had been outstanding for more than two years. Although the management had indicated that they have made efforts to recover the debts, the return to drawer (RD) Cheques Kshs 3,286,110 is a pointer to weak cash management and controls systems.

ii. The management indicated that it shall initiate the process of write off. Owing to the fact that a huge balance of the long outstanding debts relates to MDAs; NHIF rebates Kshs. 71,410,322 Ministry of Health disaster debts Kshs. 95,658,100 this will encourage the culture for other institutions to over burden KNH budget.

iii. The management of the Hospital did not justify the need for the write off, in line with the provisions of Regulation 157 (1)(a) PFM (National Government) Regulations 2015 which provides that an Accounting Officer may only write off losses if all reasonable steps have been taken to recover the debts and the loss is irrecoverable.

Committee Recommendations

i) Within three months of adoption of this report, the Accounting Officer should provide a comprehensive report on the reasonable steps that have been taken to recover the debts and the losses before initiating the write off process on account of being irrecoverable.
ii) Within three months of adoption of this report, the Accounting Officer should provide a comprehensive report on how the Hospital has mapped out the cash management with a robust system to strengthen controls against patients and other forms of receipts suffering from the vice of return to drawer (RD) Cheques.

2.2 Debt owed by Patients

58. The Committee heard that receivables from exchange transaction balance totaling Kshs 2,039,875,000 included Kshs. 748,581,556 identified as 'debts owed by absconded patients. There was no indication of the strategy adopted by Management to recover these debts.

Management response

59. The Management informed the Committee that the debt relates to patients who absconded from hospital before paying bills or entering into a formal credit arrangement. Efforts have been made to follow up the debts through demand letters and short messages (SMS) using last known addresses for the patients. However, recovery of these debts has not been fruitful. A provision has been made in the financial statements for the year ended June 30, 2020 for the absconded patients' debts in line with the requirements of IPSAS.

60. The management reported that it has instituted various measures to curb abscondment which include:

i) Installation of CCTV system in the main corridors and wards to monitor patient movement.
ii) Additional security personnel have been contracted by the Hospital and stationed to cover all patients' wards.

iii) Tracking of repeat patients with previous outstanding bills where they are required to pay obligations before provision of services except for emergencies as determined by the clinicians.

iv) Escort of patients seeking services outside the wards.

v) Enhanced data collection by Health Information Officers for tracing in case of abscondment.

vi) A revised KNH Credit Policy and Procedure Manual is in place that has streamlined identification and assessment of indigent cases early enough thus shortening stay after clinical discharge that has discouraged abscondment.

Committee Observations

The Committee observed that;

i) The Management has instituted several measures in place aimed at preventing the occurrences of patients absconding. However, abscondment points to weak Hospital control systems that may lead to severe lapses.

ii) The effectiveness of the instituted measures relies on the integrity and professionalism of the staff of the hospital since there is a high likelihood of collusion in successful abscondment incidents.

Committee Recommendations

i) Within three months upon adoption of this report, the Accounting Officer KNH should submit to the National Assembly and the Auditor-General a comprehensive report and a trend analysis on how the measures instituted to curb abscondment have reduced the loss arising from patient abscondment.

ii) The committee cites the management of the Hospital for the poor control systems.

2.3 Rental Debts Owed by Ministry Staff

61. The Committee heard that the Records on houses let out to staff reflected rental receivables totaling Kshs. 28,300,000 as at 30 June, 2020. The balance included rent arrears totaling to Kshs 2,998,806 due from the Ministry of Health employees for more than one year. The

Debts ought to have been deducted from their salaries by the Ministry and remitted to the Hospital. In addition, included balance were arrears totaling Kshs. 991,000 owed by five officers who vacated their rented houses while indebted.

62. No adequate reasons were provided by Management to the Auditor for the failure to collect the various debts whose non-recovery may result in loss of income to the Hospital.

Management response

63. The Management reported that the Ministry of Health staff house rent outstanding balance as at June 30, 2019, amounting to Kshs. 2,998,806 was fully settled on 8th July 2022 and copies of payment receipts were adduced to support the settlements.

Committees Observations

i) The Hospital operated under a lenient rent policy with weak tenancy agreements coupled with poor enforcement of the policy. This contributed to the accumulation of rent arrears.
ii) The claim by the Hospital that the full rent arrears have been settled was not substantiated since the supporting documents provided did not account for the entire rent arrears.

Committee Recommendations

i) Within three months upon adoption of this report, the Accounting Officer should provide the National Assembly, with a comprehensive report with evidence of rent recovery including amounts of Kshs. 991,000 owed by the five officers who vacated their rented houses while indebted.
ii) KNH management should institute a control mechanism that prevents tenants from vacating their rented houses while indebted.

3.0 Outstanding Imprests

64. The Committee heard that Imprests records indicated long standing temporary imprests and staff debtors totaling Kshs. 1,013,509 and Kshs. 1,056,529 respectively as at 30 June, 2020. No adequate reasons were provided to the Auditor for the failure to recover balances. In the

circumstances, Management of the Hospital is in breach of the law and recoverability of the balances is doubtful.

Management response

65. The Management submitted that the long outstanding imprest is owed by former Hospital employees who left service due to death; dismissal; retirement or resignation before fully accounting for imprest issued to them in the course of their duty.

66. The Committee was informed that out of the Kshs, 1,013,509 the hospital had recovered Kshs.144,625 as a result and still follow up to recover from officers who had moved to other organizations. The follow-up to recover outstanding imprest for those officers who died, were dismissed or retired has not borne fruit as there are no benefits due to them that are held by the hospital. It was reported that a provision for bad and doubtful debts was made in the financial statements for the year ended June 30, 2019 for the long outstanding imprest in line with the requirements of IPSAS. The Hospital's Management indicated that it will initiate the process of write off for the imprests that cannot be recovered.

67. Besides, the Committee was informed that Staff debtors amounting to Kshs.1, 056,529 relates to patients' bills guaranteed by staff at the time the patient is discharged from the hospital. The long outstanding staff debts have not been recovered for staff that subsequently left KNH service. Follow-up to recover the outstanding staff debt has not borne fruit as there are no benefits due to them that are held by the hospital and hence recoverability of the debts is doubtful. A provision has been made in the financial statements for the long outstanding staff debts in line with the requirements of IPSAS.

Committee Observations

i) The hospital failed to enforce the provision of the PFM (National Government) Regulations, 2015 Regulation 93(5) that prescribes that imprest surrender be made within 7 days. Pursuant to Regulation 93(7), the Accounting Officer who failed to recover the imprest committed an offence.

ii) Some former staff members of the Hospital moved to other organizations without settling the debts they owed the hospital. This indicates that the clearance procedures for those exiting are so lenient that debts owed are not deducted from terminal dues causing losses to the hospital.

iii) There is no admissible evidence that imprests of Kshs 1,013,509 had been recovered in line with Regulation 93(6) of PFM (National Government) Regulations, 2015.

Committee Recommendation

Within three months upon adoption of this report, the Accounting Officer to provide evidence of the alleged recovery of imprest Kshs 1,013,509 in accordance with Regulation 93(6) of PFM (National Government) Regulations, 2015. The evidence of recovery should be submitted to the National Assembly and the Auditor General for verification and reporting in the subsequent audit cycle.

4.0 Outstanding Trade and Other Payables

68. The Committee heard that the outstanding trade and other payables from exchange transactions totaling Kshs. 2,272,976,000 as at 30 June, 2019 included long outstanding balances totaling Kshs. 91,753,342. No adequate explanation was provided for the failure to pay the outstanding bills that may attract interests and penalties if they are not settled without further delay.

Management response

69. The Management in its submission stated that the long outstanding supplier invoices are those that are not fully supported to facilitate settlement. This could result from missing delivery notes, incomplete deliveries, awaiting credit notes and over invoiced amounts. The Management reported that the pending amount has since been settled.

Committee Observations

The Committee observed that;

i) The reported causes of the delays in payments including missing delivery notes, incomplete deliveries, awaiting credit notes and over invoiced amounts are issues that ought to have been conclusively resolved when the payable were first recognized in the books of KNH. The hospital therefore was slow in addressing the issues and the payables might have a risen out of dubious procurement processes.

ii) The claim that the outstanding trade and other payables have since been settled and the appended schedule as proof of settlement is inadmissible, since some of the payment therein relates to periods before the financial year under review.

Committee recommendations

Within three months upon the adoption of this report, the Accounting Officer should submit to the National Assembly and to the Auditor-General for audit verification and reporting in the subsequent audit cycle, the evidence of settlement of the amount of Kshs. 91,753,342 and the related documents that created the obligation.

5.0 Long Outstanding Deficit in Defined Benefits Pension Scheme

70. The Committee heard that the Hospital's defined benefits pension scheme indicated that the actuarial valuation for the Scheme as at 30 June, 2019, reflected benefit liabilities totaling Kshs. 11,284,264,000 as disclosed in Note 34 to the financial statements. The assets of the Scheme totaled Kshs. 7,346,292,000 resulting to a deficit of Kshs. 3,937,972,000 payable by the Hospital as the Scheme's sponsor. The Hospital had regularly requested the National Treasury to fund the deficit through the exchequer and, in this regards, annual disbursements of Kshs. 100 Million were made to the Scheme from 2015/2016 to 2018/2019.

71. The Committee was informed that at Kshs. 100 million per annum, the deficit will be offset after 39 years by which time most of the Schemes' beneficiaries will have retired. There was no indication that Management had proposed a viable plan that can resolve the matter sooner.

Management response

72. The hospital's management reported that it has been disbursing to the Defined Benefit Scheme the allocated Kshs 100 million from FY 2015/16 to FY 2020/21 towards reduction of the deficit. The hospital through the Ministry of Health, has been lobbying for a higher allocation to help in reducing the deficit. A copy of the request for additions funding was adduced.

73. As a result of persistent push for additional funding, for FY 2022/23 the hospital was allocated Kshs. 300M towards the deficit and an excerpt of a budget book adduced for confirmation. The Hospital Management expressed its expectations that the amount will be sustained at Kshs. 300M moving forward.

Committee Observations

The Committee observed that;

i) The deficit in defined benefits pension scheme of Kshs. 3,937,972,000 payable by the Hospital as the Scheme's sponsor is operationally unsustainable and requires financing interventions. However, the rate at which the exchequer injected (Kshs.100 M) is unsustainable and the scheme may not be in a position to finance its pension obligations as and when they arise. This implies that the pensioners benefits will not be adequately and timely financed by the scheme.
ii) The Hospital might have not considered the sustainability of defined benefits pension scheme before instituting it by conducting a proper financial forecasting or the scheme contributions were being mismanaged.
iii) The sustainability of the Scheme largely relies on additional funding from the exchequer, which is not guaranteed.

Committee Recommendation

Within six months upon the adoption of this report, the Auditor General should carry out a Forensic audit of the scheme to establish any financial leakages and submit a report to the National Assembly.

6.0 Unutilized Leave

74. The committee heard that Section 6.3.3 of the KNH Human Resource Policies and Procedures Manual entitles all employees, irrespective of cadre, to annual leave of thirty (30) working days. Further Section 6.3.5 provides that deferment of annual leave from one year to another is not permitted except under exceptional circumstances approved by Chief Executive Officer. Contrary to these requirements, records examined indicated that four (4) staff had negative leave days and sixty-three (63) others had accumulated between 30 and 156 leave days. There was no evidence that the exceptions were granted by the Chief Executive Officer. Management was therefore in breach of its human resource policies and procedures.

Management response

75. The Committee was informed that the Hospital has endeavoured to implement leave management as stipulated in the Human Resource Policies and Procedures Manual. In particular, the following actions have been taken to ensure compliance: HODs/HOUs have been reminded to ensure the leave rota is adhered to by all the staff in their departments/Units. This is to ensure that staff proceed on leave as scheduled to address the challenge of many leave days being carried forward Ref: KNH/HR//82/66 dated 5th December 2019.It was reported that as at June 2020, none of the staff in KNH had any deferred leave days.

76. Besides, the Management indicated that the officers who had over utilized their leave days leading to negative balances were issued with warning letters to desist from proceeding on leave before the same was approved. The over utilized leave days were recovered from the officers' subsequent year leave entitlement.

Committee Observations

The Committee observed that;

i) The Management of the hospital failed to enforce the applicable Human Resource procedures, policies and manuals which led to deferment of leave days without permission being granted by the CEO and also occasioned incidences of over utilized leave days.
ii) The Hospital then implausibly considered some technical officers as indispensable hence could not go on leave on account of the nature of their work.
iii) Deferment of leave days can lead to burn-out at work which impairs productivity. The hospital was subjected to the risk of poor work performance.

Committee Recommendations

i) The Management of the hospital must at all times ensure that the existing Human Resource policies, procedures and manuals are strictly adhered to. Any officer who contravenes the applicable leave policy to be reprimanded by the hospital management.
ii) Within three months upon adoption of this report, the accounting officer KNH should submit to the National Assembly, the leave rota for the sixty three (63) officers who had accumulated between 30 and 156 leave days as reported in the audit report.

FINANCIAL YEAR 2019/2020

1.0 Unconfirmed Borrowings Balance

77. The Committee heard that, as disclosed in Note 37 to the financial statements and as previously reported, the statement of financial position reflects borrowings balance of Kshs.1,199,863,000. The borrowing related to a loan received in 2007/2008 from the Kingdom of Spain in the form of medical equipment. Review of records indicated that the loan was repayable by the Hospital at an interest rate of 3% per annum on a reducing balance for the first six (6) years and thereafter the interest plus principal for the next nine (9) years with effect from 1 July, 2008. However, interest has not been paid or accrued in the twelve (12) financial years between 2007/2008 and 2019/2020. Further, the accrued interest, loan repayment and loan balance confirmation certificate as at 30 June 2020 were not provided.

78. The management has indicated that it is following up the matter with The National Treasury with a view to converting the borrowing into a grant. Under the circumstances, the validity, accuracy and completeness of the borrowings balance amounting to Kshs.1,

199,863,000 reflected in the statement of financial position as at 30 June, 2020 could not be confirmed by the Auditor.

Management response

79. The management informed the Committee that, in compliance with Public Investment Committee recommendations, The National Treasury and Planning, Ministry of Health and Kenyatta National Hospital jointly commenced the process of resolving the matter. Consequently, the subsidiary grant agreement, converting the Euro 14 million Loan from an on-Lend loan to an on-Grant to the Hospital was fully signed on 4th August 2022 and a copy of a duly signed agreement was adduced.
80. It was also pointed out that KNH Board approved the passing of necessary book entries that extinguished the long-term borrowing in the Hospital books of account and recognized the Euro 14 Million as a capital grant from the Government in the FY2021/22 and the supporting documentary evidence of Board approvals and book entries in the financial statements were submitted.

Committee observations

i. The Issue was addressed in the previous Public Investment Committee of the National Assembly as contained in the 24th PIC's report. In the report, it was recommended that the National Treasury and the KNH should share information on the loan repayments to ensure that that the KNH reflects accurate status of the loan.
ii. It has taken long (Since 2006) to have the Subsidiary Grant Agreement to be converted from an on-Lend Loan to an On Grant Loan as fully signed on 4th August 2022.However, the Board's approval for passing of the necessary book entries to correct the anomaly in the Financial Statements was granted much later on 06/09/2022.
iii. KNH was neither consulted nor involved in signing of the Loan Agreement. The National Treasury unilaterally initiated and conclusively processed the Loan. Further, the establishment of the KNH under a Legal Notice impairs its independence for enhanced service delivery. the hospital needs to be established under an Act of Parliament.

Committee Recommendations

i. Within three months upon adoption of this report, the Accounting Officer, KNH and the other affected Officers should implement the recommendations in the 24th PIC's report to ensure that at any time there is no information asymmetry between the Hospital and the National Treasury on Loans.

ii. Within three months upon adoption of this report, the Ministry of Health in collaboration with the Office of Attorney General to initiate the drafting of a legislative proposal establishing the KNH under an Act of Parliament.

2.0 Inaccuracies in Cash and Cash Equivalents

81. The Committee heard that, as disclosed in Note 25 to the financial statements, the statement of financial position reflects cash and cash equivalents balance totaling Kshs.1, 937,317,000. Review of the bank reconciliation statements by the Auditor reflected that receipts in the bank that were not recorded in the cash book totaling to Kshs.5,247,360 and receipts in the cash book not recorded in the bank statement totaling to Kshs.2,745,590 that were still outstanding as at 30 June, 2020.

82. Further, the Committee heard that the payroll and administration cashbook include a cheque amounting to Kshs.139, 090,912. However, a review of the bank statement reflected an amount of Kshs.156, 583,664 for the cheques which was debited in the bank account resulting to an unexplained variance amounting to Kshs.17, 492,752.

83. Consequently, the accuracy, completeness and validity of cash and cash equivalents balance of Kshs.1,937,317,000 reflected in the statement of financial position as at 30 June, 2020 could not be confirmed.

Management Response

84. The Management informed the Committee that the Receipt in the Bank not Recorded in Cash Book amounting to Ksh. 5,247,360 related to monies directly deposited by hospital clients into the Hospital bank accounts in the month of June 2020 but at the closure of the financial year, the Hospital had not gotten the payers details to enable receipting and recording in the cashbook as at the time of the Audit. The Hospital sought assistance from the bank to get details of the payers however, this took a little longer than expected. The details were later on provided, the deposits receipted, and cash books updated in the first quarter of FY 2020/22.
85. On the Receipts in Cashbook not in Bank Statement totaling to Kshs. 2,745,590, the management stated that it related to various direct bank deposits that were erroneously receipted twice. It was reported that appropriate adjustment was made to correct the error in FY 2021/22 and presented to the auditor for verification and the issues were resolved.
86. In regards to the unexplained variance of Kshs.17,492.752, the Committee was informed that for the month of June 2020, the total PAYE due from the Hospital was Kshs. 156,583,664 made up of Kshs. 139,090,912.05 from KNH permanent staff payroll and Kshs. 17,492,751.95 for short-term employees. It was explained that all payments for PAYE to KRA are to be through a single PRN, which is generated through i-Tax system per month hence the need to consolidate all PAYE deductions and pay as a single payment. Therefore, the Management expounded that a single PAYE payment of Kshs. 156,583,664 for June 2020 was made to KRA composed of the following;

No.	Cashbook	Kshs.	KShs.
1	Payroll Cashbook		139,090.912.05
2	Heart Fund	2,932,825.05	
3	PACT-COE	599,150.70	
4	Recurrent General	5,941,942.77	

5	Private Wing	8,018,833.43	
Sub – Total		**17,492,751.95**	**17,492,751.95**
Total			156,583,664.00

Committee Observations

The Committee observed that;

i) The hospital contravened the provisions of PFM (National Government) Regulations 90 (3) which requires that a monthly bank reconciliation to be undertaken and any discrepancies noted should be investigated promptly and appropriate action taken including updating relevant cash books.

ii) Since it took the error of duplication in receipting of KSh 2,745,590 to be identified by the external auditor, the Internal Audit function of the hospital was ineffective.

iii) The error of double receipting has since been corrected, appropriate book readjustments made and verified by the Auditor General.

iv) The explanation provided to the Committee on what occasioned the unexplained variance of Ksh 17,497,752 is simplistic and direct. The same seemed not to have been given to the Auditor General before the audit process was concluded.

Committee Recommendations

The Accounting Officer should at all times ensure that the provisions of Regulation 90 of the PFM (National Government) Regulations are strictly adhered to in order to curb any incidence of unexplained bank reconciliation variances. Any staff of the hospital who facilitates contravention of the provisions to be duly reprimanded by the hospital's management.

3.0 Property Plant and Equipment

87. The Committee heard that, as disclosed in Note 25 to the financial statements and as previously reported, the statement of financial position reflects property, plant and equipment balance of

Kshs.13,029,937,000. The balance includes three (3) parcels of land with a total of 0.763 hectares in Nairobi valued at Kshs.49, 000,000 which were excised and allocated to third parties. It was brought to the attention of the Committee that the issue was discussed by the Parliamentary Public Investment Committee (PIC), with recommendations that the National Land commission revoke title deeds irregularly issued to private entities, Ethics Anti-Corruption Commission investigate how the Hospital land was allocated to individuals and that the then Chief Executive Officer be surcharged for any loss that may have been incurred. However, no progress has been made.

88. Further, as previously reported, the balance includes seven (7) acres of land totaling to Kshs.13,029,937,000 acquired by the Kenya Urban Roads Authority (KURA) in 18 December, 2015 and August 2016 for construction of Hospital Road and Mbagathi Way Link Road. The Hospital's internal valuation amounted to Kshs.4, 219,257,210 and the Authority was to pay compensation of Kshs.1, 859,297,000 to the Hospital. However, no compensation had been made as at the time of audit in April, 2021 despite commencement of the road construction.

89. Consequently, the auditor could not confirm the validity, accuracy, completeness and ownership of the property, plant and equipment balance totaling Kshs.13, 029,937,000 reflected in the statement of financial position as at 30 June, 2020.

Management Response

90. The management informed the Committee that, on the Excised Parcels of Land, there has been no loss incurred in respect to the three (3) parcels of land irregularly allocated- LR.No.209/12822; LR.No.209/12767; and LR.No.209/11460. The Hospital took upon itself since the matter came to its attention in the year 2005 to pursue the placement of caveats on the said parcels of land with the relevant authorities so as to have the titles revoked. This process commenced in 2006 and has been ongoing to date.

91. In February 2012, the Ministry of Lands confirmed that KNH had placed caveats on LR.No.209/12767 on 26th January 2007 and LR.No.209/12822 on 28th February 2000. The caveats are still in place to date. The Committee was informed on the civil suit No.599 of 2014 that was filed by Chai Developers Limited against NQCL seeking orders to withdraw the caveat placed on LR.No.209/12767. From the Court file, the Management established that the parties

had entered a consent order to withdraw the caveat. The Hospital requested NLC to place a caveat on LR.No.209/12767, revoke the title and investigate the authenticity of the said title. Further, vide the Management letter 24th September 2019, the Hospital requested the President's Delivery Unit to facilitate the NLC acting in concert with the Chief Lands Registrar to review with a view of revoking these titles which had been irregularly/illegally allocated. The Management reported that they are still awaiting the response on the revocation.

92. The Committee was informed that On June 4, 2020, EACC wrote to KNH to furnish them with all documents relating to the parcels of land and appoint a competent officer to record a statement. The documents were submitted and the statement was recorded on or about 30th June 2020. EACC has yet to inform the Hospital of the outcome of their investigation.

93. Further, the Committee heard that portions of parcels of land LRN-209/11460 and LRN-209/12822 were compulsorily acquired for the construction of Hospital Road- Mbagathi Way Link Road. The value of the parcels of land after excision is shown below:

No	LRN. No	Initial Land Area in KNH Books before excision Ha	Excised for Mbagathi Way Link Road (Ha)	Land Area in KNH Books after excision (Ha)	Current Land value in KNH Books after excision (Kshs)	Status in KNH Books
1	209/11460	0.316	0.2173	0.0987	7,183,861	0.2173 hectares were excised for construction of Hospital Road-Mbagathi Way Link

No	LRN. No	Initial Land Area in KNH Books before excision Ha	Excised for Mbagathi Way Link Road (Ha)	Land Area in KNH Books after excision (Ha)	Current Land value in KNH Books after excision (Kshs)	Status in KNH Books
						Road and adjusted in the books in FY 2018/19.
2	209/12767	0.226	0	0.226	17,000,000	Not excised
3	209/12822	0.1221	0.0308	0.0913	6,729,730	0.0308 hectares was excised for construction of Hospital Road-Mbagathi Way Link Road and adjusted in the books in FY 2018/19.
	Total	0.6641	0.1295	0.5346	30,913,591	

94. On the issue of Compulsory Acquired Land, the Committee was informed that NLC vide letter dated March 9, 2017 which was adduced stated that KNH was not entitled to compensation. The letter posits that compensation would have only followed if there were the demolition of structures and improvements of the specific corridor. The Hospital sought intervention from

the Office of the Head of Public Service and the Attorney General. In the interim vide letter dated December 18, 2018 presented to the Committee, the Hospital wrote to NLC requesting disbursement of the compensation sum owed to the Hospital. A report on the same was submitted to the National Department Committee on Health during their visit to the Hospital on March 20, 2019.

95. Vide letter dated May 14, 2019, the Management wrote to the Attorney General (AG) seeking intervention and possible guidance as to whether or not KNH was entitled to compensation and why NLC has sought compensation from KURA for the same. The AG responded vide letter dated July 23, 2019 and indicated that KURA received a request to deposit Kshs.1, 877,889.97 with NLC in respect of the KNH Land over the construction of Mbagathi Way Link Road; Upon receipt of the request, KURA approached NLC and was advised that the award was made in error or contrary to the law; KURA did not seek exchequer for the compensation from the National Treasury. However, NLC graciously advised KURA to consider on corporate social responsibility basis to oversee the rehabilitation of roads with the KNH complex and erecting a perimeter wall to help secure KNH property along the Mbagathi Way Link Road. KURA stated that the request was under consideration and could be implemented from savings realized upon the conclusion of the link road project.

Committee observations

96. The Committee observed that the plots were irregularly excised and allocated to third parties in previous years. The matter was discussed by the Public Investment Committee (PIC) of the National Assembly which, in its 19th Report, recommended that the National Land Commission (NLC) to revoke the title deeds irregularly issued to the private entities.
97. Further the report recommended that, the Ethics and Anti-Corruption Commission to investigate the irregular allocation of the land, and the Inspector General of State Corporations to surcharge the then Accounting Officer for any loss that may have been incurred. However, there was no indication of the results of the actions, if any, taken to comply with Parliament's recommendations. As a result, ownership and custody of the three parcels of land as at 30th June 2019 had not been confirmed.

Committee recommendations

Within three months upon adoption of this report, the Accounting officers for the National Land Commission, the Ethics and Anti-Corruption Commission, the Inspector General of State Corporations, the KNH and the Committee on Implementation should fast-track the process of implementing the Committee recommendations and report to the National Assembly on the status.

4.0 Receivable from Exchange Transactions

98. The Committee heard that, as disclosed in Note 26 to the financial statements, the statement of financial position reflects receivable from exchange transactions balance of Kshs.1, 477,994,000. However, the following unsatisfactory matter s were noted:

4.1 Receivables from National Hospital Insurance Fund (NHIF)

99. The Committee heard that, as previously reported, the medical services receivables balance of Kshs.8,921,102,000 included an amount of Kshs.903,098,855 due from NHIF while the NHIF financial statements as at 30 June, 2020 reflected a balance of Kshs.91,253,834 thus resulting to an un-reconciled variance totaling to Kshs.811,845,021.

Management Response

100. The management informed the Committee that, the hospital carries out regular reconciliation with NHIF and discrepancies found are resolved on time. A joint report between NHIF and KNH team on the reconciliation of hospital claims was adduced.

Committee Observations

i) There was delay in the reconciliation of the inter-entity records and reports thus resulting in reporting inconsistent and misleading balances in the financial statements of the two institutions.

ii) There existed a huge variance in the financial statements of the KNH and NHIF on receivable balances. This had the effect of inflating the receivables (current assets) of the

KNH and understating the payables (current liabilities) of NHIF thus misrepresenting the fact.

Committee recommendations

Within three months upon adoption of this report, the Accounting Officer of KNH to initiate debtor records reconciliation process for the two institutions (KNH and NHIF-transitioning to SHA), and report to the National Assembly and to the Auditor-General for verification and reporting in the subsequent audit cycle.

4.2 Prepayment – Supply Contracts

100. It was reported that the balance included prepayments totaling to Kshs.352,355,000 out of which an amount of Kshs.31,734,000 related to supply contracts awarded to three firms of Kshs.15,793,000, Kshs.2,213,000 and Kshs.13,728,000.

101. As reported in the previous year, the first prepayment is in dispute while the second one is under investigation. The third pre-payment related to micro filming project at the Hospital which had not been completed as at 30 June, 2020. It was pointed out that although the issue had been discussed by the Public Investment Committee, no action had been taken on the recommendations that the three companies be investigated, prosecuted and the then Chief Executive Officer be held accountable for the loss and be surcharged.

Management Response

102. The management informed the Committee that, as a State Corporation, the Hospital is subject to the State Corporations Act and the regulations made there under. It was pointed out that it is the Inspector- General (Corporations) who has the statutory mandate to review any claim submitted, in order to determine the adequacy and reliability of the evidence submitted in support of the surcharge. As at the time of submission, the Hospital was still awaiting the outcome of the process.

103. Further, the Committee was informed that Pursuant to the powers conferred on the Inspector General (Corporations) by Section 19 of the State Corporations Act, Cap 446 of the Laws of

Kenya, the Hospital had submitted the claim for surcharge of Dr. Onguti to the Inspectorate of State Corporations for direction and a letter to that effect was adduced.

Committee Observations

The Public Investments Committee in their 24th report observed that the matters, have been pending since the 19th PIC report which was adopted in 2015 and the related recommendations have never been implemented.

Committee Recommendations

i) Within three months upon adoption of this report, the Inspector-General (State Corporations) to initiate and fast track the process of surcharging Dr.Meshack Onguti for the loss of Ksh.31,733,576 plus the accrued interest at the CBK rates applicable in accordance with the State Corporations Act, Cap 446.
ii) Within three months upon adoption of this report, the EACC should fast track the investigations as recommended in the 19th and 24th PIC reports and submit the findings to the National Assembly.

4.3 Impairment Allowance

104. The Committee heard that, the reported balance was obtained from a gross balance of Kshs.9,340,844,000 less impairment allowance amounting to kshs.7,862,850,000 which included long outstanding debts totaling to Kshs.6,990,141,202 whose recoverability was doubtful.

Management Response

105. The management informed the Committee that, the provision for bad and doubtful debts that was made related to receivables assessed to be impaired in line with the requirements of International Public Sector Accounting Standards (IPSAS) and the hospital Finance and Procedures Manual.

Committee Observations

The Committee observed that;

i) The Committee observed that a similar issue was discussed in the 24th PIC report where the committee observed that the matter arose due to KNH's management failure to provide a schedule of beneficiaries to the auditors. However, the recoverability of the impaired receivables is doubtful noting the circumstances under which it arose and lack of collateral. This could be manipulated with the view to defraud the Hospital.
ii) The position of the impairment allowance was worsening as revealed by the reported balances of which long outstanding debts whose recoverability is doubtful increased by KSh 459 million from the previous financial year.
iii) The credit policy of the KNH seems to be weak in substance and enforcement hence the ineffectiveness in debt collections that results in long outstanding debts.

Committee recommendations

Within three months upon adoption of this report, the Accounting Officer- KNH, Board of Directors- KNH and Principal Secretary State Department Medical Services should come up with an approved policy detailing the mechanisms under which credit services will be rendered to needy cases.

4.4 Ministry of Health (MOH) Staff Long Outstanding Debts

106. The Committee heard that, as reported in the previous year, the balance included MOH staff rent totaling to Kshs.7, 477,924 that had been outstanding for more than one year, and which ought to have been deducted from the payroll through the check off system and forwarded to the Hospital.
107. Under the circumstances, the validity, accuracy, completeness and full recoverability of receivable from exchange transactions balance of Kshs.1, 477,994,000 reflected in the statement of financial position as at 30 June 2020 could not be determined.

Management Responses

108. The Committee was informed that Ministry of Health settled the long outstanding staff rent arrears on July 8, 2022 amounting to Kshs.7, 094,000 and documentary evidences to the same were adduced.

Committee Observations

The Committee observed that;

i) The rent arrears that had been outstanding for over one year was on an upward trend and increased by Ksh 4,479,118 from the previous financial year.
ii) The Hospital operated under a lenient rent policy with weak tenancy agreements coupled with poor enforcement of the policy. These contributed to the accumulation of rent arrears.
iii) Though the rent arrears have since been settled on 8th July 2022, the recovered amounts did not factor in the net present value for money on account of fluctuations in inflation rates. Consequently, the value of public money was eroded. Further, the claim by the Hospital that the full rent arrears have been settled was not substantiated since the supporting documents provided did not account for the entire rent arrears.
iv) KNH no longer hosts Ministry of Health staff, they directly engage clients.

Committee Recommendations

i) Within three months upon adoption of this report, the Accounting Officer, Kenyatta National Hospital should provide to the National Assembly, a comprehensive report with evidence of rent recovery amounting to Kshs.7, 094,000.
ii) Within three months upon adoption of this report, the Accounting Officer, Kenyatta National Hospital should ensure that the tenancy agreements must incorporate a provision for fines and penalties for late payments to curb erosion of value for money and also as a strategy to incentivize prompt payments of rents.

OTHER MATTER

1.0 Budgetary Control and Performance

109. The Committee heard that, the statement of comparison of budget and actual amounts reflected final receipts budget and actual on comparable basis totaling to Kshs.18,543,995,000 and Kshs.16,607,821,000 respectively, resulting to an underfunding amounting to Kshs.1,936,174,000 or 10% of the budget. Similarly, the statement reflected final expenditure budget and actual on comparable basis totaling to Kshs.17,095,420,000 and Kshs.15,737,210,000 respectively, resulting to an under performance amounting to Kshs.1,358,210,000 or 8% of the budget.
110. It was indicated stated that the underfunding affected the planned activities and might have impacted negatively on service delivery to the public.

Management Response

111. The management informed the Committee that, the hospital realized 90% of the planned budget in revenue generation for the under review. This was due to the effective implementation of the Balance scorecard performance management measure that involved cascading of the overall revenue targets to the heads of divisions, departments and units. Going forward, the hospital indicated it is targeting to achieve 100% as per the Board performance contract.
112. In addition, the hospital reported that it was in the process of automating budget making and monitoring. This was expected to be implemented in FY 2022/23. As at the time of submission, the Management stated that had enhanced monitoring of the budget performance by heads of departments / units on quarterly basis through including the targets in their performance contracts, enhanced training of hospital budgeting committees and monthly review of budget performance by the Hospital Budget Implementation Committee.

Committee Observations

The Committee observed that;

i) Under performance of the budget derails realization of the set budget targets and therefore impairs public service delivery.
ii) The Hospital instituted remedial measures to enhance budget performance but there was no statistical evidence to what extent the measures have been effective in addressing the underperformance.

Committee Recommendations

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

2.0 Unresolved Prior Year matters

113. The Committee heard that, in the audit report of the previous year, several issues were raised. However, the Management had not resolved the issues or given any explanation for failure to adhere to the provisions of the Public Sector Accounting Standards Board templates and The National Treasury and Planning Circular reference No. AG.4/16/3 Vol.1 (9) dated 24 June, 2020.

Management Response

114. The management informed the Committee that, the hospital submitted and expounded on the progress on follow-up of Auditors recommendations to demonstrate the measures that had been instituted to resolve the audit issues raised on the financial year under review.

Committee Observations

The Committee observed that the Hospital failed to include a report on the progress made in resolving issues reported in the audit reports for the previous year. This was contrary to the reporting format prescribed by the Public Sector Accounting Standards Board and Section 81 (3) of the PFMA CAP 412 A.

Committee Recommendations

The Committee recommended that;

i) The Committee reprimands the then Accounting Officer for failure to comply with provisions of the Public Sector Accounting Standards Board and Section 81 (3) of the PFMA CAP 412A that provides that a public entity shall prepare financial statement in a form that complies with the relevant accounting standards prescribed and published by the Accounting Standards Board from time to time.

ii) Within three months after adoption of this report, the National Treasury to institute a mechanism for reprimanding State Corporations that fail to include a report on the progress made in resolving issues reported in the audit reports for the previous year.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1.0 Receivable from Non-Exchange Transactions

115. The Committee heard that, as disclosed in Note 27 to the financial statements, the statement of financial position reflected receivable from non-exchange transactions balance of Kshs.1, 182,597,000. The balance included staff receivables totaling to Kshs.13, 070,000 out of which temporary imprests and staff debtors amounting to Kshs.7, 422,563 and Kshs.1, 406,054 respectively, had been outstanding for more than one year. It was noted this is contrary to Section 93(5) of the Public Finance Management (National Government) Regulations, 2015 which states that a holder of a temporary imprest shall account or surrender the imprest within 7 working days after returning to duty station.

116. Section 93(6) further provides that in the event of the imprest holder failing to account for or surrender the imprest on the due date, the Accounting Officer shall take immediate action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank Rate. In the circumstance, the Management was in breach of the law.

Management Response

117. The management informed the Committee that, out of the Kshs, 7,422,563 that had been long outstanding, Kshs.6, 553,679 had been fully accounted for. It was reported that the balance of Kshs.868, 884 was owed by former Hospital employees who left service due to death; dismissal; retirement or resignation before fully accounting for imprest issued to them in the course of their duty. Documentary evidences was adduced to corroborate the stated position.

118. Further, the management reported that follow-up to recover outstanding imprest for those officers who died, were dismissed or retired has not borne fruit as there are no benefits due to them that are held by the hospital. Provision for bad and doubtful debts was made in the financial statements for the year ended June 30, 2019 for the long outstanding imprest in line with the requirements of IPSAS. The Hospital Management undertook to initiate the process of write off for the imprests that cannot be recovered.

119. The Management explained that the Staff debtors of Kshs.1, 406,054 related to patients' bills guaranteed by staff at the time the patient is discharged from the hospital. The long outstanding staff debts have not been recovered for staff that subsequently left KNH service. Follow-up to recover the outstanding staff debt has not borne fruit as there are no benefits due to them that are held by the hospital and hence recoverability of the debts is doubtful. A provision has been made in the financial statements for the long outstanding staff debts in line with the requirements of IPSAS.

Committee Observations

The Committee observed that;

i) The hospital failed to enforce the provision of the PFM Act (National Government) 2015 Regulation 93(5) that prescribes that imprest surrender be made within 7 days. Pursuant to Regulation 93(7), the Accounting Officer who failed to recover the imprest committed an offence.
ii) Some Hospital employees left service due to death; dismissal; retirement or resignation before without settling the debts they owed the hospital. This indicates that the clearance procedures for those exiting are so lenient that debts owed are not deducted from terminal dues causing losses to the hospital.
iii) There is no admissible evidence that imprests of Kshs 868, 884 had been recovered in line with Regulation 93(6) of PFM (National Government) Regulations, 2015.

Committee Recommendation

Within three months upon adoption of this report, the Accounting Officer to provide evidence of the alleged recovery of imprest Kshs 868, 884 in accordance with Regulation 93(6) of PFM (National Government) Regulations, 2015. The evidence of recovery should be submitted to the National Assembly and the Auditor General for verification and reporting in the subsequent audit cycle.

2.0 Medical Services Contracts Loss

120. The Committee heard that as disclosed in Note 22 to the financial statements, as previously reported, the statement of financial performance included medical services contracts loss totaling to Kshs.474, 548,000. The following unsatisfactory observations were noted;

2.1 Contracts with National Hospital Insurance Fund (NHIF)

121. The balance included loss from the National Hospital Insurance Fund (NHIF) totaling to Kshs.313, 268,000. This loss is net of rebate received from the NHIF and the amount the Hospital spent in the treatment of NHIF members. Review of records showed that the hospital entered into a two years renewable medical service contract with the Fund with effect from 1st August, 2008 to 31st July, 2010. Upon lapse of the two years and based on the renewal clause, the contract was renewed on the same terms with effect from 1st August, 2010. Since the contract provided for continuous engagement between the parties, the Hospital through several letters in years 2013 and 2014 raised concerns on losses incurred due to the unfavorable contracts.

122. Further it was reported that upon exhausting all the negotiation mechanisms without success, the Hospital Management sought to discontinue the loss-making contract. The intent to discontinue services to NHIF members was communicated to NHIF and the Ministry of Health in the month of April, 2014. NHIF responded on the same in the same month of April 2014 whereby NHIF explained its inability to increase the rebate that had been coupled with litigations causing delayed adjustment of premiums. Subsequently the hospital was directed by the Ministry of Health on 30th May, 2014 to continue offering the services on the same terms despite making losses.

123. Besides, the Committee heard that the Management continued to engage the NHIF and the Ministry of Health on the loss-making contracts in the year 2016. Although a renegotiated contract signed on 21st March, 2019 had enhanced the number of claimable services which will have a positive effect on the annual losses, the loss incurred during the year is still significant. Consequently, the Hospital will continue to incur losses if the reimbursable amounts are not reviewed.

Management Response

124. The management informed the Committee that, the current contract (2022-2024) commenced operations on July 2022 provides for continuous engagement between the life of the contract by both parties. The hospital Management has been monitoring

the losses and areas of improvement within the contract with a view of engaging NHIF on any clause in the contract that are unfavorable to the hospital.

125. It was explained that the making of the current contract resulted in improvement of several reimbursement packages in the various medical categories which include:

i) Outpatient services: reimbursement is on fee for service on managed schemes.

ii) Surgical services: More procedures were introduced up to 645 and majority of procedures reimbursement package was improved.

iii) Intensive care services: The cover is not comprehensive and the hospital was allowed to co-charge the difference between the bill and the daily rebate.

iv) Oncology services: Complex chemotherapy cover was improved from four cycles to six cycles at a rate of Kshs 100,000.

v) Radiology Services: additional services were introduced which includes Bone scans, Radio Nucleoid scans, Echocardiogram, E.E.G, fluoroscopy etc.

vi) Renal Services: fixing of A/V fistulas was introduced as surgical benefit package.

vii) Dental services: Outpatient services were introduced for managed schemes based on preauthorization.

126. A summary of the sample of the improved surgical packages in the current contract were provided as:

Procedures	Old Rate Kshs.	New Rate Kshs.	Change Kshs.
Aortic Valve Replacement (Open Heart Surgery)	350,000	450,000	100,000
Congenital Heart Defects (Closed Heart Surgery) PDA	120,000	370,000	250,000
Total Oesophagectomy	400,000	450,000	50,000
Peg Tube and Insertion	40,000	80,000	40,000
Creation of AV Fistula Graft	30,000	150,000	120,000
Adenoidectomy	40,000	64,500	24,500

Procedures	Old Rate Kshs.	New Rate Kshs.	Change Kshs.
Adenotonsillectomy (Ts&As) - Child	45,000	69,500	24,500
Excision of PAROTIDS Gland (Total Parotidectomy)	80,000	150,000	70,000
Laryngectomy (Partial)	150,000	180,000	30,000
Tracheal Reconstruction	200,000	320,000	120,000
Anterior Cervical Fusion - AO Plating	150,000	400,000	250,000
Cranioplasty	130,000	200,000	70,000
BurrHole(S) for Brain Abscess	130,000	240,000	110,000
Craniotomy for Brain Tumor	210,000	450,000	240,000
Craniotomy for Intracerebral Hematoma	100,000	300,000	200,000
Excision of Intracranial Nerve Lesion	200,000	250,000	50,000
Laparotomy: Metroplasty / Uteroplasty	50,000	120,000	70,000
Neuro-embolization (IR)	NIL	350,000	350,000
Flush Aortogram/Renal Artery/Hepatic (with embolization material and micro catheter	NIL	220,000	220,000
Embolization/Carotid/Renal/Hepatic (no micro catheter)	NIL	250,000	250,000
Biliary stenting	NIL	100,000	100,000

127. The Management reported that the hospital has been monitoring the areas which may require midterm review and has already engaged the fund on services such as oxygenator machine which the fund as at the point of submission was extending approval on case by case, Oxygen package per day for critical care units and other specialties which have

been identified. Based on the above improved rates, the hospital is optimistic that the new contract will reduce the losses in the future.

Committee Observations

The Committee observed that;

i) Improved surgical packages have since been instituted with higher rates as a remedy for persistent losses on NHIF Medical Services Contract.
ii) The latest Contract covering 2022-2024 which has the revised enhanced rates came much later from the time the audit issue was raised. The delay to revise the rates exacerbated the accumulation of losses incurred by the hospital.
iii) The establishment of the KNH under a Legal Notice impairs its independence for enhanced service delivery and independent decision making without the control of the State Department of Medical Services in the Ministry of Health.

Committee Recommendations

The Committee recommended that;

Within three months upon adoption of this report, the Ministry of Health in collaboration with the Office of Attorney General to initiate the drafting of a legislative proposal establishing the KNH under an Act of Parliament.

2.2 Free Maternity Program

128. The Committee heard that, as previously reported, the balance included an amount of Kshs.161, 280,000 relating to loss of free maternity program offered by the Hospital. This followed a directive from the Cabinet Secretary, Ministry of Health which communicated the decision of the Government to reimburse an amount of Kshs.17, 500 for every delivery. However, the Hospital being a referral hospital received complicated maternal referrals and as a result, the costs are higher and the reimbursable amount of Ksh.17, 500 per delivery had remained the same despite the high cost. Consequently, the Hospital has continued to bear the high cost on free maternity program which have impacted negatively on the overall performance.

Management Response

129. The management informed the Committee that, in July 2013, the Government of Kenya rolled out free maternity services program through a presidential declaration to encourage women to give birth at health facilities under skilled personnel. The policy aimed at reducing maternal complications as well as maternal mortalities in Kenya. Under this program, referral hospitals were to be reimbursed on every delivery conducted in the facility Kshs.17, 500 with the assumption that this will be adequate with/without delivery complications.
130. Further, it was pointed out that in July 2017, the Government transferred the Free Maternity Scheme to Linda Mama Programme under the NHIF management. The Linda Mama covers delivery and pre- delivery incidental costs only. The hospital has engaged NHIF in full implementation of the programme where NHIF agreed to take care of post-natal and delivery complication.
131. It was reported that the current reimbursable amounts include:
    i) Delivery package at Kshs.17, 500
    ii) Hospitalization as a result of pregnancy related complications at a daily rebate of Kshs.4, 000.
    iii) Three months' post Natal care for mother and child at a daily rebate of Kshs.4, 000.
132. It was indicated that the hospital management is pursuing further enhancement of the Linda mama package to eliminate the loss and sustain provision of quality healthcare.

Committee Observations

The Committee observed that;

i) The enhanced reimbursable amounts for free maternity program under Linda Mama were an improvement of the previous free maternity programme but only partially addressed the issue of losses incurred by the hospital.

ii) The hospital management is currently pursuing further enhancement of the Linda Mama package to eliminate the loss and sustain provision of quality healthcare.

Committee Recommendations

Within three months upon adoption of this report, the Accounting Officer- KNH, Board of Directors of KNH and the Principal Secretary State Department for Medical Services should come up with a mechanism for setting the reimbursement rates for free maternity services in the NHIF comprehensive care contract that covers the real costs incurred.

3.0 Trade and Other Payables from Exchange Transactions

133. The Committee heard that as similarly reported in 2018/2019 and as was disclosed in Note 26 to the financial statements, the statement of financial position reflected the trade and other payables from exchange transactions balance of Kshs.1, 533,408,000. The balance included balances totaling to Kshs.60, 500,440 that had been outstanding for more than twelve (12) months. No explanation was provided for failing to clear these long outstanding account payables.
134. In the circumstances, the Auditor was unable to confirm whether Management effectively used public resources by accumulating trade and other payables from exchange transactions totaling to Kshs.60, 500,440 as at 30 June, 2020.

Management Response

135. The management informed the Committee that, the long outstanding supplier invoices were those that were not fully supported to facilitate settlement. This was on account of missing delivery notes, incomplete deliveries, awaiting credit notes and over invoiced amounts. The Committee was informed that the then pending amount has since been settled. Documentary evidence were provided to confirm the payments.

Committee Observations

i) The reported causes of the delays in payments including missing delivery notes, incomplete deliveries, awaiting credit notes and over invoiced amounts are issues that ought to have been conclusively resolved when the payable were first recognized in the books of KNH. The hospital therefore was slow in addressing the issues and the payables might have a risen out of dubious procurement processes.

ii) The claim that the outstanding Trade and Other Payables have since been settled and the appended schedule as proof of settlement is inadmissible, since some of the payment therein relates to periods before the financial year under review.

Committee recommendations

Within three months upon the adoption of this report, the Accounting Officer should provide evidence of settlement of the amount of Kshs. 60, 500,440 and the related documents that created the obligation to the National Assembly and to the Auditor General for audit verification and reporting in the subsequent audit cycle.

4.0 Defined Benefit Pension Scheme Deficit

136. The Committee heard that, as disclosed in Note 36 to the financial statements, the statement of financial position reflected net defined benefit scheme balance of Kshs.8, 771,990,000 which was to be paid by the Hospital as scheme Sponsor. The Hospital has been requesting for funding of the deficit through the budgetary process and in the last four years from 2015/16 to 2019/20, an amount of Kshs.100, 000,000 per year has been allocated and subsequently disbursed to the scheme. However, the allocation per year towards the scheme deficit is not sufficient, as it will take over eight-seven (87) years to bridge the deficit and by which time most of the beneficiaries will have retired. In the circumstances, the Auditor was unable to confirm whether the benefit scheme is prudently managed

Management Response

137. The management informed the Committee that, the hospital has been disbursing to the Defined Benefit Scheme the allocated Kshs 100 million from FY 2015/16 to FY 2020/21 towards reduction of the deficit. The hospital through the Ministry of Health, has been lobbying for a higher allocation to help in reducing the deficit. A letter to that effect was adduced.

138. Further, it was pointed out that consequently, for FY 2022/23 the hospital was allocated Kshs. 300M towards the deficit. The Hospital Management expects that the amount will be sustained at Kshs. 300M moving forward.

Committee Observations

The Committee observed that;

i. The deficit in defined benefits pension scheme payable by the Hospital as the Scheme's sponsor is operationally unsustainable and requires financing interventions. However, the rate at which the exchequer injected (Kshs.100 M) is unsustainable and the scheme may not be in a position to finance its pension obligations as and when they arise. This implies that the pensioners' benefits will not be adequately and timely financed by the scheme.

ii. The Hospital might have not considered the sustainability of the defined benefits pension scheme before instituting it by conducting proper financial forecasting or the scheme contributions were being mismanaged.

iii. The sustainability of the Scheme largely relies on additional funding from the exchequer, which is not guaranteed.

Committee Recommendation

Within six months upon the adoption of this report, the Auditor General should carry out a Forensic audit on the scheme with a view to establishing any financial leakages and submit a report to the National Assembly.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

BASIS FOR CONCLUSION

1.0 Long Outstanding Debts

139. The Committee heard that, as disclosed in Note 26 to the financial statements, the statement of financial position reflected receivables from exchange transactions balance of Kshs.1, 477,994,000. The balance included receivables totaling to Kshs.71, 410,322, Kshs.95, 658,100, Kshs.3, 286,110 and Kshs.774, 761,257 for National Hospital Insurance Fund

(NHIF) rebate, Ministry of Health disaster debts, return to drawer (RD) cheques and absconded patients' debts respectively. Further, the balance included rental receivables balance of Kshs.36, 282,000 included MOH staff rent totaling to Kshs.7, 477,924 that had been outstanding for more than one year, and which ought to have been deducted from the payroll through the check-off system and forwarded to Kenyatta National Hospital. Under the circumstances, the Auditor was unable to confirm existence of effective mechanisms of debt management by the Hospital.

Management Response

140. The management informed the Committee that, the NHIF outstanding balance amounting to Kshs 71,410,322, the management provided a breakdown of the progress status of the recovery. Out of the Kshs 71, 410, 322 long outstanding claims owed by the Fund as at 30th June 2019, the hospital reported it had made efforts to follow-up and as at the time of the submission, claims amounting to Kshs 39,896,910 had been settled. Documentary evidence to confirm the same was adduced.
141. The management reported that it is continuously following up on payment of the outstanding claims as well as engaging the NHIF to improve on settlement of the claims within the credit period as per existing contract.

142. On Ministry of Health Disasters Debtor Kshs. 95,658,100, the Committee was informed that it the debt related to hospital bills for victims of disasters that have occurred across the country in diverse dates from 1998 to 2019 and who were treated in the hospital. It was explained that upon discharge, the patients were released without paying medical bills incurred based on the Government's directive that the Hospital will be reimbursed. The hospital has been making follow-ups with the parent ministry for settlement, but these bills have not been settled up to date. The Hospital Management took an undertaking to initiate the process of write off.

143. On the Return to drawer (RD) cheques of Kshs. 3,286,110, the management explained that this related to personal cheques that were received in the year 2004 and prior years for

patients' medical bills. These cheques were drawn by well-wishers who were helping patients to meet their medical bills obligations but were unfortunately dishonoured upon presentation to the bank. Efforts to have the drawers replace the cheques were not fruitful.

144. As a remedial action, the management reported that, the hospital no longer accepts personal cheques as a mode of payment to avoid recurrence of the same. The long outstanding debts whose recoverability was doubtful have been properly provided for in the financial statements as impaired in line with International Public Sector Accounting Standards (IPSAS). The hospital management took an undertaking to initiate the process of write off.

145. On the Absconded Patients' Debts amounting to Kshs.774, 761, 257, the management informed the Committee that the debt related to patients who absconded from hospital before paying bills or entering into a formal credit arrangement. Efforts have been made to follow up the debts through demand letters and short messages (SMS) using last known addresses for the patients. However, recovery of these debts have not been fruitful. It was reported that a provision had been made in the financial statements for the year ended June 30, 2020 for the absconded patients' debts in line with the requirements of IPSAS.

146. The management expounded on measures that have since been instituted to curb abscondment which include:

a) Installation of CCTV system in the main corridors and wards to monitor patient movement.
b) Additional security personnel have been contracted by the Hospital and stationed to cover all patients' wards.
c) Tracking of repeat patients with previous outstanding bills where they are required to pay obligations before provision of services except for emergencies as determined by the clinicians.
d) Escort of patients seeking services outside the wards.
e) Enhanced data collection by Health Information Officers for tracing in case of secondment.
f) A revised KNH Credit Policy and Procedure Manual is in place that has streamlined identification and assessment of indigent cases early enough thus shortening stay after clinical discharge that has discouraged secondment.

147. Regarding the Ministry of Healthh staff rent of Kshs 7,477,924, the Committee was informed that the Ministry of Health settled the long outstanding staff rent arrears amounting to Kshs.7, 094,000 on 8th July, 2022 a Documentary evidence on settlement of the rent arrears was adduced.

Committee Observation

i. The Hospital had long outstanding debts made up of NHIF rebates Kshs.71,410,322, Ministry of Health disaster debts Kshs. 95,658,100 and return to drawer (RD) Cheques Kshs 3,286,110 which had been outstanding for more than two years. Although the management had indicated that they have made efforts to recover the debts, the return to drawer (RD) Cheques Kshs 3,286,110 is a pointer to weak cash management and controls systems.

ii. The management indicated that it shall initiate the process of write off. Owing to the fact that a huge balance of the long outstanding debts relates to MDAs; NHIF rebates Kshs. 71,410,322 Ministry of Health disaster debts Kshs. 95,658,100 this will encourage the culture for other institutions to over burden KNH budget.

iii. The management of the Hospital did not justify the need for the write off, in line with the provisions of Regulation 157 (1)(a) PFM (National Government) Regulations 2015 which provides that an Accounting Officer may only write off losses if all reasonable steps have been taken to recover the debts and the loss is irrecoverable.

Committee Recommendations

i. Within three months of adoption of this report, the Accounting Officer, Kenyatta National Hospital should provide a comprehensive report on the steps that have been taken to recover the debts and the losses before initiating the write off process on account of being irrecoverable.

ii. Within three months of adoption of this report, the Accounting Officer, Kenyatta National Hospital should provide a comprehensive report on how the Hospital has mapped out the cash management with a robust system to strengthen controls against patients and other forms of receipts suffering from the vice of return to drawer (RD) Cheques.

2.0 KENYA MEDICAL SUPPLIES AUTHORITY

2.1 EXAMINATION OF THE REPORT OF THE AUDITOR-GENERAL ON KENYA MEDICAL SUPPLIES AUTHORITY FOR THE YEAR ENDED 30TH JUNE 2018.

FINANCIAL YEAR 2017/2018

Dr. Andrew Mulwa (Acting CEO- KEMSA) accompanied by Mr. Waiganjo Karanja (Director-Finance and Strategy), Mr. John Kabuchi (Acting Procurement Director), Ms. Carol Anunda (Finance Manager), and Mr. Edward Njoroge (Operations Director), Dr. John Aduda (Quality Assurance), Mr. Enos Namasaka (Human Resources Manager), Dr. George Walukana (Programmes Manager), Jackline Mainye (Ag. Manager, Commercial), and Ms. Esther Somoke (Liaison Officer) appeared before the Committee to adduce evidence on the report of the Auditor General on the financial statements of the Agency for the financial year ended 2018.

1.0 Staff Costs

148. The Committee heard that, the staff costs of Kshs.765,607,575 as disclosed in the statement of financial performance for the year ended 30 June 2018 includes Kshs.9,326,710 paid to forty (40) officers employed during the year and two (2) who were promoted during the year. However, the approved staff establishment for the forty two (42) vacancies filled was not availed for audit review. Further, the Authority had seven hundred and fifty nine (759) employees as at 30 June 2018 against an approved staff establishment of three hundred and forty one (341) resulting in unapproved over employment of four hundred and eighteen (418) officers. In addition, the staff cost expenditure of Kshs.765,607,575 includes Kshs.8,787,805 paid to twenty-six (26) seconded staff who have been working for the Authority for over six (6) years contrary to the Authority's human resource policies and procedures paragraph 7.3 which restricts secondment to a period not exceeding three years and renewable once. Further, the seconded twenty-six (26) staff include twelve (12) staff with no special skills contrary to paragraph 7.3 of the human resource policies and procedure which provides for secondment of employees with special skills that are not available within the Authority. Consequently, the propriety of the staff cost of Kshs.765,607,575 for the year ended 30 June 2018 could not be confirmed.

Management Response

149. The management informed the Committee that;

i. As per the existing KEMSA Human Resource Policies Manual, the Board has mandated the Management to recruit and promote staff in grades SA4 and below. The staff in question fall in this category. (See Appendix 1 i KEMSA Human Resource Policies Manual)

ii. The request to hire new staff was duly approved and justification was provided. Find attached the supporting documentation for the recruitment requests and promotions. (Appendix 1 ii Request to hire new staff)

iii. KEMSA has a staff establishment of 341, which was approved by the 37th Board of Directors meeting held on the 8th May 2014 as per Board minutes MIN 9/FB/2014 on the approved staff establishment (Appendix 1 iii) and by the Permanent Secretary Ministry of Health vide the letter (Ref: MMS/ADM/1/17) dated 13th May 2010 as recommended by the Joint Ministerial Committee (Appendix 1 iv).

iv. The 759 employees indicated above was the total number of staff both KEMSA staff (324 in-post) and Program staff (435). The 435 are contracted staff by KEMSA to render services to the various programs that KEMSA has with its Strategic Partners.

v. While approving the new business model, the KEMSA 35th Board meeting held on 15th October 2013, under minute No.44/FB/2013 ix (d) gave authority to the management for the recruitment of short-term/contract staff based on the new business model needs.

vi. This authority was given to enable the management to effectively manage the unpredictable workload from the county health facilities and the strategic partners' projects within the Approved Personnel Emoluments budget. (see Appendix 1 vi KEMSA 35th Board meeting held on 15th October 2013, under minute No.44/FB/2013 ix (d)

vii. In addition, KEMSA has Contractual Partnerships with thirteen strategic partners to whom KEMSA offers supply chain services with variable and unpredictable workloads. The various projects under the different strategic partners have different contract durations ranging from one year to five years, hence the need for short-term contract staff to cater to their specific needs.

viii. Given the above scenario, the short-term contract staff are inevitable but do not form part of the approved staff in the establishment since they are required for a specific period tied to the life of the Project.

ix. An Example is the KEMSA-USAID Medical Commodity Program which was to run for an initial 3-year period with an extension of 2 years. The technical staff recruited to manage the project have employment contracts that are renewable at the end of each contract period of the KEMSA-USAID MCP Program.

x. These contracted staff for the projects are meant to ensure meeting performance targets as set by the development partners and guard against taking on board staff on permanent terms for tasks/assignments that are not long-term in nature/whose lifespan is period specific.

xi. Engagement of contract staff is duly provided for in the KEMSA HR policies and the contracts are reviewed each year – based on the exigency of service and KEMSA's operational and business requirements.

xii. During the period KEMSA employed contracted staff in line with business needs/workload requirements and as approved by the Board and hence there was no unapproved/overemployment of staff.

Current status:

The KEMSA Board is currently reviewing its Human Resource Instruments that will eventually determine the optimal staffing levels.

Seconded staff

Further, on the seconded staff, the management responded that;

i) KEMSA has since released back to the parent ministries, the seconded armed Administration Police Officers deployed by the Security of Government Building (SGB) officers who have been there for more than six (6) years. New officers have since reported to take up their security duties. (See attached letters for release Appendix 1.Vii).

ii) KEMSA has written a request letter to the Principal Secretary, the Ministry of Health to take back all the Ministry employees seconded to KEMSA. KEMSA received the Ministry's response on this matter and four officers were released back to the Ministry of Health in May 2019 see (Appendix 1.viii Copies of the release letters to the Principal Secretary Ministry of Health attached in) Two of the Officers have since retired.

Current Status

KEMSA has only 3 Seconded staff from the Ministry of Health who are offering special skills in Bio-Medical engineering (2) and Public health (1).

Committee Observations

The Committee observed that a similar audit query was raised in 2016/2017. However, the committee observed that;

i) The Board approved KEMSA establishment was 341 and in Financial year 2016/2017 KEMSA had 329 in-post staff, after recruiting 40 more in Financial year 2017/2018 the in-post figure stood at 324 against an expected figure of 369 if no staff had exited. However, KEMSA did not provide any documentary prove that the Fourty five (45) staff had exited KEMSA in 2017/2018 either through retirement, natural attrition, dismissal or resignation. This could lead to existence of ghost workers.
ii) There existed approval from the Board allowing management to employ staff on contractual terms as and when need arises as per minutes REF: MIN/44/FB/2013 for the meeting held on 15th October 2013) and that all the contracted staff are always paid off and leave upon expiry of their contracts.
iii) The Kshs.8,787,805 paid to twenty six (26) seconded staff who have been working for the Authority for over six (6) years contrary to the Authority's human resource policies and procedures paragraph 7.3 which restricts secondment to a period not exceeding three years and renewable once (total six years) was irregular since no justification for KEMSA breaching its own manual.
iv) Twelve (12) of the seconded staff did not possess special skills contrary to paragraph 7.3 of the human resource policies and procedure which provides for secondment of employees with special skills that are not available within the Authority.
v) It is not clear whether KEMSA adhered to its human resource policies and procedures on seconded staff as the response did not address the question at hand as at 30 June 2018 on overstayed and non-specially skilled seconded staff.
vi) There were no details provided on the advertisement for the 40 employees hired in the financial year, and the report from the interview panel indicating the criteria for merit;
vii) There is no evidence that KEMSA had sought approval from the Salaries and Remuneration Commission for the establishment and salary rates.
viii) Except for the Boards approval of the establishment, there is no evidence that KEMSA had sought SCAC's guidance on the development of the Human Resource Instruments. Further, the Human Resource Instruments then would have been approved by the Public Service

Commission to culminate in a reviewed organization structure, staff establishment, grading, career guidelines and Human Resource Policy and Regulations manual for KEMSA.

ix) KEMSA did not provide the approved SRC salary scales for the established cadres and therefore no evidence was adduced to prove that the salaries paid for the respective cadres was in tandem with SRC salary review.

Committee Recommendations

i) Within three Months upon adoption of this report, the Auditor-General should carry out a comprehensive special audit on the staff and payroll of KEMSA for a period of five years from 2017/2018 to 2021/2022 (both years inclusive) to establish the status of the staffing and report to the National Assembly on the findings. Should the report establish any irregularities, the then Accounting Officers should be reprimanded and held accountable for any financial losses during their tenure.

ii) Within three Months upon adoption of this report, the Accounting officer should submit the approval from the Salaries and Remuneration Commission for the staff establishment and salary rates, SCAC's guidance on developed and approved Human Resource Instruments and PSC approvals for the instruments.

iii) The committee reprimands the then Accounting Officers and the Human Resource Officers in charge during the time of breach of the SCAC's, PSC and SRC requirements.

2.0 Expired/Damaged Drugs

150. The Committee heard that, as previously reported, the net sales balance of Kshs.709,435,073 for the year ended 30th June 2018 is arrived at after deducting cost of sales (pharms) of Kshs.2,441,247,836. The cost of sales figure includes an amount of Kshs.150,423,159 for expired/damaged drugs that were unsaleable due to expiry or damage. No explanation has been provided for stocking expired/damaged drugs. Consequently, the accuracy and validity of the net sales balance of Kshs.709,435,073 for the year ended 30th June 2018 could not be confirmed.

Management Response

The management informed the Committee that, there were commodities that expired in the authority warehouses and were mainly driven by;

i) KEMSA's business model is a "PULL" system where counties and other public health and Faith-based facilities determine what they require and buy the same. After devolution, the entire public health supply chain system moved from PUSH to PULL and some commodities attracted little or no demand from these facilities. Over time these commodities exhausted their shelf life.

ii) There was a change of treatment protocol or treatment policy from the use of streptomycin injection (TB drug) due to toxicity and resistance to other more efficacious drugs and therefore the drugs under the old treatment regimen became obsolete.

iii) Change of technology from analog to digital for X-ray films as a result of the initiative by the National Government to equip 2 hospitals in each County and 4 National Referral hospitals with outsourced specialized state-of-the-art medical equipment. This has reduced the demand for commodities specifically X-Ray films. The X-Ray films that KEMSA was holding as inventory were therefore rendered obsolete.

iv) Damages in the cause of day-to-day operations for example breakages, and spillage. Tabulation by reason for expiry is as shown in the summary below.

REASON FOR EXPIRY	**THE FINANCIAL YEAR 2017/2018**
Change of treatment protocol/policy	4,920,461.00
Change of technology from analog to digital	1,215,885.20
Damages	86,616.80
Low Consumption due to Gen -expert testing	16,224.50
Low demand/consumption from customers	144,183,971.39
TOTAL	**150,423,158.89**

Committee Observations

A similar issue was raised in FY 2016/2017 and discussed by PIC in the 22nd Report.

The committee had observed that;

a) The expiry of drugs was not due to breach of contractual terms but due to change in drug regimen indicating poor planning by KEMSA. The Agency should ordinarily know which drugs are obsolete and which drugs are going to be introduced into the market.
b) KEMSA indicated that they had devised strategies to determine the demand of drugs from across the counties which included constant engagement and collecting data to avoid expiry of drugs as well as other strategies such as prioritizing on shelf life of drugs.

Arising from this, the committee observed that KEMSA did not provide any documentary prove of the improvements made through the devised strategies or whether such strategies ever existed such as prioritizing on shelf life of drugs.

i. KEMSA did not manage its Drugs stock for the purpose of preventing wastage, loss, and continuing utilization of supplies. Further, KEMSA did not avoid unprofitable lock-up of funds by keeping stocks to the minimum necessary for the efficient conduct of the its (KEMSA) supply/operations. In addition, the committee observed that KEMSA had not put in place strategies that will prevent wastage such as the use of anticipatory patterns to predict demand of drugs from the Counties. Thus, KEMSA contravened Section 160 (1) of the Public Procurement and Asset disposal Act 2015.
ii. KEMSA had treated expired drugs as saleable drugs in the financial statements as pointed out in the audit report that the cost of sales figure includes an amount of Kshs.150,423,159 for expired/damaged drugs that were unsaleable due to expiry or damage. This is misleading to the users of financial statements as it inflates the current assets.

Committee Recommendations

i) The committee reprimands the then Accounting Officer(s) for laxity in minimizing wastage of public funds though procurement and stocking of expired drugs.
ii) Within three Months upon adoption of this report, the Auditor-General should carry out a Compliance audit on procurement of drugs, stocking, accountability and destruction of expired drugs by KEMSA for a period of five years from 2017/2018 to 2021/2022 (both years inclusive) to establish if there are any irregularities or breach of the procurement law. Should there be any irregularities established, EACC and DCI should investigate the specific cases and the officers found culpable should be prosecuted by the DPP and be held accountable for any financial losses during their tenure.

iii) Within three Months upon adoption of this report, the management of KEMSA should submit to the National Assembly, a copy of the documented strategies approved by the Board and the Principal Secretary State Department of Medical Services put in place to prevent wastage.

3.0 Board Expenses

151. The Committee heard that, note 14 to the financial statements reflects board expenses of Kshs.8,379,185 for the year ended 30 June 2018 and which include sitting and lunch allowance of Kshs.6,095,999. Further, the sitting and lunch allowance of Kshs.6,095,999 include an amount of Kshs.1,660,999 paid to four (4) board members whose supporting invitation letters and minutes of meetings held were not availed for audit verification. Consequently, the validity of sitting and lunch allowance expenses totalling to Kshs.1,660,999 paid to the four board members could not be confirmed for the year ended 30 June 2018.

Management Response

152. The management informed the Committee that, KEMSA had not had a substantive board chair since 9th October, 2015 following the expiry of the second term of the then Chairman. KEMSA also did not have a substantive Chief Executive Officer from 1st January 2017 to 30th June 2018. The absence of substantive holders of the two offices posed various operational challenges in the strategic management of the organization. During this time the Board appointed two Acting CEOs in succession as the process of recruiting a substantive holder of the office was underway. In the absence of a substantive Board Chair, the Board had to appoint a Chairperson (Session Chair) to lead each of its meetings or represent the organization in external meetings and/or events where the Board's representation was needed. This included meetings with the line Cabinet Secretary, and line Principal Secretary and consultations with the Acting CEO.
153. In addition, there were increased board activities and consultations that required the presence of the board Session Chair and one member of the board on various ongoing developments as follows:

a) The review of the KEMSA Act where the KEMSA board had to meet the parliamentary committees and other stakeholders including the Principal Secretary and Cabinet Secretary to give their input
b) Consultations in regard to Design, funds mobilization, and subsequent tendering of the Construction of a Modern warehouse and office complex.
c) Consultations with stakeholders (Development Partners) in regard to restructuring of the organization to conform with the new Public Procurement and Disposal Act of 2015.
d) Similarly, they were available on behalf of the Board for consultations with the Acting CEO during the transition period.
e) Recruitment of a substantive CEO.

154. The code of Governance of State Corporations (Mwongozo) provides among others that:
i) The Chairperson of the Board shall maintain a close, but independent working with the CEO.
ii) Be available for consultations with the CEO.
iii) Act as a formal link with the shareholders
iv) Promote a positive image of the organization
v) Provide updates on governance matters and any issues thereof to the responsible Cabinet Secretary and SCAC.
vi) In the absence of a Substantive Chairperson, the Board had to continue playing the above roles and others through one of them appointed by consensus.
vii) The appointment of a Board representative especially for meetings with external stakeholders was dependent on the availability and of the particular Board Member mostly at very short notice. Most of these meetings did not have formal invitations and were through official phone calls through the CEO's office.

155. The management confirmed that no sitting allowance was paid to a board member undeservingly i.e., where a meeting or a representation did not take place.

Committee Observations

i) The response by KEMSA was too general rather than addressing the specific audit query raised on sitting and lunch allowance of Kshs.1,660,999 paid to four (4) board members which were not supported by invitation letters and minutes of meetings held. KEMSA tried to justify the reason for appointment and existence of the four board members rather than supporting their expenditure. Therefore, the expenditure was irregular.

ii) KEMSA has continued to experience serious Governance issues arising from deliberate lack of substantive office holders as indicated. KEMSA has not had a substantive board chair since 9th October, 2015, following the expiry of the second term of the then Chairman. KEMSA also did not have a substantive Chief Executive Officer from 1st January 2017 to 30th June 2018. The absence of substantive holders of the two offices posed various operational challenges in the strategic management of the organization and thus poor governance.

Committee Recommendations

i) The committee reprimands the then Cabinet Secretary for failing to bring to the attention of the appointing authority the vacancy of the Board Chairperson and CEO.

ii) Within three Months upon adoption of this report, the Principal Secretary Ministry of Health in collaboration with the Inspector of State Corporations should ensure that the then Accounting Officer who authorised the payment of the sitting and lunch allowance of Kshs.1,660,999 to the four (4) board members which were not supported by invitation letters and minutes of meetings held is surcharged the amount so paid.

4.0 Property, Plant and Equipment

4.1 Land

156. The Committee heard that, as previously reported, the property, plant and equipment balance of Kshs.3,968,606,648 as at 30 June 2018 includes land at a cost of Kshs.1,786,967,270 which includes various parcels of land spread across the country and valued at Kshs.158,000,000 for which the Authority does not possess ownership documents as detailed below:

SITE	LETTER OF ALLOTMENT/PARCEL NUMBER	Asset Cost
ELDORET	Block 10/155 & 10/156	25,000,000.0
GARISSA	PDP Ref. No. 326/2003/58	6,500,000.0
KAKAMEGA – GREEN SITE	Block 4/168 Part	7,500,000.0
KAKAMEGA – PGH	Block 4/168 Part	3,000,000.0
KISUMU	209163/IX of 26/10/2005	25,000,000.0
MOMBASA	R.54/95/10	76,000,000.0
NYERI	Block 3/173 & 3/174	15,000,000.0
Total		**158,000,000.0**

157. Further, the property, plant and equipment balance of Kshs.3,968,606,648 excludes the unspecified value of parcel of land in Meru Municipality measuring 0.3 Ha which also belongs to the Authority. No explanation has been provided for the failure to obtain the title deeds for these parcels of land and to bring into account the parcel of land in Meru.

158. In the circumstances, it has not been possible to confirm the ownership of the eight (8) parcels of land and whether the land cost of Kshs.1,786,967,270 is fairly stated as at 30 June 2018.

Management Response

159. The management informed the Committee that despite having allotment letters and Leases for the various parcels of land, the Authority did not possess title deeds for parcels of land valued at Ksh. 158,000,000.
160. KEMSA Board has however taken up the issue of titles on KEMSA Land seriously and has engaged a Conveyance expert to handle the issue of realization of the title's deeds with a specified time frame.

Current State

161. KEMSA engaged the Ministry of Lands and Physical Planning through the Directorate of Survey on April 2023 to conduct a cadastral survey for these parcels of land. The purpose of the survey was to establish the boundaries and installation of beacons. Beacon certificates have been issued upon successful installation of beacon markers. The preparation of the final survey report and technical file was completed. The cadastral survey report and preparation of a technical file form part of the requirements by the registrar of lands to complete the conveyance of the land. The Ministry of Lands and Physical Planning through the Directorate of Survey have since submitted the final valuation report.
162. The Authority did not obtain documents of title for the Meru Municipality land measuring 0.3 Ha. Land adjudication was latter done in Meru county, which saw the location of the parcels change as the County was still planning on positioning various organizations that had been allocated land in the area, KEMSA included.
163. KEMSA was allocated another piece of land in Meru via allocation letters done by the sitting governor then. The allocation letter had stated that the County Govt has set aside 10 acres for KEMSA. KEMSA received the title deeds for the Meru 10-acre land in 2021. (see appendix 6.1 -Meru tittle deed)

Current Status;

164. Even though KEMSA has received a tittle deed for Meru, the cadastral survey has not been undertaken and this is a requisite for valuation. Since the land was not purchased there was no cost to attach to the parcels.

165. In February 2023 a cadastral survey was procured and is currently being undertaken by the Directorate of Survey. Once complete the Ministry of Land - Directorate Land Valuation will issue the technical file that will form the basis for the valuation of land.

Committee Observations

The committee observed that the issue was discussed in the 19th and 20th PIC reports and noted that;

i) The Agency had taken time to register the title deeds despite having the necessary documentation in place. The situation has not changed over seven years now down the line. The committee was concerned that KEMSA had engaged Priority Management Limited, (Conveyance experts) through KTK Advocates to handle the issue, in the financial year 2012/2013 but had nothing positive to show with regard to the land ownership documents.

ii) The lawyers contracted to register the leases and title deeds of lands belonging to the KEMSA as per the 22nd PIC report had been paid approximately Kshs. 2,000,000 then for the titles registered. However, the total payments to date could not be established and the consultants/lawyers could have continued to draw money from KEMSA with no corresponding services rendered.

iii) It was also not clear whether KEMSA had engaged other conveyance experts as indicated in their submission to the committee to the extent that KEMSA Board had taken up the issue of titles on KEMSA Land seriously and had engaged a Conveyance expert to handle the issue of realization of the title's deeds within a specified time frame. The specified time frame, how the conveyance experts were engaged, the terms and the charges is unknown as the same were not documented.

iv) It was not clear why KEMSA had not engaged the National Lands Commission on the lands matter.

v) That KEMSA did not obtain documents of title for the Meru Municipality land measuring 0.3 Hectares but was instead allocated 10 acres by the County Government in 2021 to which Title No: Meru Central/Ruiri Rwarera/11514 dated 16 December, 2021 was issued.

vi) KEMSA did not provide any documentary evidence that they had sought the intervention of the Ministry of Health, or the Ministry of Lands, Public Works, Housing and Urban Development to address the delay in issuance of titles.

vii) The committee also observed that in the 22nd PIC report, as pertains to the Eldoret land which KEMSA had stated that part of the land was occupied by the Kenya National Highways Authority, KEMSA did not apprise the committee on its current status.

Committee Recommendations

i) Within three Months upon adoption of this report, the Accounting Officer - KEMSA should present to the National Assembly a comprehensive report on the status of all its land parcels with regard to acquisition of ownership documents for the aforementioned pieces of land.

ii) Within three Months upon adoption of this report, the Accounting Officer - KEMSA should present to the National Assembly and Auditor-General (for audit verification and reporting to the National Assembly) a comprehensive report on the payments made to each of the advocates and/or conveyance consultants to date, their terms of engagement and their contractual documents to the National assembly.

iii) Within three Months upon adoption of this report, the Accounting Officer - KEMSA should present to the National Assembly a comprehensive report on the status of the Eldoret land which KEMSA had stated that it was occupied by the Kenya National Highways Authority.

iv) Within three Months upon adoption of this report, the Auditor-General should review and report to the National Assembly the procurement process for the engagement of the conveyance experts and advocates from 2011/2012 to date and the corresponding payments to date.

4.2 Motor Vehicles

166. The Committee heard that, property, plant and equipment balance of Kshs.3,968,606,648 includes motor vehicles net book value of Kshs.62,315,900 which include four (4) vehicles

with a net book value of Kshs.2,574,000 that are owned by the National Government as detailed below:

Registration No.	Name	Year of manufacture	NBV
GKA 538G	Isuzu FVR 23 Lorry	1998	928,125.0
GKA 539G	Isuzu FVR 23 Lorry	1998	945,000.0
GKA 960B	Toyota Land cruiser	1998	391,500.0
GKU 127B	Isuzu TX Lorry	1998	309,375.0
Total			**2,574,000.0**

167. No explanation has been provided for failing to transfer the ownership documents of these vehicles to the Authority. In the circumstances, it has not been possible to confirm the ownership the four (4) motor vehicles and whether the motor vehicles net book value of Kshs.62,315,900 is fairly stated as at 30 June 2018.

Management Response

168. The management informed the Committee that, KEMSA is in possession of vehicles owned by the Ministry of Health. It should be noted that KEMSA had requested for transfer of ownership from the Permanent Secretary, Ministry of Health, but MOH recalled two 2 drivers and a vehicle registration number GK 960B. The vehicle registration number GK 960B was physically released to the Ministry as soon as the request was received.
169. KEMSA will continue following up on the issue to ensure that ownership of the lorries is transferred so as to correct this anomaly.

Committee Observations

i) The Agency (KEMSA) had taken time to register the vehicles despite having the necessary documentation in place. Their continued inclusion in the KEMSA financial statements may be misleading to the users since MOH appears to have continued control over the vehicles and recall them at will.
ii) KEMSA has been in possession of vehicles transferred from the Ministry of Health without logbooks neither did it have any written proof that the said vehicles had been handed over to them.

Committee Recommendations

i) Within three Months upon adoption of this report, the Accounting Officer - KEMSA to regularize possession of the said motor vehicles through acquisition of logbooks and/or provide proof of ownership through a written documentation entailing the Ministry of Health handing over and acceptance by the Authority.

4.3 Work in Progress

170. The Committee heard that, the work in progress balance of Kshs.494,320,413 as at 30th June, 2018 include Kshs.321,360,535 paid to a consultant engineer for design and supervision of construction of warehouse and office block. However, according to documents availed, the amount payable for the design was Kshs.126,279,953 (being 4.1% cost of works of Kshs.3,079,998,859) resulting in over payment of Kshs.195,080,582 that was not explained or supported. The work in progress also include Kshs.22,466,643 paid to a consultant engineer for supervision of renovations. However, according to documents availed, the amount payable is Kshs.5,754,638 (12% of cost of work Kshs.47,955,316) again resulting to overpayment of Kshs.16,712,005 as detailed below:

Project Description	Cost of Works	Amount Paid Kshs.	Recalculated amount 12%	Overpayment
	Kshs.	Kshs.	Kshs.	Kshs.
Caging & Partitioning of	11,586,870	3,966,320	1,390,424	2,575,896
Renovation of Quality Assurance	4,839,975	1,716,320	580,797	1,135,523
Renovation of Eldoret Depot	13,528,230	3,662,040	1,623,387	2,038,653
Renovation of Mombasa Depot	7,391,370	3,883,872	886,964	2,996,908
Renovation of Kakamega Depot	10,608,870	1 9,238,091	1,273,064 1	7,965,027
Total	**47,955,315**	**22,466,643**	**5,754,636** 1	**16,712,007**

171. Further, the cost price for the consultant engineer for supervision of renovation and construction of the warehouse and office block has not been specified in the contract agreement. In the circumstance, the propriety of Kshs.211,792,587 charged to work in progress as at 30 June 2018 could not be confirmed.

Management Response

172. The management informed the Committee that, as per letter (REF B. D108/KEMSA GEN/40 dated 22nd &10th November 2017 and B.D 108/KEMSA GEN 60 Appendix 4.3 i) from the State Department of Public Works the fees schedule applied in the calculations is the condition of engagement 1987; and as outlined in the Conditions of Engagement and Scales of Fees for Professional Services for building and civil Engineering works.
173. Fees at design stage are calculated based on the estimated cost of the works. This is because during design stage KEMSA did not have a contract sum since the work had not been tendered. The estimated cost of the project was put at Ksh. 3,386,643,874.82.

174. The Fees are paid in stages – during design and during construction. By the tender stage, the project architect is paid 70% of his fees, the structural engineer 80%, the Quantity surveyor 60% and the service engineers 70%. The balance is paid as the construction progresses. The fees are recalculated based on the actual contract sum realized from the tendering process and any overpayment is recovered from the fees payable during construction stage.

175. The realized cost of the project is Ksh. 3,079,998,859.50. The difference in fees payable and fees paid to the consultant Ksh. 29,097,717.30 and not Ksh. 195,080,581.00.

176. The amount of Kshs 22,466,463 paid to DAMA Services Ltd was in line with Conditions of Engagement and Scales of Fees for Professional Services for building and civil Engineering works. See (Appendix 4.3 ii the Condition of Engagement 1987).

177. The scales provide the rates to be applied in the calculation of professional fee notes for Architects, Engineers, and Quantity Surveyors. The amounts paid included fees as per the scales and disbursements for other costs incurred in the line of offering professional services. The generally applied rate applied of 12 % is not supported by the Scales. There was therefore no overpayment to the consultant as observed.

Further submissions by Maestro Architects

178. The Committee after meeting the management of the Authority (KEMSA) resolved to invite the Director of Maestro Architects to apprise it on the following;

i) The signed contractual agreement between them and the Kenya Medical Supplies Authority for the consultancy services for the design and supervision of construction of warehouse and office block

ii) The circumstances surrounding the overpayment Kshs.195,080,582 that was paid to your company; and

iii) The details of the companies that formed the consortium and the services offered by each of the Company in executing the contract in question.

179. The Director Maestro Architects informed the Committee that;

i) An Expression of Interest [EOI] - KEMSA/EOI 1/2016-2017 provision of consultancy services for the design and supervision of construction of KEMSA modern warehouse and office block] for the project was initially advertised and there after an Invitation to participate in a Request for Proposal [RFP No. KEMSA/RFP 01/2016-2017 for Consultancy Services for the Design and Supervision of Construction of KEMSA Modern Warehouse and Office Block] was sent to the successful consortiums from the earlier EOI exercise.

ii) Maestro Architects Ltd, in a consortium with M & M Construction Consultants (Quantity Surveyors), Kiri Consult Ltd (Civil/Structural Engineers), Norkun Intakes Ltd (Mechanical / Electrical Engineers) and EMS Consultants (Environmental Expert) successfully bidded for the tender for design and supervision of construction of KEMSA modern warehouse and office Block as advertised and was awarded the contract (ref. KEMSA/PROC/RFP 01/2016-2017) on 12th June 2017.

iii) Following the award and the acceptance our team embarked on interpretation of the clients' brief. The client's brief [as captured in the RFP under the Terms of Reference] was a comprehensive list of expected design output. It detailed the facilities to be accommodated including the space sizes and no. of personnel to work in each department. This Brief was captured in the RFP under the Terms of Reference.

iv) The consortium presented the understanding of the requirements of the client and our proposed design approach, in the form of an inception report. The report was approved by the client by collaboration with the State Department of Public Works by letter signed off by the Chief Architect of the Republic of Kenya. The consultant was commended as having demonstrated a good understanding of the client's needs. The consultants were instructed to proceed to preliminary designs based on the inception report.

v) Preliminary design was presented to the client and technical ministry team on 5th September 2017 and was approved with amendments. The consultant was instructed to proceed to scheme design taking into account the client's input, particularly on taking an integrated design approach that incorporated the existing buildings. These amendments entailed the renovation of existing facilities and the inclusion of elevated access linking

warehouses across Utawala road at the Pride Centre. A linkage bridge between the proposed warehouse and office block was also included.

vi) Scheme design taking into consideration the comments from the Preliminary Design Meeting was presented to the client and technical ministry team on 18th September 2017. This design captured all the components in the client's initial brief and incorporated all the comments made during the consultative meeting held. The presentation of the scheme included the presentation of the project official estimated cost of **Ksh. 8,861,005,582.27** [Eight Billion Eight Hundred and Sixty One Million, Five Thousand Five Hundred and Eight Two Shillings and Twenty Seven Cents] this was the official basis/value of the consultancy work for design phase. [Pre-Contract Stage]. The Consultants were instructed to finalize the design on this basis to enable the client to make the decision on if to phase out the project or not.

vii) On further presentations, meetings and design workshops, the client directed the implementation of the project in phases and tasked the consultant to isolate work worth approximately Ksh. 3 billion to be progressed to detail design and ultimately to be floated for construction within the financial year. In a concerted back-and-forth exercise with the client and the State Department of Public Works, project phase 1 & 2 were identified, detailed and construction contract procurement initiated. The value of the winning tender phase 1 & 2 was Ksh.3,079,998,859.50 [Three Billion, Seventy-Nine Million Nine Hundred and Ninety Eight thousand, Eight Hundred and Fifty-Nine Shillings and Fifty Cents Only.]

180. To achieve the above budget, the following already designed and costed works were omitted at tender:

i) Mechanization and integration of the warehouses (operationalization of new warehouse, refurbishment of old warehouse & mechanization equipment).
ii) Auxiliary building
iii) Maintenance Workshop and fire station building
iv) Solar Power Installations
v) Overhead bridge linking new Warehouse & Warehouse at Pride Center

vi) Bridge/link between office block and warehouse.

vii) Epoxy flooring to the Warehouse

viii) 2 no. gate houses (for warehouse and office block)

ix) Dock doors (7 no. + 10no. Fire escape doors)

x) Generators (2 no.)

xi) Automatic Voltage Stabilizers

xii) Uninterruptible Power Supply

xiii) Building Management System

xiv) Proposed link between Supply chain Warehouse and new Warehouse

xv) Climate control to the Warehouse

xvi) Lifts to the Warehouse (2 no.)

xvii) Cold room support structure

xviii) Sun shading feature

xix) Storage Racks

Over time, during the realization of the project, the client endeavored to realize the project as was envisioned and progressively released more phases from the above list to be implemented in accordance with the approved scheme design. So far the following additional contracts have been awarded and implemented.

i) Racking installation to new warehouses.

ii) Epoxy Flooring to the warehouse.

iii) Cold-room support structure

iv) Link, Sun shading feature and Roller Shutters.

v) BMS installations.

vi) Generators, AVS and UPS installation.

vii) Warehouse lift installation.

viii) Warehouse gatehouse

Total value of construction work certified stood at **Ksh. 5,020,004,094.88. Five Billion, Twenty Million, Four Thousand and Ninety-Four Shillings and Eighty-Eight Cents Only.**

viii) Further, the client initiated procurement of the following additional works towards the realization of the project:

(i) Specialized works to cold room floor
(ii) Cold room racks installation
(iii) Installation of Dock door

181. Based on their financial appraisal of June, 2023 the project still needed additional Kshs. 5,115,463,869.88 to be realized as envisioned, designed and approved.
182. Payment of consultancy work based on the contract is segmented as;

(i) Design phase / pre-contract phase
(ii) Construction and construction phase / post contract phase.

183. The contract stipulated that the Conditions of Engagement and Scales of Fees for Professional Services for Building and Civil Engineering Works Second Edition (1987) - Part 1 Building Works and any Amendments Thereto prepared by The Ministry of Public Works would be the basis for consultants' remuneration. This was the guide that was used in determining fees due at every stage of the consultancy.
184. The basis for consultancy invoicing of pre-contract phase was the total value of the project paid up to scheme design as instructed by the client i.e., Ksh. 8,861,005,582.27 [Eight Billion Eight Hundred and Sixty One Million, Five Thousand Five Hundred and Eight Two Shillings and Twenty Seven Cents]
185. The basis for consultancy invoicing of post contract was the value of certified work (undertaken by the six (6) contractors i.e., Ksh. 5,020,004,094.88. [Five Billion, Twenty Million, Four Thousand and Ninety Four Shillings and Eighty Eight Cents Only].
186. All invoices were reviewed by the State Department of Public Works which recommend the amount to be paid by the client after verification by the State Department. The Director of Maestro Architects Limited stated that there was no overpayment for consultancy services contrary to the Reports of the Auditor General. The consortium comprised of the following;
    - Maestro architects ltd
    - M & m construction consultants

- Kiri consult ltd
- Norkun intakes ltd
- Ems consultants

187. The warehouse, flammable good warehouse, gatehouses, parking and driveways were all in use with the office block intended to be in use by the close of the month of March 2024. The Completion certificates were not available as project was ongoing as at the time they appeared before the Committee.

Committee Observations

i) The undated and unsigned evaluation report submitted by Ministry of Transport, Infrastructure, Housing and urban Development to KEMSA puts the figure at Kshs. 163,590,536.22 while a letter dated 10th November 2017 from the same Ministry had put the figure at approximately Kshs. 289,000,000 thus contradictory.

ii) The Kshs.321,360,535 paid to a consultant engineer for design and supervision of construction of warehouse and office block and Kshs.22,466,643 paid to a consultant engineer for supervision of renovations could not be confirmed as a proper charge to public funds.

iii) There was a significant discrepancy between the contract sum agreed upon for consultancy services and the amount actually paid to Maestro Architects Limited. Despite the contract being valued at Kshs. 126,279,953, documents revealed that the company received a total payment of Kshs. 321,360,535, resulting in an overpayment of Kshs. 195,080,582.

iv) The consultant could not proof the basis upon which the total payment of Kshs. 321,360,535, was derived from the presumed contract price of Ksh. 8,861,005,582.27 as stated by the consultant. The contract agreement for the Ksh. 8,861,005,582.27 was not provided to the Committee for review and therefore the basis upon which it was arrived was not established.

v) The project had various phases, scope adjustments to align with budget constraints and there were omissions of certain works during tendering which were incorporated into the project as it progressed in order for project to realize the purpose as initially envisioned.

vi) Kenya Medical Supplies Authority management portrayed knowledge gap in project management that resulted in the mix up of project design proposals and works done in to bills.

vii) KEMSA directed the implementation of project in phases to be progressed to detailed design and ultimately to be floated for construction. Phase 1 and 2 progressed to tender and awarded at a contract sum of Kshs. 3,079,998,859.50.

viii) A letter from the Chief Architect in the Ministry of Transport, Infrastructure, Housing and Urban Development Ref: No.B.D108/KEMSA GEN/19 dated 1st August, 2017 concurred with the inception report and gave the authority to proceed to preliminary design.

Committee Recommendations

i) Within three months upon adoption of this report, the State Department for Public Works should verify the progress of the project, including the completion status of various components such as warehouses, office blocks, gatehouses, and infrastructure and provide a comprehensive report on the completion status of the project with respect to the stage of completion, quality of works, the statement of final account, the amount so far paid and any overpayments noted.

ii) Within three months upon adoption of this report, the Accounting Officer, Kenya Medical Supplies Authority should submit the completion certificate for the completed phases or components of the project where applicable, a detailed report on the cost escalations, approvals for the variations and justifications for the same. The Auditor-General should submit to National Assembly verified and approved project cost bill up.

5. Receivables from Exchange Transactions

188. The Committee heard that, as previously reported, the receivables from exchange transactions balance of Kshs.4,122,083,110 reflected in the statement of financial position as at 30 June 2018 includes long outstanding receivables totaling Kshs.3,400,428,351 comprising of counties Kshs.2,345,622,268 and the Ministry of Health Kshs.1,054,806,083 whose recovery is doubtful as detailed below:

S/No	County	2017/2018 (Kshs)	2016/2017(Kshs)
1	Baringo County	48,068,556.43	-6,337,929.22
2	Bomet County	35,463,332.10	63,841,235.45
3	Bungoma County	25,712,619.50	39,213,362.00

4	Busia County	8,259,252.00	33,722,894.09
5	Elgeyo Marakwet County	29,942,996.00	36,220,062.10
6	Embu County	10,672,646.59	28,809,712.29
7	Garissa County	20,697,722.42	29,435,980.42
8	Homa Bay County	111,584,756.40	91,620,619.40
9	Isiolo County	20,076,759.38	13,833,202.38
10	Kajiado County	47,641,962.32	72,910,137.77
11	Kakamega County	76,030,623.96	62,823,047.46
12	Kericho County	26,210.66	26,210.66
13	Kiambu County	84,195,731.60	40,718,540.60
14	Kilifi County	78,855,087.48	96,332,760.43
15	Kirinyaga County	43,983,030.50	31,781,035.50
16	Kisii County	68,542,061.55	82,125,996.55
	Kisumu County	87,447,971.98	35,748,735.98
18	Kitui County	84,983,062.26	97,925,471.37
19	Kwale County	48,031,472.16	59,002,946.16
20	Laikipia County	1,685,940.33	20,477,607.33

21	Lamu County	18,692,662.32	15,670,912.32
22	Machakos County	70,202,331.55	59,655,732.55
23	Makueni County	38,1 36,508.15	32,164,680.94
24	Mandera County	-0.25	22,737,929.75
25	Marsabit County	25,243,360.85	37,529,431.85
26	Meru County	90,164,923.80	78,779,433.55
27	Migori County	77,285,902.86	29,009,389.86
28	Mombasa County	16,828,306.00	269,109.00
29	Murang'a County	46,944,447.50	61,944,447.50
30	Nairobi County	285,663,343.28	285,501,728.28
31	Nakuru County	96,371,414.27	147,204,788.57
32	Nandi County	23,488,911.39	56,766,202.39
33	Narok County	104,584,708.18	98,524,087.18
34	Nyamira County	44,956,895.68	28,491,247.68
35	Nyandarua County	722,767.79	19,945,667.69
36	Nyeri County	4,381,675.81	90,593,134.31
37	Samburu County	30,397,881.62	21,986,744.62
38	Siaya County	28,868,646.40	51,161,954.00

39	Taita Taveta County	49,409,857.11	24,231,712.11
40	Tana River County	38,282,273.86	38,282,273.86
41	Tharaka Nithi County	8,692,559.12	33,907,404.12
42	Trans Nzoia County	41,407,560.59	41,407,560.59
43	Turkana County	87,473,020.45	1,554,131.45
44	Uasin Gishu County	-21,000.02	9,313,763.78
45	Vihiga County	78,513,730.22	47,547,096.22
46	Wajir County	65,200,386.02	56,669,456.52
47	West Pokot County	41,827,398.03	28,633,244.57
	Sub Total	2,345,622,268.20	2,349,714,900.98
	Ministry of Health	1,054,806,083.00	-
	Grand Total	**3,400,428,351.20**	**2,349,714,900.98**

189. No explanation has been provided for failing to recover these long outstanding debts. In the circumstances, the accuracy and validity of the receivable from exchange transactions balance of Kshs.4,122,083,110 reflected in the statement of financial position as at 30 June 2018 is doubtful.

Management Response

190. The management informed the Committee that, as at 30th June 2018 KEMSA receivable from exchange transaction balance of Ksh. 4,122,083,110 with a long outstanding amount due to KEMSA of Ksh 3,400,428,351 which includes an amount due from the Ministry of

Health Programs totaling to Ksh. 1,054,806.083 and county Government Ksh. 2,345,622,268.

191. The debt arose from the Supply Chain Services (Warehousing, Procurement and Distribution) offered by KEMSA to the various national programs under the Ministry of Health. They include HIV-Aids, Family Planning, East Africa Laboratory Networking Project, and Nutrition among others.

192. KEMSA has since been following up on the settlement of these debts with the Ministry of Health through correspondences and meetings with the Ministry Officials. The Principal Secretary had confirmed that the debt had been captured as pending bills and had been provided for in the financial year 2018/2019. However, it has come to KEMSA's attention that this outstanding amount has not been factored in the Ministry of Health Budget for 2018/19.

193. The authority has since written to the Principal Secretary, who has referred the matter to national Treasury to provide the funds to clear the outstanding amount. The debt remains valid and that is the reason why it formed part of the Receivables from Exchange Transactions. (Appendix 5i-Letters from the Principal Secretary Ministry of Health and KEMSA)

194. Further as at 30th June, 2018, The County Governments owed KEMSA a total of Ksh. 2,345,622,268. KEMSA was advised by the principal Secretary of Health to extend credit facility to Counties despite the high outstanding debts. (Appendix5 ii- Letter from the Principal Secretary)

195. As at 11th August 2020, KEMSA had collected a total of Ksh 2,193,622,288.76 from the counties against the debts outstanding as at 30th June 2018.

196. Most of the counties have cleared the debts outstanding as at 30th June 2018. The Authority is in constant engagement with the few counties notably Nairobi, Narok, Murang'a, Kisumu, Machakos, Migori,Narok, Kisumu and Vihiga Counties and there are positive indications that the amounts will be cleared before 30th June 2018. We therefore do not consider the debts as doubtful see (Appendix 5 iv Letters of engagement with counties) and (a detailed debt report and funds received during FY 22/23.

Current Status;

197. The long outstanding amounts as at 30th June, 2018 have been settled except the receivable from Kisumu County of Kshs 35,748,735.98.
198. The management is following up on the settlement of this outstanding amount through reminder letters, personal visits and lobbying through the Council of Governors.

Committee Observations

i) Despite KEMSA indicating that follow-up with the Ministry of Health was done through correspondences, there's no evidence that the pending bills have been cleared or the commitment that the Ministry of health will clear the debt.
ii) Since the Ministry ought to have provided funding to KEMSA first before provision of the mentioned services, it's not clear how the debt arose from the Supply Chain Services (Warehousing, Procurement and Distribution) offered by KEMSA to the various national programs under the Ministry of Health.
iii) There is no evidence that the debts owing from the counties has been cleared and what steps have been taken to recover the amount presumed owing from Kisumu County of Kshs 35,748,735.98
iv) PIC in its 22nd report had discussed the audit issue and observed that The National government had spent approximately Kshs.600,000,000 to procure drugs from KEMSA in a period of 90 days during the 2016/17 financial year. This was despite the national government having no role in purchase of drugs (for counties) as per the fourth schedule of the constitution which delimits the roles to be performed by the two levels of government.
v) Despite assurances by Management, KEMSA still lacks effective debt collection measures to discharge its obligations as they fall due.

Committee Recommendations

i) Within three Months upon adoption of this report, the accounting officer should provide a comprehensive report on the status of the debts to the National Assembly and to the Auditor-General who shall review and report the findings to the National Assembly.

ii) The National Government should limit itself to those functions earmarked for it in the Fourth Schedule of the Constitution.

iii) Within three Months upon adoption of this report, the EACC should investigate whether the purchase of drugs was in accordance with the procurement law. Should any officer be found culpable, the DPP should initiate legal proceedings with a view to making good any loss that may be determined/established.

6.0 Trade and Other payables

199. The Committee heard that, trade and other payables from exchange transactions balance of Kshs.833,920,091 as at 30 June 2018 includes long outstanding Medical creditors of Kshs.22,888,538.84 and operation creditors of Kshs.35,681,976.80 that have been outstanding for a long period of time. Further, the trade and other payable from exchange transaction balance includes long outstanding customer prepayment of Kshs.3,829,479 termed as direct deposit dated as far back in 2016 and suppliers retained fund of Kshs.9,858,300 which has been outstanding since 30 June 2012.

200. Consequently, the accuracy and validity of the trade and other payables from exchange transactions balance of Kshs.833,920,091 as at 30 June 2018 could not be confirmed.

Management Response

201. The management informed the Committee that, the payables are broken down as follows;

i) Medical Creditors

Med Africa Ltd	**14,891,184.00**

Meditec Systems Ltd	**2,290,509.84**
Omaera Pharmaceuticals Ltd	**5,706,845.00**
Total	**22,888,538.84**

i) **Operation Creditors**

Crown Agents Kenya Ltd	**11,361,832.91**
GTZ	**11,361,832.91**
John Snow Incorporated	**11,361,832.91**
Total Security Surveillance Ltd	**1,596,478.07**
Total	**35,681,976.80**

M/S Med Africa ltd KSH 14,891,184.00

202. The supplier M/S Med Africa ltd was awarded a Contract to supply, Install, and Commission Diesel Fired Incinerators at Busia, Kitale, and Wajir County Referral hospitals on 25th June 2015 with a delivery period of 24 weeks. At the time of signing the contract, the indication was that the sheds would be ready to house the incinerators before delivery. This was not the case since the Ministry of Health who were responsible for the construction of the three incinerator sheds did not prepare the sites as expected.
203. The incinerators were delivered in January 2016 to the respective sites but the sheds to house them were not ready. KEMSA procured the equipment on behalf of East Africa Public

Health Laboratory Networking Project, and the supplier delivered the equipment but the sheds were not ready. The Principal Secretary advised KEMSA vide letter (REF .NO MOH /ADM/1/1/VOL .1 dated 24th March 2016 Appendix 6 i) to pay Med Africa Ltd 70% of the contract amount. 30% of the contract (Ksh 14,891,184) is what is outstanding awaiting installation and commissioning of the incinerators.

204. On 10th September 2018 KEMSA received a certificate of practical completion of the incinerator's sheds for Busia and Kitale County Hospital (Appendix 6 ii completion certificate) Med Africa Ltd handed over Incinerators to county referral Hospitals and subsequently payment was made see (Appendix 6iii copies of payment vouchers)

Meditec Systems Ltd KSH 2,290,509.84

205. M/s Meditec Systems Ltd was awarded a contract for procurement of cancer, surgical dental, and diagnostic equipment worth USD 3,368 374.20 on 28th November 2012. KEMSA received the authority to incur an expenditure of Ksh 300,000,000 from the Ministry of Medical Services (MOMs) (Appendix 6 iv copy of AIE). One of the items in the contract was the construction of the bunker and civil works, which was to take 47 weeks to be completed. At the time M/s Meditec Systems Ltd were forwarding the final certificate, funds were not enough to service the final payment (Ksh 2,290,509.84) due to changes/fluctuations in exchange rates. KEMSA requested the Ministry of Health to facilitate extra funds which were sent and the supplier paid in FY21/22 see (Appendix 6 v copies of payment voucher)

OMAERA PHARMACEUTICALS LTD KSH 5,706,845.00

206. In 2016, the Pharmacy and Poisons Board recalled the marketing authorization of Alimox (Amoxicillin Oral suspension due to quality issues see (Appendix 6 vi Letter for suspension of marketing Authorization for Alimox)

207. The manufacturer could not, therefore, manufacture the product until the Manufacturing Authorization was reinstated. They appealed for reinstatement of the Manufacturing authorization in Nov 2016 but the regulator (PPB) reinstated the Marketing authorization on 22nd of Feb 2018(after about two years). By the time the Market Authorization was

reinstated, the product had been delisted from the Kenya Essential Medicines List and hence the manufacturer could not replace the product with fresh batches.

208. In July 2019, an agreement was reached between KEMSA and Omaera and the supplier was requested to replace the delisted Alimox with Amoxicillin Dispersible tablets 250mg at the same value of the delisted product. This was done in November 2019. The supplier has delivered the commodities (see attached receipt documents Appendix 6 vii) Operational Creditors KSH (35,681,976.80)
209. Crown Agents Kenya Ltd, GTZ and John Snow formed a consortium with KEMSA and worked together on a contract for Tendering, Implementation and Winding up Phase for Providing Procurement and Supply Chain Management Services to the GFATM programs in Kenya. Part of the agreement in the contract of association was that partners were to share the profit of the project on an equal basis of 25%:25%:25%:25%.
210. At the end of the Financial Year, KEMSA had received part of the Procurement and Supply Chain Management Consortium (PSCMC) fees from the principal recipient hence providing for payables to the partners. These payments are outstanding awaiting resolution of pending bills incurred during the operations of the consortium. In FY 20/21 all pending bills for the consortium were paid after funds were received from The National treasury.
211. As at 30th June, 2018 KEMSA payable from exchange transactions included long outstanding customer prepayment of Ksh. 3,829,479 termed as direct deposit dated as back as 2016. The direct deposits are made up of the following transactions: see (Appendix 6 ix detailed Customer prepayment report). suppliers retained fund of Kshs.9,858,300.
212. The amount of Ksh. 9,858,300 is a retention for Alliance Technologies Ltd after the termination of the contract existing between KEMSA and Alliance Technologies Ltd, due to failure to meet obligations under the contract. Alliance Technologies sought legal redress and the matter is still in court. KEMSA has retained the amount until the case is fully determined.

Further submissions by the management of Meditec Systems Limited.

213. The Committee, after meeting Kenya Medical Supplies Authority (KEMSA) management, resolved to invite the Directors of Meditec Systems Limited to apprise it on the signed

contractual agreement between Meditec Systems Limited and the Kenya Medical Supplies Authority for the procurement of cancer, surgical dental and diagnostic equipment worth USD $ 3,368,374.20. The submission was to include the award and acceptance letters for the contract, the amount received on procurement of cancer, surgical dental and diagnostic equipment, the money received for the construction of the bunker and civil works and the certificate of completion for construction of the bunker and civil works.

214. The management of Meditec Systems Limited informed the Committee that the award letter, acceptance letter, and duly signed contract were attached to their written submission to the Committee. Some information was captured in their legacy systems, which subsequently crashed. However, through diligent efforts and utilizing SAP system, they were able to retrieve the information. The letter Ref: MED 23-2020 sent to KEMSA provided a breakdown of outstanding amounts for the project. Additionally, they provided a follow-up letter (MED 10-2021,) demanding payment, and their lawyer's demand letter. In August 2021, Meditec Systems Limited received Kshs. 30,964,359.05 the total outstanding amount. Meditec Systems Limited indicated that the project was not completed on time because of the following;

215. The proposed site at the time of tendering was changed to a new location and attached a draft of letters sent to KEMSA (Ref: Med 105-2014) requesting an extension to the contract, citing the delays caused by the change in site. They also attached a map showing the original site where the bunker was to be constructed and the actual site where it was constructed.

216. Additionally, the commissioning of the bunker was hampered by issues related to basic amenities such as electricity, lack of internet connectivity, sewage overflow to the site and the delay by KEMSA to respond to the request to hand over the equipment.

Committee Observations

i) The Committee observed that M/S Med Africa ltd was awarded a Contract to supply, Install, and Commission Diesel Fired Incinerators at Busia, Kitale, and Wajir County Referral hospitals on 25th June 2015 with a delivery period of 24 weeks. However, the sheds to house the incinerators were not ready since the Ministry of Health who were responsible for the construction of the three incinerator sheds did not prepare the sites as expected. The

Principal Secretary had advised KEMSA vide letter (REF .NO MOH /ADM/1/1/VOL .1 dated 24th March 2016) to pay Med Africa Ltd 70% of the contract amount. 30% of the contract (Ksh 14,891,184) is what is outstanding awaiting installation and commissioning of the incinerators

ii) The status of the sheds and installation of the incinerator at Wajir is still unknown since there is no update on the matter.

iii) M/s Meditec Systems Ltd was awarded a contract for procurement of cancer, surgical dental, and diagnostic equipment worth USD 3,368 374.20 on 28th November, 2012. One of the items in the contract was the construction of the bunker and civil works, which was to take 47 weeks to be completed. However, at the time M/s Meditec Systems Ltd were forwarding the final certificate, funds were not enough to service the final payment (Ksh 2,290,509.84) due to changes/fluctuations in exchange rates. KEMSA received the extra funds from the Ministry of Health and the supplier paid in FY2021/2022. The committee did not get any documentary evidence of final settlement.

iv) The contractual agreement between Meditec Systems Limited and the Kenya Medical Supplies Authority (KEMSA) for the procurement of cancer, surgical dental, and diagnostic equipment, along with construction works, was signed and executed. However, KEMSA paid in Kenyan Shillings.

v) The completion of the construction of the bunker and civil works was delayed, attributed to changes in the proposed site, issues with basic amenities at the new site, and delays in equipment handover by KEMSA.

vi) On Omaera Pharmaceuticals Limited with an amount payable of Kshs. 5,706,845.00. The committee observed that the Alimox (Amoxicillin Oral suspension was recalled in 2016 by the Pharmacy and Poisons Board due to quality issues. The manufacturer could not, therefore, manufacture the product until the Manufacturing Authorization was reinstated. The product was delisted from the Kenya Essential Medicines List and hence the manufacturer could not replace the product with fresh batches. In July 2019, an agreement was reached between KEMSA and Omaera and the supplier was requested to replace the

delisted Alimox with Amoxicillin Dispersible tablets 250mg at the same value of the delisted product which was done in November 2019. However, no documentary evidence was adduced before the committee to prove the agreement and delivery. Arising from the foregoing the committee was of the view that KEMSA did not assess the quality of the products they received in their stores before acceptance thus breaching section 150 of the Public procurement and Asset Disposal Act, 2015 on acceptance of goods, works and services.

vii) The Operational Creditors of Kshs.35,681,976.80 related to Crown Agents Kenya Ltd, GTZ and John Snow who had formed a consortium with KEMSA for Tendering, Implementation and Winding up Phase for Providing Procurement and Supply Chain Management Services to the GFATM programs in Kenya. However, at the end of the Financial Year, KEMSA had received part of the Procurement and Supply Chain Management Consortium (PSCMC) fees from the principal recipient hence providing for payables to the partners whose remittance to the consortium partners was delayed until FY 2020/2021.

viii) The delivery note provided for the supply of drugs after an agreement was reached between KEMSA and Omaera and the supplier requested to replace the delisted Alimox with Amoxicillin Dispersible tablets 250mg was not adding up. It was outside the respective year under review (beyond the financial year cycle).

ix) An amount of Kshs. 3,829,479 included in the long outstanding customer prepayment was a direct deposit dating back 2016. It was not clear whether there was any refund or how the prepayment was handled by KEMSA.

x) The amount of Ksh. 9,858,300 was a retention for Alliance Technologies Ltd after the termination of the contract between them and KEMSA arising from failure to meet obligations under the contract. However, Alliance Technologies had sought legal redress and the matter is still in court.

xi) KEMSA still has not paid some suppliers for goods supplied and services rendered from as far back as 2013. There is no justification for the continued delay.

xii) KEMSA is still holding funds in its accounts that should ideally be surrendered to the Unclaimed Financial Assets Authority.

Committee Recommendations

i) Within three months upon adoption of this report, the Accounting Officer-KEMSA, the Principal Secretary-State Department for Medical Services and the County Government of Wajir should ensure that the incinerator is installed.

ii) Within three months upon adoption of this report, the Auditor-General should audit the payables in question and give a comprehensive report on their status to the National Assembly.

iii) Within three months upon adoption of this report, the Accounting Officer-KEMSA should fast track the settlement of the case between them and Alliance Technologies.

iv) Within three months upon adoption of this report, the Accounting Officer-KEMSA, should fast-track the process of paying off the pending bills and if it does not have details of suppliers it owes money as it claims, it should surrender the monies to the Unclaimed Financial Assets Authority as required by law.

v) Within three months upon adoption of this report, the Accounting Officer-KEMSA, to provide evidence of installation of the diesel-powered incinerators at Busia, Kitale and Wajir County Referral hospitals.

vi) Within three months upon the adoption of this report, the Auditor-General should undertake verification and a reconciliation of payment made in Kenyan Shillings with a view of determining the loss or gain realized.

vii) Within three months upon adoption of this report, EACC should investigate M/S Med Africa Limited for the contract to supply install and commission diesel fired incinerator at Wajir County Referral Hospital and report the findings to the National Assembly. Should any officer be found culpable, the DPP should initiate legal proceedings with a view to recovering any irregular payments.

7.0 Budgetary Performance

217. The Committee heard that, during the year under review, the Authority's actual receipts amounted to Kshs.3,059,979,000 against budgeted receipts of Kshs.3,861,226,000 resulting in a revenue shortfall of Kshs.801,247,000 equivalent to 21% of the budget. The bulk of the revenue shortfall was from net sales which had actual collection of Kshs.709,435,000 against budgeted receipts of Kshs.1,162,381,000 resulting in a shortfall 452,946,000. Further, the

Authority's actual expenditure for the year amounted to Kshs.2,222,683,000 against budgeted expenditure of Kshs.2,605,105,000 resulting in an overall under absorption of Kshs.382,422,000. It is therefore clear that the Authority did not fully achieve its budget objectives which adversely affected delivery of the intended services to the public. Therefore, there is need for the Authority to review its budget making process with a view to coming up with a realistic budget to support the attainment of the core mandate of procuring, warehousing and distribution of medical commodities to public health activities in the Country.

Management Response

218. The management did not submit response to the Committee.

Committee Observations

i) The Acting CEO- KEMSA did not have a written submission to the budgetary performance audit query.

ii) The bulk of the revenue shortfall was from net sales which had actual collection of Kshs.709,435,000 against budgeted receipts of Kshs.1,162,381,000 resulting in a shortfall 452,946,000. This is the core business of KEMSA and drugs are always in high demand thus not clear how they under-collected or the budget was unrealistic.

iii) The Authority's actual expenditure for the year amounted to Kshs.2,222,683,000 against budgeted expenditure of Kshs.2,605,105,000 resulting in an overall under absorption of Kshs.382,422,000. Therefore, the Authority did not fully achieve its budget objectives which could have adversely affected delivery of the intended services to the public.

Committee Recommendations

i) The committee reprimands the Accounting officer for not addressing the audit query on budgetary performance.

ii) The accounting officer-KEMSA should ensure that the revenue target factored in the annual budgets are realistic and achievable. Also, the accounting officer should always

ensure that the Authority reviews its budget making process with a view to coming up with a realistic budget.

iii) The Accounting Officer-KEMSA must at all times adhere to their annual work plans, procurement plans and revenue collections schedule to ensure that they fully achieve its budget objectives.

7.1 Insurance Expenses

219. The Committee heard that, insurance costs of Kshs.97,896,057 for the year ended 30 June 2018 include staff group life assurance of Kshs.4,343,068. However, the staff group insurance service was single sourced as no evidence of competitive bidding was availed for audit verification. This is contrary to Section 96 of the Public Procurement and Assets Disposal Act, 2015 which require the accounting officer to take such steps as are reasonable to bring the invitation to tender to the attention of all those who may wish to submit tenders.

220. Further, although direct procurement method was used, the circumstances did not meet the conditions set for direct procurement as laid down in Section 91 of the Act. Management was therefore in breach of the law and the validity of the staff group life assurance expenses of Kshs.4,343,068 for the year ended 30 June 2018 could not be confirmed.

Management Response

221. The management informed the Committee that, the staff group life assurance was single-sourced because of the following reasons:

i) Running the pension scheme requires a Fund issuer or Fund Manager. KEMSA competitively recruited The Insurance Company of East Africa (ICEA) as Fund Manager.

ii) A fund administrator is also required and thus Sapon Insurance Brokers were competitively recruited as fund administrators/ trustees to run the pension scheme.

iii) Group life assurance was incorporated in the trust deed and rules which is the governing document registered by the Retirement Benefits Authority (RBA) in line with (The Treasury Circular of November 24th, 2010 clause 5 Appendix 7i) and is therefore inbuilt into the pension scheme. The Trust deed and rules clause 13 (i) on page 27 requires that if a member dies whilst in the service of the founder, a lump sum called "the life assurance

benefit") becomes payable in addition to the amount accrued to the member's credit under the scheme from his contributions and the founder's contribution as provided under clause 13 (ii).

iv) It is therefore prudent that both pension and group life assurance be administered in the same place to ensure both benefits are paid upon death of a member.

v) The direct procurement was done in line with section 103(2)(d) that detail when direct procurement may be used;

i) A procuring entity may use direct procurement as allowed under sub-section (2) as long as the purpose is not to avoid competition. (2) A procuring entity may use direct procurement if any of the following are satisfied.

ii) The procuring entity, having procured goods, equipment, technology or services from a supplier or contractor, determines that additional supplies shall be procured from that supplier or contractor for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procuring entity, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods or services in question;

Committee Observations

i) The staff group insurance service was single-sourced contrary to Section 96 of the Public Procurement and Assets Disposal Act, 2015 which requires the accounting officer to take such steps as are reasonable to bring the invitation to tender to the attention of all those who may wish to submit tenders.

ii) Further, although direct procurement method was used, the circumstances did not meet the conditions set for direct procurement as laid down in Section 91 and section 103(2)(d) of the Public Procurement and Assets Disposal Act, 2015 and therefore the procurement method is not justified in the circumstances.

iii) KEMSA misinterpreted and used the supplier Trust deed clause "the life assurance benefit" to justify its irregular process of single sourcing procurement. The clause has no relationship with the method used and a supplier cannot dictate to a procuring entity what, how and when to procure.

iv) The staff group life assurance was unnecessary in the circumstances and the expenditure Kshs.4,343,068 was nugatory.

Committee Recommendations

i) Within three months upon adoption of this report, the EACC should investigate whether the procurement of staff group life assurance was in accordance with the procurement law. Should any officer be found culpable, the DPP should initiate legal proceedings with a view to recovering the amount expended of Kshs.4,343,068 from the officers involved.

FINANCIAL YEAR 2018/2019

1.0 Inaccuracy in Net Sales

222. The Committee heard that, as disclosed under Note 3 to the financial statements, the statement of financial performance reflects net sales balance of Kshs.1,164,120,025 which is net of the cost of sales balance of Kshs.4,747,574,351. The cost of sales balance includes an amount of Kshs.128,604,791 for expired/damaged drugs that were unsaleable. This has the effect of increasing the cost of sales instead of proposing for write-off in the statement of financial performance. Management has not given reasons for the accounting of the expired/damaged drugs as cost of sales. Consequently, the accuracy, completeness and validity of the net sales balance of Kshs.1,164,120,025 for the year ended 30 June, 2019 could not be confirmed.

Management Response

223. The management informed the Committee that, the expiries were mainly driven by:

i) KEMSA's business model is "PULL" system where counties and other public health and Faith based facilities determine what they require and buy the same. After devolution, the entire public health supply chain system moved from push to PULL and some commodities attracted little or no demand from these facilities. These commodities have over time exhausted their shelf life and hence becoming obsolete.

ii) There was a change of treatment protocol or treatment policy from the use of streptomycin injection (TB drug) due to toxicity and resistance to other more efficacious drugs and therefore the drugs under the old treatment regimen becomes obsolete.

iii) Change Technology from analogue to Digital: As a result of the Initiative by the National Government of equipping 2 hospitals in each County and 4 National Referral hospitals with outsourced specialized state-of-the-art medical equipment. This has reduced the demand for commodities specifically X-Ray films. The X-Ray films that KEMSA was holding as inventory were therefore rendered obsolete. Damages in the cause of day-to-day operations.

iv) Further, total stock receipts for KEMSA Capital were Ksh.6,683,149,754.57 and expiries compared to receipt were 1.92% which is within the International Standards of Pharmaceutical Supply Chain Management on acceptable expiry levels.

v) It is worth noting that KEMSA also has taken measures for items that are received below their 75% shelf life. The suppliers are required to commit to collect the products that are not consumed 6 months to expiry date.

vi) The value of expired stock was expensed as cost of sale which was disclosed in the statement of financial performance under revenue from exchange transactions.

vii) The expiries are a Commercial loss and not an operating expense and that's the reason why they are adjusted against the cost of sales in line with IPSAS 1 (45) that states: Each material class of similar items shall be presented separately in the financial statements. Items of a dissimilar nature or function shall be presented separately unless they are immaterial.

Committee observations

i) The committee observed that KEMSA did not respond to the issue of improper accounting of the expired/damaged drugs as the cost of sales amount to Kshs.128,604,791. This had the effect of increasing the closing stock which would be reflected as an asset in the statement of financial position yet it has no economic value and would be misleading to the users of financial statements.
ii) A similar issue was raised in FY 2017/2018 and again in 2016/2017 the PIC in the 22nd Report had discussed the same.

The committee had observed that;

a) the expiry of drugs was not due to breach of contractual terms but due to change in drug regimen indicating poor planning by KEMSA. The Agency should ordinarily know which drugs are obsolete and which drugs are going to be introduced into the market.
b) KEMSA indicated that they had devised strategies to determine the demand of drugs from across the counties which included constant engagement and collecting data to avoid expiry of drugs as well as other strategies such as prioritizing on shelf life of drugs.

Arising from this, the committee observed that KEMSA did not provide any documentary prove of the improvements made through the devised strategies or whether such strategies ever existed such as prioritizing on shelf life of drugs.

i) KEMSA did not manage its drugs stock for the purpose of preventing wastage, loss, and continuing utilization of supplies. Further, KEMSA did not avoid unprofitable lock-up of funds by keeping stocks to the minimum necessary for the efficient conduct of the its (KEMSA) supply/operations. In addition, the committee observed that KEMSA had not put in place strategies that will prevent wastage such as the use of anticipatory patterns to predict demand of drugs from the Counties. Thus, KEMSA contravened Section 160 (1) of the Public Procurement and Asset disposal Act 2015.
ii) KEMSA had treated expired drugs as saleable drugs in the financial statements as pointed out in the audit report that the cost of sales figure includes an amount of Kshs.150,423,159

for expired/damaged drugs that were unsaleable due to expiry or damage. This is misleading to the users of financial statements as it inflates the current assets.

Committee Recommendations

i) The committee reprimands the then Accounting Officer(s) for laxity in minimizing wastage of public funds though procurement and stocking of expired drugs.

ii) Within three months upon adoption of this report, as recommended in our report for 2017/2018, the Auditor-General should carry out a Compliance audit on procurement of drugs, stocking, accountability and destruction of expired drugs by KEMSA for a period of five years from 2017/2018 to 2021/2022 (both years inclusive) to establish if there are any irregularities or breach of the procurement law. Should there be any irregularities established, EACC and DCI should investigate the specific cases and the officers found culpable should be prosecuted by the DPP and be held accountable for any financial losses during their tenure.

iii) Within three Months upon adoption of this report, as recommended in our report for 2017/2018, the management of KEMSA should submit to the National Assembly, a copy of documented strategies, approved by the Board and the Principal Secretary State Department of Medical Services to prevent wastage.

2.0 Unsupported Other Income

224. The Committee heard that, the statement of financial performance reflects other income of Kshs.2,051,110,240. The balance includes supply chain fees totalling to Kshs.1,449,443,349 composed of USAID Kshs.675,711,309, Global Fund Kshs.517,524,508, UNICEF Kshs.35,672,444, Ministry of Health Kshs.161,744,537 and other Strategic Partners Kshs.58,790,551. However, the Management did not provide supporting documents such as agreements, approved programmes and budgets, receipts and expenditure for audit review. In the circumstances, the accuracy and validity of supply chain fees totalling to Kshs.1,449,443,349 for the year ended 30 June, 2019 could not be confirmed.

Management Response

225. The management informed the Committee that, the supply chain fees are earned as per the contract terms indicated on signed MOUs and contacts from Strategic Partners and instruction letters to incur expenditure from the Ministry of Health as informed by the Ministry's Capital budget for procurement of medical commodities.

226. KEMSA has provided supporting documents of agreements with Strategic Partners and Instruction letters from the Ministry of Health authorizing procurement of medical commodities.

Further submissions by the Management

227. Further, KEMSA earned supply chain fees of Kshs 1,449,443,349 as per attached schedule as per the contract terms indicated on signed MOUs and contacts from Strategic Partners and instruction letters to incur expenditure from the Ministry of Health as informed by the Ministry's Capital budget for procurement of medical commodities.

228. KEMSA has provided supporting documents of agreements with Strategic Partners and Instruction letters as follows;

(i) Contract between KEMSA and USAID-MCP and consents to procure medical commodities

(ii) MOU between KEMSA and the National Treasury on behalf of GLOBAL FUND and authorities to procure medical commodities, highlighting the respective budgets and agreed supply chain fees.

(iii) MOU between KEMSA and UNICEF, highlighting the pricing schedule for supply chain services to be provided.

(iv) Authorities to procurement for the Ministry of Health, highlighting the respective budgets and agreed supply chain fees.

(v) MOU between KEMSA and other strategic partners namely AMREF, WFP, CHAI and JHPIEGO that the Authority provided supply chain fees during the financial year under review.

Committee observations

i) The committee observed that the first response by the Management did not address the question with regard to providing supporting documents such as agreements, approved programmes and budgets, receipts and expenditure for review. The committee requested for comprehensive response on the supply chain fees which did not either address the issues raised in the report as the accounting officer only duplicated the figures questioned in the report without clear analysis on how the incomes were arrived at, the value of the volumes transacted as the basis of the fees received were equally unknown. This could create room for fraudulent manipulation of fees, thus under-reporting.

ii) The contract and MOU documents between the KEMSA and programme partners were provided. However, although the award fee for USAID as described in the contract/MOU were designated in US dollars, the actual amount at the time of execution and the dollar conversion rate are not disclosed in the documentary evidence adduced by KEMSA. Global Fund MOU had the fees rates as percentage of procurement volume, UNICEF MOU fees was not clear, MOH did not have a contract or MOU, AMREF contract did not specify the fees receivable, WFP contract did not specify the fees receivable, Clinton Health Access Initiative had the fees rates as percentage of procurement volume, JHPIEGO Kenya did not have specified fees.

Arising from the aforementioned, the committee observed that the basis upon which the fees received were determined and whether there was a proper cost benefit analysis between what KEMSA spent in the process and what they received in return could not be ascertained.

iii) The approved programmes and budgets, receipts and expenditure were not provided for audit and committee review.

Committee recommendations

i) Within three months upon adoption of this report, the EACC should review the respective accounts of these partners with a view to establishing the status and whether there were economic crimes perpetrated during the effective period for which the contracts/MOUs

ran. Should there be any official found culpable of any financial misconduct, the DPP should initiate legal process with a view to recovering the lost funds.

3.0 Unaccounted for Funds

229. The Committee heard that, a review of the Kenya Health Sector Support Project-Essential Medicine and Medical Supplies (EMMS)-Ministry of Health and East Africa Public Health Laboratory Networking Project (EAPHLNP)-Ministry of Health financial statements for the year ended 30 June, 2019 revealed that a total of Kshs.419,058,786 comprising of Kshs.333,194,208 from EMMS and Kshs.85,864,578 from EAPHLNP was disbursed to Kenya Medical Supplies Authority to finance projects under Kenya Health Sector Support Project-KEMSA and East Africa Public Health Laboratory Networking Project-KEMSA. However, the amount has not been reflected in the financial statements and Management has not explained how the funds were accounted for. In the circumstances, the accountability of Projects' funds totalling to Kshs.419,058,786 for the year ended 30 June, 2019 could not be confirmed.

Management Response

230. The management informed the Committee that, receipts of Ksh 200,000,000 and Kshs. 133,194,208.35 were received on 9th July 2018 from the Ministry of Health to the KEMSA Equity Trade Account. The breakdown of the Ksh. 333,194,208.00 is as follows;

Remarks	**Amount**
Grant from the World Bank for purchase of EMMS and included 10% KEMSA Management fees.	200,000,000.00
Grant from MOH for payment for Lab equip. & consumables that had not been shipped by 30-6-2018.	49,539,458.80

KEMSA fees for supply chain services under KHSSP for the procurement of Equipment.	83,654,749.20
	333,194,208.00

The utilization of the funds (spent through KEMSA's account) is as follows;

Source	**Amount**
Receipts from MOH	333,194,208.00
Purchase of Medical Commodities	- 158,848,063.00
KEMSA Fees Expense	- 56,978,886.00
KEMSA Fees Expense	- 15,884,806.00
Total	**101,482,453.00**

231. The accounts have been amended and the balance of Kshs. 101,482,453.00 has been treated as payable to WB KHSSP Project in the KEMSA financial statements. The receipt of Ksh. 85,864,578 was received in the EAPHL Project account and has been accounted for under the Project Fund ledger in the KEMSA Main accounts.

Committee observations

i) The committee observed that Kshs.419,058,786 comprising of Kshs.333,194,208 from EMMS and Kshs.85,864,578 from EAPHLNP disbursed to Kenya Medical Supplies Authority to finance projects under Kenya Health Sector Support Project KEMSA and East Africa Public Health Laboratory Networking Project-KEMSA were not being reflected in the financial statements of either KEMSA as an entity or the project accounts. It was therefore not clear how the funds were accounted for.

ii) KEMSA has given a breakdown of how the funds were received and expensed . KEMSA has also indicated that the accounts have been amended and the balance of Kshs. 101,482,453.00 being treated as payable to WB KHSSP Project in the KEMSA financial statements. The committee noted with concern that there is no evidence that the expenditure or the amended financial statements have been audited by the Auditor-General.

iii) The committee further observed that the receipt of Kshs. 85,864,578 in the EAPHL Project account, though KEMSA indicates that it has been accounted for under the Project Fund ledger in the KEMSA Main accounts. There is no evidence that the receipt or the expenditure in respect of the Project Fund ledger in the KEMSA Main accounts have been audited by the Auditor-General.

Committee recommendations

Within three months upon adoption of this report, the Auditor-General should carry out a forensic audit on how the project funds of Kshs.419,058,786 comprising of Kshs.333,194,208 from EMMS and Kshs.85,864,578 from EAPHLNP disbursed to Kenya Medical Supplies Authority to finance projects under Kenya Health Sector Support Project-KEMSA and East Africa Public Health Laboratory Networking Project-KEMSA were received and accounted for by KEMSA and submit a report to the National Assembly.

4.0 Unsupported Expenses - Staff Costs

232. The Committee heard that, as disclosed in Note 5 to the financial statements, the statement of financial performance reflects staff costs of Kshs.980,575,930. The balance includes

salaries and allowances of Kshs.25,717,843 paid to fifty-six (56) officers employed during the year. However, the Management did not provide supporting documents outlining the recruitment process, advertisement for vacancies, interviewing panel recommendations and approval for hiring for audit review. Further, the balance includes bonus payments of Kshs.43,689,870 paid to staff during the year. However, the Management did not provide supporting documents such as attained set targets, bonus approved budget and approval from Salaries and Remuneration Commission, (SRC). Management did not also provide the basis for paying allowances amounting to Kshs.17,212,000 to staff participating in tender evaluation committees. In addition, the Authority had seven hundred and ninety one (791) employees against an approved staff establishment of three hundred and forty one (341) resulting in unapproved and unexplained over establishment of four hundred and fifty (450) officers. Consequently, the accuracy, completeness and validity of bonus and committee allowances expenditure totalling to Kshs.86,619,713 for the year ended 30 June, 2019 could not be confirmed.

Management Response

233. The management informed the Committee and responded as follows;

Over Establishment

i) The recruitment of fifty-six (56) officers employed during the year and respond as follows;
ii) As per the existing KEMSA Human Resource Policies Manual, the Board has mandated the Management to recruit and promote staff in grades SA4 and below. The staff in question fall in this category.
iii) The request to hire new staff was duly approved and justification was provided. Find attached the supporting documentation for the recruitment requests and promotions.
iv) KEMSA has a staff establishment of 341, which was approved by the 37th Board of Directors meeting held on the 8th May 2014 as per Board minutes MIN 9/FB/2014 on the approved staff establishment (Appendix 1 iii) and by the Permanent Secretary Ministry of Health vide the letter (Ref: MMS/ADM/1/17) dated 13th May 2010 as recommended by the Joint Ministerial Committee.

v) The 791 employees indicated above was the total number of staff both KEMSA staff (324 in-post) and Program staff (467).

vi) The 467 are contracted staff by KEMSA to render services to the various programs that KEMSA has with its Strategic Partners. While approving the new business model, the KEMSA 35th Board meeting held on 15th October 2013, under minute No.44/FB/2013 ix (d) gave authority to the management for the recruitment of short-term/contract staff based on the new business model needs.

vii) This authority was given to enable the management to effectively manage the unpredictable workload from the county health facilities and the strategic partners' projects within the Approved Personnel Emoluments budget.

viii) In addition, KEMSA has Contractual Partnerships with thirteen strategic partners to whom KEMSA offers supply chain services with variable and unpredictable workloads. The various projects under the different strategic partners have different contract durations ranging from one year to five years, hence the need for short-term contract staff to cater to their specific needs.

ix) Given the above scenario, the short-term contract staff are inevitable but do not form part of the approved staff in the establishment since they are required for a specific period tied to the life of the Project.

x) An Example is the KEMSA-USAID Medical Commodity Program which was to run for an initial 3-year period with an extension of 2 years. The technical staff recruited to manage the project have employment contracts that are renewable at the end of each contract period of the KEMSA-USAID MCP Program.

xi) These contracted staff for the projects are meant to ensure meeting performance targets as set by the development partners and guard against taking on board staff on permanent terms for tasks/assignments that are not long-term in nature/whose lifespan is period specific.

xii) Engagement of contract staff is duly provided for in the KEMSA HR policies and the contracts are reviewed each year – based on the exigency of service and KEMSA's operational and business requirements.

xiii) During the period KEMSA employed contracted staff in line with business needs/workload requirements and as approved by the Board and hence there was no unapproved/overemployment of staff.

xiv) KEMSA Board is currently reviewing its Human Resource Instruments that will eventually determine the optimal staffing levels.

xv) The bonus payment of Ksh. 43,689,870 was in line with the provisions of the KEMSA Human Resource Manual. The amount was as per the USAID/KEMSA MCP contract.

Committee Allowances

i) Further, Kshs.17,212,000 was paid to staff participating in tender evaluation committees related to two (2) Financial year committee allowances.

ii) It is worth noting that the payment of committee allowances is duly provided for in the HR Policies and Procedures Manual.

iii) The tender evaluation process is a cross-functional exercise where officers work outside the normal hours and produce detailed reports that are used to make important decisions in the Procurement of Health Products and Technologies (HPT's).

Committee Observations

The Committee, on the issue of recruitment of fifty six (56) officers observed that, the issue had been recurring over the previous years including 2017/2018. Further, a similar audit query was raised in 2016/2017 which the PIC in their 22nd Report had observed that;

i) The Board's approved KEMSA establishment was 341 and in financial year 2017/2018 KEMSA had 324 in-post staff, after recruiting 56 more staff in Financial year 2018/2019 the in-post figure still stood at 324 against an expected figure of 380 if no staff had exited. However, KEMSA did not provide any documentary proof that the fifty-six (56) staff had exited KEMSA in 2018/2019 either through retirement, natural attrition, dismissal or resignation. This could lead to existence of ghost workers. It is also unlikely that even after recruiting 56 more staff in financial year 2018/2019 the in-post figure still stood at 324.

ii) KEMSA indicates that the bonus payment of Kshs. 43,689,870 was in line with the provisions of the KEMSA Human Resource Manual. However, the Management did not provide documentary evidence on the attained set targets, the approved budget and approval letter from Salaries and Remuneration Commission, (SRC). In addition, KEMSA indicates that the Kshs.17,212,000 paid to staff participating in tender evaluation committees is duly provided for in the HR Policies and Procedures Manual. Therefore, the bonus payment was irregular and not a proper charge to public funds. The provisions of the KEMSA Human Resource Manual are not superior to the constitutional provisions that established SRC and outlined its mandate.

iii) There were no details provided outlining the recruitment process, advertisement for vacancies, interviewing panel recommendations indicating the criteria for merit and approval for hiring

iv) There is no evidence that KEMSA had sought approval from the Salaries and Remuneration Commission for the staff establishment and salary rates.

v) Except for the Board's approval of the establishment, there is no evidence that KEMSA had sought SCAC's guidance on the development of the Human Resource Instruments. Further, the Human Resource Instruments then would have been approved by the Public Service Commission to culminate in a reviewed organization structure, staff establishment, grading, career guidelines and Human Resource Policy and Regulations manual for KEMSA.

vi) KEMSA did not provide the approved SRC salary scales for the established cadres and therefore no evidence was adduced to prove that the salaries paid for the respective cadres was in tandem with SRC salary review.

Committee Recommendations

i) Within three Months upon adoption of this report, as recommended in the committee report for 2017/2018, the Auditor-General should carry out a comprehensive special audit on the staff and payroll of KEMSA for a period of five years from 2017/2018 to 2021/2022 (both years inclusive) to establish the status of the staffing and report to the National Assembly on the findings. Should the report establish any irregularities, the CEO's for the time being in

position should be reprimanded and held accountable for any financial losses during their tenure.

ii) Within three Months upon adoption of this report, as recommended in the committee report for 2017/2018, the Accounting Officer should submit the approval from the Salaries and Remuneration Commission for the staff establishment and salary rates, SCAC's guidance on developed and approved Human Resource Instruments and PSC approvals for the instruments.

iii) The committee reprimands the then Accounting Officer/Human Resource Officers for breaching of the SCAC's, PSC and SRC requirements.

5.0 Unsupported Legal Expenses

234. The Committee heard that, as disclosed in Note 9 to the financial statements, the statement of financial performance reflects the legal expenses balance of Kshs.63,602,437 paid to private legal firms. However, the management did not provide supporting documents such as the basis for charging the legal fee, approval and a no-objection from the Attorney General to engage the private firms for audit verification. Consequently, the accuracy, completeness and validity of legal fee expense of Kshs.63,602,437 reflected in the statement of financial performance for the year ended 30 June, 2019 could not be confirmed.

Management Response

235. The management informed the Committee that, the legal fees charged by the law firms that have represented KEMSA in various legal matters have been drawn on the basis and as provided in the Advocates Act, the Advocates Remuneration Order and the principles guiding assessment of legal fees as have been from time to time developed by judicial precedent.

236. The office of the Attorney-General Act (No. 49 of 2012) differentiates a Ministry, a State Department and a State Corporation and the nature of their interaction with the office of the Attorney General. KEMSA is a state corporation and therefore cannot be classified as a Ministry or State Department. The said Act is clear that the only time a state corporation

should engage the office of the Attorney General in legal matters is when the matter raises substantial legal or constitutional issues.

237. Ministries and state departments on the other hand engage the office of the attorney general in all legal matters. There is no legal requirement for state corporations to engage the office of the attorney general in the procurement of legal services or for approval by the said office before engaging legal services of law firms or assessment of fees payable for legal services provided.

238. There is a court judgment quashing the circular from the office of the attorney general, which required state corporations to obtain the Attorney-General's approval in engaging private law firms for the provision of legal services. That judgment has not been overturned.

Committee observations

i) KEMSA indicates that the office of the Attorney-General Act (No. 49 of 2012) is clear that the only time a state corporation should engage the office of the Attorney General in legal matters is when the matter raises substantial legal or constitutional issues. The threshold for substantial legal issues is not clear as to when a matter raises a substantial legal issue or not.

ii) Should the argument by KEMSA Management hold, then, the office of the Attorney-General Act (No. 49 of 2012) and court judgment quashing the circular from the Office of the Attorney General did not exempt KEMSA from adhering to the Public procurement and Asset Disposal Act, 2015 on identifying the legal firms. It is therefore not clear how the law firms were identified and the basis for charging the legal fee is unknown.

Committee recommendations

i) Within three (3) months upon adoption of this report, the Attorney-General (solicitor General) should initiate the process of amending the affected Acts of parliament with regard to state corporations seeking approval and a no-objection from the Attorney General before engaging private law firms with a view to minimizing wastage and misuse of public funds.

6.0 Inaccuracy in Inventories

239. The Committee heard that, as disclosed in Note 20 to the financial statements, the statement of financial position reflects an inventory balance of Kshs.11,027,341,453. The balance includes KEMSA capital stocks of Kshs.470,556,334 and third-party stocks of Kshs.456,382,477 that have been lying in the stores for periods between two (2) and eight (8) years. No explanation has been provided for holding the stocks for that long. Management has not provided for obsolescence or impairment of inventories. Further, the balance includes an amount of Kshs.97,535,372 in respect of the Kenya Health Sector Support Project (KHSSP) which was meant to be transferred to the Counties. The KHSSP project came to an end in June 2018. It is, therefore, not clear why the stocks that were meant for Counties were still held in the Authority's stores. In the circumstances, the accuracy, completeness and validity of the above inventories balance of Kshs.1,024,474,183 reflected in the statement of financial position as at 30 June 2019 could not be confirmed.

Management Response

240. The management informed the Committee that, the reasons for stock items having been held in the KEMSA warehouse for more than 2 years include;
241. KEMSA operates a demand-driven (Pull) system for the supply of essential medicines and medical supplies. This system requires that health facilities determine and request stocks as per their needs, unlike the previous system where the MOH would determine what is to be supplied to the health facilities. This system came into full operation after devolution.
242. As a result of this some stock items have been held in the warehouse for longer than 2 years Low consumption and erratic demand patterns has affected some of the WB-HSSP (KEMSA Capital) and KEMSA Capital stock items – since the supply chain is a pull system (demand-driven), when there is low demand from health facilities this will affect the inventory turnover.
243. The third-party stocks are held on behalf of the National strategic programs and other partners. These parties are responsible for the provision of distribution lists. KEMSA shares regular stock status updates with them. Some of the reasons for this category of stock items

being held for more than two years include; a change in technology that has rendered some items obsolete, a change in treatment guidelines requiring the use of more effective treatment options and low consumption at health facilities resulting in slow movement of the stocks.

244. The KEMSA management has also made tremendous effort to reduce the dormant stocks in the warehouse. Attached in appendix 6i is a letter to the Ag. Director General-MOH requesting for authority to issue out the stocks as donations. (See Appendix 6i- schedules with explanations per stock item & Letter to Ag. Director General REF: KEMSA/CEO/SEC/2019/07/17).

245. For the Kenya Health Sector Support Project (KHSSP) stocks, some equipment had not been distributed to health facilities due to the following factors;

(i) Duplication of facilities in the distribution list provided by Ministry of health

(ii) Some facilities did not have Master File List codes.

(iii) Wrong Master File List codes in the distribution list.

(iv) Some facility e.g. Kwale County Hospital returned a Cryotherapy Machine and as per the document from the Transporter (Bulto Suppliers & Transporters) it was indicated that the reason for the return is because the facility does not use the equipment. (See appendix 6ii- letter from Bulto Suppliers & Transporters on reason for return & sample of communication with county on Result Based Financing equipment distribution.

(v) Facilities were placed in the wrong counties in the distribution list.

(vi) KEMSA is in the process of contacting the county director/county pharmacist of health in the affected counties to provide alternative facilities as recommended by the HSSP Project coordinators.

(vii) However, in FY 21/22 during project closure, we confirm that all KHSSP products were issued to the respective health facilities.

Committee observations

i) The committee noted with concern that for stock amounting to Kshs.97,535,372 in respect of Kenya Health Sector Support Project (KHSSP) which was meant to be transferred to the Counties had not been distributed to health facilities due to the following factors;

a) Duplication of facilities in the distribution list provided by Ministry of health

b) Some facilities did not have Master File List codes.
c) Wrong Master File List codes in the distribution list
d) Some facility e.g. Kwale County Hospital returned a Cryotherapy Machine because the facility does not use the equipment.
e) Facilities were placed in the wrong counties in the distribution list.

ii) The KEMSA concludes by indicating that they are in the process of contacting the county director/county pharmacist of health in the affected counties to provide alternative facilities as recommended by the HSSP Project coordinators. However, in FY 2021/2022 during project closure, KEMSA confirms that all KHSSP products were issued to the respective health facilities.

iii) The statements are contradictory and KEMSA cannot confirm the status with certainty as to whether that they are in the process of contacting the county director/county pharmacist of alternative facilities or all KHSSP products were issued to the respective health facilities by FY 21/22 during project closure.

iv) KEMSA had capital stocks of Kshs.470,556,334 and third party stocks of Kshs.456,382,477 that have been lying in the stores for periods between two (2) and eight (8) years. This was attributed to Low consumption and erratic demand patterns.

v) The third-party stocks are held on behalf of the National strategic programs and other partners who are responsible for the provision of distribution lists and some items have been rendered obsolete.

vi) The KEMSA management on (ii) and (iii) they indicated that they had made tremendous effort to reduce the dormant stocks in the warehouse by requesting for authority from the Ag. Director General-MOH to issue out the stocks as donations. If the stocks are obsolete or have had Low consumption and erratic demand patterns then if donated, they will not have any economic or medical use.

vii) The capital stocks were acquired and dumped into KEMSA warehouse without conducting a feasibly study or needs assessment.

Committee recommendations

Within three months upon adoption of this report, EACC should carry out an investigation on the procurement of the capital stock to establish if there are any irregularities or breach of the procurement law. Should there be any irregularities established, the officers found culpable should be prosecuted by the DPP and be held accountable for any financial losses during their tenure.

7.0 Property, Plant and Equipment

246. The Committee heard that, as disclosed in Note 22(a) to the statement of financial position reflects property, plant and equipment balance of Kshs.5,137,553,566. The following observations were made:

7.1 Unsupported Land

247. The Committee heard that, the balance includes land at a cost of Kshs.1,786,967,270 which includes various parcels of land spread across the country all valued at Kshs.158,000,000 whose ownership documents were not availed while other parcels of land had not been valued. In the circumstances, it has not been possible to confirm the accuracy and ownership of the value of land of Kshs.158,000,000, as at 30 June, 2019.

Management response

248. The management informed the Committee that, despite having allotment letters and Leases for the various parcels of land, the Authority did not possess title deeds for parcels of land valued at Ksh. 158,000,000.
249. KEMSA Board has however taken up the issue of titles on KEMSA Land seriously and has engaged a Conveyance expert to handle the issue of realization of the title's deeds with a specified time frame.
250. KEMSA engaged the Ministry of Lands and Physical Planning through the Directorate of Survey on April 2023 to conduct a cadastral survey for these parcels of land. The purpose of the survey was to establish the boundaries and installation of beacons. Beacon certificates have been issued upon successful installation of beacon markers. The preparation of the final

survey report and technical file was completed. The cadastral survey report and preparation of a technical file form part of the requirements by the registrar of lands to complete the conveyance of the land. The Ministry of Lands and Physical Planning through the Directorate of Survey have since submit the final valuation report. KEMSA will update the valuation of these parcels of land as informed by the valuation report and upon receipt of documents of title.

Committee Observations

The committee observed that the issue has been recurring over the financial years including 2017/2018 and was discussed in the 19th and 20th PIC reports. Arising from the fact, the Committee noted that;

i) The Agency had taken time to register the title deeds despite having the necessary documentation in place. The situation has not changed over seven years now down the line. The committee was concerned that KEMSA had engaged Priority Management Limited, (Conveyance experts) through KTK Advocates to handle the issue, in the financial year 2012/2013 but had nothing positive to show with regard to the land ownership documents.

ii) The lawyers contracted to register the leases and title deeds of lands belonging to the KEMSA as per the 22nd PIC report had been paid approximately Kshs. 2,000,000 then for the titles registered. However, the total payments to date could not be established and the consultants/lawyers could have continued to draw money from KEMSA with no corresponding services rendered.

iii) It was also not clear whether KEMSA had engaged other conveyance experts as indicated in their submission to the committee to the extent that KEMSA Board had taken up the issue of titles on KEMSA Land seriously and had engaged a Conveyance expert to handle the issue of realization of the title's deeds within a specified time frame. The specified time frame, how the conveyance experts were engaged, the terms and the charges is unknown as the same were not documented.

iv) It was not clear why KEMSA had not engaged the National Lands commission on the lands matter.

v) That KEMSA did not obtain documents of title for the Meru Municipality land measuring 0.3 Hectares but was instead allocated 10 acres by the County Government in 2021 to which Title No: Meru Central/Ruiri Rwarera/11514 dated 16 December 2021 was issued.

vi) KEMSA did not provide any documentary evidence that they had sought the intervention of the Ministry of Health, or the Ministry of Ministry of Lands, Public Works, Housing and Urban Development to address the delay in issuance of titles.

vii) The committee also observed that in the 22nd PIC report, as pertains to the Eldoret land which KEMSA had stated that part of the land was occupied by the Kenya National Highways Authority, KEMSA did not apprise the committee on its current status.

Committee Recommendations

i) Within three Months upon the adoption of this report, and as recommended in the committee report for 2017/2018, the Accounting Officer- KEMSA should present a comprehensive report on the status of all its land parcels with regard to the acquisition of ownership documents for the aforementioned pieces of land.

ii) Within three Months upon adoption of this report, and as recommended in the committee report for 2017/2018, the Accounting Officer - KEMSA should present a comprehensive report on the payments made to each of the advocates and/or conveyance consultants to date, their terms of engagement and their contractual documents to the National Assembly.

iii) Within three months upon adoption of this report, and as recommended in the committee report for 2017/2018, the Accounting Officer - KEMSA should present a comprehensive report on the status of the Eldoret land which KEMSA had stated that it was occupied by the Kenya National Highways Authority.

iv) Within three months upon adoption of this report, and as recommended in the committee report for 2017/2018, the Auditor-General should review and report to the National Assembly the procurement process for the engagement of the conveyance experts and advocates from 2011/2012 and the corresponding payments to date.

7.2 Motor Vehicles without Log Books

251. The Committee heard that, the balance constitutes motor vehicles net book value of Kshs.44,515,628. The balance includes four (4) vehicles with a net book value of Kshs.2,574,000 whose ownership documents such as log books were not availed for audit review. Available information indicates that these vehicles are owned by the National Government and have not been officially transferred to the Authority. In the circumstances, the accuracy, completeness and ownership of motor vehicles net book value of Kshs.2,574,000 as at 30 June, 2019 could not be confirmed.

Management Response

252. The management informed the Committee that, KEMSA is in possession of motor vehicles owned by the Ministry of Health. KEMSA had requested for transfer of ownership of all vehicles from the Permanent Secretary, Ministry of Health, since the listed vehicles were being used and maintained by KEMSA for distribution of Health Products and Technologies (HPTs) in line with our mandate. The Ministry of Health responded by recalling one vehicle.
253. KEMSA has received copies of the log book and will continue to follow up on the transfer of ownership of the motor vehicles.
254. KEMSA is awaiting the transfer of the remaining Motor Vehicles from the Ministry of Health.

Committee Observations

The committee observed that the issue was discussed in the committee report for 2017/2018 and had noted the following;

i) The Agency (KEMSA) had taken time to register the vehicles despite having the necessary documentation in place. Their continued inclusion in the KEMSA financial statements may be misleading to the users since MOH appears to have continued control over the vehicles and recall them at will.

ii) KEMSA has been in possession of vehicles transferred from the Ministry of Health without logbooks neither did it have any written proof that the said vehicles had been handed over to them.

Committee Recommendations

Within three months upon adoption of this report, KEMSA to regularize possession of the said motor vehicles through acquisition of logbooks and/or provide proof of ownership through a written documentation entailing the Ministry of Health handing over and acceptance by the Authority.

7.3 Unsupported Expenditure

255. The Committee heard that, work in progress of Kshs.1,243,061,943 include provisional sums totaling Kshs.76,518,559 under certificate number 14 in respect of proposed construction of KEMSA modern warehouse and office block at Embakasi. However, the supporting schedule attached included items of expenditure which were based on unsubstantiated provisional items such as 'interest on anticipated delayed payments' and 'substructure' balance of Kshs.21,657,121 and Kshs.25,000,000 respectively, the provision which was not justified with approved and validated details. Consequently, the accuracy, completeness and validity of Kshs.76,518,559 paid from provisional sum for the year ended 30 June, 2019 could not be confirmed.

Management Response

256. The management informed the Committee that, KEMSA contracted Dama Services Limited as a consortium for the provision of consultancy (Technical services) in construction projects. The Lead Consultant (Dama Services Limited) calculated professional fees which were checked and approved by the KEMSA Contract Implementation Team (CIT) based on the (Appendix 7.3i addendum of the conditions of engagement and scale of fees for professional services for building and civil engineering works (1989 Edition) Clause 208) which prescribes hourly charges done for such assignments.

257. All the fee notes submitted were accompanied by an invoice for services rendered by the Consortium Architect, Quantity Surveyor and Engineers. The amounts on the invoices also included disbursements for the services rendered.

258. The method used to calculate the professional fees paid to the consultant was based on the addendum and not the 12% cost of work method as raised in the auditor's query.

259. The contract between KEMSA and the consultant M/S Dama Services Ltd was for consultancy services for small works projects which included renovation in Nyeri, Nakuru, Kisumu, Nyeri, Mombasa, Embakasi and Commercial street. The payment clause in the contract indicates that ''the consultant would be paid in accordance with the conditions of engagement and scales of fees for professional services for building and civil engineering works second edition 1989''. Due to the nature of work that the consultant was to oversee, it was not possible to stipulate in the contract the value of the sum of works.

260. Tere was no overpayment for invoices raised by M/S Dama Services and the payments were done in accordance with the laid down guidelines for payment of professional services as outlined.

Committee observations

i) The committee observed that the response given by KEMSA did not address the query raised by the auditors on unsupported costs and thus intentionally misleading. Available information indicates that M/S Dama Services were on renovation of Quality Assurance Lab and not on the proposed construction of KEMSA modern warehouse and office block at Embakasi.

ii) KEMSA paid 'interest on anticipated delayed payments' of Kshs.21,657,121. It is not clear why KEMSA had anticipated to delay on payments contrary to section 53 (8) of the Public Procurement and Asset Disposal Act 2015 which states that the Accounting officer shall not commence any procurement proceeding until satisfied that sufficient funds to meet the obligations of the resulting contract are reflected in its approved budget estimates.

iii) KEMSA paid both 'interest on anticipated delayed payments' of Kshs.21,657,121and substructure for Kshs.25,000,000 indicated as provisional sums in the tender documents which were not justified with approved and validated details. This is contrary to section

139 (2) (e) of the Public Procurement and Asset Disposal Act 2015 which states that an accounting officer of a procuring entity, on the recommendation of an evaluation committee, may approve the request for the use of provisional sums, which request shall be accompanied by a certificate from the tenderer making a justification for such cost.

iv) The unsupported expenditure are nugatory.

Committee recommendations

i) Within three months upon adoption of this report, EACC should carry out an investigation on;
   a) The procurement process of the proposed construction of KEMSA modern warehouse and office block at Embakasi and the payments thereto, to establish if there are any irregularities or breach of the procurement law.
   b) Payment of the unsubstantiated provisional items on 'interest on anticipated delayed payments' and 'substructure' balance of Kshs.21,657,121 and Kshs.25,000,000 respectively. Should there be any irregularities established, the officers found culpable should be prosecuted by the DPP and be held accountable for any financial losses during their tenure.

7.4 Unsupported Buildings

261. The Committee heard that, the balance includes additions to buildings amounting to Kshs.3,581,000. However, the existence of the buildings could not be verified as no contracts, ownership documents or completion certificates, were availed for audit review. In the circumstance, the accuracy and validity of additional buildings valued at Kshs.3,581,000 as at 30 June, 2019 could not be confirmed.

Management Response

262. The management informed the Committee that, the amount of Ksh. 3,581,000 recognized in work-in-process building related to consultancy fees paid for renovation works done in the KEMSA's Commercial Street and Embakasi Depots and not an additional building as indicated by the Auditor. The work done was meant to extend the life and usefulness of the buildings.

The works done were:

(i) Repair of Embakasi Roof

(ii) Partitioning of the KEMSA QA Lab

(iii)Building of Commercial Street perimeter wall

(iv)Caging of the Embakasi Dispatch area.

Committee observations

i) The response given by KEMSA did not address the query raised by the auditors on unsupported Buildings and thus intentionally misleading.
ii) KEMSA indicates that the amount of Ksh. 3,581,000 recognized in work-in-process building related to consultancy fees paid for renovation works done in the KEMSA's Commercial Street and Embakasi Depots. However, work-in-process do not form part of the buildings value until capitalized.

Committee recommendations

The Committee reprimands the then officer responsible for preparing financial statements for the time being in place for providing misleading information.

8.0 Unsupported Payments Received in Advance

263. The Committee heard that, as disclosed in Note 25 the statement of financial position reflects payments received in advance amounting to Kshs.221,483,033. A review of the supporting schedules indicated that the amounts are due to various organizations such as Ministry of Health, dispensaries and other private organizations. However, Management have not provided details of the nature and basis of these advance receipts. Consequently, the accuracy, completeness and validity of the payment received in advance balance of Kshs.221,483,033 reflected in the statement of financial position as at 30 June, 2019 could not be confirmed

Management Response

264. The management informed the Committee that, the nature and basis of advance receipts as follows:

(i) Some institutions process payments based on LPO/Quotations and as such they expect a supply of goods based on those transactions and that is why the payments appear as prepayments.

(ii) Institutions like the National Cancer Institute made prepayments and by the time the last delivery of supplies was done the financial year had closed.

(iii)The payments from the Ministry of Health were prepayments for UHC. These were funds remitted in advance before supplies were made to the UHC pilot counties.

(iv)There were new customer payments that were not fully serviced and were captured as prepayments since the goods were serviced partially by the time the financial year 2018/2019 was closed.

(v) Some payments could not be allocated to any existing customer since the details in the KEMSA bank statement were not sufficiently indicated by the sender. The amounts therefore were receipted as prepayments awaiting identification of the customer.

Committee observations

i) Failure to disclose or provide details of the nature and basis of advance receipts is a serious omission that may create loopholes for the concerned officers to perpetrate fraud if not controlled.

ii) The response by KEMSA is deficient for lack of details or breakdown on which payments relates to institutions that processed payments based on LPO/Quotations, prepayments made by National Cancer Institute, Ministry of Health's prepayments for UHC, new customer prepayments and those payments that could not be allocated to any existing customer for lack of details.

iii) It was difficult to ascertain the accuracy, completeness and validity of the payment received in advance balance of Kshs.221 483,033 reflected in the statement of financial position as at 30 June, 2019.

iv) The list provided detailing unsupported payments does not have authentication from KEMSA such as a signature or official stamp.

Committee recommendations

i) The committee reprimands the then officer responsible for preparing financial statements for the time being in place for failing to disclose full information.

ii) Within three Months upon adoption of this report, the Auditor-General should review the list provided detailing unsupported payments and report the findings to the National Assembly.

9.0 Unsupported Project Fund

265. The Committee heard that, as disclosed under Note 27 to the statement of financial position reflects project fund balance of Kshs.405,729,772 which includes a balance of Kshs.216,881,203 for Kenya Health Sector Support Project (KHSSP) KEMSA. However, a review of the KHSSP project's financial statements for the year ended 30 June, 2019 revealed that the project had cash and cash equivalent balance of Kshs.911,916,874 which when compared against the reported balance of Kshs.216,881,203 resulted to an unexplained difference of Kshs.695,035,671. Consequently, the accuracy and completeness of the project fund balance of Kshs.405,729,772 reflected in the statement of financial position as at 30 June, 2019 could not be confirmed.

Management Response

266. The management informed the Committee that, KEMSA Capitalization project under the Kenya Health Support Project (KHSSP) was carried out jointly by the World Bank, DANIDA and the Government of Kenya. The World Bank made payments to Suppliers of commodities supplied to Public Health Facilities through KEMSA, While DANIDA and the Government of Kenya established a fund from which payments to KEMSA were to be done.

267. KEMSA opened two bank accounts at the Co-operative Bank of Kenya where funds from the project were to be channeled. The World Bank Pooled Account was to receive all amounts meant for the KEMSA Capitalization while the World Bank Non-Pooled Account was to receive funds for capacity building.

268. The two accounts were KEMSA Accounts operated by KEMSA signatories in line with the laid down financial regulations. The amount of KSH 695,035,671 is the cash and cash equivalent for the WB POOLED account. All issues were resolved and hence the project ended in FY 2020-2021.

Committee observations

The committee observed that:

i) The accuracy and completeness of the project fund balance of Kshs.405,729,772 reflected in the statement of financial position as at 30 June, 2019 was in doubt.
ii) The Schedules provided do not explain what KEMSA received versus what they expended.
iii) Schedules provided are merely narrations with no supporting documentary evidence of what it relates.
iv) KEMSA expunged the narrations issued to justify bank balances in their submissions

Committee recommendations

Within three Months upon adoption of this report, the Auditor-General should review the bank statements showing the balances and report the findings on the authenticity and the regularity of the expenditure therein.

10.0 Unsupported Medical Commodity Fund

269. The Committee heard that, as disclosed under Note 28 to the financial statements, the statement of financial position reflects medical commodity fund balance of Kshs.7,407,088,246 comprising of third-party stocks balance of Kshs.7,390,181,509 and global funds account balance of Kshs.16,906,736. However, supporting documents and schedules for the two balances were not provided for audit review. Consequently, the accuracy and validity of the medical commodity fund balance of Kshs.7,407,088,246 reflected in the statement of financial position as at 30 June, 2019 could not be confirmed.

Management Response

270. The management informed the Committee that, the schedules and supporting schedules for the medical commodity fund are provided.

Committee observations

The medical commodity fund balance comprising of third-party stocks balance of Kshs.7,390,181,509 and global funds account balance of Kshs.16,906,736 did not have supporting documents and schedules for the two balances.

Committee recommendations

Within three months upon adoption of this report, the Auditor-General should review the third-party stocks balance of Kshs.7,390,181,509 schedules and global funds account balance of Kshs.16,906,736 and report the findings on the authenticity and the regularity of the expenditure therein.

11.0 Budgetary Control and Performance

271. The Committee heard that, the statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.4,356,834,000 and Kshs.3,707,974,000 respectively resulting to revenue shortfall of Kshs.648,860,000 or 15% of the budget. Similarly, the statement reflects final expenditure budget and actual on comparable basis of Kshs.2,583,703,000 and Kshs.2,557,267,000 respectively resulting to an under expenditure of Kshs.26,436,000 or 1% of the budget. The revenue shortfall was in respect of other income which had actual collection of Kshs.2,051,110,000 against budgeted receipts of Kshs.2,676,285,000 resulting in a shortfall of Kshs.625,175,000. The underfunding and underperformance affected the planned activities and may have impacted negatively on service delivery to the public.

Management Response

272. The management did not submit response for this audit query.

Committee Observations

The committee observed that;

i) The Acting CEO- KEMSA did not have a written submission to the audit query on budgetary performance.
ii) The revenue shortfall in respect of other income which had actual collection of Kshs.2,051,110,000 against budgeted receipts of Kshs.2,676,285,000 resulting in a shortfall of Kshs.625,175,000.
iii) The Authority's actual expenditure for the year amounted to Kshs.2,557,267,000 against budgeted expenditure of Kshs.Kshs.2,583,703,000 resulting in an overall under absorption of Kshs.26,436,000. Therefore, the Authority did not fully achieve its budget objectives which could have adversely affected delivery of the intended services to the public.

Committee Recommendations

i) The committee reprimands the accounting officer for not addressing the audit query on budgetary performance.
ii) The accounting officer-KEMSA should ensure that the revenue target factored in the annual budgets are realistic and achievable. Also, the accounting officer should always ensure that the Authority reviews its budget making process with a view to coming up with a realistic budget.
iii) The accounting officer-KEMSA must at all times adhere to their annual work plans, procurement plans and revenue collections schedule to ensure that they fully achieve its budget objectives.

12.0 Unresolved Prior Year Matters

273. The Committee heard that, in the audit report of the previous year, several issues were raised under the Report on Financial Statements, Report on Lawfulness and Effectiveness in Use of Public Resources, and Report on Effectiveness of Internal Controls, Risk Management and Governance. However, the Management had not resolved all the issues or given any explanation for failure to adhere to the provisions of the Public Sector Accounting Standards Board templates and The National Treasury's Circular Ref: PSASB/12/1/(44) of 25 June, 2019.

Management Response

274. The management did not submit response for this audit query.

Committee Observations

KEMSA failed to adhere to the provisions of the Public Sector Accounting Standards Board templates and The National Treasury's Circular Ref: PSASB/12/1/(44) of 25 June, 2019 yet they had not resolved all the issues or given any explanation.

Committee Recommendations

i) The Committee reprimands the Accounting Officer - KEMSA for not addressing the audit query on Unresolved Prior Year Matters

ii) The Accounting Officer-KEMSA should at all times ensure compliance with the provisions of the Public Sector Accounting Standards Board templates and The National Treasury's Circular Ref: PSASB/12/1/(44) of 25 June, 2019.

13.0 Non-Compliance with Internal Recruitment Guidelines

275. The Committee heard that, the authority's career progression guideline of 2016 and roles profile require distributions loaders and drivers to have a minimum requirement of Kenya Certificate of Secondary Education (KCSE) D+ for job entry. A review of personal files however, revealed that four distribution loaders and one driver were recruited during the year despite the fact that they did not have KCSE certificates. Consequently, the Management is in breach of law.

Management Response

276. The management informed the Committee that, the divers and loaders under review were hired based on their previous experience and knowledge for the work.

Committee Observations

i) The committee observed that four distribution loaders and one driver were recruited during the year despite the fact that they did not possess KCSE certificates.
ii) KEMSA bypassed their own career progression guideline of 2016 and roles profile that required distributions loaders and drivers to have a minimum requirement of Kenya Certificate of Secondary Education (KCSE) D+ for job entry.

Committee Recommendations

The Committee reprimands the then Accounting officer for not adhering to their own career progression guideline of 2016 and roles profile that required distributions loaders and drivers to have a minimum requirement of Kenya Certificate of Secondary Education (KCSE) D+ for job entry

14.0 Delay in Completion of Work

277. The Committee heard that, during the year under review, the Authority continued to implement a contract for Phase 1 of the Proposed Construction of KEMSA Modern

Warehouse and Office Block at Embakasi. Although the contract had provided for completion of work within a duration of fifty-two (52) weeks ending 28 March, 2018, the project had taken one hundred and and sixteen (116) weeks by 30 June, 2019, and was therefore behind schedule by sixty-four (64) weeks which may lead to cost escalation. In the circumstances, it has not been possible to confirm whether value for money has been realized from the cost incurred on the incomplete project.

Management Response

278. The management informed the Committee that, the project delay was brought about by the increased quantum of works- The Main Contractor had indicated in their bid document that they had the requisite capability to undertake the project, however due to the additional workload. We note that it would have been impossible for the MC to fast-track works due to the specialized nature of the works, requiring specialized equipment at specialized locations for works. It is worth noting that working additional hours was encouraged from 8 hours to approx. 10 hours a day on this specific task.
279. Further it was impossible for the bidders to have foreseen the water table/underground water table level and quantity of underground water at a glance. These conditions necessitated pumping of water due to the volume of underground water and depths of excavations
280. Delay in receipt of tax exemption - In July 2018 KEMSA requested for a master list of items to be exempted. It should be noted that the general Tax Waiver was acquired on 29th March 2019, which was longer than expected (52no. weeks) due to review of tax waiver process at The National Treasury. This delay impacted on the cash flow and coordination of the project, as the MC was procuring items and paying VAT in the absence of an exemption.

Committee Observations

i) The committee observed that the project had taken time to complete from fifty-two (52) weeks ending 28 March, 2018, to one hundred and sixteen (116) weeks by 30 June, 2019, and therefore behind schedule by sixty-four (64) weeks which may lead to cost escalation.
ii) The main Contractor did not have the requisite capability to undertake the project, due to the additional workload, the specialized nature of the works, requiring specialized equipment at

specialized locations for works. This meant that due diligence was not undertaken during technical evaluation and after preliminary evaluations.

iii) The cited delay in receipt of tax exemption where in July 2018 KEMSA had requested for a Master List of items to be exempted was far beyond after the project completion date 28 March, 2018. Although, the general Tax Waiver was acquired on 29th March 2019, which was longer than expected (52no. weeks) this was a sign of poor planning on the part of KEMSA.

iv) The Auditor-General had raised an audit query for the same project citing arbitrage payments in respect of unsubstantiated provisional items on interest on anticipated delayed payments and 'substructure' balance of Kshs.21,657,121 and Kshs.25,000,000 respectively.

Committee Recommendations

i) Within three months upon adoption of this report, EACC should carry out an investigation on;
   a) The procurement process of the proposed construction of KEMSA modern warehouse and office block at Embakasi and the payments thereto, to establish if there are any irregularities or breach of the procurement law.
   b) Payment of the unsubstantiated provisional items on 'interest on anticipated delayed payments and 'substructure' balance of Kshs.21,657,121 and Kshs.25,000,000 respectively. Should there be any irregularities established, the officers found culpable should be prosecuted by the DPP or be held accountable for any financial losses during their tenure.

15.0 Long Outstanding Balances

15.1 Receivables From Exchange Transactions

281. The Committee heard that, the statement of financial position reflects receivables from exchange transactions balance of Kshs.5,112,529,398 which constitutes receivables totalling Kshs.3,996,038,344 comprising of Kshs.2,642,507,670 from all the forty seven (47) Counties and Kshs.1,353,530,674 due from the Ministry of Health, that have been

outstanding for more than one year and whose recovery is doubtful. No explanation has been provided for failing to recover these long outstanding debts.

Management Response

282. The management informed the Committee that, receivable from exchange transaction balance of Ksh. 5,112,529,398 with a long outstanding amount due to KEMSA of Ksh 3,996,038,344 which includes an amount due from the Ministry of Health (MOH) Programs totaling to Ksh. 1,353,530,674 and county Government Ksh. 2,642,507,607.

283. The MOH debt arose from the supply chain services (warehousing, procurement and distribution) offered by KEMSA to the various national programs under the Ministry of Health. They include HIV-Aids, Family Planning, East Africa Laboratory Networking Project, and Nutrition among others.

284. KEMSA has since written to the Principal Secretary, most recently on 27th November 2019 requesting for settlement of pending bills owed to KEMSA has since carried out an audit to verify the pending bills.

285. Further, the management concurred with the observation that as at 30th June 2019, The County Government owed KEMSA a total outstanding debt of Ksh. 2,642,507,670. We wish to inform you that as at 27th March 2020, KEMSA had collected a total of Ksh. 3,693,998,151.71 from the counties against the debts outstanding as at 30th June 2019.

286. Most of the counties have cleared the debts outstanding as at 30th June 2019. KEMSA therefore does not consider the amounts outstanding as doubtful. The current debt as at 30th June 2023 is at ksh 6,043,331,042.01.

Committee Observations

The Committee observed that the issue had been deliberated upon in the committee report for 2017/2018 and noted;

i. That as per the KEMSA response for 2018/2019, as at 27th March 2020, KEMSA had collected a total of Ksh. 3,693,998,151.71 from the counties against the debts outstanding as at 30th June 2019 while in their response to 2017/2018 KEMSA stated that as at 11th August 2020, KEMSA has collected a total of Ksh 2,193,622,288.76 from the counties against the debts outstanding as at 30th June 2018. The response is contradictory as it appears that the debts collected do not relate to the long-outstanding balances. Similarly, there is no evidence that the debts owing from the counties has been cleared.

ii. Despite KEMSA indicating that follow-up with the Ministry of Health was done through correspondences, there's no evidence that the pending bills have been cleared or the commitment that the Ministry of health will clear the debt.

iii. Since the Ministry ought to have provided Funding to KEMSA first before provision of the mentioned services, it's not clear how the debt arose from the Supply Chain Services (Warehousing, Procurement and Distribution) offered by KEMSA to the various national programs under the Ministry of Health.

iv. PIC in its 22nd report had discussed the audit issue and observed that The National government had spent approximately Kshs. 600,000,000 to procure drugs from KEMSA in a period of 90 days during the 2016/17 financial year. This was despite the national government having no role in purchase of drugs (for counties) as per the fourth schedule of the constitution which delimits the roles to be performed by the two levels of government.

v. Despite assurances by Management, KEMSA still lacks effective debt collection measures to discharge its obligations as they fall due.

Committee Recommendations

i) Within three months upon adoption of this report, the accounting officer should provide a comprehensive report on the status of the debts to the National Assembly and to the Auditor-General who shall review and report the findings to the National Assembly.

ii) The National Government should limit itself to those functions earmarked for it in the Fourth Schedule of the Constitution.

iii) Within three Months upon adoption of this report, the EACC should investigate whether the purchase of drugs was in accordance with the procurement law. Should any officer be found culpable, the DPP should initiate legal proceedings with a view to making good any loss that may be determined/established.

15.2 Trade and Other Payables From Exchange Transactions

287. The Committee heard that, as previously reported, trade and other payables from exchange transactions balance of Kshs.3,481,233,696 constitutes long outstanding amounts of Kshs.97,631,797 which constitute medical creditors of Kshs.17,888,530, operation creditors of Kshs.36,170,144, long outstanding suppliers' funds retained balance of Kshs.16,186,120 and VAT output due of Kshs.27,387,003, all which have been outstanding beyond one year.
288. In the circumstances, I am unable to confirm existence of effective debt collection measures put in place by Management and the Authority's ability to discharge its obligations as they fall due.
289. The management responded as follows;

Medical creditors of Kshs.17,888,530

Med Africa Ltd	**9,891,194.00**
Meditec Systems Ltd	**2,290,509.84**
Omaera Pharmaceuticals Ltd	**5,706,845.00**
Total	**17,888,538.84**

M/S Med Africa ltd KSH 9,891,194.00

290. The Committee heard that, the supplier M/S Med Africa ltd was awarded a Contract to supply, Install and Commission Diesel Fired Incinerators at Busia, Kitale and Wajir County Referral hospitals on 25th June 2015 with a delivery period of 24 weeks. At the time of signing the contract, an indication was that the sheds would be ready to house the incinerators before delivery. This was not the case since the Ministry of Health who were responsible for the construction of the three incinerator sheds did not prepare the sites as expected.

291. The incinerators were delivered in January 2016 to the respective sites but the sheds to house them were not ready. KEMSA procured the equipment on behalf of the East Africa Public Health Laboratory Networking Project, and the supplier delivered the equipment but the sheds were not ready. The Principal Secretary advised KEMSA vide letter (REF. NO MOH /ADM/1/1/VOL .1 dated 24th March 2016 Appendix 14 i) to pay the Med Africa Ltd 70% of the contract amount. 30% of the contract (Ksh 14,891,184) is what is outstanding awaiting installation and commissioning of the incinerators.

292. On 10th September, 2018 KEMSA received certificate of practical completion of the incinerator's sheds for Busia and Kitale County Hospital (Appendix 14 ii completion certificate). Med Africa Ltd has handed over Incinerators to county referral Hospitals and subsequently, payment was made see (Appendix 14iii copies of payment vouchers)

Meditec Systems Ltd KSH 2,290,509.84

293. The Committee heard that, management M/s Meditec System Ltd was awarded a contract for procurement of cancer, surgical dental, and diagnostic equipment worth USD 3,368 374.20 on 28th November 2012. KEMSA received the authority to incuran expenditure of Ksh 300,000,000 from the Ministry of Medical Services (MOMs) (Appendix 14 iv copy of AIE). One of the items in the contract was the construction of bunker and civil works, which was to take 47 weeks to be completed. At the time M/s Meditec systems Ltd were forwarding the final certificate, funds were not enough to service the final payment (Ksh 2,290,509.84) due to changes/fluctuations in exchange rates. KEMSA requested the Ministry of Health to facilitate extra funds which were sent and the supplier paid in FY21/22 (See Appendix 14 v copies of payment voucher).

OMAERA PHARMACEUTICALS LTD KSH 5,706,845.00

294. The Committee heard that, in 2016, the Pharmacy and Poisons Board recalled the marketing authorization of Alimox (Amoxicillin Oral suspension due to quality issues see (Appendix 14 vi Letter for suspension of marketing Authorization for Alimox)
295. The Manufacturer could not therefore manufacture the product until the Manufacturing Authorization was reinstated. They appealed for reinstatement of the Manufacturing authorization in Nov 2016 but the regulator (PPB) reinstated the Marketing authorization on 22nd of Feb 2018(after about two years). By the time the Market Authorization was reinstated the product had been delisted from Kenya Essential Medicines List and hence the manufacturer could not replace the product with fresh batches..
296. In July 2019, an agreement was reached between KEMSA and Omaera and the supplier was requested to replace the delisted Alimox with Amoxicillin Dispersible tablets 250mg at the same value of the delisted product. The supplier delivered the commodities in November 2019. (see attached receipt documents Appendix 14 vii)

Operation creditors of Kshs.36,170,144

i. Operation Creditors

Crown Agents Kenya Ltd	**11,361,832.91**
GTZ	**11,361,832.91**
John Snow Incorporated	**11,361,832.91**
Total Security Surveillance Ltd	**1,596,478.07**
Directorate of industrial training	**94,850.00**
Kenya Airways plc	**393,330.76**

Total	**36,170,144.99**

297. Crown Agents Kenya Ltd, GTZ and John Snow formed a consortium with KEMSA and worked together on a contract for Tendering, Implementation and Winding up Phase for Providing Procurement and Supply Chain Management Services to the GFATM programs in Kenya. Part of the agreement in the contract of association was that partners were to share the profit of the project on an equal basis of 25%:25%:25%:25%.
298. At the end of the Financial Year, KEMSA had received part of the Procurement and Supply Chain Management Consortium (PSCMC) fees from the Principle Recipient hence providing for payables to the partners. These payments are outstanding awaiting resolution of pending bills incurred during the operations of the consortium.
299. In the FY 2020/2021 all pending bills for the consortium were paid after funds were received from The National treasury Retained balance of Kshs.16,186,120

VAT output due of Kshs.27,387.003

i) The VAT output due increased due to the delay in receipt of tax exemption certificates from UNICEF. When billing for supply chain fees, KEMSA's charge is inclusive of 16% output VAT. On payment, UNICEF remits to KEMSA funds exclusive of VAT and are supposed to provide a certificate of exemption from KRA. Using the tax exemption certificate, a credit note is raised to reduce the VAT due from KEMSA. KEMSA is continually making follow-ups with UNICEF so as to reconcile the account.

ii) Further submissions by the management of Meditec Systems Limited.

iii) The Committee, after meeting Kenya Medical Supplies Authority (KEMSA) management, resolved to invite the Directors of Meditec Systems Limited to apprise it on the signed contractual agreement between Meditec Systems Limited and the Kenya Medical Supplies Authority for the procurement of cancer, surgical dental and diagnostic equipment worth USD $ 3,368,374.20. The submission was to include the award and acceptance letters for the contract, the amount received on procurement of cancer, surgical dental and diagnostic

equipment, the money received for the construction of the bunker and civil works and the certificate of completion for construction of the bunker and civil works.

iv) The management of Meditec Systems Limited informed the Committee that the award letter, acceptance letter, and duly signed contract were attached to their written submission to the Committee. Some information was captured in their legacy systems, which subsequently crashed. However, through diligent efforts and utilizing SAP system, they were able to retrieve the information. The letter Ref: MED 23-2020 sent to KEMSA provided a breakdown of outstanding amounts for the project. Additionally, they provided a follow-up letter (MED 10-2021,) demanding payment, and their lawyer's demand letter. In August 2021, Meditec Systems Limited received Kshs. 30,964,359.05 the total outstanding amount. Meditec Systems Limited indicated that the project was not completed on time because of the following;

v) The proposed site at the time of tendering was changed to a new location and attached a draft of letters sent to KEMSA (Ref: Med 105-2014) requesting an extension to the contract, citing the delays caused by the change in site. They also attached a map showing the original site where the bunker was to be constructed and the actual site where it was constructed.

vi) Additionally, the commissioning of the bunker was hampered by issues related to basic amenities such as electricity, lack of internet connectivity, sewage overflow to the site and the delay by KEMSA to respond to the request to hand over the equipment.

Committee Observations

The committee noted that in their report for 2017/2018, they had observed that;

i) The Committee observed that M/S Med Africa ltd was awarded a Contract to supply, Install, and Commission Diesel Fired Incinerators at Busia, Kitale, and Wajir County Referral hospitals on 25th June 2015 with a delivery period of 24 weeks. However the sheds to house the incinerators were not ready since the Ministry of Health who were responsible for the construction of the three incinerator sheds did not prepare the sites as expected. The Principal Secretary had advised KEMSA vide letter (REF .NO MOH

/ADM/1/1/VOL .1 dated 24th March 2016 to pay Med Africa Ltd 70% of the contract amount then and 30% of the contract (Kshs. 14,891,184) was outstanding awaiting installation and commissioning of the incinerators.

ii) The status of the sheds and installation of the incinerator at Wajir is still unknown since there is no update on the matter.

iii) M/s Meditec Systems Ltd was awarded a contract for procurement of cancer, surgical dental, and diagnostic equipment worth USD 3,368 374.20 on 28th November 2012. One of the items in the contract was the construction of the bunker and civil works, which was to take 47 weeks to be completed. However, at the time M/s Meditec Systems Ltd were forwarding the final certificate, funds were not enough to service the final payment (Ksh 2,290,509.84) due to changes/fluctuations in exchange rates. KEMSA received the extra funds from the Ministry of Health and the supplier paid in FY21/22. The committee did not get any documentary evidence of final settlement.

iv) The contractual agreement between Meditec Systems Limited and the Kenya Medical Supplies Authority (KEMSA) for the procurement of cancer, surgical dental, and diagnostic equipment, along with construction works, was signed and executed. However, KEMSA paid in Kenyan Shillings.

v) The completion of the construction of the bunker and civil works was delayed, attributed to changes in the proposed site, issues with basic amenities at the new site, and delays in equipment handover by KEMSA.

vi) On OMAERA PHARMACEUTICALS LTD with an amount payable of Kshs. 5,706,845.00. The committee observed that the Alimox (Amoxicillin Oral suspension was recalled in 2016 by the Pharmacy and Poisons Board due to quality issues. The Manufacturer could not, therefore, manufacture the product until the Manufacturing Authorization was reinstated. The product was delisted from the Kenya Essential Medicines List and hence the manufacturer could not replace the product with fresh batches. In July 2019, an agreement was reached between KEMSA and Omaera and the supplier was requested to replace the delisted Alimox with Amoxicillin Dispersible tablets

250mg at the same value of the delisted product which was done in November 2019. However, no documentary evidence was adduced before the committee to prove the agreement and delivery. Arising from the foregoing the committee was of the view that KEMSA did not assess the quality of the products they received in their stores before acceptance thus breaching section 150 of the Public procurement and Asset Disposal Act 2015 on acceptance of Goods. Works and services.

vii) The Operational Creditors of KSH (35,681,976.80) related to Crown Agents Kenya Ltd, GTZ and John Snow who had formed a consortium with KEMSA for Tendering, Implementation and Winding up Phase for Providing Procurement and Supply Chain Management Services to the GFATM programs in Kenya. However, at the end of the Financial Year, KEMSA had received part of the Procurement and Supply Chain Management Consortium (PSCMC) fees from the principal recipient hence providing for payables to the partners whose remittance to the consortium partners was delayed until FY 20/21.

viii) The delivery note provided for the supply of drugs after an agreement was reached between KEMSA and Omaera and the supplier was requested to replace the delisted Alimox with Amoxicillin Dispersible tablets 250mg was not adding up. It was outside the respective year under review (beyond the financial year cycle.

ix) An amount of Ksh. 3,829,479 included long outstanding customer prepayment was a direct deposit dating back 2016. It was not clear whether there was any refund or how the prepayment was handled by KEMSA.

x) The amount of Ksh. 9,858,300 was a retention for Alliance Technologies Ltd after the termination of the contract between them and KEMSA arising from failure to meet obligations under the contract. However, Alliance Technologies had sought legal redress and the matter is still in court.

xi) KEMSA still has not paid some suppliers for goods supplied and services rendered from as far back as 2013. There is no justification for the continued delay.

xiii) KEMSA is still holding funds in its accounts that should ideally be surrendered to the Unclaimed Financial Assets Authority.

Committee Recommendations

The Committee recommended that as recommended in their 2017/2018

i) Within three Months upon adoption of this report, and as recommended in the committee report for 2017/2018, the accounting officer-KEMSA, the Principal Secretary-State Department for Medical Services and the County Government of Wajir should ensure that the incinerator is installed.

ii) Within three Months upon adoption of this report, the Auditor-General should audit the payables in question and give a comprehensive report on their status to the National Assembly.

iii) Within three Months upon adoption of this report, the Accounting Officer-KEMSA should Fastrack the settlement of the case between them and Alliance Technologies.

iv) Within three months upon adoption of this report, and as recommended in committee report for 2017/2018, the accounting officer-KEMSA, fast-tracks the process of paying off the pending bills and if it does not have details of suppliers it owes money as it claims, it should surrender the monies to the Unclaimed Financial Assets Authority as required by law.

v) Within three Months upon adoption of this report, and as recommended in committee report for 2017/2018, the accounting officer-KEMSA, to provide evidence of installation of the diesel-powered incinerators at Busia, Kitale and Wajir County Referral hospitals.

vi) Within three months upon the adoption of this report, the Auditor-General should undertake verification and reconciliation of payment made in Kenyan Shillings with a view of determining the loss or gain realized.

vii) Within three months upon adoption of this report, EACC should investigate M/S Med Africa Limited for the contract to supply install and commission diesel fired incinerator at Wajir County Referral Hospital and report the findings to the National Assembly. Should any officer be found culpable, the DPP should initiate legal proceedings with a view to recovering any irregular payments.

3.0 KENYA VETERINARY BOARD

3.1 EXAMINATION OF THE AUDITOR'S GENERAL REPORT OF THE KENYA VETERINARY FOR THE FINANCIAL YEAR 2018/2019 TO 2020/2021

Dr. Mary Agutu, the Ag. Chief Executive Officer of Kenya Veterinary Board was accompanied by Mr. Mr.Simon Gathete appeared before the committee to adduce evidence on the Audited accounts of the Kenya Veterinary Board for the Financial year 2018/2019 - 2020/2021.

Financial Year 2018/2019

1.0 Budget Control and Performance

300. The Committee heard that, the statement of comparative budget and actual amounts reflect final income budget and actual on comparable basis of Kshs. 134,990,000 and Kshs. 133,482,668 respectively resulting to an under collection of Kshs. 1,507,332 or 1% of the budget. However, the statement reflects final expenditure budget and actual on comparable basis of Kshs. 142,500,000 and Kshs. 70,353,823 respectively resulting to and under expenditure of Kshs. 72,146,177 or 51% of the budget.

The under expenditure affected the planned activities and may have impacted negatively on service delivery to the public.

Management Response

301. The management informed the Committee that, the collection of Kshs. 1,507,332 arose from low collection of A-in-A (licenses and fees).
302. The under expenditure of Kshs. 72,146,177 (Building – Kshs. 71,867,020 and Administration & operating expense – Kshs. 279,157) arose from the construction of the Kenya Veterinary Board Resource Centre whereby certified works of Kshs. 8,132,980 by State Department of Public Works was paid by the Kenya Veterinary Board. During the year, the Board received Kshs. 80,000,000 towards the construction.

303. The balance of development fund was committed to the contract and paid in the subsequent year following issuance of certificates of completion by Public Works. The project was completed and officially commissioned by the Principal Secretary on 18th March 2021. During the 2020/2021 Financial year, the budget control and performance issue was resolved as reported in the audited financial statement for the year

Committee observations

i. The Committee observed that, Kenya Veterinary Board (KVB) had budgeted to collect Kshs. 134,990,000 with a final expenditure budget of Kshs. 142,500,000. However, KVB did not explain how they intended to finance the budget deficit of Kshs. 7,510,000. The Board relied on unrealistic projections of revenue and expenditure leading to underperformance of the budget.

ii. The under collection of Kshs. 1,507,332 or 1% of the budget and the under expenditure of Kshs. 72,146,177 or 51% of the budget may have affected the planned activities and might have impacted negatively on the service delivery to the public.

Committee Recommendation

The Accounting Officer should ensure at all times that the budgets are realistic, achievable and always adhere to annual work plans, procurement plans and revenue collection schedules.

2.0 Lack of an effective internal controls system

304. The Committee heard that, a review of the Board operations revealed that the Board does not have an established internal audit unit to oversee governance mechanisms and promote transparency and accountability in the management of resources. There is no approved internal audit charter detailing the scope, responsibilities and purpose of the internal audit function. Management did not avail of any documented risk management policy to guide the enterprise's risk management processes effectively.

305. Consequently, I am unable to confirm the effectiveness on internal control, risk management and governance.

Management Response

306. The management informed the Committee that, the board did not have an internal auditor. However, the Board re-designated a qualified officer as an Internal Auditor on 13th January 2021 following the Auditor General's recommendations.

307. The Board developed the Enterprise Risk Management Policy. From March 2021 to 12th January 2023 there was no Board of Directors to approve the policy. The Board has since been gazetted from 13th January 2023 in compliance with the VSVP Act 2011 and has been inaugurated and is now operational. This policy document has been discussed at the Board Committee stage and its pending submission to the Board for approval during the next Board meeting scheduled for July 2023.

Committee observations

i. The board operated without internal audit unit to oversee governance mechanisms and promote transparency and accountability in the management of resources contrary to the provisions of section 73 (1) (a) of the Public Finance Management Act, 2012 and the attendant regulations. Further, there was no approved internal audit charter detailing the scope, responsibilities and purpose for the internal audit function.

ii. KVB management did not have a documented risk management policy to guide the enterprises risk management processes effectively as at the time of audit review.

iii. The then Accounting Officer breached Regulation 165 (1) (a) (b) of the Public Finance Management (National Government) Regulations, 2015 which provides that the Accounting Officer shall ensure that the national government entity develops risk management strategies, which include fraud prevention and a system of risk management and internal control that builds robust business operations.

Committee Recommendations

i. The Committee reprimands the Accounting Officer for the breach of Regulation 165 (1) (a) (b) of the Public Finance Management (National Government) Regulations, 2015. The

Accounting Officer should ensure that at all times the internal audit unit and an approved internal audit charter detailing the scope, responsibilities and purpose for the internal audit function are in place in order to promote transparency and accountability in the management of resources.

ii. Within three months upon adoption of this report, the board of KVB should submit to the National Assembly and the Auditor-General the approved audit committee membership, the audit committee minutes and the internal audit reports considered by the Audit Committee subsequently after appointment and their recommended actions for review. The Auditor-General should report the status of the actions taken by the KVB management in the subsequent audit cycle.

Financial Year 2019/2020

1.0 Budgetary Control and Performance

308. The Committee heard that, the statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.143,500,000 and Kshs.126,063,608 respectively resulting to an under-funding of Kshs.17,436,392 or 12% of the budget. Similarly, the statement reflects final expenditure budget and actual on comparable basis of Kshs.143,500,000 and Kshs. 85,579,789 respectively resulting to an under expenditure of Kshs. 57,920,211 or 40% of the budget.

Based on the approved estimates, under funding and under expenditure affected the planned activities and may have impacted negatively on service delivery to the public.

Management Response

309. The management informed the Committee that, the under collection of Kshs. 17,436,392 comprising of GoK grant under funding of Kshs. 12,500,000 and Kshs. 4,936,392 from low collection of A-in-A (licenses and fees).

310. The under expenditure of Kshs. 57,920,211 (Building – Kshs. 56,760,416 and Administration & operating expense – Kshs. 1,159,795) arose from the construction of the Kenya Veterinary Board Resource Centre.

311. During the financial year, the construction project was affected by the COVID-19 pandemic affected the administrative and construction works following the presidential countrywide lockdown directives. The project was completed and officially commissioned by the Principal Secretary on 18th March 2021. During the 2020/2021 Financial year, the budget control and performance issue was resolved as reported in the audited financial statement for the year.

Committee observations

i. The under-funding of Kshs.17,436,392 or 12% of the budget and the under expenditure of Kshs. 57,920,211 or 40% of the budget may have affected the planned activities and might have impacted negatively on the service delivery to the public.

ii. The explanation by the KVB management that the under-expenditure of Kshs. 56,760,416 on Building arose from the construction of the Kenya Veterinary Board Resource Centre which was affected by Covid-19. However, the contract agreement stipulating the contract implementation timelines to the effect that it took over one (1) financial year were not provided noting that project was initiated, budgeted for and funded in the financial year 2018/2019 before the Covid -19 closure directive.

iii. The KVB management did not submit the completion certificate for the Kenya Veterinary Board Resource Centre.

Committee recommendations

The Committee recommended that;

i. Within three months after the adoption of this report, the Auditor-General should perform a Compliance audit on the procurement process for the Kenya Veterinary Board Resource Centre with a view to ascertain whether the proper procurement process was adhered to, the total cost of the project in relation to the budget thereof, the timelines for the disbursements of the Kshs. 80,000,000 by the national government, the implementation process, variations to the contract if any and justification for the same and whether there was value for money on the project.

ii. Within three months after the adoption of this report, the Accounting Officer KVB should submit to the National Assembly and the Auditor-General a comprehensive report detailing the progress reports, certificates of partial completion as issued from time to time and the final completion certificate issued by Public works Department, the contract agreement and evidence that the amount of Kshs.80,000,000 was not utilized irregularly to defray other recurrent costs.

iii. The Accounting Officer should ensure at all times that the budgets are realistic, achievable and always adhere to annual work plans, procurement plans and revenue collection schedules.

2.0 Lack of Enterprise Risk Management Policy

312. The Committee heard that, the Board did not have a well-documented Enterprise Risk Management Strategy and Policies in place to effectively guide the enterprise's risk management processes at large.

313. In the circumstances, it's hard to confirm Management's preparedness to mitigate against risk.

Management Response

314. The management informed the Committee that, the Board developed the Enterprise Risk Management Policy. From March 2021 to 12th January 2023 there was no Board of Directors to approve the policy. The Board has since been gazetted from 13th January 2023 in compliance with the VSVP Act 2011 and has been inaugurated and is now operational. This policy document has been discussed at the Board Committee stage and its pending submission to the Board for approval during the next Board meeting scheduled for July 2023.

Committee observations

The Committee observed that;

i) The then Accounting Officer breached Regulation 165 (1) (a) (b) of the Public Finance Management (National Government) Regulations, 2015 which provides that the Accounting Officer shall ensure that the national government entity develops risk management strategies, which include fraud prevention and a system of risk management and internal control that builds robust business operations.

Committee Recommendations

i) The Committee reprimands the Accounting Officer for the breach of Regulation 165 (1) (a) (b) of the Public Finance Management (National Government) Regulations, 2015. The Accounting Officer should ensure that risk management policies and strategies which include fraud prevention mechanism and a system of risk management and internal control that builds robust business operations to effectively guide the board in risk management are developed.

Financial Year 2020/2021

1.0 Failure to have a fully constituted Board of Directors

315. The Committee heard that, the statement of financial performance reflects an amount of Kshs.12, 915,509 in respect of remuneration of the Board of Directors. However, the Board

of Directors' tenure of office ended on 20th March 2021 and a new Board has not been appointed as at 30th June 2021.

316. Further, a review of the status as at the time of audit in the month of December, 2021 revealed that three (3) instead of four (4) veterinary surgeons and one (1) instead of three (3) veterinary paraprofessionals had been appointed. This is contrary to section 4 (1) paragraphs (f) and (g) of the Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011 which provides that the Board shall consist of four (4) registered veterinary surgeons elected by registered veterinary surgeons and appointed by the Cabinet Secretary and three (3) veterinary paraprofessionals appointed by the Cabinet Secretary after being elected by registered veterinary paraprofessionals.

317. In the circumstances, the Board may not have effectively executed its mandate.

Management Response

318. The management informed the Committee that, the Board of Directors was not appointed as per the VSVP Act, 2011. However, the Board was gazetted on 13th January 2023 in compliance with the VSVP Act 2011. The Board of Directors has been inaugurated and is now operational.

Committee observations

i. The Board of Directors was not appointed as per the VSVP Act, 2011 and therefore operated illegally. In this respect the amount Kshs.12, 915,509 on remuneration of the then Board of Directors whose term of office had expired on 20th March, 2021 was illegally paid.

ii. The Board was gazetted on 13th January 2023 in compliance with the VSVP Act 2011. This meant KVB was in breach of their establishing Act between 20th March, 2021 and 13th January, 2023 and the business carried on by the improperly appointed Board of Directors was questionable and invalid.

iii. The then Cabinet Secretary for Agriculture and Livestock Development breached section 4 (1) paragraphs (f) and (g) of the Veterinary Surgeons and Veterinary Paraprofessionals

Act, 2011 which provides that the Board shall consist of four (4) registered veterinary surgeons elected by registered veterinary surgeons and appointed by the Cabinet Secretary and three (3) veterinary paraprofessionals appointed by the Cabinet Secretary after being elected by registered veterinary paraprofessionals

Committee recommendations

The Committee recommended that;

i) The Committee reprimands the appointing authorities for the delays in constituting or failing to adhere to the provisions of section 4 (1) paragraphs (f) and (g) of the Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011 which provides that the Board shall consist of four (4) registered veterinary surgeons elected by registered veterinary surgeons and appointed by the Cabinet Secretary and three (3) veterinary paraprofessionals appointed by the Cabinet Secretary after being elected by registered veterinary paraprofessionals.

ii) Within three months upon adoption of this report, the Accounting Officer for the time being in place during the period of non-adherence to the VSVP Act 2011 to be surcharged for fraudulently paying Kshs.12, 915,509 and any other subsequent amounts paid within the period of the breach (between 20th March, 2021 and 13th January, 2023) to the affected Board Members whose term in office had expired.

2.0 Understaffing of the Kenya Veterinary Board

319. The Committee heard that, an examination of the Board's approved staff establishment revealed an optimal staff level of two hundred and two (202) employees. However, only twenty (20) employees were in post resulting in a variance of one hundred and eighty-two (182) employees.

320. In addition, the Board's core function of inspectorate as stipulated in Section 6 (2)(m) of the Veterinary Surgeons and Veterinary Paraprofessionals' Act, 2011 is to create an inspectorate to work in collaboration with law enforcement agencies to locate, inspect and close down premises or ambulatory clinics operated contrary to the practices prescribed under the Act

and take legal action against offenders. However, the Board had only two inspectors serving the forty-seven counties.

321. In the circumstances, the Board lacks enough staff to manage the day-to-day activities as well as the core function of inspectorate as stipulated by law.

Management Response

322. The management informed the Committee that, the Board concurs with the audit findings that it is highly understaffed. The staffing levels stands at 6% of the staff establishment. The Board currently has 19 staff out of 202 (*13 employed by the Board and 6 deployed from the Ministry of Agriculture, Livestock and Crop Development*).
323. The recruitment process was suspended by the Cabinet Secretary of the parent Ministry. The recruitment process could not proceed due to lack of Board of Directors. The new Board was gazetted on 13th January 2023 in compliance with the VSVP Act 2011. The Board of Directors has been inaugurated and is now operational. The Board has now commenced the process of seeking fresh authority to recruit staff.

Committee observations

The Committee observed that;

i. The understaffing of the Board may have affected the realization of the organization core function and might have impacted negatively on the service delivery to the public.
ii. The Board's core function of collaborating with law enforcement agencies to locate, inspect and close down premises or ambulatory clinics operated contrary to the practices prescribed under the Act and taking legal action against offenders was not achieved despite being acritical role in ensuring quality of services and heath of the public as beneficiaries.

Committee recommendations

The Committee recommended that;

Within three months upon adoption of this report, the Accounting Officer of KVB should submit comprehensive report on how the board has complied with the approved staff establishment and the remedial alterative in absence of the recruitment process.

4.0 NATIONAL AUTHORITY FOR THE CAMPAIGN AGAINST ALCOHOL AND DRUG ABUSE (NACADA).

4.1 EXAMINATION OF THE AUDITOR'S GENERAL REPORT OF NATIONAL AUTHORITY FOR THE CAMPAIGN AGAINST ALCOHOL AND DRUG ABUSE FOR THE FINANCIAL YEAR 2017/2018 TO 2020/2021.

Prof. John Muteti, the Ag. Chief Executive Officer of National Authority for the Campaign Against Alcohol and Drug Abuse was accompanied by Mr. Samuel Makini. Director Finance and Mr. John Njuku, Manager Internal Audit appeared before the committee to adduce evidence on the Audited accounts of National Authority for the Campaign Against Alcohol and Drug Abuse for the Financial year 2017/2018 - 2020/2021.

FINANCIAL YEAR 20172018

1.0 Unqualified Report

Committee observation

The Authority was issued with Unqualified Report for the Financial Year 2017/2018

Committee Recommendation

The Accounting Officer should continue upholding the sound financial management practices.

FINANCIAL YEAR 2018/2019

1.0 Unqualified Report

Committee observation

The Authority was issued with Unqualified Report for the Financial Year 2018/2019

Committee Recommendation

The Accounting Officer should continue upholding the sound financial management practices.

FINANCIAL YEAR 2019/2020

1.0 Unqualified Report

Committee observation

The Authority was issued with Unqualified Report for the Financial Year 2019/2020.

Committee Recommendation

The Accounting Officer should continue upholding the sound financial management practices.

FINANCIAL YEAR 2020/2021

324. The Committee heard that, the Authority was issued with Unqualified Report for the Financial Year 2019/2020. However, the Authority had two (2) other matters on lawfulness and effectiveness in use of Public Resources in the Auditor-General's Report as detailed below;

1.0 Failure Collect Long Outstanding Debts

325. The Committee heard that, the statement of financial position reflects long outstanding receivables from exchange transactions totalling Kshs.15,292,100 and as disclosed in Note 23 to the financial statements. Review of the debtors' aging analysis showed that debts amounting to Kshs 6,382,036 had been outstanding for more than one year. Included in these debts were AIEs issued to Regional and County Commissioners of Kshs.1,319,200 and dues from an audit firm of Kshs.3,119,986 which had been outstanding for more than three (3) years as at 30th June, 2021. The Management did not provide any evidence of the action being taken to recover these debts.

Management Response

326. The management informed the Committee that, it had followed up for the payment of debts for **Kshs 1,319,200** being A.I.Es issued to Regional and County Commissioners. These

amounts have been partially paid and the outstanding amount currently stands at **Kshs 500,000** and Management is following up on the outstanding balance.

327. The amount of Kshs **3,119,986** relates to the amount owed by Ernest and Young and there is a dispute under investigation by the courts. Once the matter is settled, these amounts will be paid to NACADA.

Committee observations

The Committee observed that;

i. The amount of Kshs 3,119,986 relates to the amount owed by Ernest and Young. The amount is a balance outstanding after a matter relating to how the firm was procured to offer services to NACADA was taken to court on the regularity of the procurement process. The matter is still in court through an appeal raised by EACC.

ii. The amount of Kshs. 1,319,200 relating to A.I.Es issued to Regional and County Commissioners was not accounted for. Although the Accounting Officer-NACADA indicated that these amounts have been partially paid and the outstanding amount then stood at Kshs 500,000 and management was following up on the outstanding balance, there was no documentary evidence of surrender by the respective Regional and County Commissioners.

Committee Recommendations

The Committee recommended that;

i. Within three months upon adoption of this report, the Accounting Officer – NACADA should submit to the National Assembly and the Auditor-General the documentary evidence of surrender by the respective Regional and County Commissioners for review. The Auditor-General Should review the evidence and report the status in the next audit cycle.

ii. The Accounting Officer – NACADA in collaboration with Office of the Attorney-General should fast track the settlement of the pending court case to its logical conclusion.

2.0 Failure to Acquire Property Ownership Documents

328. The Committee heard that, the Presidential and the Ministry of Internal Coordination of National Government directives dated 28th August 2015 and 13th August 2019, resulted in the renovation and transformation of the National Youth Service – Miritini Camp into a rehabilitation centre for youths affected by drug and substance abuse. However, by the time of audit, the land was yet to be transferred to the Authority. This is contrary to Section 79(1)(c)(i) of the Public Finance Management Act, 2015, which requires the Accounting Officer to ensure that adequate arrangements are made for the proper use, custody, safeguarding and maintenance of public property.
329. In the circumstances, Management was in breach of the law,

Management Response

330. The management informed the committee that, through a Presidential Directive dated 28th August, 2015 and a directive from the Ministry of Interior and Coordination of National Government dated 13th August 2019; the NYS Miritini Camp was transformed to rehabilitate the youth affected by drug and substance abuse. The NYS service men vacated the premises in October 2019 and the Authority took over the land and building and commenced operations. NACADA is in the process of seeking the transfer and Title for Miritini Camp. Management has sought the help of the Parent Ministry and Ministry of Lands to assist in the transfer of the property. The relevant communications between NACADA through the Parent Ministry and the Ministry of Lands are attached under.

Committee observations

The Committee observed that;

i. The National Authority for Campaign Against Drug Abuse does not possess title deed for the land LR.NO. MN/VI/4755 in Miritini measuring 5.897 hectares and has been legally transferred to the Authority by the National Youth Service.

ii. The Authority renovated and transformed the National Youth Service – Miritini Camp into a rehabilitation centre for youths affected by drug and substance abuse even before acquiring ownership documents.

Committee Recommendations

The Committee recommended that;

Within three months after the adoption of this report, the Accounting Officer - NACADA in collaboration with the Principal Secretaries for Interior and National Administration, State Department of Public Services and State Department for Lands and Physical Planning and the National Land Commission to expedite the process of transfer and acquisition of title deed.

5.0 KENYA BROADCASTING CORPORATION

5.1 EXAMINATION OF THE AUDITOR'S GENERAL REPORT OF KENYA BROADCASTING CORPORATION FOR THE FINANCIAL YEAR 2000/20001 TO 2012/2013

FINANCIAL YEAR 2000/20001

1.0 Financial Position

331. The Committee heard that, during the year ended 30th June, 2001, the Corporation recorded a net loss of Kshs. 510,333,848 which brought the accumulated deficit to Kshs. 6,461,219,503 as at the same date. Further, the Corporation's Balance Sheet as at 30th June 2001 shows negative working capital of Kshs. 2,816,374,404 and negative net worth of Kshs. 5,532,731,913 compared to negative working capital of Kshs. 2,711,801,698 and negative net worth of Kshs. 5,022,398,065 respectively in the previous year. The Committee also heard that the Corporation was also unable to pay its financial commitments as they fell due. Evidently, therefore, the Corporation was technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors

Management Response

332. The management informed the Committee that, the corporation made a net loss of Kshs 510,333,848 bringing the accumulated deficit to Kshs 6,461,219,503. This is due to the huge amounts debited in the profit & loss account relating to depreciation (kshs443,328,799) as a result of old equipment, rising electricity costs (kshs 75,331,151) and the high wage bill (kshs 363,864,201).
333. Further the Committee was informed that the negative working capital of Kshs 2,816,374,404 (Current Assets - Current Liabilities) for the year 2000/2001 is attributable to the total GoK loan plus interest charged to KBC cumulatively since the Government committed to repay the OECF Japan loan (the loan is explained below) on KBC's behalf.

Both the repayment and interest are treated as current liabilities, therefore greatly affecting the financial position of the Corporation.

334. The management further submitted that the negative net worth of Kshs 5,532,731,913 for the year compared to Kshs 5,022,398,065 for the previous year, the increase is as result of the additional net loss of Kshs 510,333,848 for the year ended 30th June 2001 as explained above. The interest that the Government has charged KBC over the years totalling kshs 536,976, 192 is debited to the profit & loss account therefore contributing to the negative net worth.

335. To address the technical insolvency problem of KBC, the Committee heard that the management contracted Delloitte to provide consultancy services for the transformation of the organization. They finalized the transformation report in August 2015, the Board of Directors approved the report in September 2015 and a Cabinet paper has been prepared for submission to the cabinet to approve the transformation recommendations. Upon obtaining Cabinet approval, implementation will commence in order to transform KBC into a profit-making entity.

Committee observations

i. The Committee observed that, the corporation's corporate governance is considerably weak thereby exposing the corporation to potential losses in addition reputational and operational risks.

ii. The Corporation is technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors.

iii. The explanation by the management that corporation made a loss due to the huge amounts debited in the profit & loss account relating to depreciation because of old equipment, rising electricity costs and the high wage bill is unsatisfactory since these are operational costs that are directly related to revenue generation. This may point to possible revenue leakages.

iv. Arising from consultancy services of Deloitte Kenya a Cabinet memo on transformation of KBC was developed in 2015 and as of 2023 when the management appeared before the

Committee, the Memo was still awaiting Cabinet's approval. However, it was not certain how long it would take to implement the recommendations of the memo.

v. The Committee observed that the financial position of the Corporation is weak and if strategies are not put in place to reverse the position, the Corporation may not be able to meet its financial obligations as and when they fall due.

Committee Recommendations

i. Within three months after the adoption of the Report the Ethics and Anti-Corruption to investigate whether there are any financial leakages/ financial impropriety Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the financial leakages/ financial impropriety.

ii. Within three months after the adoption of this report, the MD KBC in collaboration with the PS Broadcasting and Telecommunication and the PS National Treasury to expedite the approval process for consequent implementation of the CAB memo with a view of instituting transformative business turn around strategies to facilitate improvement of solvency status of KBC.

iii. The Committee recommends that the KBC diversifies its revenue base to reduce over reliance on Government support.

2.0 Liabilities

336. The Committee heard that, the corporation's balance sheet as of June 30th 2001 reflects a loan of Kshs. 7,543,422,121 obtained from the Overseas Economic Co-operation Fund (OECF) Japan in 1989, which Treasury has over the years serviced on behalf of the corporation. Although the loan has been rescheduled until 2011, the corporation has been unable to repay to the Treasury Kshs 2,819,035,380 so far paid on its behalf.

337. Further, the Committee was informed that the corporation was also unable to remit to the Kenya Revenue Authority VAT totalling Kshs. 189,412,509 and to service trade creditors totalling Kshs. 259,554,592. The corporation was, therefore, in breach of the law and may have to incur avoidable penalties.

Management Response:

338. The management informed the committee that, KBC modernization project was initiated out of a government study in 1987. The report recommended the rollout of medium-wave radio transmitters in the country. As a result, a request was sent out to various donors to fund the project, which the Japanese government accepted through the Overseas Economic Co-operation Fund.
339. Additionally, the Committee was informed that the loan was granted in 1989 under the Government of Kenya guarantee. Therefore, KBC became unable to repay the loan due to cash flow constraints caused by competition as a result of the liberalization of the electronic industry in Kenya in the 1990s. The government started repaying the loan on behalf of KBC, while at the same time recording all amounts repaid as loans by the government to KBC at market interest rates. The initial loan amount provided was Yen 15.441 billion, equivalent to Ksh 8,287,588,398.
340. The management stated that the outstanding OECF Japan loan was Kshs 7,543,422,121 as of June 30, 2001. The medium-wave radio transmitters that were procured with the proceeds of the OECF Japan loan are now obsolete with the migration to FM radio transmission, which is efficient, high-quality, and cost-effective.
341. Further, the Committee was informed that the corporation was also unable to remit Kshs 189,412,509 of VAT to KRA and Kshs 259.554,592 to trade creditors. The management submitted that they have addressed the problem by paying KRA 26 million monthly, covering the arrears and current PAYE and VAT. Additionally, the backlog of outstanding payments to trade creditors has now been settled, as evidenced by the accounts of 2014.

Committee observations

i. The Kenya Broadcasting Corporation took a loan of Kshs. 7,543,422,121 from the Overseas Economic Co-operation Fund (OECF) Japan in 1989. The National Treasury has over the years serviced on behalf of the corporation. However, the corporation has been unable to repay to the National Treasury Kshs 2,819,035,380 so far paid on its behalf despite the loan having been rescheduled until 2011

ii. The OECF Japan loan was received in the form equipment's which were rendered obsolete because of the liberalization of the electronic industry in Kenya in the 1990s and the migration to FM radio transmission leading to the loss of value for money on the investment. Arising from the foregoing, it meant that the Management of KBC did not carry-out a proper Feasibilty study or there was laxity on those charged with governance having approved the loan without due diligence.

iii. The Corporation was also unable to meets its tax obligation of Kshs189,412,509 of VAT payable to KRA contrary to the provisions of the VAT Act CAP476 thus breaching the law.

iv. An amount of Kshs 259,554,592 owing to Trade creditors were not settled as at the time of audit in 2001. However, the management submitted that they had addressed the backlog of outstanding payments to trade creditors as reflected in the accounts of the financial year ending 30, June 2014. The mere disclosure of a lower balance of trade creditors in subsequent financial statements as indicated could not be taken to imply that payments were done in absence of documentary evidence.

Committee recommendations

The committee recommends that;

Within three months upon adoption of the report, the Accounting officer-KBC should submit to the National assembly and to the auditor General a comprehensive report with details of the payees and the corresponding documentary evidence of settlement of the obligations. The auditor General should review and report the findings in the subsequent audit cycle.

3.0 Property, Plant and Equipment

3.1 Fixed Assets

342. The Committee heard that, as had been seriously reported, the Corporation did not maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which required the maintenance of proper books and records of accounts of assets.

In addition, out of the 33 parcels of land which parcels of land which belongs to the Corporation, only 8 parcels of lands had title deeds while 7 had allotment letters issued. The Corporation therefore did not have title deeds or other legal documents of ownership in respect of 25 parcels of land. In the circumstances, it was not possible to confirm the ownership status of the parcels of land and confirm that the fixed assets totalling Kshs.4,826,664,612.00 were fairly stated in the financial statements.

Management Response:

343. The management responded by informing the committee that maintain an assets register. However, that problem had been resolved.
344. The Corporation valued all its assets in November 2014 and developed an assets register.
345. The Corporation has secured 8 title deeds for its parcels of land as detailed below:

(i) LR.NO. 205/5918 Broadcasting house Nairobi measuring 2.8 acres.
(ii) LR. NO.1476/1 Nyali measuring 22.85 acres.
(iii)LR. NO. 1932/4 kitale measuring 200 acres.
(iv)LR. NO. Mgange/dawida/908 Vuria Hill 2.884 acres.
(v) LR. NO. Block 104/519 Ushirika Flats Nirobi 0.3875 acres.
(vi)LR. NO. Ndivisi/ Mihuu/ 1973 Webuye 2.96 acres.
(vii) LR. NO. Nyaribari Chache/Borabu/5924 kisii 2.08 acres.
(viii) LR. NO. Ntirimiti Settlement Scheme/153 Marania Meru 238.45 acres.

346. The Corporation hired consultants (conveyance lawyers) in 2012 to survey the unsurveyed parcels of land and process the remaining title deeds. The consultant had made provided progress report for the remaining parcels of land as per the attached correspondents.

Committee observations

i. The Corporation did not maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and

records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

ii. The Corporation had title deeds for eight parcles of land with another32 parcels which does not have title deeds or other legal documents of ownership. However, the title deed for LR.NO. 209/5918 -Broadcasting house Nairobi measuring 2.8 acres in which the KBC headquarters are situated, was in the name of CHIEF SECRETARY, COLONY AND PROTECTORATE OF KENYA a body corporate duly established by the chief secretary (incorporation) ordinance 1958. Further, out the seven allotment letters KBC claimed to have, only one was provide but was in the name of KOMAROCK Raching Company. It was not clear how KBC claimed ownership of the same and the status of the other six parcles allotment letters.

iii. The Corporation hired consultants (conveyance lawyers) in 2012 to survey the unsurveyed parcels of land and process the remaining title deeds. However, except for the status report given of 6 January 2014, not further, correspondences thereafter were presented before the committee and the terms of engagement between KBC and the conveyance lawyers, the timelines and the cost of the services were unknown.

Committee recommendations

i. Within three months upon adoption of this report, the Accounting Officer, KBC should submit to the National Treasury and the Auditor-General the updated fixed asset register detailing all the assets of the company with the respective details that needs to be disclosed in the asset register in accordance with the disclosure requirements set by the National Treasury and the Accounting standards Board.

ii. The committee reprimands the Corporation Accounting Officer for the failure to maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

iii. Within three months upon adoption of this report, the Accounting Officer-KBC in collaboration with the National Land commission should expedite the processing of the Corporation's title deeds for all the parcels of land owned by KBC.

iv. Within three months upon adoption of this report, the Auditor-General should review the procurement process for the hired consultants (conveyance lawyers-J.Thongori &co) in and the status of payments so far made to the lawyers and the milestones achieved.

3.2 Power generators

347. The Committee heard that the Corporation at the direction of the Government loaned its five power generators valued at Kshs.29,023,200 to KENGEN to alleviate the power crisis during 2000/2001. The generators had not been returned to the Corporation, despite several reminders and demands by the Corporation to KENGEN.

348. Under the circumstances, therefore, it was not possible to confirm that the five power generators were safe, secure and recoverable by the Corporation.

Management Response:

349. The management informed the committee that, in the financial year 1999/2000 when the country experienced serious power shortages due to drought, the Government directed KBC to release five power generators to Kengen to be installed at the University of Nairobi, Kenyatta University and Jomo Kenyatta University. The value of these generators was Kshs. 29,023,200. During the accounting period 2000/2001, the generators had not been returned and they were never returned, despite management's effort to have them returned. The KBC management made several follow-ups by holding meetings and writing to the Managing Director KENGEN, the PS Ministry of Information Communications and Treasury requesting for the return of the generators vide letters; KBC/MD/2/A/Vol. 11/95 of 20th March, 2012, KBC/MD/2/3/A/C Vol. I11/93 and KBC/MD/2/3/A/ Vol. II, to no avail. We are still in communication with our parent ministry to assist us in this matter.

Committee observations

The Committee observed that;

The Corporation at the direction of the Government loaned its five power generators valued at Kshs.29,023,200 to KENGEN to alleviate the power crisis during 2000/2001. However, The

generators had not been returned to the Corporation, despite several reminders and demands by the Corporation to KENGEN. The Corporation had not done enough to follow on the return of the generators and there was loss incurred in respect to the loaned generators valued at Kshs.29,023,200

Committee recommendations

The Committee Recommendations

Within three months after the adoption of this report, EACC to initiate investigation into how the loaned generators to KENGEN were procured, whether there were any malpractices in the initial procurement and that the generators were idle at the time of loaning and submit its findings to DPP for a possible prosecution of those found culpable.

4.0 Loss of salaries – Kshs. 22,572,966

350. The Committee heard that, the Corporation lost a total of 22,572,966 between the period September 1997 and December 2001 through electronic money transfer fraud through the use of a deficient payroll computer software.
351. In addition, the loss was attributed to two officers who were responsible for processing the payroll but, who through manipulation, fraudulently obtained Money from the Corporation' s bank account to purportedly pay salaries to the Corporation's staff. although the matter was reported to the police and the two suspected culprits arrested and charged in court, the outcome of the case was still unknown and the amount remains unrecovered. The loss was clearly indicative of the existence of weak internal controls within the Corporation.

Management Response:

352. The management informed the Committee that, the corporation lost a total of Kshs 22,572,966 between the period September 1997 and December 2001 through electronic money transfer fraud through the use of deficient payroll computer software.
353. The management further stated that the board, sitting on 28th November, 2002, approved disciplinary action against the staff involved and dismissed them. Further, the concerned

staff was further taken to court through KBC external lawyers, Sumbeiywo & Company Advocates.

354. The Committee further heard that the corporation has also invested in new software for processing payroll. The adoption of the Citidirect payment system has also enhanced security since the payroll undergoes four stages of authorization and the history of all transactions is available at all times.

Committee observations

i. The corporation lost a total of Kshs 22,572,966 between the period September 1997 and December 2001 through electronic money transfer fraud using a deficient payroll computer software.
ii. The matter was reported to the police and the two suspected culprits arrested and charged in court. However, the outcome of the case was still unknown and the amount remains unrecovered.
iii. The then Accounting Officer breached Regulation 165 (1) (a) (b) of the Public Finance Management (National Government) Regulations, 2015 which provides that the Accounting Officer shall ensure that the national government entity develops risk management strategies, which include fraud prevention and a system of risk management and internal control that builds robust business operations.

Committee Recommendations

i. The Committee reprimands the then Accounting Officer for the breach of Regulation 165 (1) (a) (b) of the Public Finance Management (National Government) Regulations, 2015.
ii. Within three months upon adoption of the report, EACC to initiate an investigation on the salary fraud and submit its findings to DPP for a possible prosecution of those found culpable.
iii. Within three months upon adoption of the report, the Accounting officer-KBC should submit to the National assembly, a comprehensive report and approved documentary evidence on the risk management policies and internal controls put in place to mitigate fraudulent activities within the corporations operating systems.
iv. Within three months upon adoption of the report, the Accounting officer-KBC in collaboration with the Attorney-General should petition the chief justice to expedite the

case and bring it to a justifiable conclusion then submit the ruling to the National assembly and the steps taken to implement the ruling.

5.0 PAYABLES

5.1 Payment for goods not delivered

355. The Committee heard that, in September, 2001 the Corporation, when launching the Metro Tv Station, contracted private firm to supply goods and accessories at a cost of Kshs.1,940,400.00. Although the contract provided that a down payment of 25 % was to be made at the commencement of the job and the balance when the job is completed, the Corporation cleared the total bill in four installments of Kshs.485,025 each between March and November, 2000, while only work valued at Kshs.310,000.00 had been done. The balance of goods and accessories valued at Kshs.1,630,000 paid in advance of delivery could not be ascertained.

Management Response:

356. The Management informed the Committee that, during the launch of Metro TV station in September 2000, KBC contracted a private firm to supply goods and accessories at a cost of Kshs 1,940,400,000. Although the contract provided for a 25% down payment and the balance when the job was completed, the corporation paid these amounts in four equal installments before full supply of the goods was done, as at the accounting period. The concerned officer who handled this matter was disciplined by being demoted and subsequently left the Corporation. Currently we are following public procurement regulations in buying goods and services.

Committee observations

The Corporation, in September, 2001 when launching the Metro Tv Station, contracted private firm to supply goods and accessories at a cost of Kshs.1,940,400.00, Although the contract provided that a down payment of 25 % was to be made at the commencement of the job and the

balance when the job is completed, the Corporation made an excess payment of 59% before the work was completed contrary to the provisions of the contract.

Committee recommendations

The Accounting Officer to ensure that, the provisions of the procurement contract and prevailing procurement laws and regulations are complied with at all times.

6.0 RECEIVABLES

6.1 Debtors

357. The Committee heard that, the Debtors balance at 30th June 2001 amounted to Kshs.395,819,069 out of which Debts amounting to Kshs.242,700,140 have remained outstanding since 1996. The bad debts provision of Kshs.68,631,756 made in the accounts by the Corporation would therefore, appear to be inadequate. Further, the Government owes the Corporation a total of Kshs.774,995,767 charged for public airtime which, however, was excluded from the Balance Sheet Debtors figure of shs.395,489,069.00. Although a Debt Recovery Committee had been formed some four years ago to recover the long outstanding debts, there was no evidence of any effective recovery and the debts may have to be written off.

Management Response:

358. The management informed the Committee that debtors' balance as at 30th June 2001 amounted to kshs 395, 849,069 out of which debts amounting to Kshs 242,700,140 have remained outstanding since 1996. In order to manage debtors and collect outstanding debts efficiently and effectively, KBC management has put in place the following strategies

i) Developed and implemented a credit policy in 2008.
ii) Utilize a panel of external debt collectors to collect overdue debts.
iii) Utilize a panel of external lawyers to follow up and take legal action on defaulting debtors.
iv) KBC legal department issuing notices to overdue debtors.
v) Five KBC staff that collect debts on a daily basis with a monthly individual target to be met.

359. KBC is currently making annual bad debts provision that is sufficient in accordance with International Financial Reporting Standards.

360. The amount that the Government owes KBC for airtime kshs 774,995,767 relates to periods prior to 1989 when Public Broadcasting was under Voice Of Kenya (VOK) without any supporting documents e.g. orders, LPOs and invoices. Without necessary supporting documents it is difficult to enforce collection of such debts.

361. Further the Committee heard that, the Debtors figure of Kshs.55,420,873 in the balance sheet includes debts totalling Kshs.396,722,458 or 87% which are aged over 120 days. Included among the debtors is advertising firm which owes the Corporation a total of Kshs.38,638,324. The firm is no longer in existence and its business has been taken over by another firm. It is not clear whether the new firm took over the debts owed to KBC. It has not been possible to confirm whether, and if so, when the Corporation will be able to recover these amounts. Any additional provision that would have been necessary in relation to this uncertainty has not been incorporated in these financial statements.

Management Response:

362. The management informed the committee that the debt of kshs 38, 638, 324 was owed by Mcann Erickson advertising agency. The advertising agency was bought by Scanad advertising agency. Scanad advertising agency took over the debt of Mann Erickson and paid KBC.

Committee observations

i. The Corporation has not demonstrated the efforts made to recover the long outstanding debts. Despite the explanation by the corporation management that they employed several debt management strategies including the formation of a debt recovery committee in 2005 to recover the debts, there was no evidence of any effective recovery.

ii. The bad debts provision of Kshs.68,631,756 made in the financial year 2000/2001 accounts by the Corporation on the debts amounting to Kshs.242,700,140 which had remained outstanding since 1996 appear to be inadequate.

iii. The government owes the Corporation a total of Kshs.774,995,767 charged for public airtime which was excluded from the Balance Sheet Debtors figure of shs.395,489,069.00.

Committee Recommendation

i. The Accounting Officer - KBC should pursue the recovery of all the outstanding debts.

ii. Within three months upon adoption of this report, KBC should submit comprehensive progress report to the National Assembly and the Auditor-General detailing the recoveries made.

Financial year 2001/2002

1.0 Financial Position

363. The Committee heard that, during the review that year ended June 30, 2002, the corporation recorded a net loss of Kshs. 599,263,809, which brought the accumulated deficit to Kshs. 7,060,483,312. Further, the corporation's balance sheet reflects a negative working capital of Kshs 3,714,656,222.

364. Further, it was noted that the balance sheet also shows a negative net worth of shs. 6,131,995,722, as at the same date as disclosed in note 9 to the financial statements, the corporation was unable to pay Japanese loans used in the Radio MW Modernization Project totalling Kshs. 3,163,166,942 and interest on the same totalling Kshs. 536,967,192, which the Treasury had to pay on behalf of the corporation. Evidently, the corporation was technically insolvent, and the financial statements have been prepared on a going concern basis, which assumes continued support from the government and other creditors.

Management Response:

365. The management informed the Committee that, during the year in question, the corporation made a net loss of Kshs 599,263,809, bringing the accumulated deficit to Kshs

7,060,483,312. This is due to the huge amounts debited in the profit and loss account relating to depreciation (Kshs 406,031,909) as a result of old equipment, rising electricity costs (Kshs 67,358,371), and the high wage bill (Kshs 377,788,766).

366. Further, it was stated that the negative working capital of Kshs 3,714,656,222 (current assets and current liabilities) for the year 2001/2002 was attributable to the total GoK loan plus interest charged to KBC cumulatively since the government committed to repaying the OECF Japan loan (the loan is explained below) on KBC's behalf. Both the repayment and interest are treated as current liabilities, therefore greatly affecting the financial position of the corporation. The financial statements reported negative net worth of Kshs 6,131,995,722. The interest that the Government has charged KBC over the years totalling kshs 536,976, 192 is debited to the profit loss account therefore contributing to the negative net worth.

367. The management further submitted to the committee that to address the technical insolvency problem of KBC, it contracted Delloitte to provide consulting services for the transformation of the organization. The consultancy firm finalized the transformation report in August 2015. The report was presented to the Board of Directors, who approved it in September 2015. Consequently, a cabinet paper was prepared for submission to the Cabinet to approve the transformation recommendations. Therefore, upon obtaining Cabinet approval, implementation will commence in order to transform KBC into a profit-making entity.

Committee observations

i. The Committee observed that the corporation's corporate governance is considerably weak thereby exposing the corporation to potential losses in addition to reputational and operational risks.

ii. The Corporation is technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors. The financial position of the Corporation is weak and if strategies are not put in place to reverse the position, the Corporation may not be able to meet its financial obligations as and when they fall due.

iii. The explanation by the management that corporation made a loss due to the huge amounts debited in the profit & loss account relating to depreciation because of old equipment, rising electricity costs and the high wage bill is unsatisfactory since these are operational

costs that directly relate to revenue generation. This may point to possible revenue leakages.

iv. Arising from consultancy services of Deloitte Kenya a Cabinet memo on transformation of KBC was developed in 2015 and as of 2023 when the management appeared before the Committee, the Memo was still awaiting Cabinet's approval. However, it was not certain how long it would take to implement the recommendations of the memo.

Committee Recommendations

i. Within three months after the adoption of the Report the Ethics and Anti-Corruption to investigate whether there are any financial leakages/ financial impropriety. Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the financial leakages/ financial impropriety.

ii. Within three months after the adoption of this report, the MD KBC in collaboration with the PS Broadcasting and Telecommunication and the PS National Treasury to expedite the approval process for consequent implementation of the CAB memo with a view to instituting transformative business turn around strategies to facilitate improvement of solvency status of KBC.

iii. Within three months after the adoption of this report, the MD and the Board of KBC submit to the National Assembly, documented revenue generation and competition strategies implemented intended to be implemented by the corporation in order to diversify its revenue base and reduce over reliance on the Government support.

2.0 Fixed Assets

368. The Committee heard that, as had been previously reported, Corporation did not maintain any fixed assets register contrary to Section 43 of Kenya Broadcasting Corporation Act (Cap 221), and although the Corporation had indicated that valuation of its assets had started, the exercise was hindered by liquidity problems mentioned in paragraph 1 above. Under the circumstances, it was not possible to confirm the correctness of the Non-Current Assets balance of Kshs.4,465,539,969 as at 30th June, 2002.

Management Response:

369. The management informed the committee that, during the financial year that ended 30th June 2001, the Corporation did not maintain an assets register. However, had problem had been resolved. The Corporation valued its assets in November 2014 and developed assets register.

Committee observations

i. The Corporation did not maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

ii. The Corporation had title deeds for eight parcles of land with another 32 parcels which does not have title deeds or other legal documents of ownership. However, the title deed for LR.NO. 209/5918 -Broadcasting house Nairobi measuring 2.8 acres in which the KBC headquarters are situated, was in the name of CHIEF SECRETARY, COLONY AND PROTECTORATE OF KENYA a body corporate duly established by the chief secretary (incorporation) ordinance 1958. Further, out the seven allotment letters KBC claimed to have, only one was provide but was in the name of KOMAROCK Ranching Company. It was not clear how KBC claimed ownership of the same and the status of the other six parcels allotment letters.

iii. The Corporation hired consultants (conveyance lawyers) in 2012 to survey the unsurveyed parcels of land and process the remaining title deeds. However, except for the status report given of 6 January 2014, not further, correspondences thereafter were presented before the committee and the terms of engagement between KBC and the conveyance lawyers, the timelines and the cost of the services were unknown.

Committee recommendations

i. Within three months upon adoption of this report, the Accounting Officer, KBC should submit to the National Treasury and the Auditor-General the updated fixed asset register detailing all the assets of the company with the respective details that needs to be disclosed

in the asset register in accordance with the disclosure requirements set by the National Treasury and the Accounting standards Board.

ii. The committee reprimands the Corporation Accounting Officer for the failure to maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

iii. Within three months upon adoption of this report, the Accounting Officer-KBC in collaboration with the National Land commission should expedite the processing of the Corporation's title deeds for all the parcels of land owned by KBC.

iv. Within three months upon adoption of this report, the Auditor-General should review the procurement process for the hired consultants (conveyance lawyers-J.Thongori &co) in and the status of payments so far made to the lawyers and the milestones achieved.

3.0 Irregular Payments

370. The Committee heard that, the former Managing Director gave notice of resignation on July 27, 2002, to vie for a parliamentary seat and subsequently left office on August 14, 2002, in effect giving notice of resignation for less than 3 months' period as required by his terms of service. Additionally, on leaving employment, the officer was paid a total of Kshs. 1,000,000, including 3 months' salary in lieu of notice at Kshs. 200,000 per month and an additional Kshs. 400,000 to cater for transport. Although the corporation explained that the officer could not give adequate notice due to a government directive that required public officers intending to seek elective posts to resign by August 15, 2002, the directive should not by itself have varied terms of the employment contract. Consequently, the officer should have forfeited his salary in lieu of notice.

371. Further, the Committee was informed that that the payment of Kshs. 400,000 for transport is questionable since the officer was not in the service of the corporation. In addition, all the payments were made without deducting pay-as-you-earn taxes in accordance with the Income Tax Act. Under the circumstances, it was not possible to confirm the propriety of the payment of Kshs. 1,000,000

Management Response:

372. The management submitted to the Committee about the resignation of Mr. Joseph M. Hamisi - P/No. 006310. It informed the Committee that:

i) the payment of two months' basic salary for transportation and travel expenses is normally paid to an officer who is either proceeding on retirement or is compelled by circumstances and not on his own volition but in the interest of the corporation or the government to retire or resign. Therefore, the Managing Director, Mr. Hamisi, was forced to resign through a government circular that required all officers intending to vie for elective positions in the 2002 elections to resign and vacate public offices from their employment by 15th August, 2015.

ii) the payment of three months' basic salary in lieu of notice was necessary since Mr. Hamisi could not serve the mandatory three months' notice period due to the conditions given in the government circular; therefore, the corporation had to pay him three (3) months' salary in lieu of notice. This allowance was paid to Mr. Hamisi as a result of the compelling nature of his resignation, as he could not have ordinarily served the entire three-month notice period.

iii) the Payment of PAYE on the transportation and travel allowance (on exit) were and are still not taxable as they do not tantamount to earnings and are payable particularly to retirees on exit to assist and facilitate in the transportation of their personal belongings and relocation of family members upon leaving the corporation. If an actual transport facility (e.g., a lorry /van) was provided by the corporation, then PAYE could still not have been deducted. This is normally the same scenario with funeral allowances. Other deductions relating to PAYE in respect of Mr. Hamisi covering the days worked up to 15th August, 2002, and payment of gratuity were affected and remitted as required.

Committee Observations

The committee observed that

i) The former Managing Director on his volition gave notice of resignation on July 27, 2002, to vie for a parliamentary seat and subsequently left office on August 14, 2002. The notice of resignation was less than 3 months' period required by his terms of service.

ii) The former Managing Director was irregularly paid a total of Kshs. 1,000,000, comprising of 3 months' salary in lieu of notice at Kshs. 200,000 per month and an additional Kshs. 400,000 to cater for transport. Despite the fact that the officer could not give adequate notice due to a government directive that required public officers intending to seek elective posts to resign by August 15, 2002, he should have forfeited his salary in lieu of notice rather than being irregularly compensated by the corporation.

iii) The payment of Kshs. 400,000 for transport was irregular and not payable since the officer was not in the service of the corporation to warrant facilitation.

iv) All the payments were made without deducting pay-as-you-earn taxes in accordance with the Income Tax Act.

Committee Recommendations

The committee recommends that;

Within three months after the adoption of this report, the MD – KBC in collaboration with the Attorney General and the inspector General state corporation should recover the amount of Kshs. 1,000,000 plus interest at the prevailing CBK rates from Mr. Hamisi and the other officer involved in paying the irregular allowances.

Financial year 2002/2003

1.0 Financial Position

373. The Committee heard that, during the year ended 30th June, 2003, the corporation incurred a net loss of Kshs. 1,126,929,499, which brought its adjusted accumulated deficit to Kshs. 8,186,128,261. Further, the balance sheet reflects a negative working capital of Kshs. 605,314,911 and a negative net worth of Kshs. 7,257,640,671 as of the

same date. Consequently, as disclosed in Note 9 to the financial statements, the Corporation was unable to pay foreign loans used in the Radio Modernization Project totalling Kshs. 3,865,991,765 and interest on the same totalling Kshs. 536,967,192, which the Treasury had to pay on its behalf. Evidently, therefore, the corporation is technically insolvent, and its continued operation on a going concern basis is dependent on government support.

Management Response:

374. The management informed the Committee that, during the year in question, the corporation made a net loss of Kshs 1,126,929,499, bringing the accumulated deficit to Kshs 8,186,128,261. This was due to the huge amounts debited in the profit & loss account relating to depreciation in Kshs 373,234,736 as a result of old equipment, rising electricity costs in Kshs 94,839,974, and the high wage bill in Kshs 394,618,131.
375. It was also pointed out that the negative working capital of Kshs 605,314,911 (current assets and current liabilities) for the year 2002/2003 is attributable to the total GoK loan plus interest charged to KBC cumulatively since the government committed to repaying the OECF Japan loan (the loan is explained below) on KBC's behalf. Both the repayment and interest are treated as current liabilities, therefore greatly affecting the financial position of the corporation.
376. The Committee was also informed that the financial statements reported a negative net worth of Kshs 7,257,640,671. The interest that the government has charged KBC over the years, totalling Kshs 536,976,192, is debited to the profit and loss account, therefore contributing to the negative net worth.
377. The management, in their submissions, informed the Committee that to address the technical insolvency problem of KBC, it contracted Delloitte to provide consulting services for the transformation of the organization. The consultancy firm finalized the transformation report in August 2015. The report was presented to the Board of Directors, who approved it in September 2015. Consequently, a cabinet paper was prepared for submission to the Cabinet to approve the transformation recommendations. Therefore, upon obtaining Cabinet

approval, implementation will commence in order to transform KBC into a profit-making entity.

Committee observations

i. The Committee observed that, the corporations corporate governance is considerably weak thereby exposing the corporation to potential losses in addition to reputational and operational risks.

ii. The Corporation is technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors. The financial position of the Corporation is weak and if strategies are not put in place to reverse the position, the Corporation may not be able to meet its financial obligations as and when they fall due.

iii. Arising from consultancy services of Deloitte Kenya a Cabinet memo on transformation of KBC was developed in 2015 and as of 2023 when the management appeared before the Committee, the Memo was still awaiting Cabinet's approval. However, it was not certain how long it would take to implement the recommendations of the memo.

Committee Recommendations

i) Within three months after the adoption of this report, the MD KBC in collaboration with the PS Broadcasting and Telecommunication and the PS National Treasury to expedite the approval process for consequent implementation of the CAB memo with a view to instituting transformative business turn around strategies to facilitate improvement of solvency status of KBC.

ii) Within three months after the adoption of this report, the MD and the Board of KBC submit to the National Assembly, documented revenue generation and competition strategies implemented intended to be implemented by the corporation in order to diversify its revenue base and reduce over reliance on Government support.

2.0 Fixed Assets

378. The Committee heard that, as had been pointed out in the previous report, the Corporation did not maintain a fixed assets register for the assets reflected in the balance sheet at

Kshs.4,144,871,879. Consequently, it was not possible to confirm whether the carrying values as stated in the financial statements reflected the fair values of fixed assets at the balance sheet date. Included in the Corporation's assets were 33 parcels of land in various parts of the country whose value had not been determined. Land parcels numbering 23 out of 33 had no title deeds and had not therefore been registered in the Corporation's name.

379. The unregistered land includes KBC Headquarters Complex LR 15090 (40.47 ha), Karen LR 10956 (10 ha) and KBC Norfolk 209/10370(0.0061 ha). Under the circumstances, it had not been possible to confirm the ownership and security of those parcels of land.

Management Response:

380. The management informed the Committee that during the financial year that ended on 30th June 2001, the Corporation did not maintain an assets register. However, this problem has been resolved. The Corporation valued all its assets in November 2014 and developed an assets-carrying register.

381. The Corporation had obtained 8 title deeds for its parcels of land as detailed below:

i) LR.NO. 205/5918 Broadcasting house Nairobi measuring 2.8 acres.
ii) LR. NO.1476/1 Nyali measuring 22.85 acres.
iii) LR. NO. 1932/4 kitale measuring 200 acres.
iv) LR. NO. Mange/ dawida/ 908 Vuria Hill 2.88 acres.
v) LR. NO. Block 104/519 Ushirika Flats Nirobi 0.3875 acres.
vi) LR. NO. Ndivisi/ Mihuu/ 1973 Webuye 2.96 acre
vii) . LR. NO. Nyaribari Chache/ Borabu/ 5924 kisii 2.08 acres..
viii) LR. NO. Ntirimiti Settlement Scheme/ 153 Marani Meru 238.45 acres.

382. The Corporation hired consultants (conveyance lawyers in 2012 to survey the unsurveyed parcels of land and process title deeds. The consultant is making progress in securing title deeds.

Committee observations

i. The Corporation did not maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

ii. The Corporation had title deeds for eight parcles of land with another32 parcels which does not have title deeds or other legal documents of ownership. However, the title deed for LR.NO. 209/5918 -Broadcasting house Nairobi measuring 2.8 acres in which the KBC headquarters are situated, was in the name of CHIEF SECRETARY, COLONY AND PROTECTORATE OF KENYA a body corporate duly established by the chief secretary (incorporation) ordinance 1958. Further, out the seven allotment letters KBC claimed to have, only one was provide but was in the name of KOMAROCK Raching Company. It was not clear how KBC claimed ownership of the same and the status of the other six parcles allotment letters.

iii. The Corporation hired consultants (conveyance lawyers) in 2012 to survey the unsurveyed parcels of land and process the remaining title deeds. However, except for the status report given of 6 January 2014, not further, correspondences thereafter were presented before the committee and the terms of engagement between KBC and the conveyance lawyers, the timelines and the cost of the services were unknown.

Committee recommendations

i. Within three months upon adoption of this report, the Accounting Officer, KBC should submit to the National Treasury and the Auditor-General the updated fixed asset register detailing all the assets of the company with the respective details that needs to be disclosed in the asset register in accordance with the disclosure requirements set by the National Treasury and the Accounting standards Board.

ii. The committee reprimands the Corporation Accounting Officer for the failure to maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act

(Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

iii. Within three months upon adoption of this report, the Accounting Officer-KBC in collaboration with the National Land commission should expedite the processing of the Corporation's title deeds for all the parcels of land owned by KBC.

iv. Within three months upon adoption of this report, the Auditor-General should review the procurement process for the hired consultants (conveyance lawyers-J.Thongori &co) in and the status of payments so far made to the lawyers and the milestones achieved.

3.0 Debtors

383. The Committee heard that, the debtors figure of Kshs.55,420,873 in the balance sheet includes debts totalling Kshs.396,722,458 or 87% which are aged over 120 days. Included among the debtors is advertising firm which owes the Corporation a total of Kshs. 38,638,324. The firm is no longer in existence and its business has been taken over by another firm. It is not clear whether the new firm took over the debts owed to KBC. It has not been possible to confirm whether, and if so, when the Corporation will be able to recover these amounts. Any additional provision that would have been necessary in relation to this uncertainty has not been incorporated in these financial statements.

Management Response

384. The management informed the Committee that the debt of Kshs. 38, 638, 324 was owed by Mcann Erickson advertising agency. The advertising agency was bought by Scanad advertising agency. Scanad advertising agency took over the debt of Mann Erickson and paid KBC.

Committee observations

i. The Corporation has not demonstrated the efforts made to recover the long outstanding debts. Despite the explanation by the corporation management that they employed several debt management strategies including the utilization of a panel of external debt collectors to collect the overdue debts there was no evidence of any effective recovery.

ii. The bad debts provision made by the Corporation on the long outstanding debts appear to be inadequate.

Committee Recommendation

i. The Accounting Officer - KBC should pursue the recovery of all the outstanding debts.

ii. Within three months upon adoption of this report, KBC should submit comprehensive progress report to the National Assembly and the Auditor-General detailing the recoveries made.

4.0 Cash and Cash Equivalent

385. The Committee heard that, as disclosed in note 7 to the financial statements, Cash and Cash Equivalent negative balance of Kshs. 15,736,351 consist of bank overdraft balance of Kshs. 15,737,183 which includes a Broadcaster bank account balance of Kshs.2,898,692 whose bank reconciliation statement could not be prepared due to missing bank statements. Also included in the cash balance are reconciling items described as dishonored cheques totalling Kshs. 29,316,798.86.

386. The dishonored cheques amount relate to period before 1991 during the Voice of Kenya era and could not be verified. Under the circumstances, it is not possible to confirm the accuracy of Cash and Cash equivalent overdraft balance of Kshs.15,736,451 as at the balance sheet date.

Management Response

387. The management informed the committee that, the Copies of missing statements for the Broadcaster magazine bank account were requested from the bank and reconciliation was eventually done. The dishonored cheques totalling to Kshs 29,316,798.86 were amount received from our debtors in terms of cheques but which cheques had been returned unpaid. Some of the dishonored cheques were replaced in subsequent year. The balance amount of dishonored cheques was reverse and reinstated under debtors. External debt collector were given the cheques to follow the drawers for replacement.

Committee observations

i. The committee observed that the bank reconciliation statement for the Broadcaster bank account was not prepared due to missing bank statements as at the time of audit.
ii. There were dishonored cheques relating to the period before 1991 during the Voice of Kenya era that could not be verified.
iii. KBC Management indicates that the dishonored cheques were replaced in subsequent year and the balance amount of dishonored cheques was reversed and reinstated under debtors. However, there was no documentary evidence of the replacements, reversals and reinstatements under debtors.

Committee recommendations

The committee recommends that;

i) Within three months upon of this report, the EACC should investigate whether the dishonored cheques were due to fraud and whether public funds may have been lost and irregular debts concealed as dishonored cheques. Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the financial leakages/ financial impropriety.
ii) The Accounting Officer KBC should ensure compliance with Section 68(2)(k) of the PFM Act Cap 412A by providing supporting documentation to the Auditors General on time.

4.0 Stocks

388. The Committee heard that, the stocks balance of Kshs.73,863,929 was not physically verified as at 30th June 2003. There were no certificates confirming the value and existence of the items making up the stock balance reflected in the balance sheet.
389. Consequently, it is not possible to confirm whether the carrying values as stated in the financial statements reflect the fair value of the stock as at balance sheet date.

Management Response:

390. The Management informed the committee that the he stock value of Kshs 73,863,929 was fully supported by the stock take values.

Committee observation

The Committee observed that

The stock was not physically verified and there were no stock take certificates confirming the value and existence of the items.

Committee recommendations

Within three months upon adoption of this report, the Accounting should submit to the National Assembly and the Auditor – General the stock take certificates reflecting the items in the stock at the close of the financial year under review.

Financial Year 2003/2004

1.0 Going Concern

391. The Committee heard that the corporation realized a deficit of Kshs. 1,489,786,321 (2003-1,126,929,499) during the year which brought the cumulative deficit to Kshs. 11,675,377,227 as at 30, 2004. The balance sheet also reflected a negative working capital of Kshs. 8,274,792,069 and negative net assets of Kshs. 10,746,889,637.

392. The addition, the corporation was unable to service the current maturity of the long-term government loan of Kshs. 7,440,603,431 (2003- Kshs. 4,402,958,957), creditors of Kshs. 1,467,451,857, and has failed to remit the statutory value-added tax (VAT) of Kshs. 46,442,678, bringing the cumulative VAT due to the Kenya Revenue Authority to Kshs. 274,529,467. Evidently, the corporation is technically insolvent, and its continued existence as a going concern is dependent upon the continued financial support of the government and its creditors.

Management Response:

393. The management informed the committee that during the year in question, the corporation made a net loss of Kshs 1,489,786,321, bringing the accumulated deficit to Kshs 11,675,377,227. This was due to the huge amounts debited in the profit and loss account relating to depreciation (Kshs 337,331,248) as a result of old equipment, rising electricity costs (Kshs 80,807,851), the high wage bill (Kshs 435,015,909), and GOK interest on OECF Japan loan repayments (Kshs 876,480,456).
394. It was also pointed out that the negative working capital of Kshs 8,274,792,069 (current assets and liabilities) for the year 2003/2004 is attributable to the total GoK loan plus interest charged to KBC cumulatively since the government committed to repaying the OECF Japan loan (the loan is explained below) on KBC's behalf. Both the repayment and interest are treated as current liabilities, therefore greatly affecting the financial position of the corporation.
395. The Committee was also informed that the financial statements reported a negative net worth of Kshs 10,746,889,637. The interest that the government has charged KBC over the years, totalling Kshs 3,414,777,711, is debited to the profit and loss account, therefore contributing to the negative net worth.
396. The management, in their submissions, informed the Committee that to address the technical insolvency problem of KBC, it contracted Delloitte to provide consulting services for the transformation of the organization. The consultancy firm finalized the transformation report in August 2015. The report was presented to the Board of Directors, who approved it in September 2015. Consequently, a cabinet paper was prepared for submission to the Cabinet

to approve the transformation recommendations. Therefore, upon obtaining Cabinet approval, implementation will commence in order to transform KBC into a profit-making entity.

Committee observations

i) The Committee observed that, the corporation's corporate governance is considerably weak thereby exposing the corporation to potential losses in addition to reputational and operational risks.

ii) The Corporation is technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors. The financial position of the Corporation is weak and if strategies are not put in place to reverse the position, the Corporation may not be able to meet its financial obligations as and when they fall due.

iii) Arising from consultancy services of Deloitte Kenya a Cabinet memo on transformation of KBC was developed in 2015 and as of 2023 when the management appeared before the Committee, the Memo was still awaiting Cabinet's approval. However, it was not certain how long it would take to implement the recommendations of the memo.

Committee Recommendations

i) Within three months after the adoption of this report, the MD KBC in collaboration with the PS Broadcasting and Telecommunication and the PS National Treasury to expedite the approval process for consequent implementation of the CAB memo with a view to instituting transformative business turn around strategies to facilitate improvement of solvency status of KBC.

ii) Within three months after the adoption of this report, the MD and the Board of KBC submit to the National Assembly, documented revenue generation and competition strategies implemented intended to be implemented by the corporation in order to diversify its revenue base and reduce over reliance on Government support.

2.0 Fixed Assets.

397. The Committee heard that the Corporation did not maintain a fixed asset register. Although the Corporation explained that the problem had been inherited from the Ministry of Information and Broadcasting which did not hand over proper records of assets taken over by the Corporation at its incorporation. In the absence of an appropriate fixed assets register, it was not possible to confirm whether all fixed assets as reported in the financial statements reflected the fair values of fixed assets as at the balance sheet date.

Management Response:

398. The Management informed the Committee that during the financial year that ended 30th June 2001, the Corporation did not maintain an asset register. However, that problem had been resolved. The Corporation valued all its assets in November 2014 and developed assets register.

Committee observations

i. The Corporation did not maintain a fixed asset register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

ii. The Corporation indicated that the problem had been inherited from the Ministry of Information and Broadcasting which did not hand over proper records of assets taken over by the Corporation at its incorporation.

Committee recommendations

i. Within three months upon adoption of this report, the Accounting Officer, KBC should submit to the National Treasury and the Auditor-General the updated fixed asset register detailing all the assets of the company with the respective details that needs to be disclosed in the asset register in accordance with the disclosure requirements set by the National Treasury and the Accounting standards Board.

ii. The committee reprimands the Corporation Accounting Officer for the failure to maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

3.0 Debtors

399. The Committee heard that, the debtors balance of Kshs.460,773,451 as disclosed in Note 5 to the financial statements include net trade debtors of Kshs.429,115,721 after providing for doubtful debts of Kshs.132,551,088. Age analysis of Trade Debtors indicate that a total of Kshs.369,002,626 or 80% are between 1 and 5 years old and 48% are over 5 years old. It has not been possible to confirm whether the Corporation will be able to recover these debts. Any additional provision that would have been necessary in relation to this uncertainty has not been incorporated in these financial statements.

Management Response:

400. The Management informed the Committee that the debtors balance of Kshs 460,773,451 included staff debtors of Kshs 17,503,949 that were fully recovered by the following financial year.

401. In order to manage debtors and collect outstanding debts efficiently, KBC management has put in place the following strategies:

i) Developed and implemented a credit policy in 2008.
ii) Utilize a panel of external debt collectors to collect overdue debts.
iii) Utilize a panel of external lawyers to follow up and take legal action on defaulting debtors.
iv) KBC legal department issuing notices to overdue debtors.
v) Five KBC staff that collect debts on a daily basis with a monthly individual target to be met.

Committee observations

i. The Corporation has not demonstrated the efforts made to recover the long outstanding debts. Despite the explanation by the corporation management that they employed several

debt management strategies including the formation of a debt recovery committee in 2005 to recover the debts, there was no evidence of any effective recovery.

ii. The bad debts provision made in the financial year 2003/2004 accounts by the Corporation on the long outstanding debts appear to be inadequate.

Committee Recommendation

i. The Accounting Officer - KBC should pursue the recovery of all the outstanding debts.

ii. Within three months upon adoption of this report, KBC should submit comprehensive progress report to the National Assembly and the Auditor-General detailing the recoveries made.

Financial Year 2004/2005

1.0 Going Concern

402. The Committee heard that, during the year under review, the Corporation realized a deficit of Kshs. 1,487,298,332 (2004–Kshs. 1,489,786,321), which brought the cumulative deficit to Kshs. 13,185,183,311 as at 30 June 2005. The balance sheet also reflects negative working capital and net assets of Kshs. 9,518,601.298 and Kshs. 12,256,695,721, respectively.

403. Further, the corporation was unable to service its current maturity of a long-term government loan of Kshs. 8,472,316,824 and could not remit Kshs. 296,210,178 in statutory VAT to the Kenya Revenue Authority. The corporation is technically insolvent, and its continued existence as a going concern is dependent upon the continued financial support of its creditors and the government. The corporation attributes its poor performance to the fact that it offers 68% of its operations to the public without generating any revenue and that its equipment is old and dilapidated.

Management Response:

404. The management informed the Committee that it had addressed the audit query during the financial year that ended on 30th June,2001.

Committee observations

The committee observed that the issue was deliberated in the committee report for the financial year 2000/2001 and observed as follows

i. The Kenya Broadcasting Corporation took a loan from the Overseas Economic Co-operation Fund (OECF) Japan in 1989. The National Treasury has over the years serviced on behalf of the corporation.

ii. The OECF Japan loan was received in the form equipment's which were rendered obsolete because of the liberalization of the electronic industry in Kenya in the 1990s and the migration to FM radio transmission leading to the loss of value for money on the investment. Arising from the foregoing, it meant that the Management of KBC did not carry-out a proper Feasibilty study or there was laxity on those charged with governance having approved the loan without due diligence.

iii. The Corporation was then unable to meets its tax obligation of Kshs189,412,509 of VAT payable to KRA which had increased to Kshs. 296,210,178 in the year under review. This was contrary to the provisions of the VAT Act CAP476.

Committee recommendations

The committee recommends that;

Within three months of adoption of the report, the Accounting officer-KBC should submit to the National assembly and to the auditor General a comprehensive report with details of the payees and the corresponding documentary evidence of settlement of the obligations relating to KRA. The Auditor General should review and report the findings in the subsequent audit cycle.

2.0 Property Plant and Equipment

405. The Committee heard that, as had been previously reported, , the Corporation did not maintain a register of its properties, plant and equipment. In the absence of an appropriate fixed assets register, the Corporation was in breach of section 43 (1) of the KBC Act, Cap 221 which stipulated that the Board shall cause to be kept proper books and records of

account of assets among other things. Under the circumstances, it was not possible to confirm whether the carrying value of Kshs.3,545,858,382 reflected in the balance sheet was fairly stated.

Management Response:

406. The management informed the committee that, that issue had been responded to in the year that ended 30th June, 2001.

Committee observations

i. The Corporation did not maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

ii. The Corporation indicated that the problem had been inherited from the Ministry of Information and Broadcasting which did not hand over proper records of assets taken over by the Corporation at its incorporation.

Committee recommendations

i. Within three months upon adoption of this report, the Accounting Officer, KBC should submit to the National Treasury and the Auditor-General the updated fixed asset register detailing all the assets of the company with the respective details that needs to be disclosed in the asset register in accordance with the disclosure requirements set by the National Treasury and the Accounting standards Board.

ii. The committee reprimands the Corporation Accounting Officer for the failure to maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

2.1 Generators

407. The Committee heard that, during the power crisis in the country in the year 2000, the Corporation loaned five generators valued at Kshs.29 Million to KenGen following a request by its Parent Ministry that KBC assists in alleviating the temporary power crisis. Although the crisis was long gone, the generators had e not yet been returned to KBC. KBC had also not been compensated for the generators in any way. No indication had been seen on how or when these generators were likely to be returned or compensation for them received.

Management Response

408. The management informed the committee that that issue had been responded to in the year that ended 30th June, 2001.

Committee observations

The Committee observed that;

The Corporation at the direction of the Government loaned its five power generators valued at Kshs.29,000,000 to KENGEN to alleviate the power crisis during 2000/2001. However, the generators had not been returned to the Corporation, despite several reminders and demands by the Corporation to KENGEN. The Corporation had not done enough to follow on the return of the generators and there was loss incurred in respect to the loaned generators valued at Kshs.29,000,000

Committee recommendations

The Committee Recommendations

Within three months after the adoption of this report, EACC to initiate investigations into how the loaned generators to KENGEN were procured, whether there was any malpractices in the initial procurement and that the generators were idle at the time of loaning and submit its findings to DPP for a possible prosecution of those found culpable.

3.0 Inaccuracies in the Financial Statements

409. The Committee heard that, the cash flow statement presented had some anomalies, notably, a prior year adjustment of Kshs. 11,075,490,047 for which disclosure regarding nature and period have not been made as required by IAS 8.

410. Further, although the cash and cash equivalent shown in the balance sheet is Kshs. 132,416,177 as at 30 June -2005, the cashflow statement shows Kshs. 132,373,225 leading to unexplained difference of Kshs. 42,952. Other anomalies noted during the audit were differences between the ledger/financial statements balances and schedules presented for audit as indicated below: -

Item	**Financial Statement/ Schedule Balance(kshs)**	**Ledger balance(kshs)**	**Difference (kshs)**
Debtors	480,968,630	445,907,297	35,061,333
Cash and cash equivalents	132,416,177	155,062,953	22,646,776

411. Further review of the financial statements revealed that the deficit figure of Kshs.13,145,273,368 shown in the statement of changes in equity as at 30 June 2005 differ by Kshs.39,909,948 which has not been explained. In addition, the net loss in the Income and Expenditure summary statement is Kshs.1,487,298,332 while the statement of changes in equity reflects Kshs.1,445,549,462 resulting in an unexplained difference of Kshs.41,479,870. In view of the inaccuracies noted, I am unable to confirm the balances as reported in these financial statements are fairly stated as at 30 June 2005.

Management Response

412. The management informed the Committee that, prior year adjustment of Kshs. 1,075,490,047 appearing in the cash flow statement relates to a change of the depreciation policy of the Corporation from straight line method to reducing balance method with effect from 1st July 1998 in line with IAS.
413. The difference in cash & cash equivalent between the cash flow statement and balance sheet of kshs 42,952 was corrected.The difference in debtors of kshs 35,061,333 between the financial statements and schedules was corrected.
414. The difference of kshs 22,646,776 between financial statements and schedules was corrected.
415. The difference of kshs 39,909,948 in the deficit amount between the statement of changes in equity and balance sheet was corrected.
416. The difference of kshs 41,478,870 in net loss between the income & expenditure statement and statement of changes in equity was corrected.

Committee observations

i. The committee observed that there glaring inaccuracies in the financial statements. However, although the accounting officer indicates that the errors were corrected, the point in time when they were corrected and the documentary evidence of the corrections were not submitted to the committee. Therefore, the errors might have remained uncorrected and could have resulted from manipulation of financial records.

ii. The explanation that a prior year adjustment of Kshs. 11,075,490,047 appearing in the cash flow statement related to a change of the depreciation policy of the Corporation from straight line method to reducing balance method with effect from 1st July 1998 in line with IAS was unsatisfactory. Cashflow statements presents cash related items rather than non-cash items as explained.

Committee recommendations

The committee recommended that;

Within three months upon of this report, the Auditor-General should review the causes of the anomalies, how they were corrected in the subsequent financial years, whether they were deliberate/ intention and/or whether money may have been lost and concealed as errors by the accountants. The Auditor-General shall report the findings in the subsequent Year Audit report.

4.0 THE OVERSEAS ECONOMIC CO-OPERATION FUND (OECF) - Japan Loan

417. The Committee heard that, the Corporation's Balance Sheet as at 30 June 2015 reflected two loans of Kshs 8,472,316,824 and Kshs. 6,284,352.806 from the Government of Kenya and the Overseas Economic Corporation Fund (OECF) of Japan respectively which were also disclosed in notes 9 and 10 to the financial statements. The OECF loan which had been guaranteed by the Government in 1989 funded the Kenya Broadcasting Corporation's modernization programme, a project mooted out of a study by the Government in February 1988. Subsequently in 1991, the Corporation contracted a Japanese firm to undertake the modernization project at a sum of Japanese Yen 11,904,566,500 with a Kenya Currency portion of Kshs.98,507,000 both of which represented equipment supply and installation under what was termed as package 'A'.

418. The contract further included civil works under package 'B' at a cost of Kshs.251,500,000. A physical verification of 7 out of 10 modernization stations, however, showed that nearly 50% of the equipment supplied are not in use though installed, and in some instances only 25% of installed capacity was being used with the result that the targeted radio coverage to facilitate dissemination of government policies as envisaged in the study was not achieved. Although the management explained that the superfluous equipment supply represented standby equipment, the explanation is untenable considering that some of these have never been used for over 10 years since their installation and may, with time, be rendered obsolete and thus irrelevant due to rapid changes in radio communication technology. In view of the foregoing the propriety of the expenditure incurred on the modernization project of

Kshs.8,472,316,824 (principal and interest) already settled by Government and the continued repayment of the loan by Government could not be ascertained.

Management Response:

419. The management informed the committee that, the issue had been responded to in the year that ended30th June 2001.

420. The management for the year ended 30th June 2001 indicated that the outstanding OECF Japan loan was Kshs 7,543,422,121 as of June 30th 2001. The medium-wave radio transmitters that were procured with the proceeds of the OECF Japan loan are now obsolete with the migration to FM radio transmission, which is efficient, high-quality, and cost-effective.

Committee observations

i. The OECF loan had been guaranteed by the Government in 1989 funded the Kenya Broadcasting Corporation's modernization programme, a project mooted out of a study by the Government in February 1988. However, arising from the status of the project, the study might have been misleading.

ii. Some of the equipment supplied were never used though installed, and in some instances, only an insignificant capacity of the installations was being used. Therefore, the targeted radio coverage to facilitate dissemination of government policies as envisaged in the study was not achieved.

iii. Some of the superfluous equipment supplied were said to be standby equipment. However, the explanation is untenable considering that some of these have never been used for over 10 years since their installation and with time, have been rendered obsolete and thus irrelevant due to rapid changes in radio communication technology.

Committee Recommendations

i. Within three months upon adoption of this report, the EACC should investigate the officers involved in acquiring and approving the loan and those involved in the pre-requisite study

by the Government in February 1988 with a view to establishing any economical crimes in relation to providing misleading economic information for the officr's own benefit or that of a third party that led to the loss of the initial loan of Yen 15.441 billion, equivalent to Ksh 8,287,588,398. Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the financial leakages/ financial impropriety.

ii. Within three months upon adoption of this report, the Accounting officer-KBC should provide a comprehensive report to the National Assembly and the Auditor-General on the status of the equipment's, including their location and current economical value. The Auditor-General shall review the report and report the findings in the subsequent audit cycle.

Financial Year 2005/2006

1.0 Going Concern

421. The Committee heard that, during the year ended 30th June 2006, the Corporation realized a deficit of Kshs.1,210,619,381 which brought the cumulative deficit to Kshs. 14,378,358,878. The balance sheet also reflects negative working capital and net assets of Kshs.10,577,699,127 and Kshs. 13,449,871,288 respectively. The Corporation was unable to service its current maturity of G.O.K loan amounting to Kshs.9,658,787,226 and could not remit statutory deductions to various bodies totalling Kshs. 100,603,528 exposing the Corporation to fines and penalties which have not been provided for in these financial statements. The corporation is technically insolvent and its continued existence as a going concern is dependent upon the financial support by its creditors and the Government.

Management Response

422. The management informed the Committee that, the matter was responded to in the year ended 30th June 2001.

Committee observations

The Committee observed that, the issue of Going concern had been discussed in the previous years report and the following observations made;

i. The corporation's corporate governance is considerably weak thereby exposing the corporation to potential losses in addition to reputational and operational risks.
ii. The Corporation is technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors. The financial position of the Corporation is weak and if strategies are not put in place to reverse the position, the Corporation may not be able to meet its financial obligations as and when they fall due.
iii. Arising from consultancy services of Deloitte Kenya a Cabinet memo on transformation of KBC was developed in 2015 and as of 2023 when the management appeared before the Committee, the Memo was still awaiting Cabinet's approval. However, it was not certain how long it would take to implement the recommendations of the memo.

Committee Recommendations

i. Within three months after the adoption of this report, the MD KBC in collaboration with the PS Broadcasting and Telecommunication and the PS National Treasury to expedite the approval process for consequent implementation of the CAB memo with a view to instituting transformative business turn around strategies to facilitate improvement of solvency status of KBC.
ii. Within three months after the adoption of this report, the MD and the Board of KBC submit to the National Assembly, documented revenue generation and competition strategies implemented intended to be implemented by the corporation in order to diversify its revenue base and reduce over reliance on Government support.

2.0 Stocks

423. The Committee heard that, stocks of Kshs.71,961,044 at 30th June, 2006 includes spare parts valued at Kshs.45,947,314 or 66% lying at Lang'ata transmission station. These spare parts are mainly part of the 1991 Japanese loan for modernization project that has remained

stagnant for many years and are apparently obsolete because they were meant from medium wave transmitters service which has since changed to FM. The management however, insists that the spare parts are useful and therefore no specific provisions has been made in these financial statements to recognize the possibility of obsolescence of the spare parts and other stocks. Consequently, it was not possible to express an opinion on the stocks balance of Kshs.71,961,044 as at 30 June 2006.

Management Response

424. The management informed the Committee that the spare parts valued at Kshs.45,947,314 were meant for medium wave transmitters and are still useful since not all radio transmissions are done on FM. Modernization of radio stations from medium to FM is an ongoing project and as at the present transmission in Wajir, Garissa, Marsabit, Maralal, Ngong and Kapsimotwa are still on medium wave.

Committee observation

The Committee observed that;

The obsolete spare parts were useful for transmission in Wajir, Garissa, Marsabit, Maralal, Ngong and Kapsimotwa which were still on medium wave and that part of the obsolete stock was recognized in the annual accounts for the year ended 30th June 2007. However, there was no evidence of the disposal process of the obsolete stock or the issuance of the useful transmission spare parts to the stated stations.

Committee Recommendations

Within three months upon the adoption of this report, the Accounting Officer of KBC should constitute a disposal Committee to identify and verify all unserviceable, obsolete and surplus assets and recommend the best method of disposal in compliance with the Public Procurement and Asset Disposal Act CAP 412C. comprehensive report on the same to be submitted to the National Assembly and the Auditor-General.

3.0 Overseas Economic Cooperation Fund (OECF)-Japan Loan

425. The Committee heard that, the Corporation's Balance Sheet as at 30th June, 2006 reflected two loans of Kshs. 6,284,352,806 and Kshs.9,658,787,226 from Overseas Economic Cooperation Fund (OECF) of Japan and Government of Kenya respectively which are also disclosed in notes 9 and 10 to the financial statements. The OECF Loan which was guaranteed by the Government in 1989 funded Kenya Broadcasting Corporation modernization programme, a project mooted out of a study by Government in February 1988. Subsequently in 1991, the corporation contracted a Japanese firm to undertake the modernization project at a sum of Japanese Yen 11,904,566,500 with a Kenyan portion of Kshs.98,507,000 both of which represented equipment supply and installation under what was termed as package 'A'. The contract further included civil works under package 'B' at a cost of 251,500,000. A physical verification of 7 out of 10 modernization stations however showed that nearly 50% of the equipment supplied are not in use though installed and in some instances only 25% of the installed capacity was being used with the result that the targeted radio coverage to facilitate dissemination of Government policies as envisaged in the study was not achieved. Although management explained the superfluous equipment supply represented standby equipment, the explanation is untenable considering that some of these have never been used for over ten years since their installation and may, with time be rendered obsolete and thus irrelevant due to rapid changes in radio communication technology. In view of the foregoing, the propriety of the expenditure incurred in the modernization project of Kshs.9,658,787,226 (Principal and interest) already settled by the Government and the continued repayment of the loan by the government could not be ascertained.

Management Response

426. The management informed the Committee that, the issue was responded to in the year ended 30th June, 2001.

Committee observations

The committee observed that the matter was discussed in the previous year and the following observations and recommendations made;

i. The OECF loan had been guaranteed by the Government in 1989 funded the Kenya Broadcasting Corporation's modernization programme, a project mooted out of a study by the Government in February 1988. However, arising from the status of the project, the study might have been misleading.

ii. Some of the equipment supplied were never used though installed, and in some instances, only an insignificant capacity of the installations was being used. Therefore, the targeted radio coverage to facilitate dissemination of government policies as envisaged in the study was not achieved.

iii. Some of the superfluous equipment supplied were said to be standby equipment. However, the explanation is untenable considering that some of these have never been used for over 10 years since their installation and with time, have been rendered obsolete and thus irrelevant due to rapid changes in radio communication technology.

Committee Recommendations

i. Within three months upon adoption of this report, the EACC should investigate the officers involved in acquiring and approving the loan and those involved in the pre-requisite study by the Government in February 1988 with a view to establishing any economical crimes in relation to providing misleading economic information for the officer's own benefit or that of a third party that led to the loss of the initial loan of Yen 15.441 billion, equivalent to Ksh 8,287,588,398. Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the financial leakages/ financial impropriety.

ii. Within three months upon adoption of this report, the Accounting officer-KBC should provide a comprehensive report to the National Assembly and the Auditor-General on the status of the equipment, including their location and current economical value. The

Auditor-General shall review the report and report the findings in the subsequent audit cycle.

4.0 Property Plant and Equipment

4.1 Generators

427. The Committee heard that, as had been previously reported, during the power crisis in the country in 2000, the Corporation loaned five generators to KenGen valued at Kshs.29 Million following a request by its parent ministry that KBC assist in alleviating the temporary power crisis. Although the crisis was long gone, the generators had not yet been returned to KBC. KBC had also not been compensated in any way. No indication had been given as to how or when these generators were likely to be returned or compensation for them received.

Management Response:

428. The management informed the committee that, the issue had been responded to in the year that ended 30th June 2001.

Committee observations

The Committee observed that;

The Corporation at the direction of the Government loaned its five power generators valued at Kshs.29,000,000 to KENGEN to alleviate the power crisis during 2000/2001. However The generators had not been returned to the Corporation, despite several reminders and demands by the Corporation to KENGEN. The Corporation had not done enough to follow on the return of the generators and there was loss incurred in respect to the loaned generators valued at Kshs.29,000,000

Committee recommendations

The Committee Recommendations

Within three months after the adoption of this report, EACC to initiate investigation into how the loaned generators to KENGEN were procured, whether there was any malpractices in the initial procurement and that the generators were idle at the time of loaning and submit its findings to DPP for a possible prosecution of those found culpable.

5.0 Inaccuracies in the Financial Statements

429. The Committee heard that, the audit verification of the end of the year balances revealed differences between the financial statements and schedules presented for audit as indicated below:

Item	Supporting Schedule Balance Kshs.	Financial Statement Balance Kshs.	Difference Kshs.
Debtors	478,711,197	472,828,915	(5,882,282)
Cash and Cash Equivalents	376,663,408	416,174,412	39,511,004
Stocks	71,961,044	68,717,904	(3,243,140)

430. Further the cash flow statement reflects a prior year adjustment of Kshs.1,506,803,506 whose nature and period of the adjustment has not been disclosed and explained by

management. Under circumstances, it was not possible to confirm the correctness and accuracy of the above balances in these financial statements as at 30 June 2006.

Management Response

431. The management informed the committee that, the difference in debtors of Kshs. (5,882,282) between financial statements and supporting schedules was corrected.

Committee observations

i. The committee observed that there glaring inaccuracies in the financial statements. However, although the Accounting officer indicates that the errors were corrected, the point in time when they were corrected and the documentary evidence of the corrections were not submitted to the committee. Therefore, the errors might have remained uncorrected and could have resulted from manipulation of financial records.

Committee recommendations

The committee recommended that;

Within three months upon of this report, the Auditor-General should review the causes of the anomalies, how they were corrected in the subsequent financial years, whether they were deliberate/ intention and/or whether money may have been lost and concealed as errors by the accountants. The Auditor-General shall report the findings in the subsequent Year Audit report.

6.0 Budgetary control

432. The Committee heard that, the corporation overspent its budgetary provision by Kshs.1,298,014,923 or 263% in ten (10) items of expenditure for which Kshs.492,837,000 was provided. Although the management has explained that the corporation was faced with operational instability due to inflation in the oil industry, necessary approvals from the parent Ministry and the Treasury were not obtained contrary to the provisions of section 12 of the State Corporations Act (Cap 446). The Corporation was, therefore in breach of the law.

Management Response:

433. The management informed the Committed that, the excess expenditure was due to the operational instability due to inflation in the oil industry. However, measures had since been taken to ensure that expenditures were within the budget. The Management further informed that KBC's annual budgets were consistently approved by Treasury on time.

Committee observations

The committee observed that KBC was in breach of Section 12 of the State Corporations Act Cap.446 which states that no state corporation shall, without the prior approval in writing of the Minister and the Treasury, incur any expenditure for which provision has not been made in an annual estimate prepared and approved in accordance with section 11.

Committee recommendations

The committee recommended that;

The Committee reprimands the then Accounting Officer for the breach of Section 12 of the State Corporations Act Cap.446 which states that no state corporation shall, without the prior approval in writing of the Minister and the Treasury, incur any expenditure for which provision has not been made in an annual estimate prepared and approved in accordance with section 11.

7.0 Procurement Procedures

434. The Committee heard that, in August 2000, The Corporation contracted a firm to supply station indent accessories for the metro TV logo at a negotiated price of Kshs.155,000 per indent with the total cost amounting to Kshs. 1,940,000. The contract was single-sourced as no quotations from other suppliers were invited. Further, available evidence shows that the quoted amount of Kshs.155,000 for each indent was grossly inflated especially in view of the fact that on 15 September 2000, the Corporation bought 3 indents from another supplier at a cost of Kshs.145,410 which translated to Kshs.48,470 per indent leading to a price differential of Kshs.106,530 for each indent, which management has not explained.

Subsequently, an inspection carried out in March 2006 revealed that while payments totalling Kshs.1,940,000 were made by the corporation in respect of Metro TV Logo indents, only deliveries for a value of Kshs.735,000 were received by the Corporation resulting in a difference of Kshs.1,250,000. Although the Inspector General of State Corporations recommended in his report of March 2006, that is surcharge and recovery of Kshs.1,205,000 be made from the former Managing Director and others, no such recovery has been made to date.

Management Response:

435. The management informed the Committee that, the officer who handled this matter of procuring the Metro TV Logo indents was disciplined by being demoted. Subsequently, the officer left the Corporation.

Committee observations

The committee observed that;

i. The supply of the indents was single-sourced.
ii. The quoted price of Kshs.155,000 for each indent was grossly inflated in that on 15 September 2000, there were 3 indents acquired from another supplier at a price of Kshs.48,470 per indent leading to a price differential of Kshs.106,530 for each indent.
iii. Although KBC made payments totalling Kshs.1,940,000 in respect of Metro TV Logo indents, only deliveries for a value of Kshs.735,000 were received by the Corporation resulting in a difference of Kshs.1,250,000.
iv. The Inspector General of State Corporations had recommended in his report of March 2006, that is surcharge and recovery of Kshs.1,205,000 be made from the former Managing Director and others, no such recovery has been made to date.

Committee recommendations

The committee recommended that;

i. Within three months upon adoption of this report, the Accounting officer- KBC should surcharge and recover Kshs.1,205,000 from the then former Managing Director, supplier and others involved in the irregularity.

ii. Within three months upon adoption of this report, the EACC should investigate the conduct of the procurement officer and others involved in the procurement process of the indents with a view to establishing any economic crimes perpetuated by the officers with respect to single sourcing and inflation of the indent prices by Kshs.106,530. Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the financial leakages/ financial impropriety.

Financial Year 2006/2007

1.0 Going Concern

436. The Committee heard that, the balance sheet as at 30th June, 2007 reflected a negative working capital of Kshs.12,228,224,797 and a negative net worth of Kshs.14,926,450,080. Further, the income and expenditure account showed a deficit of Kshs.1,451,987,502 (2006-Kshs.1,210,619,381), which brought the cumulative deficit to Kshs.15,854,937,670. The Corporation was unable to service its current maturity of G.O.K loan amounting to Kshs.11,113,110,675 and could not remit statutory deductions totaling Kshs.113,587,425 to various institutions thus exposing the Corporation to fines and penalties which had not been provided for in these financial statements. The Corporation was therefore technically insolvent and its continued existence as a going concern is dependent upon the financial support by its creditors and the Government.

Management Response

437. The management informed the committee that, the issue had been responded to in the year that ended 30th June, 2001.

Committee observations

The Committee observed that, the issue of Going concern had been discussed in the previous years report and the following observations made;

i. The corporation's corporate governance is considerably weak thereby exposing the corporation to potential losses in addition to reputational and operational risks.
ii. The Corporation is technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors. The financial position of the Corporation is weak and if strategies are not put in place to reverse the position, the Corporation may not be able to meet its financial obligations as and when they fall due.
iii. Arising from consultancy services of Deloitte Kenya a Cabinet memo on transformation of KBC was developed in 2015 and as of 2023 when the management appeared before the Committee, the Memo was still awaiting Cabinet's approval. However, it was not certain how long it would take to implement the recommendations of the memo.

Committee Recommendations

i. Within three months after the adoption of this report, the MD KBC in collaboration with the PS Broadcasting and Telecommunication and the PS National Treasury to expedite the approval process for consequent implementation of the CAB memo with a view to instituting transformative business turn around strategies to facilitate improvement of solvency status of KBC.
ii. Within three months after the adoption of this report, the MD and the Board of KBC submit to the National Assembly, documented revenue generation and competition strategies implemented intended to be implemented by the corporation in order to diversify its revenue base and reduce over reliance on Government support.

2.0 Inaccuracies in the Financial Statements

438. The Committee heard that, the audit of the financial statements balances as at 30th June, 2007 had revealed unreconciled variances between the financial statements balances and supporting schedules balances were as follows: -

Item	Supporting schedule balance(kshs)	Financial statement balance(kshs)	Variance(kshs)
Net trade debtors	553,444,614	455,907,876	97,536,338
Cash and cash equivalent at end year	77,877,882	61,385,597	16,492,285
Stocks	**1,466,159,735**	**210,119,990**	**1,256,039,745**

439. No efforts have been made by management to reconcile the two sets of records. In the circumstances, it was not possible to confirm the accuracy of the above balances reflected in the financial statements as at 30 June 2007.

Management Response

440. The management informed the Committee that, the difference of Kshs.97,536,338 between financial statements and supporting schedules was corrected. That the difference of Kshs 16,492,285 between statements and supporting schedules had also been corrected.
441. The difference of Kshs. 1,256,039,745 in stocks between financial statements and supporting schedules was corrected.

Committee observations

The committee observed that there were glaring inaccuracies in the financials statements. However, although the Accounting officer indicates that the errors were corrected, the point in

time when they were corrected and the documentary evidence of the corrections were not submitted to the committee. Therefore, the errors might have remained uncorrected and could have resulted from manipulation of financial records.

Committee recommendations

The committee recommended that;

Within three months upon of this report, the Auditor-General should review the causes of the anomalies, how they were corrected in the subsequent financial years, whether they were deliberate/ intention and/or whether money may have been lost and concealed as errors by the accountants. The Auditor-General shall report the findings in the subsequent Year Audit report.

3.0 Cash and Bank Balances

442. The Committee heard that, included in the balance sheet cash and cash equivalents balance of Kshs.210,119,990 as at 30th June 2007 are KCB bank account balances for Nakuru, Kisumu, Maralal and Eldama Ravine of Kshs.17,413,290.90, Kshs.12.045.95, Kshs.23,957.05 and Kshs.4,151.95 whose cash books were not produced for audit verification. Further, the cash and cash equivalents balance includes Central Bank Account No. 0300079001 cash book balance of Kshs.18,102,127.45 Dr which was at variance with the bank reconciliation statement balance of Kshs.10,130,817.30 Dr by an unreconciled amount of Kshs.7,971,310.15. Under the circumstances it was not possible to confirm the accuracy and validity of the cash and cash equivalents balances of Kshs.210,119,990 as at 30th June, 2007.

Management Response:

443. The management informed the Committee that, the KCB bank accounts for Nakuru, Kisumu, Maralal and Eldama Ravine were opened to serve KBC's district offices in -the mentioned stations. The cash books of the stated were later availed for audit verification. KBC has no account at the Central Bank of Kenya but the mentioned account is at Citibank NA, which

is the Corporation's main account. The un-reconciled amount of Kshs 7,971,310.15 was reconciled and the balances harmonized.

Committee observations

i. The committee observed that KBC had no account at the Central Bank of Kenya instead it was at Citibank and the bank reconciliation was prepared and balances harmonized. However, there was no documentary evidence that the cash book balance which was at variance with the bank reconciliation statement was eventually reconciled.

ii. The cash books for Nakuru, Kisumu, Maralal and Eldama Ravine were not availed for audit verification as at the time of audit contrary to Section 68(2)(k) of the PFM Act Cap 412A by providing supporting documentation to the Auditors General on time.

Committee recommendations

The committee recommends that;

Within three months upon of this report, the Auditor-General should review the bank accounts maintained by the entity and identify whether the Central Bank Account No. 0300079001 existed and the cause of the unreconciled cashbook and bank statement balance. The Auditor-General shall report the findings in the subsequent Year Audit report.

i. The Accounting Officer KBC should ensure compliance with Section 68(2)(k) of the PFM Act Cap 412A by providing supporting documentation to the Auditors General on time.

Financial Year 2007/2008

1.0 Going Concern

444. The Committee heard that, during the year under review, the Corporation had realized realized a deficit of Kshs.425,144,997 (2007 Kshs.1,451987,502), which brought the cumulative deficit to Kshs.16,280,082,666 as at 30 June 2008. In addition, the balance sheet reflected a negative working capital of shs.12623,781,846 and a negative net worth of

Kshs.15,351,595,076. Further, the Corporation had been unable to service its current maturity of G.O.K loan amounting to Kshs.12,459,366,792 and remit statutory deductions totalling Kshs.362,899,152 to various institutions as disclosed in Note 10 to the financial statements. The Corporation to fines and penalties which have not been provided for in these financial statements.

445. The Corporation was therefore technically insolvent and its continued existence as a going concern was dependent upon the financial support of its creditors and Government.

Management Response

446. The management informed the committee that, the issue had been responded to in the year that ended 30th June, 2001.

Committee observations

The committee observed that the issue was deliberated in the committee report for financial year 2000/2001 and observed as follows

i. The Kenya Broadcasting Corporation took a loan from the Overseas Economic Co-operation Fund (OECF) Japan in 1989. The National Treasury has over the years serviced on behalf of the corporation.

ii. The OECF Japan loan was received in the form equipment's which were rendered obsolete because of the liberalization of the electronic industry in Kenya in the 1990s and the migration to FM radio transmission leading to the loss of value for money on the investment. Arising from the foregoing, it meant that the Management of KBC did not carry-out a proper Feasibilty study or there was laxity on those charged with governance having approved the loan without due diligence.

iii. The Corporation was then unable to meets its tax obligation of Kshs189,412,509 of VAT payable to KRA which had increased to Kshs. 362,899,152 in the year under review. This was contrary to the provisions of the VAT Act CAP476.

Committee recommendations

The committee recommends that;

Within three months upon adoption of the report, the Accounting officer-KBC should submit to the National assembly and to the auditor General a comprehensive report with documentary evidence of settlement of the obligations relating to KRA. The auditor General should review and report the findings in the subsequent audit cycle.

2.0 Property, Plant and Equipment

447. The Committee heard that, the Corporation did not maintain a fixed assets register to record its property, plant and equipment. Further, and as disclosed in Note 12 to the financial statements, the values of land and buildings had been combined and subjected to 2% depreciation, resulting in a net value of Kshs.875,993,125 as at 30 June 2008 contrary to the International Accounting Standard No. 16 on property, plant and equipment which required items with significant cost to be depreciated separately. Further, the property, land and equipment balance of Kshs.3,284,331,627 excluded undermined the value of 6 parcels of land in unadjudicated areas, 6 others in unsurveyed areas, 4 others in forest reserve, 3 others under dispute and 2 others with allotment letters but whose title documents were not made available for audit review.
448. Although indications were that the Corporation had made several attempts to the Ministry of Lands to have the above issues resolved and title documents obtained, limited success appeared to have been achieved. In the circumstances, it was not possible to confirm the ownership and55 fair presentation of property, plant and equipment balance of Kshs.3,284,331,627 as at 30th June 2008.

Management Response

449. The management informed the committee that, the of land and buildings had since been separated and depreciated individually in order to comply with the International Accounting Standard No. 16 on Plant, Property and Equipment.

450. The values of 6 parcels of land in unadjudicated areas, 6 in unsurveyed areas, 4 others in forest reserve, 3 others under dispute and 2 others in with allotment letters, had then been incorporated in the financial statements.

Committee observations

i. The Corporation did not maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

ii. The Corporation failed to comply with the International Accounting Standard No. 16 on property, plant and equipment by subjecting the land to 2% depreciation.

iii. The Corporation had undermined the value of 6 parcels of land in unadjudicated areas, 6 others in unsurveyed areas, 4 others in forest reserve, 3 others under dispute and 2 others with allotment letters. All these did not have title deeds or ownership documents.

Committee recommendations

i. Within three months upon adoption of this report, the Accounting Officer, KBC should submit to the National Treasury and the Auditor-General the updated fixed asset register detailing all the assets of the company with the respective details that needs to be disclosed in the asset register in accordance with the disclosure requirements set by the National Treasury and the Accounting standards Board.

ii. The committee reprimands the Corporation Accounting Officer for the failure to maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

iii. Within three months upon adoption of this report, the Accounting Officer-KBC in collaboration with the National Land commission should expedite the processing of the Corporation's title deeds for all the parcels of land owned by KBC.

Financial Year 2008/2009

1.0 Going Concern

451. The Committee heard that, as was in the previous year, the Corporation had realized a deficit of Kshs.2,129,372,052(2008-Kshs. 425,144,997) which brought the cumulative loss to Kshs.18,633,415,452 as at 30 June 2009. In addition, the Balance Sheet reflected a negative working capital of Kshs. 115,595,339,223 and negative net worth of Kshs. 17,704,927,862.

452. Further and as had been previously reported, the Corporation was unable during the year to service the Government of Kenya loan amounting to Kshs.15,301,681,918 or remit statutory deductions totaling Kshs. 464,648,454 to various agencies as disclosed in Note 10 to the financial statements, thus it exposed itself to likely fines and penalties. The Corporation therefore technically insolvent and its continued existence as a going concern was dependent upon the financial support of its creditors and the Government.

Management Response

453. The management informed the committee that, the issue had been responded to in the year that ended 30th June, 2001.

Committee observations

The committee observed that the issue was deliberated in the committee report for financial year 2000/2001 and observed as follows

i. The Kenya Broadcasting Corporation took a loan from the Overseas Economic Co-operation Fund (OECF) Japan in 1989. The National Treasury has over the years serviced on behalf of the corporation.

ii. The OECF Japan loan was received in the form equipment's which were rendered obsolete because of the liberalization of the electronic industry in Kenya in the 1990s and the

migration to FM radio transmission leading to the loss of value for money on the investment. Arising from the foregoing, it meant that the Management of KBC did not carry-out a proper Feasibilty study or there was laxity on those charged with governance having approved the loan without due diligence.

iii. The Corporation was then unable to meets its tax obligation of Kshs189,412,509 of VAT payable to KRA which had increased to Kshs. 464,648,454 in the year under review. This was contrary to the provisions of the VAT Act CAP476.

Committee recommendations

The committee recommends that;

Within three months upon adoption of the report, the accounting officer-KBC should submit to the National assembly and to the auditor General a comprehensive report with documentary evidence of settlement of the obligations relating to KRA. The auditor General should review and report the findings in the subsequent audit cycle.

2.0 Property, Plant and Equipment

454. The Committee heard that;

i. As had been previously reported the Corporation did not during the year maintain a Fixed Assets Register for its property, Land and Equipment. Further, and as disclosed in Note 12 to the financial statements, the values of land and buildings had not been combined and subjected to a 2% depreciation, resulting in a net value of Kshs 858,973,435.The treatment of this class of assets was , as similarly observed in 2007/2008,contrary to the International accounting Standards no.16 which required items with significant cost to be depreciated separately and be adequately provided for. Although the management had explained that a consultant had been contracted in April, 2008 to carry out a detailed valuation report was seen as at the date of this report.

ii. Further, the Property, Plant and Equipment balance of Kshs 3,130,341,695 excluded undetermined the value of 6 parcels of land in unadjudicated areas, 6 in unsurveyed areas, 4 in a forest reserve,3 under dispute and 2 others with allotment letters but whose title

documents were not available. Although indications were that the Corporation had made several attempts at the Ministry of Lands to have the above issues resolved and the title documents obtained, minimal success appeared to have been achieved.

iii. In July 2000, the Corporation made an arrangement with Kenya Electricity Generating Company Ltd (KenGen) whereby the Corporation loaned the Company 5 generators which were subsequently installed at Jomo Kenyatta, Kenyatta and Nairobi Universities under an Emergency Power Supply Project. The 5 generators with an estimated value of Kshs. 29 million are part of the Corporation's portfolio of assets. However, no compensation for use of the generators appears to have been paid to the Corporation during the year which raises the issue of how the sets will be replaced as per their useful life.

455. In the circumstances, it had not been possible to confirm the balance of Kshs. 3,130,341,696.00 under Property, Plant and Equipment as at 30th June, 2009.

Management Response

456. The Management informed the Committee that this issue had been responded to in the year that ended 30th June 2001 and 30th June 2008.

Committee observations

i. The Corporation did not maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

ii. The Corporation failed to comply with the International Accounting Standard No. 16 on property, plant and equipment by subjecting the land to 2% depreciation.

iii. The Corporation had undermined the value of 6 parcels of land in unadjudicated areas, 6 others in unsurveyed areas, 4 others in forest reserve, 3 others under dispute and 2 others with allotment letters. All these did not have title deeds or ownership documents.

Committee recommendations

i. Within three months upon adoption of this report, the Accounting Officer, KBC should submit to the National Treasury and the Auditor-General the updated fixed asset register detailing all the assets of the company with the respective details that needs to be disclosed in the asset register in accordance with the disclosure requirements set by the National Treasury and the Accounting standards Board.

ii. The committee reprimands the Corporation Accounting Officer for the failure to maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

iii. Within three months upon adoption of this report, the Accounting Officer-KBC in collaboration with the National Land commission should expedite the processing of the Corporation's title deeds for all the parcels of land owned by KBC.

3.0 Debtors

457. The Committee heard that, the debtors account reflects a balance of Kshs.682,797,245 while the supporting documents show a figure of Kshs.1,070,774,894. The difference of Kshs. 387,977,649.00 between the two sets of records has not been reconciled or explained. Although the management has explained that the variance was caused by misspostings during the change over from the old accounting system to the new one and that a reconciliation between the two balances was in progress, it has not however been clarified as to when the exercise will be concluded.

458. In the circumstance, it has not been possible to confirm the accuracy of the debtors' balance of Kshs.682, 797,245 as at 30th June 2009.

Management Response

459. The management informed the Committee that, the difference in debtors of Kshs. 387,977,649 between financial statements and supporting schedules was reconciled and corrected.

Committee observations

The committee observed that there were glaring inaccuracies in the financial statements. However, although the accounting officer indicates that the errors were corrected, the point in time when they were corrected and the documentary evidence of the corrections were not submitted to the committee. Therefore, the errors might have remained uncorrected and could have resulted from manipulation of financial records.

Committee recommendations

The committee recommends that;

Within three months upon of this report, the Auditor-General should review the causes of the anomalies, how they were corrected in the subsequent financial years, whether they were deliberate/ intention and/or whether money may have been lost and concealed as errors by the accountants. The Auditor-General shall report the findings in the subsequent Year Audit report.

Financial Year 2009/2010

1.0 Going Concern

460. The Committee heard that, as it had been in the previous year, the corporation recorded a deficit of Ksh. 2,580,296,065 (2009- 1,129,372,052 raising the cumulative losses to Ksh. 21,281,455,011 as at 30 June 2010. Further, the statement of financial position reflected a negative working of Ksh.19,180,565,282 and a negative net worth of Ksh. 20,352,967,421. In addition, and as reported in 2008/2009 the had been unable was unable during the year, to service a government of Kenya loan of Ksh.18,762,914,845 or remit statutory deductions totalling Ksh 513,148,148 to various agencies as disclosed in note 10 to the financial

statements. The corporation was therefore technically insolvent and its continued existence as a going concern was dependent upon the financial support of the government and creditors.

Management Response:

461. The management informed the committee that, the issue had been responded to in the year that ended 30th June, 2001.

Committee observations

The committee observed that the issue was deliberated in the committee report for financial year 2000/2001 and observed as follows;

i. The Kenya Broadcasting Corporation took a loan from the Overseas Economic Co-operation Fund (OECF) Japan in 1989. The National Treasury has over the years serviced on behalf of the corporation.
ii. The OECF Japan loan was received in the form equipment's which were rendered obsolete because of the liberalization of the electronic industry in Kenya in the 1990s and the migration to FM radio transmission leading to the loss of value for money on the investment. Arising from the foregoing, it meant that the Management of KBC did not carry-out a proper Feasibility study or there was laxity on those charged with governance having approved the loan without due diligence.
iii. The Corporation was then unable to meets its tax obligation of Kshs189,412,509 of VAT payable to KRA which had increased to Kshs. 513,148,148 in the year under review. This was contrary to the provisions of the VAT Act CAP476.

Committee recommendations

The committee recommends that;

Within three months upon adoption of the report, the Accounting officer-KBC should submit to the National assembly and to the auditor General a comprehensive report with documentary evidence of settlement of the obligations relating to KRA. The auditor General should review and report the findings in the subsequent audit cycle.

2.0 Property, Plant and Equipment

462. The Committee heard that, similar to the previous year, the Corporation did not in 2009-2010 maintain a Fixed Assets Register for the Property, Plant and Equipment. Further, and as had been disclosed in Note 15 to the financial statement , the values of land and buildings have been combined and subjected to a 2% depreciation, resulting in a net value of Ksh.848,766,138.The treatment of this class of assets is as similarly observed in 2008/2009, contrary to the International Accounting Standard No 16 which requires that items with significant cost be depreciated separately and be adequately provided for.

463. The Property, Plant and Equipment balance of Kshs. 3,093,992,523 excludes undetermined value of 6 parcels of land in unadjudicated areas , 6 in unsurveyed areas ,4 in a forest reserve , 3 under dispute and 2 others with allotment letters but whose ownership documents were not available . Although as in the previous year indications are that the corporation has made attempts at the ministry of lands to have the above issues resolved , no meaningful progress appears to have been achieved in this regard, as at 30th June, 2010.

464. In July 2000, the Corporation made an arrangement with Kenya Electricity Generating Company Ltd (KenGen) whereby the Corporation loaned the Company 5 generators, which were subsequently installed at Jommo Kenyatta, Kenyatta and Nairobi Universities under an Emergency Power Supply PROJECT. The generators with an estimated value of Kshs. 29 million are part of the Corporations portfolio of assests. However, and as observed in the previous year, no compensation for the use of the generators appears to have been paid to

the Corporation during the year under review and no explanation has been provided for the anomaly.

465. On 20th May 2010, the Corporation received from a supplier, a transmitter equipment, Turnkey Encoding system valued at 171.498 Euros (equivalent to Kshs. 17,000,000) as part of its additional equipment during the year.

466. However the value of Kshs.17,000,000 does not appear to have been incorporated in the Property, Plant and Equipment balance of Kshs. 3,093,0992,523 as at 30th June 2010.

467. In the circumstances, it has not been possible to confirm that the balance of Kshs. 3,093,0992,523 under Property, Plant and Equipment as at 30th June is fairly stated.

Management Response:

468. The management informed the Committee that, the issue had been responded to in the year that ended 30th June, 2001 and 30th June, 2008.

Committee observations

i. The Corporation did not maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

ii. The Corporation failed to comply with the International Accounting Standard No. 16 on property, plant and equipment by subjecting the land to 2% depreciation.

iii. The Corporation had undermined the value of 6 parcels of land in unadjudicated areas, 6 others in unsurveyed areas, 4 others in forest reserve, 3 others under dispute and 2 others with allotment letters. All these did not have title deeds or ownership documents.

Committee recommendations

i. Within three months upon adoption of this report, the Accounting Officer, KBC should submit to the National Treasury and the Auditor-General the updated fixed asset register detailing all the assets of the company with the respective details that needs to be disclosed in the asset register in accordance with the disclosure requirements set by the National Treasury and the Accounting standards Board.

ii. The committee reprimands the Corporation Accounting Officer for the failure to maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

iii. Within three months upon adoption of this report, the Accounting Officer-KBC in collaboration with the National Land commission should expedite the processing of the Corporation's title deeds for all the parcels of land owned by KBC.

3.0 Debtors

469. The Committee heard that, the financial statements reflect a debtor's balance of Kshs. 731,558,962, while the supporting documents show a figure of Ksh .663,146,667,resulting in an unreconciled difference of Ksh 68,412,295.Although as similarly reported in 2008 /2009, the management has explained that the variance was caused by mispostings during the change over from the old accounting system to the new one, and that a reconciliation between the two balances was in progress, it has not however been clarified as to when the issue would be resolved. In the circumstances, it has not been possible to confirm the accuracy of the debtor's balance of Ksh. 731,558,962 as at 30th June 2010.

Management Response:

470. The management informed the Committee that, the difference of Kshs. 68,412,295 in the debtors between the financial statements and supporting schedules arose out of misposting during the change over from the old accounting system to SYSPRO financial software. The figure has since been reconciled and corrected.

Committee observations

The committee observed that there were glaring inaccuracies in the financial statements. However, although the Accounting officer indicates that the errors were corrected, the point in time when they were corrected and the documentary evidence of the corrections were not submitted to the committee. Therefore, the errors might have remained uncorrected and could have resulted from manipulation of financial records.

Committee recommendations

The committee recommends that;

Within three months upon of this report, the Auditor-General should review the causes of the anomalies, how they were corrected in the subsequent financial years, whether they were deliberate/ intention and/or whether money may have been lost and concealed as errors by the accountants. The Auditor-General shall report the findings in the subsequent Year Audit report.

4.0 KBC Digital Terrestrial (DVD-T) Project

471. The Committee heard that, during the year under review, the corporation had received an approval of tax waiver for an unspecified amount from Treasury, in respect of the Digital Terrestrial (DVD-T) project.
472. However, although according to the information available the waiver was utilized as intended, the equipment does not appear to have been received by the corporation and its whereabouts had not been clarified as at 30th June, 2010.

Management Response:

473. The management informed the committee that, the waiver obtained was for the Digital TV set-top boxes that had not been imported.

Committee observations

The committee observed the waiver obtained was for the Digital TV set-top boxes that had not been imported. Although, the information available indicated that the waiver was utilized as intended, the KBC management did not explain how it was utilized and by who.

The committee recommends that;

Within three months upon of this report, the EACC should investigate the matter relating to the waiver. The parties involved in the request for the waiver, who and how it was utilized with a view to establishing any malpractices in the process. Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the impropriety.

5.0 Posting in the cashbook

474. The committee heard that, the cashbook as at 30th June, 2010 reflects a bank balance of Ksh. 9,794,624 in respect of one of the Corporation's accounts, while the bank Reconciliation statement as at the same date shows an overdraft Ksh. 3,837,686 against the account. The difference of Ksh. 13,632,310 between the two sets of records has not been reconciled or explained. Further and during the same period Reconciliation statements for four other bank accounts maintained by the Corporation had not been prepared as at 30th June, 2010.
475. In the circumstance, it has not been possible to confirm that the cash and cash equivalent balance of kshs 64,265,534 as at 30th June 2010 is fairly stated.

Management Response:

The management informed the Committee that, the difference of Kshs13,632,310 between the cashbook and bank reconciliation statement had been reconciled and corrected.

Committee observations

i. The committee observed that bank Reconciliation statements for four other bank accounts maintained by the Corporation had not been prepared as at 30th June 2010 contrary to Regulation 90 of the PFM (National Government) Regulations 2015.

ii. Although the KBC management indicates that the difference of Ksh. 13,632,310 between the cash book balance and the bank reconciliation statement was eventually reconciled, there was no documentary evidence that the cash book balance and the bank statement were eventually reconciled.

Committee Recommendations

i. Within three months upon of this report, the Auditor-General should review the causes of the unreconciled balances, how they were corrected in the subsequent financial years, whether they were deliberate/ intention and/or whether money may have been lost and concealed as errors by the accountants. The Auditor-General shall report the findings in the subsequent Year Audit report.

ii. The Accounting Officer KBC should ensure compliance with Section 68(2)(k) of the PFM Act Cap 412A by providing supporting documentation to the Auditors General on time.

6.0 Television and Radio broadcasting rights for the FIFA World Cup 2010.

476. The Committee heard that, in early 2009, the Corporation acquired Television and Radio Broadcasting Rights for the XIX FIFA World Cup 2010 and other FIFA and other events during the rights period ending 31st December 2010 within the Kenyan jurisdiction. Accordingly, and on 20th March 2009, a license Agreement also referred to as the Media Rights Agreement, was signed between the Federation Internationale De Football Association (FIFA), the African Union of Broadcasting (AUB) and the Corporation. The Agreement set out the terms and conditions upon which FIFA granted the license of the Media Rights to the corporation. Among the terms and conditions were prohibitions for the KBC to enter into any agreement or arrangement for transmission of audio-visual coverage, by means of any broadcast or other telecommunications network or technology.

477. According to information available however, and despite the prohibitions, the Corporation on diverse dates between December 2009 and June 2010 entered into third-party agreements; with Radio Africa Limited, Cellucom (K) Limited, MTech(K)Limited and Royal Media Services, in which agreements the Corporation granted the third parties to various

broadcasting rights during the world cup. Apart from breaching the agreement with FIFA and AUB, it has not been explained how the four firms were identified and the rights fee determined. For the same reason, it had not also been possible to establish whether the fees charged for the rights were fair and competitive.

478. Other records reviewed indicated that the Corporation received revenue totaling Kshs. 53,632,5416 from advertising during the event while the expected receipts stood at Kshs.144 million. No reason had however been provided for the significant shortfall of Ksh.90,367,584.

Management Response

479. The management informed the Committee that, the third party agreements entered between KBC and Radio Africa Ltd, Cellucom K. Ltd, MTech K. Ltd and royal media services to air the FIFA World Cup 2010 had resulted in the dismissal of the then managing director David Waweru and the corporation secretary Hezekiel Oira and that they had been taken to court and declared innocent as per the attached court ruling.

480. The Management added that the shortfall between the projected revenue sales from the FIFA World Cup 2010 event and the actual sales revenue realized of kshs 9367584 was because the estimated forecast of ksh 144 million was too high.

Committee observations

The committee observed that;

i. The Corporation on diverse dates between December 2009 and June 2010 entered into third-party agreements; with Radio Africa Limited, Cellucom (K) Limited, MTech(K)Limited and Royal Media Services, in which agreements the Corporation granted the third parties to various broadcasting rights during the world cup. Further, apart from breaching the agreement with FIFA and AUB, it has not been explained how the four firms were identified and the rights fee determined.

ii. The Corporation received revenue totalling ksh. 53,632,5416 from advertising during the event while the expected receipts stood at kshs 144 million. Although, the shortfall between the projected revenue sales from the FIFA World Cup 2010 event and the actual sales revenue realized of kshs 90,367,584 was attributed unrealistic budget, the explanation was unsatisfactory considering the big margin and the fact that the corporation had been in the market for long.

Committee recommendations

Within three months from the date of adoption of this report, the EACC should investigate the process of granting rights to third parties by the then managing director David Waweru and the corporation secretary Hezekiel Oira with a view to establishing any irregularities in the process and any fraud on collected amounts. Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the financial leakages/ financial impropriety.

Financial Year 2010/2011

1.0 Going Concern.

481. The Committee heard that, as had been in the previous year, the Corporation had recorded a deficit of Kshs 2,387,414,255 (2010 – a deficit of Kshs.2,580,296,065) raising the cumulative losses to Kshs.23,626,321,254 as at 30th June 2011. Further, the statement of financial position reflected a negative working capital of Kshs.22,023,898,794 and a negative net worth of Kshs.20,968,141,787. In addition, and as had been reported in 2009/2010, the Corporation was unable during the year to service a Government of Kenya loan of Kshs.6,804,423,028 which had accrued interest of Kshs.15,103,805,559 as at 30th June, 2011 or remit statutory deductions totalling Kshs. 368,414,717.
482. Although management had explained that negotiations were going on with the Government to convert the Government of Kenya loan into equity, it was not certain when the process would be completed.

483. The Corporation was therefore technically insolvent and its continued existence as a going concern was dependent upon the financial support of the government and creditors.

Management Response

484. The management informed the committee that, the issue had been responded to in the year that ended 30th June, 2001.

Committee observations

The committee observed that the issue was deliberated in the committee report for financial year 2000/2001 and observed as follows:

i. The Kenya Broadcasting Corporation took a loan from the Overseas Economic Co-operation Fund (OECF) Japan in 1989. The National Treasury has over the years serviced on behalf of the corporation.

ii. The OECF Japan loan was received in the form equipment's which were rendered obsolete because of the liberalization of the electronic industry in Kenya in the 1990s and the migration to FM radio transmission leading to the loss of value for money on the investment. Arising from the foregoing, it meant that the Management of KBC did not carry-out a proper Feasibilty study or there was laxity on those charged with governance having approved the loan without due diligence.

iii. The Corporation was then unable to meets its tax obligation of Kshs189,412,509 of VAT payable to KRA which had increased to Kshs. 368,414,717 in the year under review. This was contrary to the provisions of the VAT Act CAP476.

Committee recommendations

The committee recommends that;

Within three months upon adoption of the report, the Accounting officer-KBC should submit to the National assembly and to the auditor General a comprehensive report with documentary

evidence of settlement of the obligations relating to KRA. The auditor General should review and report the findings in the subsequent audit cycle.

2.0 Property, Plant and Equipment

485. The Committee heard that, the property, plant and equipment balance of Kshs. 4,690,513,926 includes Kshs.2,001,374,696 in respect of land which includes unsurveyed land valued at Kshs.135,125,000 in various parts of the Country.

486. Further, included in the value of land of Kshs.2,001,374,696 as at 30th June 2011 is unadjudicated piece of land valued at 1,980,000 Kshs.1,980,000 located at Voi and forest lands in Nyeri and Nakuru valued at Kshs.3,500,000 and Kshs.13,000,000 respectively.

487. No explanation has been given as to why nine (9) Parcels of land have not been surveyed to date and further, no meaningful progress appears to have been achieved in respect of unadjudicated land in Voi and forest lands in Nyeri and and Nakuru with the relevant Ministry. Management has however explained that the survey process will commence in July 2012.

488. In July, 2000, the Corporation made an arrangement with Kenya Electricity Generating Company Limited (KenGen) whereby the Corporation loaned the company five (5) generators which were subsequently installed at Jomo Kenyatta University of Science and Technology, Kenyatta University and University of Nairobi under the Emergency Power supply project. The generators which had an estimated value of Kshs.29 Million are part of the Corporation's portfolio of assets. However, and as observed in the previous year, no compensation for use of generators appears to have been paid to the Corporation during the year under review and no explanation has been provided for the anomaly.

489. In the circumstances, it has not been possible to confirm that property, plant and equipment balance of Kshs. 4,690,513,926 as at 30th June 2011 is fairly stated.

Management Response

490. The management informed the Committee that, the issue had been responded to in the year that ended 30th June, 2001 and 30th June, 2008.

Committee observations

The Committee observed that;

i. The Corporation land valued at Kshs.135,125,000 located in various parts of the Country has not been surveyed and therefore its fair value cannot be ascertained. The corporation possess adjudicated piece of land valued at Kshs.1,980,000 located at Voi and forest lands in Nyeri and Nakuru valued at Kshs.3,500,000 and Kshs.13,000,000 respectively.

ii. Further, included in the value of land of Kshs.2,001,374,696 as at 30th June 2011 is unadjudicated piece of land valued at 1,980,000 Kshs.1,980,000 located at Voi and forest lands in Nyeri and Nakuru valued at Kshs.3,500,000 and Kshs.13,000,000 respectively.

iii. The Corporation did not give sufficient explanation as to why nine (9) Parcels of land have not been surveyed to date.

iv. The Corporation at the direction of the Government loaned its five power generators valued at Kshs.29,000,000 to KENGEN to alleviate the power crisis during 2000/2001. However The generators had not been returned to the Corporation, despite several reminders and demands by the Corporation to KENGEN. The Corporation had not done enough to follow on the return of the generators and there was loss incurred in respect to the loaned generators valued at Kshs.29,000,000

Committee recommendations

The Committee Recommendations

i. Within three months after the adoption of this report, EACC to initiate investigation into how the loaned generators to KENGEN were procured, whether there was any malpractices in the initial procurement and that the generators were idle at the time of loaning and submit its findings to DPP for a possible prosecution of those found culpable.

ii. Within three months after the adoption of this report, the Accounting Officer, Kenya Broadcasting Corporation to expedite the process of surveying and adjudication of the lands in question for acquisition of ownership documents.

3.0 Television and Radio Broadcasting Rights for the FIFA World Cup 2010

491. The Committee heard that, as has been reported in 2009/10, the corporation in early 2009 acquired Television and radio broadcasting rights Broadcasting Rights for the XIX FIFA World Cup 2010 and other FIFA events during the rights period ending 31st December 2010, within the Kenyan jurisdiction. Accordingly, and on 20th March 2009, a license agreement, also referred to as the media rights agreement, was signed between the Federation Internationale De Football Association (FIFA), the African Union of Broadcasting (AUB) and the Corporation. The agreement set out the terms and conditions upon which FIFA granted the license of the media rights to the Corporation. Among the terms and conditions were prohibitions for KBC to enter into any agreement or arrangement for transmission of audio-visual coverage, by means of any broadcast or other telecommunications Network or technology.

492. According to information available however, and despite the prohibitions, the Corporation on diverse dates between December 2009 and June 2010 entered into third-party agreements with; Radio Africa Limited, Cellucom (K) Limited, Mtech (K) Limited and Royal Media Services, in with agreements the Corporation granted the third parties various broadcasting rights during the world cup. Apart from breaching the agreement with FIFA and AUB, it had not been explained how the four firms were identified and the rights fees determined. For the same reason, it had not been possible to establish whether or not the fees charged for the rights were fair and competitive.

493. Other records reviewed, the committee heard, indicated that the Corporation received revenue totalling to Kshs.53,632,416 from advertising during the event, while the expected receipts stood at Kshs.144 Million. No reason had however been provided for the significant shortfall of Kshs.90,367,584. Although the matter was in court, it could not be established when it would be determined.

Management Response:

494. The management informed the committee that, the issue had been responded to in the year that ended 30th June 2001.

Committee observations

The committee observed that;

i. The Corporation on diverse dates between December 2009 and June 2010 entered into third-party agreements; with Radio Africa Limited, Cellucom (K) Limited, MTech (K)Limited and Royal Media Services, in which agreements the Corporation granted the third parties to various broadcasting rights during the world cup. Further, apart from breaching the agreement with FIFA and AUB, it has not been explained how the four firms were identified and the rights fee determined.

ii. The Corporation received revenue totaling Kshs. 53,632,5416 from advertising during the event while the expected receipts stood at kshs 144 million. Although, the shortfall between the projected revenue sales from the FIFA World Cup 2010 event and the actual sales revenue realized of kshs 90,367,584 was attributed unrealistic budget, the explanation was unsatisfactory considering the big margin and the fact that the corporation had been in the market for long.

Committee recommendations

Within three months from the date of adoption of this report, the EACC should investigate the process of granting rights to third parties by the then Managing Director David Waweru and the Corporation Secretary Hezekiel Oira with a view to establishing any irregularities in the process and any fraud on collected amounts. Should any person/officer be found culpable, the DPP should initiate legal action with a view to holding the responsible persons accountable for the financial leakages/ financial impropriety.

Financial year 2011/2012

1.0 Going Concern 2012

495. The Committee heard that, as was in the previous years, the Corporation had recorded a deficit of Kshs.3,417,224,974 (2011 - deficit of Kshs.2,387,414,255) raising the cumulative losses to Kshs.27,043,355,600. Further, the statement of financial position reflected a

negative working capital of Kshs.27,741,341,662 and a negative net worth of Kshs. 24,385,176,133. In addition and as had been similarly reported in 2010/2011, the Corporation had unable during the year to service a Government of Kenya loan of Kshs. 8,429,463,394 which had accrued interest Kshs. 18,485,292,611 as at 30th June 2012.

496. Although the management had explained that negotiations were going on with the Government to convert the Government of Kenya Loan into equity, it was not certain when the process would be completed. The Corporation was therefore technically insolvent and its continued existence as a going concern was dependent upon the financial support of the Government and creditors.

Management Response

497. The management informed the committee that, the issue had been responded to in the year that ended 30th June, 2001.

Committee observations

The committee observed that the issue was deliberated in the committee report for financial year 2000/2001 and observed as follows

i. The Kenya Broadcasting Corporation took a loan from the Overseas Economic Co-operation Fund (OECF) Japan in 1989. The National Treasury has over the years serviced on behalf of the corporation.

ii. The OECF Japan loan was received in the form equipment's which were rendered obsolete because of the liberalization of the electronic industry in Kenya in the 1990s and the migration to FM radio transmission leading to the loss of value for money on the investment. Arising from the foregoing, it meant that the Management of KBC did not carry-out a proper feasibility study or there was laxity on those charged with governance having approved the loan without due diligence.

Committee recommendations

The committee recommends that;

Within three months upon adoption of the report, the Accounting officer-KBC should submit to the National assembly and to the auditor General a comprehensive report with documentary evidence of settlement of the obligations relating to KRA. The auditor General should review and report the findings in the subsequent audit cycle.

2.0 Property, Plant and Equipment

498. The Committee heard that, in July 2000, and as previously reported in 2010/2011, the Corporation made an arrangement with Kenya Electricity Generating Company Ltd (KenGen) whereby whereby the Corporation loaned the company five (5) generators which were subsequently installed at Jomo Kenyatta and Nairobi Universities under an Emergency power supply project. The generators which had an estimated value of Kshs.29 Million are part of the Corporation's portfolio of assets. However, and as observed in the previous year (2010/2011), no compensation for use of generators appears to have been paid to the Corporation during the year under review and no explanation has been provided for the anomaly.

Management Response

499. The management informed the Committee that, the issue had been responded to in the year that ended 30th June 2001.

Committee observations

The Committee observed that;

The Corporation at the direction of the Government loaned its five power generators valued at Kshs.29,000,000 to KENGEN to alleviate the power crisis during 2000/2001. However, The generators had not been returned to the Corporation, despite several reminders and demands by the Corporation to KENGEN. The Corporation had not done enough to follow on the return of the

generators and there was loss incurred in respect to the loaned generators valued at Kshs.29,000,000

Committee recommendations

Within three months after the adoption of this report, EACC to initiate investigation into how the loaned generators to KENGEN were procured, whether there was any malpractices in the initial procurement and that the generators were idle at the time of loaning and submit its findings to DPP for a possible prosecution of those found culpable.

3.Television and Radio broadcasting rights for the FIFA world cup 2010

500. The Committee heard that, as had been similarly reported 2010/2011, in early 2009 the Corporation acquired Television and Radio Broadcasting Rights for the XIX FIFA World Cup 2010 and other FIFA events during the rights period ending 31 December 2010, within the Kenyan jurisdiction. Accordingly, on 20 March 2009, a License Agreement, also referred to as the Media Rights Agreement, was signed between the Federation Internationale De Football Association (FIFA), African Union of Broadcasting (AUB) and the Corporation. The agreement set out the terms and conditions upon which FIFA granted the license of the Media Rights to the Corporation. Among the terms and conditions were prohibitions for KBC to enter into any agreement or arrangement for transmission of audio-visual coverage, using any broadcast or other telecommunications network or technology.
501. According to information available however, despite the prohibitions, the Corporation on diverse dates between December 2009 and June 2010 entered into third-party agreements with; Radio Africa Limited, Cellucom (K) Limited, Mtech (K) Limited and Royal Media Services, in which the Corporation granted the third parties various broadcasting rights during the World Cup. Apart from breaching the agreement between FIFA and AUB, it had not been explained how the four firms were identified and the rights fees determined. For the same reason, it had not also been possible to establish whether or not the fees charged for the rights were fair and competitive.
502. Other records viewed indicated that the Corporation received revenue totalling Kshs.53,632,416 from advertising during the event, while the expected receipts stood at

Kshs.144 million. No reason had however been provided for the significant shortfall of Kshs.90,367,584.

Management Response:

503. The management informed the committee that, the issue had been responded to in the year that ended 30th June, 2010.

Financial Year 2012/2013

1.0 Going Concern

504. The committee heard that, as had been reported in the previous year, the Corporation recorded a deficit of Kshs4,210,424,547 (2012 – a deficit of Kshs.3,417,224,974 raising the cumulative losses to Kshs.31,253,766,173. Further, the statement of financial position reflects a negative working capital of Kshs.34,850,934,791 and a negative net worth of Kshs.28,595,586,706.
505. In addition, and as had been similarly reported in 2011/2012, the Corporation had been unable during the year to service a Government of Kenya loan of Kshs.9,291,634,284 which had accrued interest of Kshs.23,052,726,705 as at 30th June 2013. Although management had explained that there were ongoing negotiations with the Government to convert the Government of Kenya loan into equity, it was not certain when the process would be completed.
506. The Corporation was therefore technically insolvent and its continued existence as a going concern was dependent upon the financial support of the government and creditors.

Management Response

507. The management informed the committee that, the issue had been responded to in the year that ended 30th June 2001.

Committee observations

The committee observed that the issue was deliberated in the committee report for financial year 2000/2001 and observed as follows

i. The Kenya Broadcasting Corporation took a loan from the Overseas Economic Co-operation Fund (OECF) Japan in 1989. The National Treasury has over the years serviced on behalf of the corporation.

ii. The OECF Japan loan was received in the form equipment's which were rendered obsolete because of the liberalization of the electronic industry in Kenya in the 1990s and the migration to FM radio transmission leading to the loss of value for money on the investment. Arising from the foregoing, it meant that the Management of KBC did not carry-out a proper Feasibility study or there was laxity on those charged with governance having approved the loan without due diligence.

Committee recommendations

The committee recommends that;

Within three months upon adoption of the report, the Accounting officer-KBC should submit to the National assembly and to the auditor General a comprehensive report with documentary evidence of settlement of the obligations relating to KRA. The auditor General should review and report the findings in the subsequent audit cycle.

2.0 Property, Plant and Equipment

508. The Committee heard that in July, 2000, and as had been previously reported in 2011/2012, the Corporation made an arrangement with Kenya Electricity Generating Company Limited (KenGen) whereby the Corporation loaned KenGen five (5) generators which were subsequently installed at Jomo Kenyatta University, Kenyatta University and University of Nairobi under an Emergency Power supply project. The generators which had an estimated value of Kshs. 29 million are part of the Corporation's portfolio of assets. However, and as observed in the previous year (2011/2012), no compensation for use of generators appears

to have been paid to the Corporation during the year under review and no explanation has been Provided for the anomaly.

Management Response:

509. The management informed the Committee that, the issue had been responded to in the year that ended 30th June 2001.

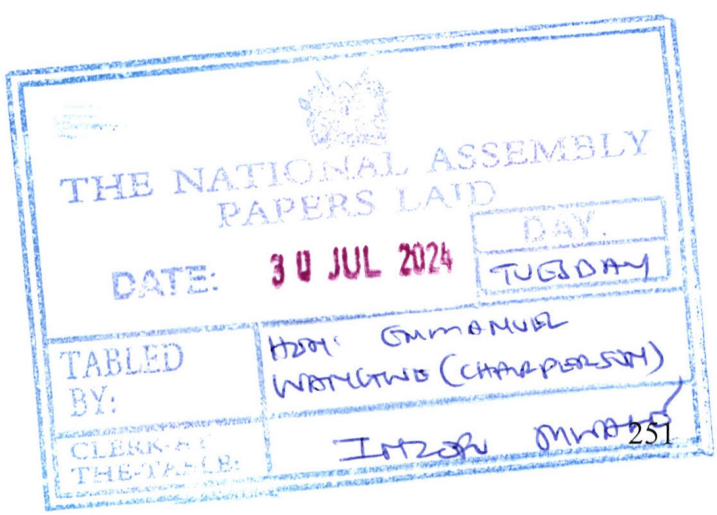
Committee observations

The Committee observed that;

The Corporation at the direction of the Government loaned its five power generators valued at Kshs.29,000,000 to KENGEN to alleviate the power crisis during 2000/2001. However The generators had not been returned to the Corporation, despite several reminders and demands by the Corporation to KENGEN. The Corporation had not done enough to follow on the return of the generators and there was loss incurred in respect to the loaned generators valued at Kshs.29,000,000

Committee recommendations

Within three months after the adoption of this report, EACC to initiate investigations into how the loaned generators to KENGEN were procured, whether there were any malpractices in the initial procurement and that the generators were idle at the time of loaning and submit its findings to DPP for a possible prosecution of those found culpable.



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT – (THIRD SESSION 2024)

THE NATIONAL ASSEMBLY

DIRECTORATE OF AUDIT, APPROPRIATIONS AND GENERAL PURPOSE COMMITTEES

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

24/05/2024

ADOPTION LIST

No.	NAME	SIGN
1.	Hon. Emmanuel Wangwe, MP, CBS – **Chairperson**	
2.	Hon. Caleb Amisi Luyai, MP – **Vice - Chairperson**	
3.	Hon. Ferdinand Kevin Wanyonyi, MP	
4.	Hon. Martin Peters Owino, MP	
5.	Hon. Mary Wamaua Njoroge, MP	
6.	Hon. Nicholas Ngikor Ngikolong, MP	
7.	Hon. (Dr.) Peter Francis Masara, MP	
8.	Hon. Abdi Jehow Fatuma, MP	
9.	Hon. Bernard Kibor Kitur, MP	
10.	Hon. CPA Geoffrey Wandeto MP	
11.	Hon. (Dr.) Jackson Kipkemoi Kosgei, MP	
12.	Hon. Joshua Kivinda Kimilu, MP	
13.	Hon. Michael Wambugu Wainaina, MP	
14.	Hon. Elijah Njore Kururia, MP	
15.	Hon. Paul Nabuin Ekwom, MP	

MINUTES OF THE 23RD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES, ADMINISTRATION, AND AGRICULTURE HELD AT SERENA HOTEL, MOMBASA COUNTY, ON THURSDAY 23RD MAY, 2024 AT 2.30 PM.

PRESENT:

1. Hon. Caleb Amisi Luyai, MP — **Vice Chairperson (Chairing)**
2. Hon. Martin Peters Owino, MP
3. Hon. Mary Wamaua Njoroge, MP
4. Hon. (Dr.) Peter Francis Masara, MP
5. Hon. Michael Wambugu Wainaina, MP
6. Hon. Bernard Kibor Kitur, MP
7. Hon. Joshua Kivinda Kimilu, MP
8. Hon. CPA Geoffrey Wandeto, MP
9. Hon. Bishop (Dr.) Jackson Kipkemoi Kosgei, MP
10. Hon. Paul Nabuin Ekwom, MP

APOLOGIES:

1. Hon. Emmanuel Wangwe, CBS, MP — **Chairperson**
2. Hon. Ferdinand Kevin Wanyonyi, MP
3. Hon. Nixon Nicholas Ngikolong, MP
4. Hon. Abdi Jehow Fatuma, MP
5. Hon. Elijah Njore Kururia, MP

IN ATTENDANCE:

SECRETARIAT

1.	Mr. Abdulahi Aden	Principal Clerk Assistant I
2.	Mr. Enock Manwa	Clerk Assistant III
3.	Ms. Christine Mariita	Clerk Assistant III
4.	Mr. Thomas Ogwel	Fiscal Analyst
5.	Mr. Yakub Ahmed	Media Relations Officer
6.	Ms. Mercy Kinyua	Legal Counsel
7.	Mr. Wesley Abuga	Researcher
8.	Ms. Maryan Gabow	Protocol Officer
9.	Mr. Stanley Langat	Sergeant – At – Arms
10.	Ms. Esther Kariuki	Hansard Officer
11.	Mr. Moses Esamai	Audio Officer

OFFICE OF THE AUDITOR GENERAL

1. Ms. Halima Dida — D-Director

2. Mr. David Githinji PA -LRO

MIN/PIC SSAA/2024/ 006 **PRELIMINARIES**

The Chairperson called the meeting to order at Thirty Minutes past two o'clock followed by a word of prayer.

MIN/PIC SSAA/2024/007 **CONSIDERATION OF THE DRAFT REPORT'S**

The Committee secretariat took the members through the draft report of the following State Corporations;

(i) Kenya Veterinary Board for Financial Year 2018/2019 to 2020/2021
(ii) National Authority for Campaign Against Drug Abuse 2017/2018 to 2020/2021

1. Kenya Veterinary Board for Financial Year 2018/2019 to 2020/2021

The Committee noted that the Kenya Veterinary Board audit query on Budget Control and Performance recurred for the financial years 2018/2019 and 2019/2020.

The Committee observed that under collection and the under expenditure of the budget may have affected the planned activities and might have impacted negatively on the service delivery to the public.

The Committee further observed that Board does not have an established internal audit unit to oversee governance mechanisms and promote transparency and accountability in the management of resources. There is no approved internal audit charter detailing the scope, responsibilities and purpose of the internal audit function.

2. National Authority for Campaign Against Drug Abuse 2017/2018 to 2020/2021

The Committee observed that the National Authority for Campaign Against Drug Abuse was issued with unqualified report for the financial years 2017/2018, 2018/2019 and 2019/2020 .

The Committee further observed heard that, the Authority was issued with Unqualified Report for the Financial Year 2019/2020. However, the Authority had two (2) other matters on lawfulness and effectiveness in use of Public Resources in the Auditor-General's Report.

MIN/PIC SSAA/2024/008 **ADJOURNMENT**

There being no other business, the Chairperson adjourned the sitting at forty minutes past five O'clock.

Signed.....30/07/2024.....

Hon. Emmanuel Wangwe CBS, MP – Chairperson

Date.....

MINUTES OF THE 24TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES, ADMINISTRATION, AND AGRICULTURE HELD AT SERENA HOTEL, MOMBASA COUNTY, ON FRIDAY 24TH MAY, 2024 AT 9:30 AM.

PRESENT:

1. Hon. Caleb Amisi Luyai, MP — **Vice Chairperson (Chairing)**
2. Hon. Martin Peters Owino, MP
3. Hon. Mary Wamaua Njoroge, MP
4. Hon. (Dr.) Peter Francis Masara, MP
5. Hon. Michael Wambugu Wainaina, MP
6. Hon. Bernard Kibor Kitur, MP
7. Hon. Joshua Kivinda Kimilu, MP
8. Hon. CPA Geoffrey Wandeto, MP
9. Hon. Bishop (Dr.) Jackson Kipkemoi Kosgei, MP
10. Hon. Paul Nabuin Ekwom, MP

APOLOGIES:

1. Hon. Emmanuel Wangwe, CBS, MP — **Chairperson**
2. Hon. Ferdinand Kevin Wanyonyi, MP
3. Hon. Nixon Nicholas Ngikolong, MP
4. Hon. Abdi Jehow Fatuma, MP
5. Hon. Elijah Njore Kururia, MP

IN ATTENDANCE:

SECRETARIAT

1.	Mr. Abdulahi Aden	Principal Clerk Assistant I
2.	Mr. Enock Manwa	Clerk Assistant III
3.	Ms. Christine Mariita	Clerk Assistant III
4.	Mr. Thomas Ogwel	Fiscal Analyst
5.	Mr. Yakub Ahmed	Media Relations Officer
6.	Ms. Mercy Kinyua	Legal Counsel
7.	Ms. Maryan Gabow	Protocol Officer
8.	Mr. Stanley Langat	Sergeant – At – Arms
9.	Mr. Wesley Abuga	Researcher
10.	Ms. Esther Kariuki	Hansard Officer
11.	Mr. Moses Esamai	Audio Officer

OFFICE OF THE AUDITOR GENERAL

1.	Mr. Halima Dida	D-Director
2.	Mr. David Githinji	PA -LRO

MIN/PIC SSAA/2024/ 009 **PRELIMINARIES**

The Chairperson called the meeting to order at thirty minutes past nine o'clock followed by a word of prayer.

MIN/PIC SSAA/2024/ 10 **CONSIDERATION OF THE DRAFT REPORT**

The secretariat took the Members through the report;

On the audit queries of Kenya Broadcasting Corporation, the Committee noted the following;

i) The audit query on Financial Position/Going Concern was recurring for the financial years 2000/2001 to 2012/2013.

ii) The audit query on fixed asset register recurred for the financial years 2000/2001 to 2012/2013.

iii) The audit query on Television and Radio Broadcasting Rights for the FIFA World Cup 2010 recurred for the financial years 2009/2010 to 2011/2012.

iv) The audit query on Liabilities – OECF Japan Loan recurred for the financial years 2000/2001, 2004/2005 and 2005/2006.

MIN/PIC SSAA/2024/ 11 **COMMITTEE OBSERVATIONS**

The Committee observed the following;

i) Kenya Broadcasting Corporation corporate governance is considerably weak thereby exposing the corporation to potential losses in addition to reputational and operational risks. This may point to possible revenue leakages and if strategies are not put in place to reverse the position, the Corporations may not be able to meet their financial obligations as and when they fall due.

ii) The Corporation is technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors.

iii) The Corporation did not maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

iv) The Kenya Broadcasting Corporation took a loan of Kshs. 7,543,422,121 from the

Overseas Economic Co-operation Fund (OECF) Japan in 1989. The National Treasury has over the years serviced on behalf of the corporation. However, the corporation has been unable to repay to the National Treasury Kshs 2,819,035,380 so far paid on its behalf despite the loan having been rescheduled until 2011.

v) The OECF Japan loan was received in the form equipment's which were rendered obsolete because of the liberalization of the electronic industry in Kenya in the 1990s and the migration to FM radio transmission leading to the loss of value for money on the investment. Arising from the foregoing, it meant that the Management of KBC did not carry-out a proper Feasibilty study or there was laxity on those charged with governance having approved the loan without due diligence.

MIN/PIC SSAA/2024/12 **ADJOURNMENT**

There being no other business, the Chairperson adjourned the sitting at twelve O'clock.

Signed.....for 30/07/2024.....

Hon. Emmanuel Wangwe CBS, MP – Chairperson

Date.....

MINUTES OF THE 25TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES, ADMINISTRATION, AND AGRICULTURE HELD AT SERENA HOTEL, MOMBASA COUNTY, ON FRIDAY 24TH MAY, 2024 AT 12:30 PM.

PRESENT:

1. Hon. Caleb Amisi Luyai, MP — **Vice Chairperson (Chairing)**
2. Hon. Martin Peters Owino, MP
3. Hon. Mary Wamaua Njoroge, MP
4. Hon. (Dr.) Peter Francis Masara, MP
5. Hon. Michael Wambugu Wainaina, MP
6. Hon. Bernard Kibor Kitur, MP
7. Hon. Joshua Kivinda Kimilu, MP
8. Hon. CPA Geoffrey Wandeto, MP
9. Hon. Bishop (Dr.) Jackson Kipkemoi Kosgei, MP
10. Hon. Paul Nabuin Ekwom, MP

APOLOGIES:

1. Hon. Emmanuel Wangwe, CBS, MP — **Chairperson**
2. Hon. Ferdinand Kevin Wanyonyi, MP
3. Hon. Nixon Nicholas Ngikolong, MP
4. Hon. Abdi Jehow Fatuma, MP
5. Hon. Elijah Njore Kururia, MP

IN ATTENDANCE:

SECRETARIAT

1.	Mr. Abdullahi Aden	Principal Clerk Assistant I
2.	Mr. Enock Manwa	Clerk Assistant III
3.	Ms. Christine Mariita	Clerk Assistant III
4.	Mr. Thomas Ogwel	Fiscal Analyst
5.	Mr. Yakub Ahmed	Media Relations Officer
6.	Ms. Mercy Kinyua	Legal Counsel
7.	Ms. Maryan Gabow	Protocol Officer
8.	Mr. Stanley Langat	Sergeant – At – Arms
9.	Mr. Wesley Abuga	Researcher
10.	Ms. Esther Kariuki	Hansard Officer
11.	Mr. Moses Esamai	Audio Officer

OFFICE OF THE AUDITOR GENERAL

1.	Mr. Halima Dida	D-Director

2. Mr. David Githinji PA -LRO

MIN/PIC SSAA/2024/ 13 **PRELIMINARIES**

The Chairperson called the meeting to order at Thirty minutes past twelve o'clock followed by a word of prayer.

MIN/PIC SSAA/2024/14 **ADOPTION OF THE REPORT**

The Committee unanimously adopted the third report as proposed by the Hon. Mary Wamaua Njoroge, MP and seconded by the Hon. Joshua Kivinda Kimilu, MP.

MIN/PIC SSAA/2024/15 **ADJOURNMENT**

There being no other business, the Chairperson adjourned the sitting at thirty minutes past One O'clock.

Signed..... 31/07/2024

Hon. Emmanuel Wangwe CBS, MP – Chairperson

Date.....

MINUTES OF THE 35TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES, ADMINISTRATION, AND AGRICULTURE HELD IN PRIDE INN PLAZA SIGNATURE MALL, ON TUESDAY, 16TH MAY , 2023 AT 10.00 AM.

PRESENT:

1. Hon. Emmanuel Wangwe, CBS, MP — Chairperson
2. Hon. Caleb Amisi Luyai, MP — Vice Chairperson
3. Hon. (Dr.) Peter Francis Masara, MP
4. Hon. Abdi Jehow Fatuma, MP
5. Hon. CPA Geoffrey Wandeto, MP
6. Hon. Bernard Kibor Kitur, MP
7. Hon. Michael Wambugu Wainaina, MP
8. Hon. Bishop Emeritus (Dr.) Jackson Kipkemoi Kosgei, MP
9. Hon. Paul Nabuin Ekwom, MP
10. Hon. Joshua Kivinda Kimilu, MP

APOLOGIES:

1. Hon. Ferdinand Kevin Wanyonyi, MP
2. Hon. Martin Peters Owino ,MP
3. Hon. Mary Wamaua Njoroge ,MP
4. Hon. Nixon Nicholas Ngikolong, MP
5. Hon. Elijah Njore Kururia, MP

IN ATTENDANCE:

SECRETARIAT

1. Mr. Aden Abdulahi — Principal Clerk Assistant I
2. Ms. Christine Mariita — Clerk Assistant III
3. Mr. Thomas Ogwel — Fiscal Analyst
4. Ms. Mercy Kinyua — Legal Counsel
5. Mr. Moses Esamai — Audio Officer III
6. Mr. Benson Muthuri — Sergeant – At – Arms

OFFICE OF THE AUDITOR GENERAL

1. Mr. Franklin Kiugu — Deputy Director Audit
2. Mr. Charles Mwitari — Director, Audit
3. Mr. David Githinji — Principal Auditor
4. Mr. Jeff Otieno — Associate LRO

NATIONAL TREASURY

Mr. Anthony Nderitu

OFFICE OF THE INSPECTORATE

Mr. Isaac Odek

KENYATTA NATIONAL HOSPITAL

1. Dr. Everson N. Kamuri — CEO/Managing Director
2. Ms. Rose Njoroge — Director SCM
3. Mr. Michael Kihuga — Director Finance
4. Mr. Calvin Nyachoti — Director Legal

MIN/PIC SSAA/2023/ 80 PRELIMINARIES

The Chairperson called the meeting to order at 10:00 AM thereafter he requested Hon. (Dr.) Jackson Kipkemoi Kosgei MP for a word of prayer.

MIN/PIC SSAA/2023/81 **SUBSTANTIVE AGENDA: EXAMINATION OF THE AUDITOR'S GENERAL REPORT OF THE KENYATTA NATIONAL HOSPITAL FOR THE FINANCIAL YEAR 2018/2019, 2019/2020 AND 2020/2021**

Dr. Everson N. Kamuri the Managing Director of Kenyatta National Hospital (KNH) was accompanied by Mr. Michael Kihuga (Director Finance) and Mr. Calvin Nyachoti (Director Legal) appeared before the committee to adduce evidence on the Audited accounts of the Kenyatta National Hospital (KNH) for the Financial year 2018/2019,2019/2020 and 2020/2021

FY 2018/19

1.0 Unconfirmed Borrowing Balance

The committee was informed that the borrowings balance totaling Kshs.1,199,863.000 reflected in the statement for financial position as at 30 June, 2019 relates to a loan received in 2007/2008 from the Kingdom of Spain. Records provided for audit indicated that the loan was disbursed in kind through supply of medical equipment and was intended to be repaid by the Hospital with effect from 1 July, 2008 at an interest rate of 3 % per annum on a reducing balance or the first six (6) years and thereafter the interest plus principal for the next nine (9) years. However, the records indicated that, no principal sum or interest liability was paid or accrued by the Hospital in the eleven financial years from 2008/2009 to 2018/2019. Further, Management has indicated that no on-lending agreement was signed between the Hospital and The National Treasury.

National debt records at the Public Debt Management Office of The National Treasury indicated commitments for the loan totaling Euro.14,000,000, were booked on 31 January, 2006 and the first disbursement amounting to Euros. 2,100,000 was received on 23 June, 2006. The records indicated that The National Treasury commenced repayment of interest on the loan and the principal sum in 2006/2007 and 2010/2011 financial years respectively. As at 30 June, 2019, there were no interest arrears outstanding, whereas only Euro 3,111,111 (then equivalent to Kshs. 361,839,630) of the principal sum remained unpaid.

From the citation provided in Note 35 to the financial statements, the Hospital Management does not appear to be aware that The National Treasury has been repaying the loan. As a result, the loan continues to be reflected in the books of the Hospital. In the circumstance, the borrowing balance amounting to Kshs. 1,199,863,000 reflected in the statement of financial position as at 30June, 2019 may not be a fair statement of the status of the loan as at 30 June 2019.

Committee Observation

i) The Issue was addressed in the previous Public Investment Committee of the National Assembly as contained in the 24th PIC's report. In the report, it was recommended that the National Treasury and the KNH should share information on the loan repayments to ensure that the KNH reflects accurate status of the loan.

ii) It has taken a long (Since 2006) to have the Subsidiary Grant Agreement to be converted from an on-Lend Loan to an On Grant Loan as fully signed on 4th August 2022. However, the Board's approval

for passing of the necessary book entries to correct the anomaly in the Financial Statements was granted much later on 06/09/2022.

iii) KNH was neither consulted nor involved in the signing of the Loan Agreement. The National Treasury unilaterally initiated and conclusively processed the Loan. Further, the establishment of the KNH under a Legal Notice impairs its independence for enhanced service delivery. the hospital needs to be established under an Act of Parliament.

Committee Resolution

The committee resolved that

KNH provide documentary evidence on the conversion before and after.

2.0 Property, plant and equipment

2.1 Excised Parcels of Land

The property, plant and equipment balance totaling Kshs.12,364,842,000 reflected in the statement of financial position as at 30 June, 2019 includes three (3) plots of land in Nairobi measuring 0.763 hectares on total size and valued at Kshs. 49,000,000 .

The plots were irregularly excised and allocated to third parties in previous years. The matter has since been discussed by the Public Investment Committee (PIC) of the National assembly which, in its 19th Report, recommended that the National Land Commission revoke the title deeds irregularly issued to the private entities; the Ethics and Anti-corruption Commission investigate the irregular allocation of the land, and the Hospital's Management surcharge the then Chief Executive Officer for any loss that may have been incurred. There was no indication of the results of the actions, if any, taken to comply with parliament's recommendations.

As a result, ownership and custody of the three parcel of land as at 30 June, 2019 has not been confirmed.

Committee Observation

i. The Committee observed that the plots were irregularly excised and allocated to third parties in previous years. The matter was discussed by the Public Investment Committee (PIC) of the National Assembly which, in its 19th Report, recommended that the National Land Commission (NLC) to revoke the title deeds irregularly issued to the private entities.

ii. Further the report recommended that, the Ethics and Anti-Corruption Commission to investigate the irregular allocation of the land, and the Inspector General of State Corporations to surcharge the then Accounting Officer for any loss that may have been incurred. However, there was no indication of the results of the actions, if any, taken to comply with Parliament's recommendations. As a result, ownership and custody of the three parcel of land as at 30th June, 2019 had not been confirmed.

2.2 Unconfirmed Ownership of Contested Land

The value of property, land and equipment as at 30 June, 2019 has been adjusted by removal of land identified as LRN 209/13319, measuring 0.0217 hectares with a book value of Kshs.1,600,000.The adjustment was explained as having resulted from the National Lands Commission making a determination on 21 January, 2019 that directed the Chief Registrar of Lands to uphold the title to the land in the name of a private individual that the Hospital had contested. However, the resolution of the Board that approved the removal of the land from the Hospital's books was not presented for audit verification.

Consequently, the regularity of the adjustment and the ownership status of the land as at 30 June, 2019, could not be confirmed.

Committee Observation

i. The Committee observed that, the land LR No. 209/13319, measuring 0.0217 hectares with a book value of Kshs.1,600,000 as at 30 June, 2019 had been removed from the financial statements based on the directive of the National Lands Commission on 21st January, 2019 that directed the Chief Registrar of Lands to uphold the title to the land in the name of a private individual. However, although the Hospital reported having contested the matter, there was no documentary proof in form of correspondences or legal suit to contest the matter.

ii. It is not clear how the private developer acquired title to the land already owned and occupied by Kenyatta National Hospital.

2.3 Failure to Adjust Records on Surrendered Lands

The Kenya Urban Roads Authority (KURA) through gazette Notice No. 9340 of 18 December 2015 and 6441 of August 2016 compulsorily acquired seven (7) acres of Kenyatta National Hospital (KNH) land valued by the Hospital at Kshs.4,219,257,210. The land was acquired for construction of Hospital Road and Mbagathi Way Link road both located in the Hospital's neighborhood. Available records indicated that KURA was to pay the Hospital Kshs. 1,859,297,000 as compensation. However, in spite of the start of the road construction work, the payment had not been made by the time of audit in April, 2020.

The excised land has been included in the property, plant and equipment balance of Kshs. 12,364,842,000 reflected in the statement of financial position. In view of the foregoing, ownership of the land by the Hospital as at 30 June, 2019 is uncertain.

Committee Observation

The committee observed that

i. In the Lands Act 2012 it provides that compensation is only payable when structures are in it.

ii. The committee was informed that KNH had projects ready to be implemented that is why they were seeking compensation

iii. The committee noted that the project KNH had in mind were donor funded and a half of the cost is available.

iv. The Committee observed that there was ready donor funding available for projects on the acquired land. However, Section 111 (1D) of the Land Act, Cap 280 provides that compensation for compulsorily acquired public land shall not be paid to a public body unless it is demonstrated that the land was purchased and developed by that public body. Therefore, the projects planned to be implemented by KNH on the land may have been hampered.

Committee Resolution

The committee resolved that

i. The office of the sector Auditor be given more time to verify the issue further and report back to the committee.

ii. KNH to provide a summary justification as to why they need compensation so that KURA can be compelled to pay.

iii. The lands Act need some amendments in relation to compensation.

iv. KNH to consider purchasing another land to continue with the projects they had in mind

2.4 Inconsistency in Depreciation of Assets

The committee heard that Section 7.3.4 of the approved Hospital Finance Manual stipulates that the Straight- line Method of depreciation shall be applied in charging depreciation for the Hospital's property, plant and equipment. However, the assets were in the year under review depreciated using the Reducing Balance Method as reflected in the assets movement schedule in note 28 to the financial statements and significant Accounting Policy No 4(c). In addition, although computers and related devices should, as prescribed in the policy, have been depreciated within three years at the rate of 33.33% using Straight –line Method of depreciation, a reducing balance rate of 30% was applied instead. No explanation has been provided for these anomalies.

In view of the inconsistent asset depreciation policies, the carrying value of the properties, plant and equipment balance totaling Kshs.12,364,842,000 as at June 30, 2019 may not be fairly stated.

Committee Observation

i. The Committee observed that, the land LR No. 209/13319, measuring 0.0217 hectares with a book value of Kshs.1,600,000 as at 30 June, 2019 had been removed from the financial statements based on the directive of the National Lands Commission on 21st January, 2019 that directed the Chief Registrar of Lands to uphold the title to the land in the name of a private individual. However, although the Hospital reported having contested the matter, there was no documentary proof in form of correspondences or legal suit to contest the matter.

ii. It is not clear how the private developer acquired title to the land already owned and occupied by Kenyatta National Hospital.

3.0 Unconfirmed National Hospital Insurance Fund Receivables Balance

The medical services receivables balance totaling Kshs.8,663,813,000 as at 30 June, 2019, as disclosed in Note 25 to the financial statements includes Kshs.903,098,855 due from the National Hospital Insurance Fund (NHIF). However, the financial statements of the NHIF for the year ended 30 June, 2019 reflect debts owed to the Hospital totaling Kshs, 149,533,123 resulting to a variance of Kshs. 753,565,732 between data held by the two entities. No explanation has been provided by the Management for failure to reconcile the data.

In view of the discrepancy, the accuracy of the medical services receivables balance totaling Kshs 8,663,813,000 as at 30 June, 2019 could not be confirmed.

Committee observation

i) There was a delay in the reconciliation of the inter-entity records and reports thus resulting in reporting inconsistent and misleading balances in the financial statements of the two institutions.

ii) There existed a huge variance in the financial statements of the KNH and NHIF on receivable balances. This had the effect of inflating the receivables (current assets) of the KNH and understating the payables (current liabilities) of NHIF thus misrepresenting the fact.

4.0 Un-analyzed Impairment Allowance

Receivables from exchange transactions balance totaling Kshs. 2,039,875,000 reflected in the statement of financial position as at 30 June, 2019 is derived from the gross balance of Kshs. 9,030,003,000 less impairment allowances totaling Kshs. 6,990,128,000, as indicated in Note 25 to the financial statements. The impairment allowance includes long outstanding debts totaling Kshs, 6,531,163,000 whose recoverability is doubtful, and an un-analyzed provision amounting to Kshs 1,248,877,758.

In view of these issues, the accuracy and validity of the receivables from exchange transactions balance totaling Kshs 2,039,875,000 reflected in the statement of financial position as at 30 June, 2019 could not be confirmed.

Committee Observation

The Committee observed that a similar issue was discussed in the 24th PIC report where the committee observed that the matter arose due to KNH's management failure to provide a schedule of beneficiaries to the auditors. However, the recoverability of the impaired receivables is doubtful noting the circumstances under which it arose and lack of collateral. This could be manipulated with the view to defraud the Hospital.

Committee Resolution

The committee resolved that

KNH provide their credit policy and procedure Manual.

OTHER MATTERS

1.0 Budgetary Performance

During the year under review, the Hospital's actual receipts amounted to Kshs.13,575,990,000 against budgeted receipts of Kshs. 14,289,468,000 resulting in a revenue shortfall of Kshs.713,478,000. Further, actual expenditure for the year amounted to Kshs.13,214,939,000 against budgeted expenditure of Kshs.13,577,799,000 resulting in an overall under –expenditure of Kshs.362,861,000. Consequently, the Hospital may not have achieved some of the service delivery and development objectives for the year under review.

Committee observation

i) The under absorption of Kshs.362, 861,000 and the under-funding of Kshs.713, 478,000 may have affected the planned activities and might have impacted negatively on the service delivery to the public.

ii) The Hospital relied on unrealistic projections of revenue and expenditure leading to underperformance of the budget.

2.0 Declining Financial Performance

During the year under review, the Hospital reported an income deficit of Kshs.435,969,000(2017/2018-deficit Kshs.1,091,284,000) resulting in increase in the accumulated deficit form Kshs. 3,276,527,000 as at 30 June, 2018 to Kshs. 3,712,496,000 as at 30 June, 2019.

The data confirms that the Hospital's performance is on a downward trend and if an effective strategy is not executed to reverse the situation, the Hospital may experience severe financial and operational difficulties in the near future.

Committee Observations

The accumulated income deficit of the Hospital is widening and could impair the hospital's capacity to settle its obligations as and when they fall due resulting in unnecessary penalties, interest and legal costs. The downward trend in performance, if not addressed through an effective strategy, the Hospital may experience severe financial and operational difficulties in the near future.

3.0 Unresolved Previous Years' Issues

Contrary to the reporting format prescribed by the Public Sector Accounting Standards Board, the financial statements do not include a report on the progress made in resolving issues reported in the audit reports for the previous year. Among these was the following matter discussed by the Public Investment Committee of the National Assembly.

Committee Observations

The Committee observed that the Hospital failed to include a report on the progress made in resolving issues reported in the audit reports for the previous year. This was contrary to the reporting format prescribed by the Public Sector Accounting Standards Board and Section 81 (3) of the PFMA CAP 412 A.

3.1 Unresolved Supply contracts

The receivables from exchange transaction balance totaling Kshs.2,039,875,000 reflected in the statement of financial position as at 30 June, 2019 includes prepayments totaling Kshs.311,702,000 out of which Kshs.31,734,000 relates to supply contracts awarded to three firms at Kshs.15,793,000, Kshs.2,213,000 and Kshs.13,728,000. As reported in the previous year, the first prepayment is disputed

whereas the second one is under investigation. The third one was for a micro-filming project at the Hospital which, however, had not been completed as at 30 June, 2019. The Public Investments Committee upon discussing the matters, recommended that the three companies be investigated and prosecuted if found culpable and the Chief Executive Officer of the Hospital then be held accountable and surcharged for the loss. In the absence of any disclosure on tangible action on the recommendation, the irregular and ineffective use of the public funds totaling Kshs. 31,734,000 remains unresolved.

Committee Observation

The Public Investments Committee in their 24th report observed that the matters, have been pending since the 19th PIC report which was adopted in 2015 and the related recommendations have never been implemented.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1.0 Persistent Losses on NHIF Medical Services Contract

The statement of financial performance reflects losses totaling Kshs. 337,262,000 made on medical services contracts out of which a sum of Kshs 169,141,000 relates to loss from a contract with the National Hospital Insurance Fund (NHIF). The loss is net of rebate received from the NHIF and the Hospital's total surcharge on treatment services provided to NHIF members. Available records indicated that the Hospital entered into a two –year renewable medical service contract with the NHIF that ran from 1st August, 2008 to 31 July, 2010. The contract was renewed on the same terms with effect from 1 August, 2010.

The records indicated that Management had in 2013 and 2014 highlighted losses incurred from the contract and eventually sought to discontinue it though notices sent to the NHIF and the Ministry of Health in April 2014. In response, the NHIF explained its inability to increase the rebate payable to the Hospital. The Ministry of Health in May, 2014 instructed the Hospital to continue offering the services on the same terms. Although a renegotiated contract signed in March, 2019 has enhanced the number of claimable services and had a positive effect on the Hospital's revenue from the contract, the loss totaling Kshs 169,141,000 recorded in the year under review is still significant.

Consequently, the Hospital may not reverse the losses unless the inefficiencies, if any, embedded in the contract and the process applied in executing it, are not eliminated.

Committee Observation

(i) improved surgical packages have since been instituted with higher rates as a way of addressing the persistent losses on NHIF Medical Services Contract.

(ii) The persistent losses were occasioned by poor contract management on the part of the Hospital as the terms of the contract could have stipulated avenues for renegotiations.

2.0 Long Outstanding Debts

Examination of income records revealed long outstanding debts of various kinds as follows:

2.1 Entity Debts and Return to Drawer Cheques

Included in the receivables from exchange transactions balance totaling Kshs 2,039,875,000 as at 30 June, 2019 were NHIF rebates (Kshs. 71,410,322) Ministry of Health disaster debts (Kshs. 95,658,100) and return to drawer (RD) Cheques (Kshs 3,286,110) The three balances have been outstanding for more than two years but no explanation has been provided by Management for the failure to recover them

Committee Observation

i. The Hospital had long outstanding debts made up of NHIF rebates Kshs. 71,410,322, Ministry of Health disaster debts Kshs. 95,658,100 and return to drawer (RD) Cheques Kshs 3,286,110 which had been outstanding for more than two years. Although the management had indicated that they have made efforts to recover the debts, the return to drawer (RD) Cheques Kshs 3,286,110 is a pointer to weak cash management and controls systems.

ii. The management indicated that it shall initiate the process of write off. Owing to the fact that a huge balance of the long outstanding debts relates to MDAs; NHIF rebates Kshs. 71,410,322 Ministry of Health disaster debts Kshs. 95,658,100 this will encourage the culture for other institutions to over burden KNH budget.

iii. The management of the Hospital did not justify the need for the write off, in line with the provisions of Regulation 157 (1)(a) PFM (National Government) Regulations 2015 which provides that an Accounting Officer may only write off losses if all reasonable steps have been taken to recover the debts and the loss is irrecoverable.

Ministry of Health Disasters Debt- Kshs. 95,658,100

This relates to hospital bills for victims of disasters that have occurred across the country in diverse dates from 1998 to 2019 and who were treated in the hospital. Upon discharge, the patients were released without paying medical bills incurred based on the Government's directive that the Hospital will be reimbursed. The hospital has been making follow-ups with the parent ministry for settlement, but these bills have not been settled to date.

The Hospital Management will initiate the process of write off.

Return to drawer (RD) cheques –Kshs. 3,286,110

This relates to personal cheques that were received in the year 2004 and prior years for patients' medical bills. These cheques were drawn by well-wishers who were helping patients to meet their medical bills obligations but were unfortunately dishonored upon presentation to the bank. Efforts to have the drawers replace the cheques were not fruitful.

Currently, the hospital no longer accepts personal cheques as a mode of payment to avoid recurrence of the same. The long outstanding debts whose recoverability is doubtful have been properly provided for in the financial statements as impaired in line with International Public Sector Accounting Standards (IPSAS).

The Hospital Management will initiate the process of write off.

Committee resolution

That KNH submits a list of names of cheques returned and the nature of patients and actions taken against such patients.

2.2 Debt Owed by Patients

The receivables from exchange transaction balance totaling Kshs 2,039,875,000 include Kshs. 748,581,556 identified as 'debts owed by absconded patients. There was no indication of the strategy adopted by Management to recover these debts.

Committee Observation

The Committee observed that;

i) The Management has instituted several measures in place aimed at preventing the occurrences of patients absconding. However, abscondment points to weak Hospital control systems that may lead to severe lapses.

ii) The effectiveness of the instituted measures relies on the integrity and professionalism of the staff of the hospital since there is a high likelihood of collusion in successful abscondment incidents.

Committee resolution

The committee resolved that

- KNH provide action taken against those culprits who aided abscondment.
- KNH provide analysis of 748 M which has accumulated for several years

2.3 Rental Debts Owed by Ministry Staff

Records on houses let out staff reflected rental receivables totaling Kshs. 28,300,000 as at 30 June, 2020. The balance included rent arrears totaling to Kshs 2,998,806 due from the Ministry of Health employees for more than one year. The Debts ought to have been deducted from their salaries by the Ministry and

remitted to the Hospital. In addition, included balance were arrears totaling Kshs. 991,000 owed by five officers who vacated their rented houses while indebted.

No adequate reasons were provided by Management for the failure to collect the various debts whose non-recovery may result in loss of income to the Hospital.

Committee observation

The committee observed that

i) The Hospital operated under a lenient rent policy with weak tenancy agreements coupled with poor enforcement of the policy. This contributed to the accumulation of rent arrears.
ii) The claim by the Hospital that the full rent arrears have been settled was not substantiated since the supporting documents provided did not account for the entire rent arrears.
iii) KNH no longer hosts ministry staff they engage clients directly.
iv) Grants given only for research purposes.

Committee Resolution

The committee resolved that

KNH to provide a complete and clear appendix 8

3.0 Outstanding Imprests

Imprests records indicated long standing temporary imprests and staff debtors totaling Kshs. 1,013,509 and Kshs. 1,056,529 respectively as at 30 June, 2020. No adequate reasons were provided for the failure to recover balances.

In the circumstances, Management of the Hospital is in breach of the law and recoverability of the balances is doubtful.

Committee Observations

i) The hospital failed to enforce the provision of the PFM (National Government) Regulations, 2015 Regulation 93(5) that prescribes that imprest surrender be made within 7 days. Pursuant to Regulation 93(7), the Accounting Officer who failed to recover the imprest committed an offence.
ii) Some former staff members of the Hospital moved to other organizations without settling the debts they owed the hospital. This indicates that the clearance procedures for those exiting are so lenient that debts owed are not deducted from terminal dues causing losses to the hospital.
iii) There is no admissible evidence that imprests of Kshs 1,013,509 had been recovered in line with Regulation 93(6) of PFM (National Government) Regulations, 2015.

Committee Resolution

The committee resolved that

- KNH submit copies of warning letters communicating to that effect
- KNH to submit a template showing the employees were given the imprest and when then they left

4.0 Outstanding Trade and Other Payables

Outstanding trade and other payables from exchange transactions totaling Kshs. 2,272,976,000 as at 30 June, 2019 included long outstanding balances totaling Kshs. 91,753,342.

No adequate explanation was provided for the failure to pay the outstanding bills that may attract interests and penalties if they are not settled without further delay.

Committee Observation

i) The reported causes of the delays in payments including missing delivery notes, incomplete deliveries, awaiting credit notes and over invoiced amounts are issues that ought to have been conclusively resolved when the payable were first recognized in the books of KNH. The hospital therefore was slow in addressing the issues and the payables might have a risen out of dubious procurement processes.

ii) The claim that the outstanding trade and other payables have since been settled and the appended schedule as proof of settlement is inadmissible, since some of the payment therein relates to periods before the financial year under review.

Committee Resolution

Provide a clear schedule of appendix 10 indicating the party, amount and the purpose.

5.0 Long Outstanding Deficit in Defined Benefits Pension Scheme

Examination of records on the Hospital's defined benefits pension scheme indicated that the actuarial valuation for the Scheme as at 30 June, 2019, reflected benefit liabilities totalling Kshs. 11,284,264,000 as disclosed in Note 34 to the financial statements. The assets of the Scheme totalled Kshs. 7,346,292,000 resulting to a deficit of Kshs. 3,937,972,000 payable by the Hospital as the Scheme's sponsor. The Hospital has regularly requested The National Treasury to fund the deficit through the exchequer and, in this regards, annual disbursements of Kshs. 100 Million were made to the Scheme from 2015/2016 to 2018/2019.

At Kshs. 100 million per annum, the deficit will be offset after 39 years by which time most of the Schemes' beneficiaries will have retired. There is no indication that Management has proposed a viable plan that can resolve the matter sooner.

Committee Observation

i) The deficit in defined benefits pension scheme of Kshs. 3,937,972,000 payable by the Hospital as the Scheme's sponsor is operationally unsustainable and requires financing interventions. However, the rate at which the exchequer injected (Kshs.100 M) is unsustainable and the scheme may not be in a position to finance its pension obligations as and when they arise. This implies that the pensioners benefits will not be adequately and timely financed by the scheme.

ii) The Hospital might have not considered the sustainability of defined benefits pension scheme before instituting it by conducting a proper financial forecasting or the scheme contributions were being mismanaged.

iii) The sustainability of the Scheme largely relies on additional funding from the exchequer, which is not guaranteed.

6.0 Unutilized Leave

Section 6.3.3 of the Human Resource policies and procedures manual entitles all employees, irrespective of cadre, to annual leave for thirty (30) working days. Further Section 6.3.5 provides that deferment of annual leave from one year to another is not permitted except under exceptional circumstances approved by Chief Executive Officer. Contrary to these requirements, records examined indicated that four (4) staff

had negative leave days and sixty three (63) others had accumulated between 30 and 156 leave days. There was no evidence that the exceptions were granted by the chief Executive Officer.

Management was therefore in breach of its human resource policies and procedures.

Committee Observation

i) The Management of the hospital failed to enforce the applicable Human Resource procedures, policies and manuals which led to deferment of leave days without permission being granted by the CEO and also occasioned incidences of over utilized leave days.
ii) The Hospital then implausibly considered some technical officers as indispensable hence could not go on leave on account of the nature of their work.
iii) Deferment of leave days can lead to burn-out at work which impairs productivity. The hospital was subjected to the risk of poor work performance.

Committee Resolution

The committee resolved as follows

That KNH provides a write up of the following concerns as per their request

i. A request to be established under an Act of parliament
ii. Rebates from NHIF to be increased due to the nature of service they provide.
iii. That the Government meets full PE (Personal) through Exchequer.
iv. Engage staffs as per the establishment which provides 7000 against the 5000 currently.
v. A fund for the Inchigent for those who cannot afford medical expenses.
vi. A support of automation through funding.
vii. KNH was build 120 years back need for rehabilitation of the entire block.
viii. The police Hospital to revert back to KNH.

FY 2019/20

1.0 Unconfirmed Borrowings Balance

As disclosed in Note 37 to the financial statements, as previously reported, the statement of financial position reflects borrowings balance of kshs.1, 199,863,000. The borrowing relates to a loan received in 2007/2008 from the Kingdom of Spain in the form of medical equipment. Review of records indicated that the loan was repayable by the Hospital at an interest rate of 3% per annum on a reducing balance for the first six (6) years and thereafter the interest plus principal for the next nine (9) years with effect from 1 July, 2008. However, interest has not been paid or accrued in the twelve (12) financial years between 2007/2008 and 2019/2020. Further, the accrued interest, loan repayment and loan balance confirmation certificate as at 30 June 2020 were not provided.

The management has indicated that it is following up the matter with The National Treasury with a view to converting the borrowing into a grant.Under the circumstances, the validity, accuracy and completeness of the borrowings balance amounting to Kshs.1,199,863,000 reflected in the statement of financial position as at 30 June, 2020 could not be confirmed.

Committee Observation

i. The Issue was addressed in the previous Public Investment Committee of the National Assembly as contained in the 24th PIC's report. In the report, it was recommended that the National Treasury and the KNH should share information on the loan repayments to ensure that that the KNH reflects accurate status of the loan.

ii. It has taken long (Since 2006) to have the Subsidiary Grant Agreement to be converted from an on-Lend Loan to an On Grant Loan as fully signed on 4th August 2022.However, the Board's approval for passing of the necessary book entries to correct the anomaly in the Financial Statements was granted much later on 06/09/2022.

iii. KNH was neither consulted nor involved in signing of the Loan Agreement. The National Treasury unilaterally initiated and conclusively processed the Loan. Further, the establishment of the KNH under a Legal Notice impairs its independence for enhanced service delivery. the hospital needs to be established under an Act of Parliament.

2.0 Inaccuracies in Cash and Cash Equivalents

As disclosed in Note 25 to the financial statements, the statement of financial position reflects cash and cash equivalents balance totaling Kshs.1, 937,317,000. Review of the bank reconciliation statements reflected receipts in the bank that were not recorded in the cash book totaling to Kshs.5,247,360 and receipts in the cash book not recorded in the bank statement totaling to Kshs.2,745,590 that were still outstanding as at 30 June, 2020.

Further, the payroll and administration cashbook include a cheque amounting to Kshs.139,090,912. However, a review of the bank statement reflected an amount of Kshs.156,583,664 for the cheques which was debited in the bank account resulting to an unexplained variance amounting to Kshs.17,492,752.

Consequently, the accuracy, completeness and validity of cash and cash equivalents balance of Kshs.1,937,317,000 reflected in the statement of financial position as at 30 June, 2020 could not be confirmed.

Committee Observations

The Committee observed that;

i) The hospital contravened the provisions of PFM (National Government) Regulations 90 (3) which requires that a monthly bank reconciliations to be undertaken and any discrepancies noted should be investigated promptly and appropriate action taken including updating relevant cash books.

ii) Since it took the error of duplication in receipting of KSh 2,745,590 to be identified by the external auditor, the Internal Audit function of the hospital was ineffective.

iii) The error of double receipting has since been corrected, appropriate book readjustments made and verified by the Auditor General.

iv) The explanation provided to the Committee on what occasioned the unexplained variance of KSh 17,497,752 is simplistic and direct. The same seemed not to have been given to the Auditor General before the audit process was concluded.

Committee resolution

The committee resolved that

Issues in i-iii be resubmitted to AOG for further verification and later be reported back to the committee.

3.0 Property, Plant and Equipment

As disclosed in Note 25 to the financial statements, as previously reported, the statement of financial position reflects property, plant and equipment balance of Kshs.13,029,937,000. The balance includes three (3) parcels of land with a total of 0.763 hectares in Nairobi valued at Kshs.49,000,000 which were excised and allocated to third parties.

The issue was discussed by the Parliamentary Public Investment Committee (PIC), with recommendations that the National Land commission revoke title deeds irregularly issued to private entities, Ethics Anti-Corruption Commission investigate how the Hospital land was allocated to individuals and that the then Chief Executive Officer be surcharged for any loss that may have been incurred. However, no progress has been made.

Further, as previously reported, the balance includes seven (7) acres of land totalling to Kshs.13,029,937,000 acquired by the Kenya Urban Roads Authority (KURA) in 18 December, 2015 and August 2016 for construction of Hospital Road and Mbagathi Way Link Road. The Hospital's internal valuation amounted to Kshs.4,219,257,210 and the Authority was to pay compensation of Kshs.1,859,297,000 to the Hospital. However, no compensation had been made as at the time of audit in April, 2021 despite commencement of the road construction.

Consequently, the validity, accuracy, completeness and ownership of the property, plant and equipment balance totaling Kshs.13,029,937,000 reflected in the statement of financial position as at 30 June, 2020 could not be confirmed.

Committee Observations

1. The Committee observed that the plots were irregularly excised and allocated to third parties in previous years. The matter was discussed by the Public Investment Committee (PIC) of the National Assembly which, in its 19th Report, recommended that the National Land Commission (NLC) to revoke the title deeds irregularly issued to the private entities.
2. Further the report recommended that, the Ethics and Anti-Corruption Commission to investigate the irregular allocation of the land, and the Inspector General of State Corporations to surcharge the then Accounting Officer for any loss that may have been incurred. However, there was no indication of the results of the actions, if any, taken to comply with Parliament's recommendations. As a result, ownership and custody of the three parcels of land as at 30th June 2019 had not been confirmed.

Committee Resolutions

The resolved as follows

To invite NLC,KURA and Attorney General to shed more light on the issue of Mbagathi Way Link Road.

4.0 Receivable from Exchange Transactions

As disclosed in Note 26 to the financial statements, the statement of financial position reflects receivable from exchange transactions balance of Kshs.1,477,994,000. However, the following unsatisfactory mattes were noted.

4.1 Receivables from National Hospital Insurance Fund (NHIF)

As previously reported, the medical services receivables balance of Kshs.8,921,102,000 includes an amount of Kshs.903,098,855 due from NHIF while the NHIF financial statements as at 30 June, 2020 reflected a balance of Kshs.91,253,834 thus resulting to an un-reconciled variance totaling to Kshs.811,845,021.

Committee Observation

There was delay in the reconciliation of the inter-entity records and reports thus resulting in reporting inconsistent and misleading balances in the financial statements of the two institutions.

There existed a huge variance in the financial statements of the KNH and NHIF on receivable balances. This had the effect of inflating the receivables (current assets) of the KNH and understating the payables (current liabilities) of NHIF thus misrepresenting the fact.

4.2 Prepayment – Supply Contracts

The balance includes prepayments totaling to Kshs.352,355,000 out of which and amount of Kshs.31,734,000 related to supply contracts awarded to three firms of Kshs.15,793,000, Kshs.2,213,000 and Kshs.13,728,000. As reported in the previous year, the first prepayment is in dispute while the second one is under investigation. The third pre-payment relates to micro filming project at the Hospital which had not been completed as at 30 June, 2020. Although the issue has been discussed by the Public Investment Committee, no action has been taken on the recommendations that the three companies be investigated, prosecuted and the then Chief Executive Officer be held accountable for the loss and be surcharged.

Committee Observation

The Public Investments Committee in their 24th report observed that the matters, have been pending since the 19th PIC report which was adopted in 2015 and the related recommendations have never been implemented.

4.3 Impairment allowance

The balance is obtained from a gross balance of Kshs.9,340,844,000 less impairment allowance amounting to kshs.7,862,850,000 which includes long outstanding debts totaling to Kshs.6,990,141,202 whose recoverability is doubtful.

Committee Observation

The Committee observed that;

i) The Committee observed that a similar issue was discussed in the 24th PIC report where the committee observed that the matter arose due to KNH's management failure to provide a schedule of beneficiaries to the auditors. However, the recoverability of the impaired receivables is doubtful noting the circumstances under which it arose and lack of collateral. This could be manipulated with the view to defraud the Hospital.

ii) The position of the impairment allowance was worsening as revealed by the reported balances of which long outstanding debts whose recoverability is doubtful increased by KSh 459 million from the previous financial year.

iii) The credit policy of the KNH seems to be weak in substance and enforcement hence the ineffectiveness in debt collections that results in long outstanding debts.

4.4 Ministry of Health (MOH) Staff Long Outstanding Debts

As reported in the previous year, the balance includes MOH staff rent totaling to Kshs.7,477,924 that has been outstanding for more than one year, and which ought to have been deducted from the payroll through the check off system and forwarded to the Hospital.

Under the circumstances, the validity, accuracy, completeness and full recoverability of receivable from exchange transactions balance of Kshs.1,477,994,000 reflected in the statement of financial position as at 30 June 2020 could not be determined.

Committee Observations

The Committee observed that;

i) The rent arrears that had been outstanding for over one year was on an upward trend and increased by Ksh 4,479,118 from the previous financial year.
ii) The Hospital operated under a lenient rent policy with weak tenancy agreements coupled with poor enforcement of the policy. These contributed to the accumulation of rent arrears.
iii) Though the rent arrears have since been settled on 8th July 2022, the recovered amounts did not factor in the net present value for money on account of fluctuations in inflation rates. Consequently, the value of public money was eroded. Further, the claim by the Hospital that the full rent arrears have been settled was not substantiated since the supporting documents provided did not account for the entire rent arrears.
iv) KNH no longer hosts Ministry of Health staff, they directly engage clients.

OTHER MATTER

1.0 Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis totaling to Kshs.18,543,995,000 and Kshs.16,607,821,000 respectively, resulting to an underfunding amounting to Kshs.1,936,174,000 or 10% of the budget. Similarly, the statement reflects final expenditure budget and actual on comparable basis totaling to Kshs.17,095,420,000 and Kshs.15,737,210,000 respectively, resulting to an under performance amounting to Kshs.1,358,210,000 or 8% of the budget.

The underfunding affected the planned activities and may have impacted negatively on service delivery to the public.

Committee Observations

The Committee observed that;

i) Under performance of the budget derails realization of the set budget targets and therefore impairs public service delivery.
ii) The Hospital instituted remedial measures to enhance budget performance but there was no statistical evidence to what extent the measures have been effective in addressing the underperformance.

2.0 Unresolved Prior Year matters

In the audit report of the previous year, several issues were raised. However, the Management has not resolved the issues or given any explanation for failure to adhere to the provisions of the Public Sector Accounting Standards Board templates and The National Treasury and Planning Circular reference No. AG.4/16/3 Vol.1 (9) dated 24 June, 2020.

Committee Observation

The Committee observed that the Hospital failed to include a report on the progress made in resolving issues reported in the audit reports for the previous year. This was contrary to the reporting format prescribed by the Public Sector Accounting Standards Board and Section 81 (3) of the PFMA CAP 412 A.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1.0 Receivable from Non-Exchange Transactions

As disclosed in Note 27 to the financial statements, the statement of financial position reflects receivable from non-exchange transactions balance of Kshs.1,182,597,000. The balance includes staff receivables totaling to Kshs.13,070,000 out of which temporary imprests and staff debtors amounting to Kshs.7,422,563 and Kshs.1,406,054 respectively, have been outstanding for more than one year. This is contrary to Section 93(5) of the Public Finance Management (National Government) Regulations, 2015 which states that a holder of a temporary imprest shall account or surrender the imprest within 7 working days after returning to duty station. Section 93(6) further provides that in the event of the imprest holder failing to account for or surrender the imprest on the due date, the Accounting Officer shall take immediate action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank Rate. In the circumstance, the Management is in breach of the law.

Committee observation

The Committee observed that;

i. The hospital failed to enforce the provision of the PFM Act (National Government) 2015 Regulation 93(5) that prescribes that imprest surrender be made within 7 days. Pursuant to Regulation 93(7), the Accounting Officer who failed to recover the imprest committed an offence.
ii. Some Hospital employees left service due to death; dismissal; retirement or resignation before without settling the debts they owed the hospital. This indicates that the clearance procedures for those exiting are so lenient that debts owed are not deducted from terminal dues causing losses to the hospital.
iii. There is no admissible evidence that imprests of Kshs 868, 884 had been recovered in line with Regulation 93(6) of PFM (National Government) Regulations, 2015.

2.0 Medical Services Contracts Loss

As disclosed in Note 22 to the financial statements, as previously reported, the statement of financial performance includes medical services contracts loss totaling to Kshs.474,548,000. The following unsatisfactory observations were noted;

2.1 Contracts with National Hospital Insurance Fund (NHIF)

The balance includes loss from the National Hospital Insurance Fund (NHIF) totaling to Kshs.313,268,000. This loss is net of rebate received from the NHIF and the amount the Hospital spent in the treatment of

NHIF members. Review of records showed that the Hospital entered into a two years renewable medical service contract with the Fund with effect from 1August, 2010. Upon lapse of the two years and based on the renewal clause, the contract was renewed on the same terms with effect from 1st August, 2010. Since the contract provided for continuous engagement between the parties, the Hospital through several letters in years 2013 and 2014 raised concerns on losses incurred due to the unfavorable contracts.

Upon exhausting all the negotiation mechanisms without success, the Hospital Management sought to discontinue the loss-making contract. The intent to discontinue services to NHIF members was communicated to NHIF and the Ministry of Health in the month of April, 2014. NHIF responded on the same in the same month of April 2014 whereby NHIF explained its inability to increase the rebate that had been coupled with litigations causing delayed adjustment of premiums. Subsequently the hospital was directed by the Ministry of Health on 30 May, 2014 to continue offering the services on the same terms despite making losses.

The Management continued to engage the NHIF and the Ministry of Health on the loss making contracts in the year 2016. Although a renegotiated contract signed on 21 March, 2019 has enhanced the number of claimable services which will have a positive effect on the annual losses, the loss incurred during the year is still significant. Consequently, the Hospital will continue to incur losses if the reimbursable amounts are not reviewed.

Committee Observations

The Committee observed that;

i) Improved surgical packages have since been instituted with higher rates as a remedy for persistent losses on NHIF Medical Services Contract.
ii) The latest Contract covering 2022-2024 which has the revised enhanced rates came much later from the time the audit issue was raised. The delay to revise the rates exacerbated the accumulation of losses incurred by the hospital.
iii) The establishment of the KNH under a Legal Notice impairs its independence for enhanced service delivery and independent decision making without the control of the State Department of Medical Services in the Ministry of Health.

2.2 Free Maternity Program

As previously reported, the balance includes an amount of Kshs.161,280,000 relating to loss on free maternity program offered by the Hospital. This follows directive from the Cabinet Secretary, Ministry of Health which communicated the decision of the Government to reimburse an amount of Kshs.17,500 for every delivery. However, the Hospital being a referral hospital receives complicated maternal referrals and as a result, the costs are higher and the reimbursable amount of Ksh.17,500 per delivery has remained the same despite the high cost.

Consequently, the Hospital has continued to bear the high cost on free maternity program which have impacted negatively on the overall performance.

Committee Observations

The Committee observed that;

i) The enhanced reimbursable amounts for free maternity program under Linda Mama were an improvement of the previous free maternity programme but only partially addressed the issue of losses incurred by the hospital.
ii) The hospital management is currently pursuing further enhancement of the Linda Mama package to eliminate the loss and sustain provision of quality healthcare

Committee Resolution
The committee resolved that KNH submit a schedule of Linda Mama Package for 2019/2020.

3.0 Trade and Other Payables from Exchange Transactions
As similarly reported in 2018/2019, as disclosed in Note 26 to the financial statements, the statement of financial position reflects the trade and other payables from exchange transactions balance of Kshs.1,533,408,000. The balance includes balances totalling to Kshs.60,500,440 that have been outstanding for more than twelve (12) months. No explanation has been provided for failing to clear these long outstanding account payables.

In the circumstances, I am unable to confirm whether Management effectively used public resources by accumulating trade and other payables from exchange transactions totaling to Kshs.60,500,440 as at 30 June, 2020.

Committee Observations

The reported causes of the delays in payments including missing delivery notes, incomplete deliveries, awaiting credit notes and over invoiced amounts are issues that ought to have been conclusively resolved when the payable were first recognized in the books of KNH. The hospital therefore was slow in addressing the issues and the payables might have a risen out of dubious procurement processes.

The claim that the outstanding Trade and Other Payables have since been settled and the appended schedule as proof of settlement is inadmissible, since some of the payment therein relates to periods before the financial year under review.

4.0 Defined Benefit Pension Scheme Deficit
As disclosed in Note 36 to the financial statements, the statement of financial position reflects net defined benefit scheme balance of Kshs.8,771,990,000 which was to be paid by the Hospital as scheme Sponsor. The Hospital has been requesting for funding of the deficit through the budgetary process and in the last four years from 2015/16 to 2019/20, an amount of Kshs.100,000,000 per year has been allocated and subsequently disbursed to the scheme. However, the allocation per year towards the scheme deficit is not sufficient, as it will take over eight-seven (87) years to bridge the deficit and by which time most of the beneficiaries will have retired.
In the circumstances, I am unable to confirm whether the benefit scheme is prudently managed.

Committee Observations

The Committee observed that;

i. The deficit in defined benefits pension scheme payable by the Hospital as the Scheme's sponsor is operationally unsustainable and requires financing interventions. However, the rate at which the exchequer injected (Kshs.100 M) is unsustainable and the scheme may not be in a position to finance its pension obligations as and when they arise. This implies that the pensioners' benefits will not be adequately and timely financed by the scheme.

ii. The Hospital might have not considered the sustainability of the defined benefits pension scheme before instituting it by conducting proper financial forecasting or the scheme contributions were being mismanaged.

iii. The sustainability of the Scheme largely relies on additional funding from the exchequer, which is not guaranteed.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

BASIS FOR CONCLUSION

1.0 Long Outstanding Debts

As disclosed in Note 26 to the financial statements, the statement of financial position reflects receivables from exchange transactions balance of Kshs.1,477,994,000. The balance includes receivables totaling to Kshs.71,410,322, Kshs.95,658,100, Kshs.3,286,110 and Kshs.774,761,257 for National Hospital Insurance Fund (NHIF) rebate, Ministry of Health disaster debts, return to drawer (RD) cheques and absconded patients' debts respectively. Further, the balance includes rental receivables balance of Kshs.36,282,000 includes MOH staff rent totaling to Kshs.7,477,924 that has been outstanding for more than one year, and which ought to have been deducted from the payroll through the check-off system and forwarded to Kenyatta National Hospital.

Under the circumstances, I am unable to confirm existence of effective mechanisms of debt management by the Hospital.

Committee Observations

The Hospital had long outstanding debts made up of NHIF rebates Kshs. 71,410,322, Ministry of Health disaster debts Kshs. 95,658,100 and return to drawer (RD) Cheques Kshs 3,286,110 which had been outstanding for more than two years. Although the management had indicated that they have made efforts to recover the debts, the return to drawer (RD) Cheques Kshs 3,286,110 is a pointer to weak cash management and controls systems.

The management indicated that it shall initiate the process of write off. Owing to the fact that a huge balance of the long outstanding debts relates to MDAs; NHIF rebates Kshs. 71,410,322 Ministry of Health disaster debts Kshs. 95,658,100 this will encourage the culture for other institutions to over burden KNH budget.

The management of the Hospital did not justify the need for the write off, in line with the provisions of Regulation 157 (1)(a) PFM (National Government) Regulations 2015 which provides that an Accounting Officer may only write off losses if all reasonable steps have been taken to recover the debts and the loss is irrecoverable.

Committee resolution

The committee resolved that KNH provide a schedule of absconded patients debts for FY 2018/2019,2019/2020 and 2020/2021.

MIN/PIC SSAA/2023/ 82 **ANY OTHER BUSINESS**

No other Business

MIN/PIC SSAA/2023/ 83 **ADJOURNMENT**

The Chairperson adjourned the sitting at half past five in the evening. The next meeting will be held on Notice

Signed.....

Hon. Emmanuel Wangwe CBS, MP – Chairperson

Date.....25/7/24.....

MINUTES OF THE 40TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES, ADMINISTRATION, AND AGRICULTURE HELD AT THE COMMITTEE ROOM 7, PARLIAMENT BUILDINGS ON MONDAY 22ND MAY, 2023 AT 2.00 PM.

PRESENT:

1. Hon. Emmanuel Wangwe, CBS, MP — Chairperson
2. Hon. Caleb Amisi Luyai, MP — Vice Chairperson
3. Hon. Mary Wamaua Njoroge ,MP
4. Hon. (Dr.) Peter Francis Masara, MP
5. Hon. Abdi Jehow Fatuma, MP
6. Hon. Michael Wambugu Wainaina, MP

APOLOGIES:

1. Hon. Ferdinand Kevin Wanyonyi, MP
2. Hon. Nixon Nicholas Ngikolong, MP
3. Hon. Martin Peters Owino ,MP
4. Hon. CPA Geoffrey Wandeto, MP
5. Hon. Bishop (Dr.) Jackson Kipkemoi Kosgei, MP
6. Hon. Joshua Kivinda Kimilu, MP
7. Hon. Bernard Kibor Kitur, MP
8. Hon. Elijah Njore Kururia, MP
9. Hon. Paul Nabuin Ekwom, MP

IN ATTENDANCE:

SECRETARIAT

1. Mr. Aden Abdulahi — Principal Clerk Assistant I
2. Mr. Mark Namaswa — Clerk Assistant III
3. Ms. Christine Mariita — Clerk Assistant III
4. Ms. Mercy Kinyua — Legal Counsel
5. Ms. Esther Kariuki — Hansard Officer III
6. Mr. Wesley Abugah — Research Officer
7. Mr. Kevin Ojiambo — Media Relations Officer
8. Mr. Danton Kimutai — Audio Officer III
9. Mr. Ben Muthuri — Sergeant – At – Arms

OFFICE OF THE AUDITOR GENERAL

1.	Mr. Richard Nyakiru	D. Audit
2.	Mr. David Githinji	P.A –LRO

INSPECTORATE OF STATE CORPORATIONS

Mr.Edwin Murimi	IGC Rep

NATIONAL AUTHORITY FOR THE CAMPAIGN AGAINST ALCOHOL AND DRUG ABUSE (NACADA)

1.	Prof John Muteti	Ag. CEO
2.	Dr. Samuel Makini	NFSA
3.	Mr. John Njuku Kaguri	Mngr. Internal Audit
4.	Esther Nyanchama	Snr. Finance Officer

MIN/PIC SSAA/2023/70 **PRELIMINARIES**

The Chairperson called the meeting to order at 2:30 PM. He thereafter said a prayer.

MIN/PIC SSAA/2023/71 **SUBSTANTIVE AGENDA: EXAMINATION OF THE AUDITOR'S GENERAL REPORT OF THE NATIONAL AUTHORITY FOR THE CAMPAIGN AGAINST ALCOHOL AND DRUG ABUSE (NACADA) FOR THE FINANCIAL YEARS 2017/2018, 2019/2020 AND 2020/2021**

Prof John Muteti, the Acting CEO of NACADA was accompanied by Dr. Samuel Makini (NFSA), Mr. John Njuku Kaguri (Mngr. Internal Audit), and Esther Nyanchama (Snr. Finance Officer) appeared before the committee to adduce evidence on the Audited accounts of the National Authority for the Campaign Against Alcohol and Drug abuse for the Financial Year 2017/2018 to 2020/2021.

MIN/PIC SSAA/2023/72 **OPENING REMARKS**

i. The Office of the Auditor General informed the Committee that there are several other government entities that have unqualified opinion an example is the Department of Defense.
ii. The AOG further briefed the Committee that NACADA is a beneficiary of getting funds that have been requested for. It was able to live within their means.

Committee Observations

1. The Committee was informed that the Independent Police Oversight Authority (IPOA) and National Police Service Commission were one of the entities that got unqualified audit opinion. Kenya Power is one of the entities audited by private auditors (and get unqualified opinion).
2. The Committee was made aware that reports on Kenya Power that are audited by private entities often portray clean accounting outcomes but, AOG is not party to such outcomes. AOG does not have an interest in giving entities clean books.

Financial Year 2017/2018

Unqualified Report

Committee observation

The Authority was issued with Unqualified Report.

Committee Resolution

The Accounting Officer should continue upholding the sound financial management practices.

FINANCIAL YEAR 2018/2019

Unqualified Report

Committee observation

The Authority was issued with Unqualified Report

Committee Resolution

The Accounting Officer should continue upholding the sound financial management practices.

FINANCIAL YEAR 2019/2020

Unqualified Report

Committee observation

The Authority was issued with Unqualified Report.

Committee Resolution

The Accounting Officer should continue upholding the sound financial management practices.

FINANCIAL YEAR 2020/2021

The Committee heard that, the Authority was issued with Unqualified Report for the Financial Year 2019/2020. However, the Authority had two (2) other matters on lawfulness and effectiveness in use of Public Resources in the Auditor-General's Report as detailed below;

Financial Year 2020/2021

1. Failure to collect Long Outstanding debts

The committee was informed that the statement of financial position reflects long outstanding receivables from exchange transactions totalling Kshs.15,292,100 and as disclosed in Note 23 to the financial statements. Review of the debtors' aging analysis showed that debts amounting to Kshs.6,382,036 had been outstanding for more than one year. Included in these debts were AIEs issued to Regional and County Commissioners of Kshs.1,319,200 and dues from an audit firm of Kshs.3,119,986 which had been outstanding for more than three (3) years as at 30 June, 2021. The Management did not provide any evidence of the action being taken to recover these debts.

Committee Observations

The Committee observed the following;

i. The amount of Kshs 3,119,986 relates to the amount owed by Ernest and Young. The amount is a balance outstanding after a matter relating to how the firm was procured to offer services to NACADA was taken to court on the regularity of the procurement process. The matter is still in court through an appeal raised by EACC.
ii. The amount of Kshs 1,319,200 relating to A.I.Es issued to Regional and County Commissioners was not accounted for. Although the Accounting Officer-NACADA indicated that these amounts have been partially paid and the outstanding amount then stood at **Kshs 500,000** and Management wass following up on the outstanding balance, there was no documentary evidence of surrender by the respective Regional and County Commissioners.

Committee Resolutions

The Committee resolved that;

1. NACADA to provide documentation to demonstrate the proceedings in court to support their responses.
2. NACADA: Board resolutions to release the money to E&Y, how many bidders were there and to produce the returns of the money that was disbursed to several civil societies.
3. NACADA to provide regulations that allowed it to procure an external entity to disburse funds to CBOs and Civil Societies.

4. NACADA to provide returns on the Kshs. 1,319,200 debts as AIEs issued to Regional and County Commissioners.

2. Failure to acquire property ownership documents

The committee was informed that the Presidential and the Ministry of Interior and Coordination of National Government directives dated 28 August, 2015 and 13 August, 2019, respectively resulted in the renovation and transformation of the National Youth Service - Miritini Camp into a Rehabilitation Centre for youths affected by drug and substance abuse. However, by the time of audit, the land was yet to be transferred legally to the Authority.This is contrary to Section 79(1)(c)(i) of the Public Finance Management Act, 2015, which requires the Accounting Officer to ensure that adequate arrangements are made for the proper use, custody, safeguarding and maintenance of public property.

Committee Observations

The Committee observed the following;

1. The National Authority for Campaign Against Drug Abuse does not possess title deed for the land LR.NO. MN/VI/4755 in Miritini measuring 5.897 hectares and has been legally transferred to the Authority by the National Youth Service.
2. The Authority renovated and transformed the National Youth Service – Miritini Camp into a rehabilitation centre for youths affected by drug and substance abuse even before acquiring ownership documents.
3. There are entities being queried on complex matters on land that are beyond their mandate. The queries on land make entities look like they have audit queries on land but in reality it is a matter that would have been resolved by government itself.
4. Letters provided to show ownership and documentation status of NACADA land are incomplete, while some of the letters are unsigned.
5. Lack of proper land ownership documentation is contrary to Section 79(1)(c)(i) of the Public Finance Management Act, 2015, which requires the Accounting Officer to ensure that adequate arrangements are made for the proper use, custody, safeguarding and maintenance of public property. In the circumstances, Management was in breach of the law

Committee Resolutions

The Committee resolved that;

1. NACADA to provide a complete set of documents to the Committee.
2. There is a need for all government land to be held in trust by one entity, for instance Treasury to avoid the need for the back and forth whenever the use of land is needed.

MIN/PIC SSAA/2023/73 **ADJOURNMENT**

The Chairperson adjourned the meeting at 4:20 PM. The next meeting will be held on notice.

Signed: .....

Hon. Emmanuel Wangwe CBS, MP – Chairperson

Date: 25/7/25

MINUTES OF THE 46TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES, ADMINISTRATION, AND AGRICULTURE HELD IN COMMITTEE ROOM 9 PARLIAMENT BUILDING ON MONDAY, 19TH JUNE, 2023 AT 10.00 AM.

PRESENT:

1. Hon. Emmanuel Wangwe, CBS, MP — Chairperson
2. Hon. Caleb Amisi Luyai, MP — Vice Chairperson
3. Hon. Ferdinand Kevin Wanyonyi, MP
4. Hon. (Dr.) Peter Francis Masara, MP
5. Hon. Michael Wambugu Wainaina, MP
6. Hon. Abdi Jehow Fatuma, MP
7. Hon. Joshua Kivinda Kimilu, MP
8. Hon. Bishop (Dr.) Jackson Kipkemoi Kosgei, MP
9. Hon. Bernard Kibor Kitur, MP

APOLOGIES:

1. Hon. CPA Geoffrey Wandeto, MP
2. Hon. Martin Peters Owino ,MP
3. Hon. Nixon Nicholas Ngikolong, MP
4. Hon. Mary Wamaua Njoroge ,MP
5. Hon. Paul Nabuin Ekwom, MP
6. Hon. Elijah Njore Kururia, MP

IN ATTENDANCE:

SECRETARIAT

1. Mr. Aden Abdulahi — Principal Clerk Assistant II
2. Mr. Mark Namaswa — Clerk Assistant III
3. Ms. Christine Mariita — Clerk Assistant III
4. Mr. Wesley Abugah — Researcher III
5. Ms. Mercy Kinyua — Legal Counsel
6. Mr. Moses Esamai — Audio Officer III
7. Mr. Kevin Ojiambo — Media Officer

KENYA VETERINARY BOARD

1. Dr.Mary Agutu -Ag. CEO
2. Mr.Simon Gathete -Finance Admin Office

AUDITOR GENERAL'S OFFICE

1. Mr.Stephen Karanu — Director Audit

2. Ms.Ebby Adika Principal Auditor
3. Mr.David Githinji Principal Auditor LRO

MIN/PIC SSAA/2023/90 PRELIMINARIES

The Chairperson called the meeting to order at 10.00 AM thereafter he requested Hon. Bernard Kibor Kitur, MP for a word of prayer.

MIN/PIC SSAA/2023/91 SUBSTANTIVE AGENDA: EXAMINATION OF THE AUDITOR'S GENERAL REPORT OF THE KENYA VETERINARY BOARD (KVB) FOR THE FINANCIAL YEARS 2018/2019 TO 2020/2021

Dr. Mary Agutu, the Ag. Chief Executive Officer of Kenya Veterinary Board was accompanied by Mr. Mr. Simon Gathete appeared before the committee to adduce evidence on the Audited accounts of the Kenya Veterinary Board for the Financial year 2018/2019 - 2020/2021.

FY 2018/2019

a) Budget Control and Performance

The Committee heard that the statement of comparative budget and actual amounts reflect final income budget and actual on comparable basis of Kshs. 134,990,000 and Kshs. 133,482,668 respectively resulting to an under collection of Kshs. 1,507,332 or 1% of the budget. However, the statement reflects final expenditure budget and actual on comparable basis of Kshs. 142,500,000 and Kshs. 70,353,823 respectively resulting to and under expenditure of Kshs. 72,146,177 or 51% of the budget.

The under expenditure affected the planned activities and may have impacted negatively on service delivery to the public.

Committee observation

The committee observed as follows:

i. The Committee observed that, Kenya Veterinary Board (KVB) had budgeted to collect Kshs. 134,990,000 with a final expenditure budget of Kshs. 142,500,000. However, KVB did not explain how they intended to finance the budget deficit of Kshs. 7,510,000. The Board relied on unrealistic projections of revenue and expenditure leading to underperformance of the budget.

ii. The under collection of Kshs. 1,507,332 or 1% of the budget and the under expenditure of Kshs. 72,146,177 or 51% of the budget may have affected the planned activities and might have impacted negatively on the service delivery to the public.

Committee resolution.

The committee resolved that the books of KVB are in limbo and need serious revaluation.

b. Lack of an effective internal controls system

The committee heard that the review of the Board operations revealed that the Board does not have an established internal audit unit to oversee governance mechanisms and promote transparency and accountability in the management of resources. There is no approved internal audit charter detailing the scope, responsibilities and purpose for the internal audit function. Management did not avail any documented risk management policy to guide the enterprises risk management processes effectively.
Consequently, I am unable to confirm effectiveness on internal control, risk management and governance.

Committee observation

i. The board operated without internal audit unit to oversee governance mechanisms and promote transparency and accountability in the management of resources contrary to the provisions of section 73 (1) (a) of the Public Finance Management Act, 2012 and the attendant regulations. Further, there was no approved internal audit charter detailing the scope, responsibilities and purpose for the internal audit function.
ii. KVB management did not have a documented risk management policy to guide the enterprises risk management processes effectively as at the time of audit review.
iii. The then Accounting Officer breached Regulation 165 (1) (a) (b) of the Public Finance Management (National Government) Regulations, 2015 which provides that the Accounting Officer shall ensure that the national government entity develops risk management strategies, which include fraud prevention and a system of risk management and internal control that builds robust business operations.

Committee resolution.

The committee resolved that management submit documentation showing the current status of staffing for each department in KVB.

2019/2020 Financial Year

a) Budgetary Control and Performance

The committee heard that the statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs. 143,500,000 and Kshs. 126,063,608 respectively resulting to an under-funding of Kshs. 17,436,392 or 12% of the budget. Similarly, the statement reflects final expenditure budget and actual on comparable basis

of Kshs. 143,500,000 and Kshs. 85,579,789 respectively resulting to an under expenditure of Kshs. 57,920,211 or 40% of the budget.

Based on the approved estimates, under funding and under expenditure affected the planned activities and may have impacted negatively on service delivery to the public.

Committee observation

i. The under-funding of Kshs.17,436,392 or 12% of the budget and the under expenditure of Kshs. 57,920,211 or 40% of the budget may have affected the planned activities and might have impacted negatively on the service delivery to the public.
ii. The explanation by the KVB management that the under-expenditure of Kshs. 56,760,416 on Building arose from the construction of the Kenya Veterinary Board Resource Centre which was affected by Covid-19. However, the contract agreement stipulating the contract implementation timelines to the effect that it took over one (1) financial year were not provided noting that project was initiated, budgeted for and funded in the financial year 2018/2019 before the Covid -19 closure directive.
iii. The KVB management did not submit the completion certificate for the Kenya Veterinary Board Resource Centre.
iv. The committee noted that there is huge gap in terms of governance and administration as queries picked by auditors would have been resolved if it was properly handled through their response in Letter of management.

Committee resolution.

The committee resolved as follows:

1. That KVB submit a copy of the construction contract for Phase 1 and 2.
2. That Management of KVB submit Board approval for the construction project.
3. That KVB provide a write up for procurement of the project, a schedule showing the advert and tendering process up to the awarding of the tender.

b. Lack of Enterprise Risk Management Policy

The committee heard that During the year under review, the Board did not have a well-documented Enterprise Risk Management Strategy and Policies in place to effectively guide the enterprises risk management processes at large.

In the circumstances, the Auditor General was unable to confirm Management's preparedness to mitigate against risk.

Committee observation

i. The then Accounting Officer breached Regulation 165 (1) (a) (b) of the Public Finance Management (National Government) Regulations, 2015 which provides that the Accounting Officer shall ensure that the national government entity develops risk

management strategies, which include fraud prevention and a system of risk management and internal control that builds robust business operations.

ii. The committee observed that management of KVB had a challenge there was no Board hence the policy would not have been approved however that has change due to the existence of the Board.

2020/2021 Financial Year

a) Failure to have a fully constituted Board of Directors

The committee heard that the statement of financial performance reflects an amount of Kshs. 12, 915,509 in respect of remuneration of Board of Directors. However, the Board of Directors' tenure of office ended on 20th March 2021 and a new Board has not been appointed as at 30th June 2021. Further, a review of the status as at the time of audit in the month of December, 2021 revealed that three (3) instead of four (4) veterinary surgeons and one (1) instead of three (3) veterinary paraprofessionals had been appointed. This is contrary to section 4 (1) paragraphs (f) and (g) of the Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011 which provides that the Board shall consist of four (4) registered veterinary surgeons elected by registered veterinary surgeons and appointed by the Cabinet Secretary and three (3) veterinary paraprofessionals appointed by the Cabinet Secretary after being elected by registered veterinary paraprofessionals.In the circumstances, the Board may not have effectively executed its mandate.

Committee observation

i. The Board of Directors was not appointed as per the VSVP Act, 2011 and therefore operated illegally. In this respect the amount Kshs.12, 915,509 on remuneration of the then Board of Directors whose term of office had expired on 20th March, 2021 was illegally paid.

ii. The Board was gazetted on 13th January 2023 in compliance with the VSVP Act 2011. This meant KVB was in breach of their establishing Act between 20th March, 2021 and 13th January, 2023 and the business carried on by the improperly appointed Board of Directors was questionable and invalid.

iii. The then Cabinet Secretary for Agriculture and Livestock Development breached section 4 (1) paragraphs (f) and (g) of the Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011 which provides that the Board shall consist of four (4) registered veterinary surgeons elected by registered veterinary surgeons and appointed by the Cabinet Secretary and three (3) veterinary paraprofessionals appointed by the Cabinet Secretary after being elected by registered veterinary paraprofessionals

iv. The committee after deliberation noted that KVB has a dully constituted Board and the matter has since been resolved.

Committee Resolution

The committee resolved as follows:

That management submit a breakdown of how the Kshs.12.9 M was spent including the agenda of meetings held.

b. Understaffing of the Kenya Veterinary Board

The committee heard that Examination of the Board's approved staff establishment revealed an optimal staff level of two hundred and two (202) employees. However, only twenty (20) employees were in post resulting in a variance of one hundred and eighty-two (182) employees.

In addition, the Board's core function of inspectorate as stipulated in Section 6 (2)(m) of the Veterinary Surgeons and Veterinary Paraprofessionals' Act, 2011 is to create an inspectorate to work in collaboration with law enforcement agencies to locate, inspect and close down premises or ambulatory clinics operated contrary to the practices prescribed under the Act and take legal action against offenders. However, the Board had only two inspectors serving the forty-seven counties.

In the circumstances, the Board lacks enough staff to manage the day-to-day activities as well as the core function of inspectorate as stipulated by law.

Committee observation

i. The committee noted there is power interference from the CS who suspended the recruitment which is not within his mandate.
ii. The understaffing of the Board may have affected the realization of the organization core function and might have impacted negatively on the service delivery to the public.
iii. The Board's core function of collaborating with law enforcement agencies to locate, inspect and close down premises or ambulatory clinics operated contrary to the practices prescribed under the Act and taking legal action against offenders was not achieved despite being acritical role in ensuring quality of services and heath of the public as beneficiaries.

Committee resolution.

The committee resolved as follows:

1. That management submit instrument of power.
2. That management to submit Executive Order for 2020/2021 that approved the structure of governance in the ministry.
3. That KVB submit documents confirming the existence of the Board.
4. The committee encouraged the DG to push the Board to employee more staffs before the resources available disbursed to other areas.

MIN/PIC SSAA/2023/ 92 ANY OTHER BUSINESS

The committee raised the following concerns on the general core mandates of KVB in our country

1. The committee sought to know whether KVB offers advisory opinion to the ministry of agriculture and how they carry it out.
2. Whether KVB has ever done sensitisation to the public and how many institutions in the country that offers such services.
3. The committee questioned whether KVB had enough staff to mitigate any outbreak of diseases across the country.
4. The committee sought clarification on whether KVB services is a national government function or county government function.
5. The committee sought to know how it can help or intervene for better service delivery in the country.

Management Response

The Chief Executive officer (CEO) of the Kenya Veterinary Board informed the committee that changes in the University Act limits the board from inspecting the Universities hence they are unable to monitor and evaluate the quality of education offered.

The CEO further informed the committee that KVB is regulated by National government however services are offered by counties. In terms of sensitization the CEO notified members that KVB has partnered with Associations in Kenya which continuously does professional trainings also the CEO indicated that KVB has Veterinary world day specifically meant to sensitize livestock farmers.

The Chief Executive officer (CEO) welcomed ideas from the committee that when such events or field visits are carried out Members of parliament should be involved and also every county be encouraged to carry out sensitization to the public at large, further KVB to do adverts .

MIN/PIC SSAA/2023/ 93 **ADJOURNMENT**

The Chairperson adjourned the sitting at Twelve Noon. The next meeting will be held on Notice.

Signed.....

Hon. Emmanuel Wangwe CBS, MP – Chairperson

Date.....

MINUTES OF THE 62ND SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES, ADMINISTRATION, AND AGRICULTURE HELD ON TUESDAY 5TH SEPTEMBER, 2023 AT THE COMMITTEE ROOM 7, PARLIAMENT BUILDINGS AT 9:00 AM.

PRESENT:

1. Hon. Emmanuel Wangwe, CBS, MP — **Chairperson**
2. Hon. Caleb Amisi Luyai — **Vice Chairperson**
3. Hon. Nixon Nicholas Ngikolong, MP
4. Hon. Abdi Jehow Fatuma, MP
5. Hon. Bishop Emeritus (Dr.) Jackson Kipkemoi Kosgei, MP
6. Hon. Joshua Kivinda Kimilu, MP
7. Hon. Paul Nabuin Ekwom, MP

APOLOGIES:

1. Hon. Ferdinand Kevin Wanyonyi, MP
2. Hon. Martin Peters Owino, MP
3. Hon. (Dr.) Peter Francis Masara, MP
4. Hon. Mary Wamaua Njoroge, MP
5. Hon. Bernard Kibor Kitur, MP
6. Hon. Geoffrey Wandeto, MP
7. Hon. Michael Wambugu Wainaina, MP
8. Hon. Elijah Njore Kururia, MP

IN ATTENDANCE:

SECRETARIAT

1.	Mr. Aden Abdullahi	Principal Clerk Assistant II
2.	Mr. Mark Namaswa	Clerk Assistant III
3.	Ms. Mercy Kinyua	Legal Counsel
4.	Mr. Wesley Abugah	Research Officer
5.	Mr. Moses Esamai	Audio Officer
6.	Mr. Kevin Ojiambo	Media Officer
7.	Mr. Noah Chemweno	Sergeant – At – Arms

OFFICE OF THE AUDITOR GENERAL/INSPECTORATE OF STATE CORPORATIONS

1.	Mr. Elijah Kimani	Principal Auditor
2.	Ms. Winnie Okechi	Auditor Assistant
3.	Mr. David W. Githinji	PA - LRO
4.	Mr. Jeff Otieno	Associate Auditor LRO
5.	Mr. Trevor Odhiambo	Auditor Assistant
6.	Mr. David Wambua	Senior Inspector **(ISC)**
7.	Ms. Fauzia Shauri	Liaison **(MOH)**

MIN/PIC SSAA/2023/96 **PRELIMINARIES**

The Chairperson called the meeting to order at 9:30 am followed by a word of prayer from Hon. Caleb Amisi, MP.

MIN/PIC SSAA/2023/97 **MEETING THE KENYA MEDICAL SUPPLIES AUTHORITY TO CONSIDER THE AUDITOR-GENERAL REPORTS ON THE ACCOUNTS OF KEMSA FINANCIAL YEARS 2017/2018, 2018/2019, 2019/2020 AND 2020/2021**

Dr. Andrew Mulwa (Acting CEO- KEMSA) accompanied by Mr. Waiganjo Karuga (Director-Finance and Strategy), Mr. John Kabuchi (Acting Procurement Director), Ms. Carol Anunda (Finance Manager), and Edward Njoroge (Operations Director) appeared before the committee to adduce evidence on the status of KEMSA.

The Committee administered the oath to the witnesses: Dr. Andrew Mulwa, Mr. Waiganjo Karuga and Mr. John Kabuchi; and the Oath to Ms. Carol Anunda and Edward Njoroge.

FY 2017/2018

MIN/PIC SSAA/2023/98 **STAFF COST**

The Committee was informed that the staff costs of Kshs 765,607,575 as disclosed in the statement of financial performance for the year ended 30 June 2018 includes Kshs.9,326,710 paid to forty (40) officers employed during the year and two (2) who were promoted during the year. However, the approved staff establishment for the forty-two (42) vacancies filled was not availed for audit review.

Further, the Authority had seven hundred and fifty-nine (759) employees as at 30 June 2018 against an approved staff establishment of three hundred and forty-one (341) resulting in the unapproved over employment of four hundred and eighteen (418) officers.

Consequently, the propriety of the staff cost of Kshs.765,607,575 for the year ended 30 June 2018 could not be confirmed.

Committee Observations

The committee observed that a similar audit query was raised in 2016/2017. However, the committee observed that;

i. The Board approved KEMSA establishment was 341 and in Financial year 2016/2017 KEMSA had 329 in-post staff, after recruiting 40 more in Financial year 2017/2018 the in-post figure stood at 324 against an expected figure of 369 if no staff had exited. However, KEMSA did not provide any documentary prove that the Fourty five (45) staff had exited KEMSA in 2017/2018 either through retirement, natural attrition, dismissal or resignation. This could lead to existence of ghost workers.

ii. There existed approval from the Board allowing management to employ staff on contractual terms as and when need arises as per minutes REF:MIN/44/FB/2013 for the meeting held on 15th October 2013) and that all the contracted staff are always paid off

and leave upon expiry of their contracts.

iii. The Kshs.8,787,805 paid to twenty six (26) seconded staff who have been working for the Authority for over six (6) years contrary to the Authority's human resource policies and procedures paragraph 7.3 which restricts secondment to a period not exceeding three years and renewable once (total six years) was irregular since no justification for KEMSA breaching its own manual.

iv. Twelve (12) of the seconded staff did not possess special skills contrary to paragraph 7.3 of the human resource policies and procedure which provides for secondment of employees with special skills that are not available within the Authority.

v. It is not clear whether KEMSA adhered to its human resource policies and procedures on seconded staff as the response did not address the question at hand as at 30 June 2018 on overstayed and non-specially skilled seconded staff.

vi. There were no details provided on the advertisement for the 40 employees hired in the financial year, and the report from the interview panel indicating the criteria for merit;

vii. There is no evidence that KEMSA had sought approval from the Salaries and Remuneration Commission for the establishment and salary rates.

viii. Except for the Boards approval of the establishment, there is no evidence that KEMSA had sought SCAC's guidance on the development of the Human Resource Instruments. Further, the Human Resource Instruments then would have been approved by the Public Service Commission to culminate in a reviewed organization structure, staff establishment, grading, career guidelines and Human Resource Policy and Regulations manual for KEMSA.

ix. KEMSA did not provide the approved SRC salary scales for the established cadres and therefore no evidence was adduced to prove that the salaries paid for the respective cadres was in tandem with SRC salary review.

EXPIRED/DAMAGED DRUGS

The Committee was made aware that the net sales balance of Kshs.709,435,073 for the year ended 30 June 2018 is arrived at after deducting the cost of sales (pharms) of Kshs.2,441,247,836. The cost of sales figure includes an amount of Kshs.150,423,159 for expired/damaged drugs that were unsaleable due to expiry or damage. No explanation has been provided for stocking expired/damaged drugs.

Committee Observations

i. A similar issue was raised in FY 2016/2017 and discussed by PIC in the 22nd Report. The committee had observed that;

   a) the expiry of drugs was not due to breach of contractual terms but due to change in drug regimen indicating poor planning by KEMSA. The Agency should ordinarily know which drugs are obsolete and which drugs are going to be introduced into the market.

b) KEMSA indicated that they had devised strategies to determine the demand of drugs from across the counties which included constant engagement and collecting data to avoid expiry of drugs as well as other strategies such as prioritizing on shelf life of drugs.

Arising from this, the committee observed that KEMSA did not provide any documentary prove of the improvements made through the devised strategies or whether such strategies ever existed such as prioritizing on shelf life of drugs.

ii. KEMSA did not manage its Drugs stock for the purpose of preventing wastage, loss, and continuing utilization of supplies. Further, KEMSA did not avoid unprofitable lock-up of funds by keeping stocks to the minimum necessary for the efficient conduct of the its (KEMSA) supply/operations. In addition, the committee observed that KEMSA had not put in place strategies that will prevent wastage such as the use of anticipatory patterns to predict demand of drugs from the Counties. Thus, KEMSA contravened Section 160 (1) of the Public Procurement and Asset disposal Act 2015.

iii. KEMSA had treated expired drugs as saleable drugs in the financial statements as pointed out in the audit report that the cost of sales figure includes an amount of Kshs.150,423,159 for expired/damaged drugs that were unsaleable due to expiry or damage. This is misleading to the users of financial statements as it inflates the current assets.

Committee Resolution

The Committee Resolved that;

i. KEMSA provides a list of suppliers for the drugs worth Ksh. 150, 423,159 that expired in the Financial Year 2017/2018
ii. KEMSA to provide evidence of procurement of the drugs right from the tendering process, advertisement and procurement ss cited in the Financial Year 2017/2018
iii. KEMSA to provide a certificate for the destruction of the expired drugs worth Ksh. 150, 423,159 in the Financial Year 2017/2018
iv. There was no list of counties that the expired drugs were supposed to be supplied to;
v. The entity to explain how the Ksh. 150, 423,159 worth of expired drugs were written off from the books of accounts of the entity in the Financial Year 2017/2018
vi. The entity to provide the percentage rate of drugs across the financial years (2017/2018, 2018/2019, 2019/2020 AND 2020/2021)

BOARD EXPENSES

The Committee was informed that the validity of sitting and lunch allowance expenses totaling to Kshs.1,660,999 paid to the four board members could not be confirmed for the year ended 30 June 2018.

Committee Observations

The committee observed that:

i. The response by KEMSA was too general rather than addressing the specific audit query raised on sitting and lunch allowance of Kshs.1,660,999 paid to four (4) board members which were not supported by invitation letters and minutes of meetings held. KEMSA tried to justify the reason for appointment and existence of the four board members rather than supporting their expenditure. Therefore, the expenditure was irregular.

ii. KEMSA has continued to experience serious Governance issues arising from deliberate lack of substantive office holders as indicated. KEMSA has not had a substantive board chair since 9th October 2015, following the expiry of the second term of the then Chairman. KEMSA also did not have a substantive Chief Executive Officer from 1st January 2017 to 30th June 2018. The absence of substantive holders of the two offices posed various operational challenges in the strategic management of the organization and thus poor governance.

PROPERTY, PLANT AND EQUIPMENT

4.1 Land

The Committee was made aware that the property, plant and equipment balance of Kshs.3,968,606,648 as at 30 June 2018 includes land at a cost of Kshs.1,786,967,270 which includes various parcels of land spread across the country and valued at Kshs.158,000,000 for which the Authority does not possess ownership documents. It has not been possible to confirm the ownership of the eight (8) parcels of land and whether the land cost of Kshs.1,786,967,270 is fairly stated as at 30 June 2018.

Committee Observations

The committee observed that the issue was discussed in the 19th and 20th PIC reports and noted that;

1 The Agency had taken an inordinate amount of time to register the title deeds despite having the necessary documentation in place. The situation has not changed over seven years now down the line. The committee was concerned that KEMSA had engaged Priority Management Limited, (Conveyance experts) through KTK Advocates to handle the issue, in the financial year 2012/2013 but had nothing positive to show with regard to the land ownership documents.

2 The lawyers contracted to register the leases and title deeds of lands belonging to the KEMSA as per the 22nd PIC report had been paid approximately Kshs. 2,000,000 then for

the titles registered. However, the total payments to date could not be established and the consultants/lawyers could have continued to draw money from KEMSA with no corresponding services rendered.

3 It was also not clear whether KEMSA had engaged other conveyance experts as indicated in their submission to the committee to the extent that KEMSA Board had taken up the issue of titles on KEMSA Land seriously and had engaged a Conveyance expert to handle the issue of realization of the title's deeds within a specified time frame. The specified time frame, how the conveyance experts were engaged, the terms and the charges is unknown as the same were not documented.

4 It was not clear why KEMSA had not engaged the National Lands Commission on the lands matter.

5 That KEMSA did not obtain documents of title for the Meru Municipality land measuring 0.3 Hectares but was instead allocated 10 acres by the County Government in 2021 to which Title No: Meru Central/Ruiri Rwarera/11514 dated 16 December, 2021 was issued.

6 KEMSA did not provide any documentary evidence that they had sought the intervention of the Ministry of Health, or the Ministry of Lands, Public Works, Housing and Urban Development to address the delay in issuance of titles.

7 The committee also observed that in the 22nd PIC report, as pertains to the Eldoret land which KEMSA had stated that part of the land was occupied by the Kenya National Highways Authority, KEMSA did not apprise the committee on its current status.

7.2 Motor Vehicles

The property, plant and equipment balance of Kshs.3,968,606,648 includes motor vehicles' net book value of Kshs.62,31 5,900 which include four (4) vehicles with a net book value of Kshs.2,574,000 that are owned by the National Government. No explanation has been provided for failing to transfer the ownership documents of these vehicles to the Authority.

In the circumstances, it has not been possible to confirm the ownership of the four (4) motor vehicles and whether the motor vehicles net book value of Kshs.62,315,900 is fairly stated as at 30 June 2018.

Committee Observations

The committee observed that;

i. The Agency (KEMSA) had taken an inordinate amount of time to register the vehicles despite having the necessary documentation in place. Their continued inclusion in the KEMSA financial statements may be misleading to the users since MOH appears to have continued control over the vehicles and recall them at will.

ii. KEMSA has been in possession of vehicles transferred from the Ministry of Health without logbooks neither did it have any written proof that the said vehicles had been handed over to them.

7.3 Work in progress

The work-in-progress balance of Kshs.494,320,413 as at 30 June 2018 includes Kshs.321,360,535 paid to a consultant engineer for the design and supervision of the construction of the warehouse and office block. However, according to documents availed, the amount payable for the design was Kshs.126,279,953 (being 4.1% cost of works of Kshs.3,079,998,859) resulting in an overpayment of Kshs.195,080,582 that was not explained or supported.
Committee Observations

i. The purported advert provided by KEMSA was just a letter addressed to the lead consultant- Ms Maestro Architects and evaluation was merely confirmation of whether all the other Eight consulting firms in the consortia were technically and professionally compliant.

ii. The committee observed that the argument by KEMSA that the fees charged by the consultants was based on the State Department of Public Works fees schedule in the condition of engagement 1987; and as outlined in the Conditions of Engagement and Scales of Fees for Professional Services for building and civil Engineering works could not confirmed.

iii. Further, an undated and unsigned evaluation report submitted by Ministry of Transport, Infrastructure, Housing and urban Development to KEMSA puts the figure at Kshs. 163,590,536.22 while a letter dated 10th November 2017 from the same Ministry had put the figure at approximately Kshs. 289,000,000 thus contradictory.

iv. The Kshs.321,360,535 paid to a consultant engineer for design and supervision of construction of warehouse and office block and Kshs.22,466,643 paid to a consultant engineer for supervision of renovations could not be confirmed as a proper charge to public funds.

v. KEMSA did not furnish the committee with the contract advertisement for the work in progress, minutes of evaluation(both technical and financial), professional opinion, offer and acceptance letters, awarding minutes and letter, the duly contract document and completion certificate.

RECEIVABLES FROM EXCHANGE TRANSACTIONS

The Committee was informed that, as previously reported, the receivables from exchange transactions balance of Kshs.4,122,083,110 reflected in the statement of financial position as at 30 June 2018 includes long outstanding receivables totaling Kshs.3,400,428,351 comprising of counties Kshs.2,345,622,268 and the Ministry of Health Kshs.1,054,806,083 whose recovery is doubtful.

Committee Observations

The committee observed that

i. Despite KEMSA indicating that follow-up with the Ministry of Health was done through correspondences, there's no evidence that the pending bills have been cleared or the commitment that the Ministry of health will clear the debt.
ii. Since the Ministry ought to have provided Funding to KEMSA first before provision of the mentioned services, it's not clear how the debt arose from the Supply Chain Services (Warehousing, Procurement and Distribution) offered by KEMSA to the various national programs under the Ministry of Health.
iii. There is no evidence that the debts owing from the counties has been cleared and what steps have been taken to recover the amount presumed owing from Kisumu County of Kshs 35,748,735.98
iv. PIC in its 22nd report had discussed the audit issue and observed that The National government had spent approximately Kshs.600,000,000 to procure drugs from KEMSA in a period of 90 days during the 2016/17 financial year. This was despite the national government having no role in purchase of drugs (for counties) as per the fourth schedule of the constitution which delimits the roles to be performed by the two levels of government.
v. Despite assurances by Management, KEMSA still lacks effective debt collection measures to discharge its obligations as they fall due.

6.0 Trade and Other payables

Trade and other payables from exchange transactions balance of Kshs.833,920,091 as at 30 June 2018 include long outstanding Medical creditors of Kshs.22,888,538.84 and operation creditors of Kshs.35,681 976.80 that have been outstanding for a long period of time. Consequently, the accuracy and validity of the trade and other payables from the exchange transactions balance of Kshs.833,920,091 as at 30 June 2018 could not be confirmed.

Committee Observations

i. The Committee observed that M/S Med Africa ltd was awarded a Contract to supply, Install, and Commission Diesel Fired Incinerators at Busia, Kitale, and Wajir County Referral hospitals on 25th June 2015 with a delivery period of 24 weeks. However, the sheds to house the incinerators were not ready since the Ministry of Health who were responsible for the construction of the three incinerator sheds did not prepare the sites as expected. The Principal Secretary had advised KEMSA vide **letter (*REF.NO MOH /ADM/1/1/VOL.1 dated 24th March 2016*)** to pay Med Africa Ltd 70% of the contract

amount. 30% of the contract **(Ksh 14,891,184)** is what is outstanding awaiting installation and commissioning of the incinerators

ii. The status of the sheds and installation of the incinerator at Wajir is still unknown since there is no update on the matter.

iii. M/s Meditec Systems Ltd was awarded a contract for procurement of cancer, surgical dental, and diagnostic equipment worth **USD 3,368 374.20** on 28th November 2012. One of the items in the contract was the construction of the bunker and civil works, which was to take 47 weeks to be completed. However, at the time M/s Meditec Systems Ltd were forwarding the final certificate, funds were not enough to service the final payment **(Ksh 2,290,509.84)** due to changes/fluctuations in exchange rates. KEMSA received the extra funds from the Ministry of Health and the supplier paid in FY2021/2022. The committee did not get any documentary evidence of final settlement.

iv. ***On OMAERA PHARMACEUTICALS LTD with an amount payable of Kshs. 5,706,845.00. The committee observed that the*** **Alimox (Amoxicillin Oral suspension was recalled in 2016 by the Pharmacy and Poisons Board due to quality issues. The Manufacturer could not, therefore, manufacture the product until the Manufacturing Authorization was reinstated. The product was delisted from the Kenya Essential Medicines List and hence the manufacturer could not replace the product with fresh batches.** In July 2019, an agreement was reached between KEMSA and Omaera and the supplier was requested to replace the delisted Alimox with Amoxicillin Dispersible tablets 250mg at the same value of the delisted product which was done in November 2019.

However, no documentary evidence was adduced before the committee to prove the agreement and delivery. Arising from the foregoing the committee was of the view that KEMSA did not assess the quality of the products they received in their stores before acceptance thus breaching section 150 of the Public procurement and Asset Disposal Act, 2015 on acceptance of goods, works and services.

v. ***The Operational Creditors of Kshs.35,681,976.80 related to*** Crown Agents Kenya Ltd, GTZ and John Snow who had formed a consortium with KEMSA for Tendering, Implementation and Winding up Phase for Providing Procurement and Supply Chain Management Services to the GFATM programs in Kenya. However, at the end of the

Financial Year, KEMSA had received part of the Procurement and Supply Chain Management Consortium (PSCMC) fees from the principal recipient hence providing for payables to the partners whose remittance to the consortium partners was delayed until FY 2020/2021.

vi. The delivery note provided for the supply of drugs after an agreement was reached between KEMSA and Omaera and the supplier requested to replace the delisted Alimox with Amoxicillin Dispersible tablets 250mg was not adding up. It was outside the respective year under review (beyond the financial year cycle)

vii. An amount of Kshs. 3,829,479 included in the long outstanding customer prepayment was a direct deposit dating back 2016. It was not clear whether there was any refund or how the prepayment was handled by KEMSA.

viii. The amount of Ksh. 9,858,300 was a retention for Alliance Technologies Ltd after the termination of the contract between them and KEMSA arising from failure to meet obligations under the contract. However, Alliance Technologies had sought legal redress and the matter is still in court.

ix. KEMSA still has not paid some suppliers for goods supplied and services rendered from as far back as 2013. There is no justification for the continued delay.

x. KEMSA is still holding funds in its accounts that should ideally be surrendered to the Unclaimed Financial Assets Authority.

1. Budgetary Performance

The Committee heard that, during the year under review, the Authority's actual receipts amounted to Kshs.3,059,979,000 against budgeted receipts of Kshs.3,861,226,000 resulting in a revenue shortfall of Kshs.801,247,000 equivalent to 21% of the budget. The bulk of the revenue shortfall was from net sales which had actual collection of Kshs.709,435,000 against budgeted receipts of Kshs.1,162,381,000 resulting in a shortfall 452,946,000. Further, the Authority's actual expenditure for the year amounted to Kshs.2,222,683,000 against budgeted expenditure of Kshs.2,605,105,000 resulting in an overall under absorption of Kshs.382,422,000. It is therefore clear that the Authority did not fully achieve its budget objectives which adversely affected delivery of the intended services to the public. Therefore, there is need for the Authority to review its budget making process with a view to coming up with a realistic budget to support the attainment of the core mandate of procuring, warehousing and distribution of medical commodities to public health activities in the Country.

Management Response

NO RESPONSE

Committee Observations

The committee observed that;

i. The Acting CEO- KEMSA did not have a written submission to the budgetary performance audit query.

ii. The bulk of the revenue shortfall was from net sales which had actual collection of Kshs.709,435,000 against budgeted receipts of Kshs.1,162,381,000 resulting in a shortfall 452,946,000. This is the core business of KEMSA and drugs are always in high demand thus not clear how they under-collected or the budget was unrealistic.

iii. The Authority's actual expenditure for the year amounted to Kshs.2,222,683,000 against budgeted expenditure of Kshs.2,605,105,000 resulting in an overall under absorption of Kshs.382,422,000. Therefore, the Authority did not fully achieve its budget objectives which could have adversely affected delivery of the intended services to the public.

INSURANCE EXPENSES

The insurance costs of Kshs.97,896,057 for the year ended 30 June 2018 include staff group life assurance of Kshs.4,343,068. However, the staff group insurance service was single-sourced as no evidence of competitive bidding was availed for audit verification. This is contrary to Section 96 of the Public Procurement and Assets Disposal Act, 2015 which requires the accounting officer to take such steps as are reasonable to bring the invitation to tender to the attention of all those who may wish to submit tenders. Management was therefore in breach of the law and the validity of the staff group life assurance expenses of Kshs.4,343,068 for the year ended 30 June 2018 could not be confirmed.

Committee Observations

The committee observed that;

i. The staff group insurance service was single sourced contrary to Section 96 of the Public Procurement and Assets Disposal Act, 2015 which require the accounting officer to take such steps as are reasonable to bring the invitation to tender to the attention of all those who may wish to submit tenders.

ii. Further, although direct procurement method was used, the circumstances did not meet the conditions set for direct procurement as laid down in Section 91 and section 103(2)(d) of the Public Procurement and Assets Disposal Act, 2015 and therefore the procurement method is not justified in the circumstances.

iii. KEMSA misinterpreted and used the supplier Trust deed clause "the life assurance benefit" to justify its irregular process of single sourcing procurement. The clause has no relationship with the method used and a supplier cannot dictate to a procuring entity what, how and when to procure.

iv. The staff group life assurance was unnecessary in the circumstances and the expenditure Kshs.4,343,068 was nugatory.

MIN/PIC SSAA/2023/99 **ADJOURNMENT**

There being no other business, the Chairman adjourned the sitting at 1:30 PM.

Signed.....

Hon. Emmanuel Wangwe CBS, MP – Chairperson

Date.....

25/07/24

MINUTES OF THE 63RD SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES, ADMINISTRATION, AND AGRICULTURE HELD ON TUESDAY 5TH SEPTEMBER, 2023 AT THE COMMITTEE ROOM 7, PARLIAMENT BUILDINGS AT 2:00 PM.

PRESENT:

1. Hon. Emmanuel Wangwe, CBS, MP — **Chairperson**
2. Hon. Caleb Amisi Luyai — **Vice Chairperson**
3. Hon. Nixon Nicholas Ngikolong, MP
4. Hon. Abdi Jehow Fatuma, MP
5. Hon. Bishop Emeritus (Dr.) Jackson Kipkemoi Kosgei, MP
6. Hon. Joshua Kivinda Kimilu, MP
7. Hon. Paul Nabuin Ekwom, MP

APOLOGIES:

1. Hon. Ferdinand Kevin Wanyonyi, MP
2. Hon. Martin Peters Owino, MP
3. Hon. (Dr.) Peter Francis Masara, MP
4. Hon. Mary Wamaua Njoroge, MP
5. Hon. Bernard Kibor Kitur, MP
6. Hon. Geoffrey Wandeto, MP
7. Hon. Michael Wambugu Wainaina, MP
8. Hon. Elijah Njore Kururia, MP

IN ATTENDANCE:

SECRETARIAT

1. Mr. Aden Abdullahi	Principal Clerk Assistant II
2. Mr. Mark Namaswa	Clerk Assistant III
3. Ms. Mercy Kinyua	Legal Counsel
4. Mr. Wesley Abugah	Research Officer
5. Mr. Moses Esamai	Audio Officer
6. Mr. Kevin Ojiambo	Media Officer
7. Mr. Noah Chemweno	Sergeant – At – Arms

OFFICE OF THE AUDITOR GENERAL/INSPECTORATE OF STATE CORPORATIONS

1. Mr. Elijah Kimani	Principal Auditor
2. Ms. Winnie Okechi	Auditor Assistant
3. David W. Githinji	PA - LRO
4. Jeff Otieno	Associate Auditor LRO
5. Mr. Trevor Odhiambo	Auditor Assistant
6. Mr. David Wambua	Senior Inspector (ISC)

7. Ms. Fauzia Shauri — Liaison **(MOH)**

MIN/PIC SSAA/2023/100 **PRELIMINARIES**

The Chairperson called the meeting to order at 2:30 PM. Prayers offered by Hon. Joshua Kimilu, MP.

MIN/PIC SSAA/2023/ 101 **MEETING THE KENYA MEDICAL SUPPLIES AUTHORITY TO CONSIDER THE AUDITOR-GENERAL REPORTS ON THE ACCOUNTS OF KEMSA FINANCIAL YEARS 2017/2018, 2018/2019, 2019/2020 AND 2020/2021**

Dr. Andrew Mulwa (Acting CEO- KEMSA) accompanied by Mr. Waiganjo Karuga (Director-Finance and Strategy), Mr. John Kabuchi (Acting Procurement Director), Ms. Carol Anunda (Finance Manager), and Edward Njoroge (Operations Director) appeared before the committee to adduce evidence on the status of KEMSA.

Financial Year 2018/2019

MIN/PIC SSAA/2023/102 **INACCURACY IN NET SALES**

As disclosed under Note 3 to the financial statements, the statement of financial performance reflects net sales balance of Kshs. 1,164,120,025 which is net of cost of sales balance of Kshs.4,747,574,351. The cost of sales balance includes an amount of Kshs.128,604,791 for expired/damaged drugs that were unsaleable. This has the effect of increasing the cost of sales instead of proposing for write-off in the statement of financial performance. Management has not given reasons for the accounting of the expired/damaged drugs as cost of sales.
Consequently, the accuracy, completeness and validity of the net sales balance of Kshs.1,164,120,025 for the year ended 30 June, 2019 could not be confirmed.

Committee observations

i. The committee observed that KEMSA did not respond to the issue of improper accounting of the expired/damaged drugs as cost of sales amount to Kshs.128,604,791. This has the effect of increasing the closing stock which would be reflected as an asset in the statement of financial position yet it has no economic value and would be misleading to the users of financial statements.

ii. A similar issue was raised in FY 2017/2018 and again in 2016/2017 the PIC in the 22nd Report had discussed the same.
The committee had observed that;
   a) the expiry of drugs was not due to breach of contractual terms but due to change

in drug regimen indicating poor planning by KEMSA. The Agency should ordinarily know which drugs are obsolete and which drugs are going to be introduced into the market.

b) KEMSA indicated that they had devised strategies to determine the demand of drugs from across the counties which included constant engagement and collecting data to avoid expiry of drugs as well as other strategies such as prioritizing on shelf life of drugs.

Arising from this, the committee observed that KEMSA did not provide any documentary prove of the improvements made through the devised strategies or whether such strategies ever existed such as prioritizing on shelf life of drugs.

iii. KEMSA did not manage its drugs stock for the purpose of preventing wastage, loss, and continuing utilization of supplies. Further, KEMSA did not avoid unprofitable lock-up of funds by keeping stocks to the minimum necessary for the efficient conduct of the its (KEMSA) supply/operations. In addition, the committee observed that KEMSA had not put in place strategies that will prevent wastage such as the use of anticipatory patterns to predict demand of drugs from the Counties. Thus, KEMSA contravened Section 160 (1) of the Public Procurement and Asset disposal Act 2015.

iv. KEMSA had treated expired drugs as saleable drugs in the financial statements as pointed out in the audit report that the cost of sales figure includes an amount of Kshs.150,423,159 for expired/damaged drugs that were unsaleable due to expiry or damage. This is misleading to the users of financial statements as it inflates the current assets.

UNSUPPORTED OTHER INCOME

Further, the statement of financial performance reflects other income of Kshs.2,051,110,240. The balance includes supply chain fees totalling to Kshs.1,449,443,349 composed of USAID Kshs.675,711,309, Global Fund Kshs.517,524.508, UNICEF Kshs.35,672,444, Ministry of Health Kshs.161,744,537 and other Strategic Partners Kshs.58,790,551. However, the Management did not provide supporting documents such as agreements, approved programmes and budgets, receipts and expenditure for audit review.

In the circumstances, the accuracy and validity of supply chain fees totalling to Kshs 1,449,443,349 for the year ended 30 June, 2019 could not be confirmed.

Committee observations

i. The committee observed that the first response by the Management did not address the question with regard to providing supporting documents such as agreements, approved programmes and budgets, receipts and expenditure for review. The committee requested for comprehensive response on the supply chain fees which did not either address the issues raised in the report as the accounting officer only duplicated the figures questioned in the report without clear analysis on how the incomes were arrived at, the value of the volumes transacted as the basis of the fees received were equally

unknown. This could create room for fraudulent manipulation of fees, thus under-reporting.

ii. The contract and MOU documents between the KEMSA and programme partners were provided. However, although the award fee for USAID as described in the contract/MOU were designated in US dollars, the actual amount at the time of execution and the dollar conversion rate are not disclosed in the documentary evidence adduced by KEMSA. Global Fund MOU had the fees rates as percentage of procurement volume, UNICEF MOU fees was not clear, MOH did not have a contract or MOU, AMREF contract did not specify the fees receivable, WFP contract did not specify the fees receivable, Clinton Health Access Initiative had the fees rates as percentage of procurement volume, JHPIEGO Kenya did not have specified fees.

Arising from the aforementioned, the committee observed that the basis upon which the fees received were determined and whether there was a proper cost benefit analysis between what KEMSA spent in the process and what they received in return could not be ascertained.

iii. The approved programmes and budgets, receipts and expenditure were not provided for audit and committee review.

Committee Resolutions

The Committee resolved that;

i. KEMSA to provide supporting documents such as Memoranda of Understanding with organizations such as USAID, UNICEF and Global Fund for review.

ii. KEMSA provides response to the management letter to the query raised on the validity of supply chain fees totalling to Kshs 1,449,443,349 for the year ended 30 June, 2019

UNACCOUNTED FOR FUNDS

A review of the Kenya Health Sector Support Project-Essential Medicine and Medical Supplies (EMMS)-Ministry of Health and East Africa Public Health Laboratory Networking Project (EAPHLNP)-Ministry of Health financial statements for the year ended 30 June, 2019 revealed that a total of Kshs.419.058,786 comprising of Kshs.333,194,208 from EMMS and Kshs.85,864,578 from EAPHLNP was disbursed to Kenya Medical Supplies Authority to finance projects under Kenya Health Sector Support Project KEMSA and East Africa Public Health Laboratory Networking Project-KEMSA. However. the amount has not been reflected in the financial statements and Management has not explained how the funds were accounted for.

Committee observations

i. The committee observed that Kshs.419,058,786 comprising of Kshs.333,194,208 from EMMS and Kshs.85,864,578 from EAPHLNP disbursed to Kenya Medical Supplies Authority to finance projects under Kenya Health Sector Support Project KEMSA and East Africa Public Health Laboratory Networking Project-KEMSA were not being reflected in the financial statements of either KEMSA as an entity or the project accounts. It was therefore not clear how the funds were accounted for.

ii. KEMSA has given a breakdown of how the funds were received and expensed . KEMSA has also indicated that the accounts have been amended and the balance of Kshs. 101,482,453.00 being treated as payable to WB KHSSP Project in the KEMSA financial statements. The committee noted with concern that there is no evidence that the expenditure or the amended financial statements have been audited by the Auditor-General.

iii. The committee further observed that the receipt of Kshs. 85,864,578 in the EAPHL Project account, though KEMSA indicates that it has been accounted for under the Project Fund ledger in the KEMSA Main accounts. There is no evidence that the receipt or the expenditure in respect of the Project Fund ledger in the KEMSA Main accounts have been audited by the Auditor-General.

Committee Resolutions
The Committee resolved that;

i. KEMSA provides documentary evidence on how the accounts have been amended including ledgers for the movement of the funds.

Unsupported Expenses - Staff Costs

As disclosed in Note 5 to the financial statements, the statement of financial performance reflects staff costs of Kshs.980,575,930. The balance includes salaries and allowances of Kshs.25,717,843 paid to fifty-six (56) officers employed during the year. However, the Management did not provide supporting documents outlining the recruitment process advertisement for vacancies, interviewing panel recommendations, and approval for hiring for audit review.

Further, the balance includes bonus payments of Kshs.43,689,870 paid to staff during the year. However, the Management did not provide supporting documents such as attained set targets, bonus approved budget, and approval from the Salaries and Remuneration Commission, (SRC).

Committee Observations

The committee, on the issue of recruitment of fifty six (56) officers observed that, the issue had been recurring over the previous years including 2017/2018. Further, a similar audit query was raised in 2016/2017 which the PIC in their 22nd Report had observed that;

i. The Board's approved KEMSA establishment was 341 and in Financial year 2017/2018 KEMSA had 324 in-post staff, after recruiting 56 more staff in Financial year 2018/2019 the in-post figure still stood at 324 against an expected figure of 380 if no staff had exited. However, KEMSA did not provide any documentary proof that the fifty-six (56) staff had exited KEMSA in 2018/2019 either through retirement, natural attrition, dismissal or resignation. This could lead to existence of ghost workers. It is also unlikely that even after recruiting 56 more staff in Financial year 2018/2019 the in-post figure still stood at 324.

ii. KEMSA indicates that the bonus payment of Kshs. 43,689,870 was in line with the

provisions of the KEMSA Human Resource Manual. However, the Management did not provide documentary evidence on the attained set targets, the approved budget and approval letter from Salaries and Remuneration Commission, (SRC). In addition, KEMSA indicates that the Kshs.17,212,000 paid to staff participating in tender evaluation committees is duly provided for in the HR Policies and Procedures Manual. Therefore, the bonus payment was irregular and not a proper charge to public funds. The provisions of the KEMSA Human Resource Manual are not superior to the constitutional provisions that established SRC and outlined its mandate.

iii. There were no details provided outlining the recruitment process, advertisement for vacancies, interviewing panel recommendations indicating the criteria for merit and approval for hiring

iv. There is no evidence that KEMSA had sought approval from the Salaries and Remuneration Commission for the staff establishment and salary rates.

v. Except for the Board's approval of the establishment, there is no evidence that KEMSA had sought SCAC's guidance on the development of the Human Resource Instruments. Further, the Human Resource Instruments then would have been approved by the Public Service Commission to culminate in a reviewed organization structure, staff establishment, grading, career guidelines and Human Resource Policy and Regulations manual for KEMSA.

vi. KEMSA did not provide the approved SRC salary scales for the established cadres and therefore no evidence was adduced to prove that the salaries paid for the respective cadres was in tandem with SRC salary review.

Committee Recommendations

The Committee recommended that;

i. KEMSA provides: copies of the advertisement to recruit for the positions, interview panel summary recommendations to recruit the 56 employees, authority to allow the Board to recruit from the SRC and correspondence between KEMSA and SRC allowing the payment of Kshs. 43,689,870 as bonus to staff.

ii. Provide information on how much money came in and went out of the organization (KEMSA) and provide approvals from SRC on the bonuses and salaries paid to staff.

Unsupported Legal Expenses

As disclosed in Note 9 to the financial statements, the statement of financial performance reflects legal expenses balance of Kshs.63,602,437 paid to private legal firms. However. The management did not provide supporting documents such as the basis for charging the legal fee, approval and a no-objection from the Attorney General to engage the private firms for audit verification.

Consequently, the accuracy, completeness and validity of legal fee expense of Kshs.63,602,437 reflected in the statement of financial performance for the year ended 30 June, 2019 could not be confirmed.

Committee observations

i. KEMSA indicates that the office of the Attorney-General Act (No. 49 of 2012) is clear that the only time a state corporation should engage the office of the Attorney General in legal matters is when the matter raises substantial legal or constitutional issues. The threshold for substantial legal issues is not clear as to when a matter raises a substantial legal issue or not.

ii. Should the argument by KEMSA Management hold, then, the office of the Attorney-General Act (No. 49 of 2012) and court judgment quashing the circular from the Office of the Attorney General did not exempt KEMSA from adhering to the Public procurement and Asset Disposal Act, 2015 on identifying the legal firms. It is therefore not clear how the law firms were identified and the basis for charging the legal fee is unknown.

Committee Resolutions

The Committee resolved that;

i. KEMSA provides an advocate's order for the contracting of lawyers and how the make up of the fees paid added up to Kshs. 63,602,437.

INACCURACY IN INVENTORIES

As disclosed in Note 20 to the financial statements, the statement of financial position reflects inventories balance of Kshs.11.027,341.453. The balance includes KEMSA capital stocks of Kshs.470,556,334 and third-party stocks of Kshs.456,382.477 that have been lying in the stores for periods between two (2) and eight (8) years. No explanation has been provided for holding the stocks for that long.

Committee observations

i. The committee noted with concern that for stock amounting to Kshs.97,535,372 in respect of Kenya Health Sector Support Project (KHSSP) which was meant to be transferred to the Counties had not been distributed to health facilities due to the following factors;

a) Duplication of facilities in the distribution list provided by Ministry of health
b) Some facilities did not have Master File List codes.
c) Wrong Master File List codes in the distribution list
d) Some facility e.g. Kwale County Hospital returned a Cryotherapy Machine because the facility does not use the equipment.
e) Facilities were placed in the wrong counties in the distribution list.

The KEMSA concludes by indicating that they are in the process of contacting the county director/county pharmacist of health in the affected counties to provide alternative facilities as recommended by the HSSP Project coordinators. However, in FY 2021/2022 during project closure, KEMSA confirms that all KHSSP products were issued to the respective health facilities.

The statements are contradictory and KEMSA cannot confirm the status with certainty as to whether that they are in the process of contacting the county director/county pharmacist of alternative facilities or all KHSSP products were issued to the respective health facilities by FY 21/22 during project closure.

ii. KEMSA had capital stocks of Kshs.470,556,334 and third party stocks of Kshs.456,382,477 that have been lying in the stores for periods between two (2) and eight (8) years. This was attributed to Low consumption and erratic demand patterns.

iii. The third-party stocks are held on behalf of the National strategic programs and other partners who are responsible for the provision of distribution lists and some items have been rendered obsolete.

iv. The KEMSA management on (ii) and (iii) they indicated that they had made tremendous effort to reduce the dormant stocks in the warehouse by requesting for authority from the Ag. Director General-MOH to issue out the stocks as donations. If the stocks are obsolete or have had Low consumption and erratic demand patterns then if donated they will not have any economic or medical use.

v. The capital stocks were acquired and dumped into KEMSA warehouse without conducting a feasibly study or needs assessment.

Committee Resolutions

The Committee resolved that;

i. KEMSA provides a breakdown of stocks that have lasted between 2-8 years to enable the Committee make an accurate assessment of decisions to keep or dispose of the stocks.

MIN/PIC SSAA/2023/104 **ADJOURNMENT**

There being no other business, the Chairman adjourned the sitting at 5:00 PM.

Signed.....

Hon. Emmanuel Wangwe CBS, MP – Chairperson

Date.....

MINUTES OF THE 68TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES, ADMINISTRATION, AND AGRICULTURE HELD IN COMMITTEE ROOM 7 PARLIAMENT BUILDING, ON MONDAY, 25TH SEPTEMBER, 2023 AT 9.30AM.

PRESENT:

1. Hon. Emmanuel Wangwe, CBS, MP — Chairperson
2. Hon. Michael Wambugu Wainaina, MP
3. Hon. Joshua Kivinda Kimilu, MP
4. Hon. Bishop (Dr.) Jackson Kipkemoi Kosgei, MP
5. Hon. Martin Peters Owino, MP
6. Hon. (Dr.) Peter Francis Masara, MP
7. Hon. Abdi Jehow Fatuma, MP

APOLOGIES:

1. Hon. Caleb Amisi Luyai, MP — Vice Chairperson
2. Hon. Ferdinand Kevin Wanyonyi, MP
3. Hon. Mary Wamaua Njoroge, MP
4. Hon. CPA Geoffrey Wandeto, MP
5. Hon. Bernard Kibor Kitur, MP
6. Hon. Nixon Nicholas Ngikolong, MP
7. Hon. Paul Nabuin Ekwom, MP
8. Hon. Elijah Njore Kururia, MP

IN ATTENDANCE:

SECRETARIAT

1.	Mr. Aden Abdulahi	Principal Clerk Assistant II
2.	Mr. Mark Namaswa	Clerk Assistant III
3.	Ms. Christine Mariita	Clerk Assistant III
4.	Ms. Mercy Kinyua	Legal Counsel
5.	Mr. Wesley Abugah	Researcher
6.	Mr. Thomas Ogwel	Fiscal Analyst
7.	Mr. Danton Kimutai	Audio Officer III
8.	Mr. Benson Muthuri	Sergeant – At – Arms
9.	Ms. Lily Cherotich	Protocol Officer
10.	Mr.Noah Chemweno	Sergeant – At – Arms

OFFICE OF THE AUDITOR GENERAL

1.	Mr.Joseph Abok	Director Audit
2.	Mr.Patrick Omenyo	Principal Audit
3.	Mr.David Githinji	Principal Auditor LRO
4.	Mr.Jeff Otieno	Associate –LRO

INSPECTORATE OF STATE CORPORATIONS

Mr.Stephen Mbatia Principal Inspector

KENYA BROADCASTING CORPORATION

1. Mr. Samuel Maina Ag. Managing Director
2. Mr. Samuel Mwanza CFO
3. Mr. John Tile Credit Control
4. Mr. Charles F.Manager
5. Mr. Job Karimi Technical Services
6. Ms. Josephine Mwaniki SNR Accountant
7. Ms. Risper Kajuju Accountant
8. Mr. Raphael Bullindah Admn. Manager

MIN/PIC SSAA/2023/130 **PRELIMINARIES**

The Chairperson called the meeting to order at half past nine in the morning followed by a word of prayer from Hon. Martin Peters Owino, MP.

MIN/PIC SSAA/2023/131 **SUBSTANTIVE AGENDA: EXAMINATION OF THE AUDITOR GENERAL REPORT OF THE KENYA BROADCASTING CORPORATION FOR THE FINANCIAL YEAR 2000/2001 TO 2012/2013**

Mr. Samuel Maina (Ag. Managing Director) was accompanied by Mr. Samuel Mwanza (CFO), Mr. John Tile (Credit Control) and Mr. Raphael Bullindah (Admn. Manager) appeared before the committee to adduce evidence on the audited accounts of Kenya Broad casting Corporation.

FY 2001 TO 2013

CORPORATE GOVERNANCE

FY 2001

1.Financial Position

During the year ended 30th June, 2001 the Corporation recorded a net loss of Kshs.510,333,848 which brought the accumulated deficit to Kshs.6,461,219,503 as at the same date. The Corporation was also unable to pay its financial commitments as they fell due.

Committee observations

i. The Committee observed that, the corporation's corporate governance is considerably weak thereby exposing the corporation to potential losses in addition reputational and operational risks.
ii. The Corporation is technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors.

iii. The explanation by the management that corporation made a loss due to the huge amounts debited in the profit & loss account relating to depreciation because of old equipment, rising electricity costs and the high wage bill is unsatisfactory since these are operational costs that are directly related to revenue generation. This may point to possible revenue leakages.

iv. Arising from consultancy services of Deloitte Kenya a Cabinet memo on transformation of KBC was developed in 2015 and as of 2023 when the management appeared before the Committee, the Memo was still awaiting Cabinet's approval. However, it was not certain how long it would take to implement the recommendations of the memo.

v. The Committee observed that the financial position of the Corporation is weak and if strategies are not put in place to reverse the position, the Corporation may not be able to meet its financial obligations as and when they fall due.

2.Loss of salaries - Kshs 22,572,966

The Corporation lost a total of 22,572,966 Between the period September 1997 and December 2001 through electronic money transfer fraud through the use of a deficient. The loss is attributed to two officers who were responsible for processing the payroll but, who through manipulation fraudulently obtained Money from the Corporation' s bank account to Purportedly pay salaries to the Corporation's staff.

Committee observations

The Committee observed

i. The corporation lost a total of Kshs 22,572,966 between the period September 1997 and December 2001 through electronic money transfer fraud using a deficient payroll computer software.

ii. The matter was reported to the police and the two suspected culprits arrested and charged in court. However, the outcome of the case was still unknown and the amount remains unrecovered.

iii. The then Accounting Officer breached Regulation 165 (1) (a) (b) of the Public Finance Management (National Government) Regulations, 2015 which provides that the Accounting Officer shall ensure that the national government entity develops risk management strategies, which include fraud prevention and a system of risk management and internal control that builds robust business operations.

Committee resolution

The committee resolved as follows

1. KBC management to submit the court ruling in regard to the loss of salaries worthy 22M
2. That KBC submit a detailed report on how legal services was procured and how much they were paid.

3. That management to submit approval from the Attorney General to engage/seek external Legal services.

3.Liabilities

The Corporation's Balance Sheet as at 30 June, 2001 reflects a loan of Kshs.7,543,422,121 obtained from Overseas Economic Co-operation Fund (OECF) Japan in 1989, which Treasury has over the years serviced on behalf of the Corporation. Although the loan has been rescheduled until the year 2011, the Corporation has been unable to repay to the Treasury Kshs,2,819,035,380 so far paid on its behalf.

Committee observations

i. The Kenya Broadcasting Corporation took a loan of Kshs. 7,543,422,121 from the Overseas Economic Co-operation Fund (OECF) Japan in 1989. The National Treasury has over the years serviced on behalf of the corporation. However, the corporation has been unable to repay to the National Treasury Kshs 2,819,035,380 so far paid on its behalf despite the loan having been rescheduled until 2011

ii. The OECF Japan loan was received in the form equipment's which were rendered obsolete because of the liberalization of the electronic industry in Kenya in the 1990s and the migration to FM radio transmission leading to the loss of value for money on the investment. Arising from the foregoing, it meant that the Management of KBC did not carry-out a proper Feasibilty study or there was laxity on those charged with governance having approved the loan without due diligence.

iii. The Corporation was also unable to meets its tax obligation of Kshs189,412,509 of VAT payable to KRA contrary to the provisions of the VAT Act CAP476 thus breaching the law.

iv. An amount of Kshs 259,554,592 owing to Trade creditors were not settled as at the time of audit in 2001. However, the management submitted that they had addressed the backlog of outstanding payments to trade creditors as reflected in the accounts of the financial year ending 30, June 2014. The mere disclosure of a lower balance of trade creditors in subsequent financial statements as indicated could not be taken to imply that payments were done in absence of documentary evidence.

Committee resolution

The committee resolved as follows

1. That KBC management submit a comprehensive report in regard to the scope of the loan and also the involvement of the Board
2. Further KBC management provide feasibility study made for the installation of the machines which were declared obsolete after a period of five years.
3. That Management submit the CAB MEMO (with Historical issues) with details of how much they sought for a write off and also provide details of accrued interest.

FY 2002

Financial Position

During the year ended 30 June 2002 the Corporation recorded a net loss of Kshs.599,263,809 which brought the accumulated deficit of Kshs.7,060,483,312.

Committee observations

i. The Committee observed that, the corporation's corporate governance is considerably weak thereby exposing the corporation to potential losses in addition reputational and operational risks.
ii. The Corporation is technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors.
iii. The explanation by the management that corporation made a loss due to the huge amounts debited in the profit & loss account relating to depreciation because of old equipment, rising electricity costs and the high wage bill is unsatisfactory since these are operational costs that are directly related to revenue generation. This may point to possible revenue leakages.
iv. Arising from consultancy services of Deloitte Kenya a Cabinet memo on transformation of KBC was developed in 2015 and as of 2023 when the management appeared before the Committee, the Memo was still awaiting Cabinet's approval. However, it was not certain how long it would take to implement the recommendations of the memo.
v. The Committee observed that the financial position of the Corporation is weak and if strategies are not put in place to reverse the position, the Corporation may not be able to meet its financial obligations as and when they fall due.

Committee resolution

The committee resolved as follows

That KBC management submits a comprehensive report detailing of the actual negative balance and how the corporation manages to operate yet it was technically insolvent.

2.Irregular Payments

The former Managing Director gave notice of resignation on 27 July 2002 to vie for a parliamentary seat and subsequently left office on 14 August 2002, in effect giving notice of resignation of less than 3 months period as required by his terms of service. On leaving employment, the officer was paid a total of Kshs.1,000,000 being 3 months' salary in lieu of notice at Kshs.200,000 per month and additional Kshs.400,000 to cater for transport. Under the circumstance it was not possible to confirm the propriety of the payment of Kshs.1,000.000.

Committee Observations

The committee observed that

i) The former Managing Director on his volition gave notice of resignation on July 27, 2002, to vie for a parliamentary seat and subsequently left office on August 14, 2002. The notice of resignation was less than 3 months' period required by his terms of service.

ii) The former Managing Director was irregularly paid a total of Kshs. 1,000,000, comprising of 3 months' salary in lieu of notice at Kshs. 200,000 per month and an additional Kshs. 400,000 to cater for transport. Despite the fact that the officer could not give adequate notice due to a government directive that required public officers intending to seek elective posts to resign by August 15, 2002, he should have forfeited his salary in lieu of notice rather than being irregularly compensated by the corporation.

iii) The payment of Kshs. 400,000 for transport was irregular and not payable since the officer was not in the service of the corporation to warrant facilitation.

iv) All the payments were made without deducting pay-as-you-earn taxes in accordance with the Income Tax Act.

Committee resolution

The committee resolved as follows

1. That KBC management submit HR instrument they relied on when making the payment to the former MD.
2. That KBC to submit government circulars which provided resignation notices to any one who wanted to vie for elective posts.

FY 2003

1.Financial Position

During the year ended 30 June 2003, the Corporation incurred a net loss of Kshs. 1, 126,929,499 which brought its adjusted accumulated deficit to Kshs. 8,186,128,261.

Committee observations

i. The Committee observed that, the corporations corporate governance is considerably weak thereby exposing the corporation to potential losses in addition to reputational and operational risks.

ii. The Corporation is technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors. The financial position of the Corporation is weak and if strategies are not put in place to reverse the position, the Corporation may not be able to meet its financial obligations as and when they fall due.

iii. Arising from consultancy services of Deloitte Kenya a Cabinet memo on transformation of KBC was developed in 2015 and as of 2023 when the management appeared before the Committee, the Memo was still awaiting Cabinet's approval. However, it was not certain how long it would take to implement the recommendations of the memo.

FY 2004

1.Going Concern

The Corporation realized a deficit of Kshs.1,489,786,321 which brought the cumulative deficit to Kshs.11,675,377,227 as at 30 June, 2004.

Committee observations

i. The Committee observed that, the corporations corporate governance is considerably weak thereby exposing the corporation to potential losses in addition to reputational and operational risks.
ii. The Corporation is technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors. The financial position of the Corporation is weak and if strategies are not put in place to reverse the position, the Corporation may not be able to meet its financial obligations as and when they fall due.
iii. Arising from consultancy services of Deloitte Kenya a Cabinet memo on transformation of KBC was developed in 2015 and as of 2023 when the management appeared before the Committee, the Memo was still awaiting Cabinet's approval. However, it was not certain how long it would take to implement the recommendations of the memo.

FY 2005

Going Concern

During the year under review, the Corporation realized a deficit of Kshs.1,487,298,332 which brought the cumulative deficit to Kshs.13,185,183,311 as at 30 June 2005.

Committee observations

i. The Committee observed that, the corporations corporate governance is considerably weak thereby exposing the corporation to potential losses in addition to reputational and operational risks.
ii. The Corporation is technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors. The financial position of the Corporation is weak and if strategies are not put in place to reverse the position, the Corporation may not be able to meet its financial obligations as and when they fall due.
iii. Arising from consultancy services of Deloitte Kenya a Cabinet memo on transformation of KBC was developed in 2015 and as of 2023 when the management appeared before the Committee, the Memo was still awaiting Cabinet's approval. However, it was not certain how long it would take to implement the recommendations of the memo.

Committee resolution

The committee resolved as follows

That management of KBC to submit a comprehensive report detailing of how much KBC had sought for a write off, i.e the principal amount and the interest accrued in total.

2. **Inaccuracies in the Financial Statements**

The cash flow statement presented had some anomalies, notably, a prior year adjustment of Kshs.11,075,490,047 for which disclosure regarding nature and period have not been made as required by IAS 8. Further, although the cash and cash equivalent shown in the balance sheet is Kshs.132,416,177 as at 30 June 2005, the cashflow statement shows Kshs.132,373,225 leading to

unexplained difference of Kshs.42,952. Other anomalies noted during the audit were differences between the ledger/financial statements balances and schedules presented for audit.

Committee observations

i. The committee observed that there glaring inaccuracies in the financial statements. However, although the accounting officer indicates that the errors were corrected, the point in time when they were corrected and the documentary evidence of the corrections were not submitted to the committee. Therefore, the errors might have remained uncorrected and could have resulted from manipulation of financial records.

ii. The explanation that a prior year adjustment of Kshs. 11,075,490,047 appearing in the cash flow statement related to a change of the depreciation policy of the Corporation from straight line method to reducing balance method with effect from 1st July 1998 in line with IAS was unsatisfactory. Cashflow statements presents cash related items rather than non-cash items as explained.

Committee resolution

The committee sought that management submit a schedule detailing how the anomalies were corrected for each items listed below

i. Debtor -Kshs.35,061,333

ii. Cash and cash equivalent -kshs.22,646,776 and kshs.42,952

3. OECF Japan Loan

The Corporation's Balance Sheet as at 30 June 2005 reflects two loans of Kshs.8,472,316,824 and Kshs.6,284,352,806, from Government of Kenya and Overseas Economic Cooperation Fund (OECF) of Japan respectively which are also disclosed in note 9 and 10 to the financial statements. The OECF loan which was guaranteed by the Government in 1989 funded Kenya Broadcasting Corporation's modernization programme, a project mooted out of a study by Government in February 1988.

Committee observations

i. The OECF loan had been guaranteed by the Government in 1989 funded the Kenya Broadcasting Corporation's modernization programme, a project mooted out of a study by the Government in February 1988. However, arising from the status of the project, the study might have been misleading.

ii. Some of the equipment supplied were never used though installed, and in some instances, only an insignificant capacity of the installations was being used. Therefore, the targeted radio coverage to facilitate dissemination of government policies as envisaged in the study was not achieved.

iii. Some of the superfluous equipment supplied were said to be standby equipments. However, the explanation is untenable considering that some of these have never been used

for over 10 years since their installation and with time, have been rendered obsolete and thus irrelevant due to rapid changes in radio communication technology.

Committee resolution

1. The committee after deliberating on the matter noted that the MD was unable to provide satisfactory responses and resolved as follows
2. That management be given more time to prepare well and have facts in relation to the loan and therefore the query be deferred up until when the committee go through the entire scope of the contract.

FY 2006

1.Going Concern

During the year ended 30th June 2006 the Corporation realized a deficit of Kshs.1,210,619,381 which brought the cumulative deficit to Kshs. 14,378,358,878.

The Corporation was unable to service its current maturity of G.O.K loan amounting to Kshs.9,658,787,226 and could not remit statutory deductions to various bodies totaling Kshs. 100,603,528 exposing the Corporation to fines and penalties which have not been provided for in these financial statements.

Committee observations

The Committee observed that, the issue of Going concern had been discussed in the previous years report and the following observations made;

i. The corporation's corporate governance is considerably weak thereby exposing the corporation to potential losses in addition to reputational and operational risks.
ii. The Corporation is technically insolvent and its existence as a going concern is dependent upon the support from the Government and its creditors. The financial position of the Corporation is weak and if strategies are not put in place to reverse the position, the Corporation may not be able to meet its financial obligations as and when they fall due.
iii. Arising from consultancy services of Deloitte Kenya a Cabinet memo on transformation of KBC was developed in 2015 and as of 2023 when the management appeared before the Committee, the Memo was still awaiting Cabinet's approval. However, it was not certain how long it would take to implement the recommendations of the memo.

2. **Overseas Economic Cooperation Fund (OECF)-Japan Loan**

The Corporation's Balance Sheet as at 30 June 2006 reflects two loans of Kshs. 6,284,352,806 and Kshs.9,658,787,226 from Overseas Economic Cooperation Fund (OECF) of Japan and Government of Kenya respectively.

A physical verification of 7 out of 10 modernization stations however showed that nearly 50% of the equipment supplied are not in use though installed and in some instances only 25% of the installed capacity was being used with the result that the targeted radio coverage to facilitate dissemination of Government policies as envisaged in the study was not achieved.

Committee observations

The committee observed that the matter was discussed in the previous year .

Committee resolution

The query be deferred until when management submits the entire scope of the loan agreement to the committee and the office of the auditor general for verification.

3. **Inaccuracies in the Financial Statements**

Further the cash flow statement reflects a prior year adjustment of Kshs.1,506,803,506 whose nature and period of the adjustment has not been disclosed and explained by management.

Committee observations

The committee observed that there glaring inaccuracies in the financials statements. However, although the Accounting officer indicates that the errors were corrected, the point in time when they were corrected and the documentary evidence of the corrections were not submitted to the committee. Therefore, the errors might have remained uncorrected and could have resulted from manipulation of financial records.

Committee resolution

The committee resolved that management provide a detailed schedule of how the anomalies and adjustment was done in the items listed.

i. Debtor -Kshs.5,882,282
ii. Cash and cash equivalent -kshs.39,511,004 and
iii. Stock -Kshs.3,243,140

4.Budgetary control

The Corporation overspent its budgetary provision by Kshs.1,298,014,923 or 263% in ten (10) items of expenditure for which Kshs.492,837,000 was provided without approval.

Committee Observation

The committee observed as follows

1. That necessary approvals from the parent Ministry and the Treasury were not obtained contrary to the provisions of section 12 of the State Corporations Act (Cap 446) as a result KBC was in breach of the Law.
2. The committee noted that management failed to explain satisfactorily how the corporation overspent up to 263% without approval and circumstances which necessitated the expenditure were not clear.
3. The committee observed that KBC was in breach of Section 12 of the State Corporations Act Cap.446 which states that no state corporation shall, without the prior approval in writing of the Minister and the Treasury, incur any expenditure for which provision has not been made in an annual estimate prepared and approved in accordance with section 11.

Committee resolution

The committee resolved as follows

1. That management submit to the committee and the office of the auditor general the ten items which led to the excess expenditure which was not budgeted for in that financial year.

2. That management to submit AIA for the entire period in question

5.procurement procedures

The Corporation contracted a firm to supply station indent accessories for metro TV logo at a negotiated price of Kshs.155,000 per indent with the total cost amounting to Kshs. 1,940,000. The contract was single sourced as no quotations from other suppliers were invited.

Although the Inspector General of State Corporations recommended in his report of March 2006, that is surcharge and recovery of Kshs.1,205,000 be made from the former Managing Director and others, no such recovery has been made to date.

Committee observations

The committee observed that;

i. The supply of the indents was single-sourced.
ii. The quoted price of Kshs.155,000 for each indent was grossly inflated in that on 15 September 2000, there were 3 indents acquired from another supplier at a price of Kshs.48,470 per indent leading to a price differential of Kshs.106,530 for each indent.
iii. Although KBC made payments totalling Kshs.1,940,000 in respect of Metro TV Logo indents, only deliveries for a value of Kshs.735,000 were received by the Corporation resulting in a difference of Kshs.1,250,000.
iv. The Inspector General of State Corporations had recommended in his report of March 2006, that is surcharge and recovery of Kshs.1,205,000 be made from the former Managing Director and others, no such recovery has been made to date.

Committee resolution

The committee resolved as follows

1. KBC management to submit miscellaneous Receipt of the payment made
2. That management to submit confirmed minutes of the board and HR manual which approved for the demotion of the junior officer.
3. That management to provide details as to why the former managing Director was not surcharged as early recommended by Inspector General of state corporation.

FY 2007

1 Going Concern

The balance sheet as at 30 June 2007 reflects a negative working capital of Kshs.12,228,224,797 and a negative net worth of Kshs.14,926,450,080. Further, the income and expenditure account shows a deficit of Kshs.1,451,987,502 (2006- Kshs.1,210,619,381), which brought the cumulative deficit to Kshs.15,854,937,670.

Committee Observation

The Committee observed that, the issue of Going concern had been discussed in the previous years report .

2.Inaccuracies in the Financial Statements

unreconciled variances between the financial statements balances and supporting schedules balances of 1.3B would not be explained

Committee Observation

The committee noted that No efforts have been made by management to reconcile the two sets of records hence not possible to confirm the accuracy of the above balances .

Committee resolution

The committee resolved that management provide a detailed schedule of how the anomalies and adjustment was done in the items listed.

i. Net Trade Debtors -Kshs.97,536,338
ii. Cash and cash equivalent -kshs.16,492,285 and
iii. Stock -Kshs.1,256,039,745

FY 2008

1. Going Concern

During the year under review, the Corporation realized a deficit of Kshs.425,144,997 (2007 Kshs.1,451987,502), Which brought the cumulative deficit to Kshs.16,280,082,666 as at 30 June 2008. In addition, the balance sheet reflects negative working capital of shs.12623,781,846 and a negative net worth of Kshs.15,351,595,076.

Committee Observation

The committee observed that the issue was deliberated in the previous financial years.

FY 2009

1.Going Concern

As in the previous year, the Corporation realized a deficit of Kshs.2,129,372,052(2008-Kshs. 425,144,997) which brought the cumulative loss to Kshs.18,633,415,452 as at 30 June 2009.In addition, the Balance Sheet reflects a negative working capital of Kshs. 115,595,339,223 and negative net worth of Kshs. 17,704,927,862.

Committee Observation

Committee Observation

The committee observed that the issue was deliberated in the previous financial years.

Committee resolution

1. The committee resolved that the matter be deferred until when management submits a detailed breakdown of what makes up the cumulative loss of the corporation
2. That the additional information sought should be availed to the committee and sector auditors for verification.

FY 2010

1.Going Concern

As in the previous year, the corporation recorded a deficit of Ksh. 2,580,296,065 (2009-1,129,372,052 raising the cumulative losses to Ksh. 21,281,455,011 as at 30 June 2010. Further the statement of financial position reflects a negative working of Ksh.19,180,565,282 and negative net worth of Ksh. 20,352,967,421. In addition, and as reported in 2008/2009 the

corporation was unable during the year to service a government of Kenya loan of Ksh.18,762,914,845 or remit statutory deductions totalling Ksh 513,148,148 to various agencies as disclosed in note 10 to the financial statements.

Committee Observation

The committee observed that the issue was deliberated in the previous financial years.

Committee resolution

The query be deferred a waiting additional information

2.Television and Radio broadcasting rights for the FIFA world cup 2010.

In early 2009, the Corporation acquired Television and Radio Broadcasting Rights for the XIX FIFA World Cup 2010 and other FIFA and other events during the rights period ending 31st December 2010 within the Kenyan jurisdiction. Accordingly, and on 20th March 2009 a license Agreement also referred to as the Media Rights Agreement, was signed between the Federation Internationale De Football Association (FIFA), African Union of Broadcasting (AUB) and the Corporation. The Agreement set out the terms and conditions upon which FIFA granted the license of the Media Rights to the corporation. Among the terms and conditions were prohibitions for the KBC to enter into any agreement or arrangement for transmission of audio-visual coverage, by means of any broadcast or other telecommunications network or technology.

ii. Other records reviewed indicated that the Corporation received revenue totaling ksh. 53,632,416 from advertising during the event while the expected receipts stood at kshs 144 million. No reason has however been provided for the significant shortfall of Ksh.90,367,584.

Committee Observation

The committee noted as follows

1. That management was in breach of the agreement entered with FIFA and AUB, and it has not been explained how the four firms were identified and how the rights fee was determined. For that reason, it has not possible to establish whether the fees charged for the rights were fair and competitive
2. The Corporation on diverse dates between December 2009 and June 2010 entered into third-party agreements; with Radio Africa Limited, Cellucom (K) Limited, MTech(K)Limited and Royal Media Services, in which agreements the Corporation granted the third parties to various broadcasting rights during the world cup. Further, apart from breaching the agreement with FIFA and AUB, it has not been explained how the four firms were identified and the rights fee determined.

3. The Corporation received revenue totalling ksh. 53,632,5416 from advertising during the event while the expected receipts stood at kshs 144 million. Although, the shortfall between the projected revenue sales from the FIFA World Cup 2010 event and the actual sales revenue realized of kshs 90,367,584 was attributed unrealistic budget, the explanation was

unsatisfactory considering the big margin and the fact that the corporation had been in the market for long.

Committee resolution

The committee resolved as follows

That management be given more time to respond to part (ii) of this query

That management submit the following

i. Details and processes of how the firms were identified
ii. Board minutes which approved the four firms
iii. Offer and acceptance letters to the four firms
iv. The entire contract engaging FIFA and AUB

FY 2011

1.**Going concern**

As in the previous year, the Corporation recorded a deficit of Kshs 2,387,414,255 (2010 – deficit of Kshs.2,580,296,065) raising the cumulative losses to Kshs.23,626,321,254 as at 30th June 2011. In addition and as reported in 2009/2010, the Corporation was unable during the year to service a Government of Kenya loan of Kshs.6,804,423,028 which has accrued interest of Kshs.15,103,805,559 as at 30th June, 2011 or remit statutory deductions totaling Kshs. 368,414,717.

Committee Observation

The committee observed that the issue was deliberated in the previous financial years.

2.Television and Radio Broadcasting Rights for the FIFA World Cup 2010

Committee Observation

The committee observed that the issue was deliberated in the previous financial years.

FY 2012

1.Going Concern

As in the previous year, the Corporation recorded a deficit of Kshs.3,417,224,974 (2011 - deficit of Kshs.2,387,414,255) raising the cumulative losses to Kshs.27,043,355,600. Further, the statement of financial position reflects a negative working capital of Kshs.27,741,341,662 and a negative net worth of Kshs. 24,385,176,133. In addition and as similarly reported in 2010/2011, the Corporation was unable during the year to service a Government of Kenya loan of Kshs. 8,429,463,394 which has accrued interest Kshs. 18,485,292,611 as at 30th June 2012.

Committee Observation

The committee observed that the issue was deliberated in the previous financial years.

2.Television and Radio broadcasting rights for the FIFA world cup 2010

Committee Observation

The committee observed that the issue was deliberated in the previous financial years.

FY 2013

1.**Going Concern**

As in the previous year, the Corporation recorded a deficit of Kshs4,210,424,547 (2012 – deficit of Kshs.3,417,224,974 raising the cumulative losses to Kshs.31,253,766,173. Further, the statement of financial position, reflects a negative working capital of Kshs.34,850,934,791 and a negative net worth of Kshs.28,595,586,706.

Committee Observation

The committee observed that the issue was deliberated in the previous financial years.

MIN/PIC SSAA/2023/132 ANY OTHER BUSINESS

No other business

MIN/PIC SSAA/2023/ 133 ADJOURNMENT

The Chairperson adjourned the sitting at twenty minutes past two.

Signed.....

Hon. Emmanuel Wangwe CBS, MP – Chairperson

Date.....25/07/24.....

MINUTES OF THE 69TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES, ADMINISTRATION, AND AGRICULTURE HELD ON TUESDAY 26TH SEPTEMBER, 2023 AT THE COMMITTEE ROOM 7, PARLIAMENT BUILDINGS AT 9:00 AM.

PRESENT:

1. Hon. Emmanuel Wangwe, CBS, MP — **Chairperson**
2. Hon. Ferdinand Kevin Wanyonyi, MP
3. Hon. Martin Peters Owino, MP
4. Hon. Mary Wamaua Njoroge, MP
5. Hon. (Dr.) Peter Francis Masara, MP
6. Hon. Abdi Jehow Fatuma, MP
7. Hon. Bishop Emeritus (Dr.) Jackson Kipkemoi Kosgei, MP
8. Hon. Joshua Kivinda Kimilu, MP
9. Hon. Michael Wambugu Wainaina, MP
10. Hon. Elijah Njore Kururia, MP

APOLOGIES:

1. Hon. Caleb Amisi Luyai — **Vice Chairperson**
2. Hon. Nixon Nicholas Ngikolong, MP
3. Hon. Bernard Kibor Kitur, MP
4. Hon. Geoffrey Wandeto, MP
5. Hon. Paul Nabuin Ekwom, MP

IN ATTENDANCE:

SECRETARIAT

1.	Mr. Aden Abdullahi	Principal Clerk Assistant II
2.	Mr. Mark Namaswa	Clerk Assistant III
3.	Ms. Christine Kemunto	Clerk Assistant III
4.	Ms. Mercy Kinyua	Legal Counsel
5.	Mr. Thomas Ogwel	Fiscal Analyst
6.	Mr. Wesley Abugah	Research Officer
7.	Mr. Moses Esamai	Audio Officer
8.	Mr. Kevin Ojiambo	Media Officer
9.	Mr. Noah Chemweno	Sergeant – At – Arms

OFFICE OF THE AUDITOR GENERAL/INSPECTORATE OF STATE CORPORATIONS

1.	Dr. Charles Mwitari	Director-Audit
2.	Mr. Elijah Kimani	Principal Auditor
3.	Ms. Winnie Okechi	Auditor Assistant

4. David W. Githinji — PA - LRO
5. Mr. Jeff Otieno — Associate Auditor LRO
6. Mr. Trevor Odhiambo — Auditor Assistant
7. Mr. Daniel Wambua — Senior Inspector **(ISC)**

MIN/PIC SSAA/2023/135 **PRELIMINARIES**

The Chairperson called the meeting to order at 9:30 am followed by a word of prayer from Hon. Mary Wamaua, MP.

MIN/PIC SSAA/2023/136 **MEETING THE KENYA MEDICAL SUPPLIES AUTHORITY TO CONSIDER THE AUDITOR-GENERAL REPORTS ON THE ACCOUNTS OF KEMSA FINANCIAL YEARS 2017/2018, 2018/2019, 2019/2020 AND 2020/2021**

Dr. Andrew Mulwa (Acting CEO- KEMSA) accompanied by Mr. Waiganjo Karanja (Director-Finance and Strategy), Mr. John Kabuchi (Acting Procurement Director), Ms. Carol Anunda (Finance Manager), and Mr. Edward Njoroge (Operations Director), Dr. John Aduda (Quality Assurance), Mr. Enos Namasaka (Human Resources Manager), Dr. George Walukana (Programmes Manager), Jackline Mainye (Ag. Manager, Commercial), and Ms. Esther Somoke (Liaison Officer) appeared before the Committee to adduce evidence on the status of KEMSA.

The Committee administered the oath to the witnesses: Dr. Andrew Mulwa, Mr. Gilbert Mamati, Mr. Edward Buluma, Mr. Waiganjo Karanja, Mr. Edward Njoroge, and Mr. Enos Namasaka.

FY 2018/2019

7.1 Property, Plant and Equipment

The Committee was informed that, as disclosed in Note 22(a) to the financial statements, the statement of financial position reflects property, plant and equipment balance of Kshs.5,137,553,566.The following observations were made:

7.1 Unsupported Land

As previously reported, the balance includes land at a cost of Kshs.1,786,967,270 which includes various parcels of land spread across the country all valued at Kshs. 158,000,000

whose ownership documents were not availed while other parcels of land had not been valued.

Committee Observations

The committee observed that the issue has been recurring over the financial years including 2017/2018 and was discussed in the 19th and 20th PIC reports. Arising from the fact, the committee noted that;

i. The Agency had taken an inordinate amount of time to register the title deeds despite having the necessary documentation in place. The situation has not changed over seven years now down the line. The committee was concerned that KEMSA had engaged Priority Management Limited, (Conveyance experts) through KTK Advocates to handle the issue, in the financial year 2012/2013 but had nothing positive to show with regard to the land ownership documents.

ii. The lawyers contracted to register the leases and title deeds of lands belonging to the KEMSA as per the 22nd PIC report had been paid approximately Kshs. 2,000,000 then for the titles registered. However, the total payments to date could not be established and the consultants/lawyers could have continued to draw money from KEMSA with no corresponding services rendered.

iii. It was also not clear whether KEMSA had engaged other conveyance experts as indicated in their submission to the committee to the extent that KEMSA Board had taken up the issue of titles on KEMSA Land seriously and had engaged a Conveyance expert to handle the issue of realization of the title's deeds within a specified time frame. The specified time frame, how the conveyance experts were engaged, the terms and the charges is unknown as the same were not documented.

iv. It was not clear why KEMSA had not engaged the National Lands commission on the lands matter.

v. That KEMSA did not obtain documents of title for the Meru Municipality land measuring 0.3 Hectares but was instead allocated 10 acres by the County Government in 2021 to which Title No: Meru Central/Ruiri Rwarera/11514 dated 16 December, 2021 was issued.

vi. KEMSA did not provide any documentary evidence that they had sought the intervention of the Ministry of Health, or the Ministry of Ministry of Lands, Public Works, Housing and Urban Development to address the delay in issuance of titles.

vii. The committee also observed that in the 22nd PIC report, as pertains to the Eldoret land which KEMSA had stated that part of the land was occupied by the Kenya National Highways Authority, KEMSA did not apprise the committee on its current status.

Committee Resolutions

The Committee resolved that;

i. Appendix 7(i) be expunged for not meeting the threshold for proper evidence adduced as supporting documents for the queries raised

7.2 Motor Vehicles without Log Books

The Committee was informed that the balance constitutes motor vehicles net book value of Kshs.44,51 5,628 and includes four (4) vehicles with a net book value of Kshs.2,574,000 whose ownership documents such as log books were not availed for audit review.

Committee Observations

The committee observed that issue was discussed in the committee report for 2017/2018 and had note the following;

i. The Agency (KEMSA) had taken an inordinate amount of time to register the vehicles despite having the necessary documentation in place. Their continued inclusion in the KEMSA financial statements may be misleading to the users since MOH appears to have continued control over the vehicles and recall them at will.
ii. KEMSA has been in possession of vehicles transferred from the Ministry of Health without logbooks neither did it have any written proof that the said vehicles had been handed over to them.

Committee Resolutions

The Committee resolved that;

KEMSA undertakes to regularize its possession of the said motor vehicles through acquisition of logbooks and/or provide proof of ownership via written documentation entailing the Ministry of Health and the Authority.

7.3 Unsupported Expenditure

The Committee was informed that additions to work in progress of Kshs 1,243,061,943 include provisional sums totaling Kshs76,518,559 under certificate number 14 in respect of proposed construction of KEMSA modern warehouse and office block at Embakasi. However, the supporting schedule attached included items of expenditure that were based on unsubstantiated provisional items such as 'interest on anticipated delayed payments' and 'substructure' balance of Kshs.21,657,121 and Kshs.25,000,000 respectively, the provision which was not justified with approved and validated details.

Committee observations

i. The committee observed that the response given by KEMSA did not address the query raised by the auditors on unsupported costs and thus intentionally misleading. Available information indicates that M/S Dama Services were on renovation of Quality Assurance Lab and not on the proposed construction of KEMSA modern warehouse and office block at Embakasi.
ii. KEMSA paid 'interest on anticipated delayed payments' of Kshs.21,657,121. It is not clear why KEMSA had anticipated to delay on payments contrary to section 53 (8) of the Public Procurement and Asset Disposal Act 2015 which states that the Accounting officer shall not commence any procurement proceeding until satisfied that sufficient funds to meet the obligations of the resulting contract are reflected in its approved budget estimates.

iii. KEMSA paid both 'interest on anticipated delayed payments' of Kshs.21,657,121and substructure for Kshs.25,000,000 indicated as provisional sums in the tender documents which were not justified with approved and validated details. This is contrary to section 139 (2) (e) of the Public Procurement and Asset Disposal Act 2015 which states that an accounting officer of a procuring entity, on the recommendation of an evaluation committee, may approve the request for the use of provisional sums, which request shall be accompanied by a certificate from the tenderer making a justification for such cost.

iv. The unsupported expenditure are nugatory.

Committee Resolutions

The Committee resolved that;

i. KEMSA to provide to the Committee details on the entire procurement cycle from the advertisement of the tender, bidding, the tender evaluation process, award of the tender, the contract document, tender offer, tender offer acceptance letter and contract sum.

ii. KEMSA to furnish the Committee with details of the project costs (variations, interest etc) for all additional works including the slab, columns among others.

7.4 Unsupported Buildings

The Committee was informed that the balance includes additions to buildings amounting to Kshs 3,581,000. However, the existence of the buildings could not be verified as no contracts, ownership documents or completion certificates were availed for audit review. In the circumstance, the accuracy and validity of additional buildings valued at Kshs.3,581,000 as at 30 June, 2019 could not be confirmed.

Committee observations

Committee observations

The response given by KEMSA did not address the query raised by the auditors on unsupported Buildings and thus intentionally misleading.

KEMSA indicates that the amount of Ksh. 3,581,000 recognized in work-in-process building related to consultancy fees paid for renovation works done in the KEMSA's Commercial Street and Embakasi Depots. However, work-in-process do not form part of the buildings value until capitalized.

Committee resolutions

The Committee resolved that;

i. KEMSA avails documents concerning the unsupported buildings including contracts, ownership documents, bill of quantities and completion certificates be provided.

ii. KEMSA provides board resolutions, minutes, and details of the contract approval process that indicates a competitive process was undertaken before award of the contract.

8. Unsupported Payments Received in Advance

The Committee was informed that as disclosed in Note 25 to the financial statements, the statement of financial position reflects payments received in advance amounting to Kshs.221,483,033. A review of the supporting schedules indicated that the amounts are due to various organizations such as Ministry of Health. dispensaries and other private organizations.

However, Management have not provided details of the nature and basis of these advance receipts.

Committee observations

i. Failure to disclose or provide details of the nature and basis of advance receipts is a serious omission that may create loopholes for the concerned officers to perpetrate fraud if not controlled.
ii. The response by KEMSA is deficient for lack of details or breakdown on which payments relates to institutions that processed payments based on LPO/Quotations, prepayments made by National Cancer Institute, Ministry of Health's prepayments for UHC, new customer prepayments and those payments that could not be allocated to any existing customer for lack of details.
iii. It was difficult to ascertain the accuracy, completeness and validity of the payment received in advance balance of Kshs.221 483,033 reflected in the statement of financial position as at 30 June, 2019.
iv. The list provided detailing unsupported payments does not have authentication from KEMSA such as a signature or official stamp.

Committee resolutions

The Committee resolved that;

i. The list provided detailing unsupported payments to be provided accompanying the right local purchase order (LPO).

9. Unsupported Project Fund

The Committee was informed that as disclosed under Note 27 to the financial statements, the statement of financial position reflects project fund balance of Kshs.405,729,772 which includes a balance of Kshs.216,881,203 for Kenya Health Sector Support Project (KHSSP) KEMSA. However, a review of the KHSSP project's financial statements for the year ended 30 June, 2019 revealed that the project had cash and cash equivalent balance of Kshs.911,916,874 which when compared against the reported balance of Kshs.216,881,203 resulted to an unexplained difference of Kshs.695,035,671.

Committee observations

The committee observed that:

i. The accuracy and completeness of the project fund balance of Kshs.405,729,772 reflected in the statement of financial position as at 30 June, 2019 was in doubt.
ii. The Schedules provided do not explain what KEMSA received versus what they expended.
iii. Schedules provided are merely narrations with no supporting documentary evidence of what it relates.
iv. KEMSA expunged the narrations issued to justify bank balances in their submissions

Committee Resolution

The Committee Resolves that;

i. KEMSA to provide certified copies of bank statements showing the balances
ii. KEMSA to expunge narrations issued to justify bank balances in their submissions.

MIN/PIC SSAA/2023/137 **ADJOURNMENT**

There being no other business, the Chairman adjourned the sitting at 1:45 PM.

Signed.....

Hon. Emmanuel Wangwe CBS, MP – Chairperson

Date.....

MINUTES OF THE 70th SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES, ADMINISTRATION, AND AGRICULTURE HELD ON WEDNESDAY 27TH SEPTEMBER, 2023 AT THE PANARI HOTEL WALNUT HALL AT 9:00 AM.

PRESENT:

1. Hon. Emmanuel Wangwe, CBS, MP — **Chairperson**
2. Hon. Ferdinand Kevin Wanyonyi, MP
3. Hon. Martin Peters Owino, MP
4. Hon. Mary Wamaua Njoroge, MP
5. Hon. (Dr.) Peter Francis Masara, MP
6. Hon. Abdi Jehow Fatuma, MP
7. Hon. Bernard Kibor Kitur, MP
8. Hon. Geoffrey Wandeto, MP
9. Hon. Bishop Emeritus (Dr.) Jackson Kipkemoi Kosgei, MP
10. Hon. Michael Wambugu Wainaina, MP
11. Hon. Joshua Kivinda Kimilu, MP
12. Hon. Paul Nabuin Ekwom, MP

APOLOGIES:

1. Hon. Caleb Amisi Luyai — **Vice Chairperson**
2. Hon. Nixon Nicholas Ngikolong, MP
3. Hon. Elijah Njore Kururia, MP

IN ATTENDANCE:

SECRETARIAT

1.	Mr. Aden Abdullahi	Principal Clerk Assistant II
2.	Mr. Mark Namaswa	Clerk Assistant III
3.	Ms. Christine Kemunto	Clerk Assistant III
4.	Ms. Mercy Kinyua	Legal Counsel
5.	Mr. Wesley Abugah	Research Officer
6.	Mr. Moses Esamai	Audio Officer
7.	Ms. Lily Cherotich	Communications Officer

OFFICE OF THE AUDITOR GENERAL/INSPECTORATE OF STATE CORPORATIONS

1.	Dr. Charles Mwitari	Director-Audit
2.	Mr. Elijah Kimani	Principal Auditor
3.	Ms. Winnie Okechi	Auditor Assistant
4.	Mr. Jeff Otieno	Associate Auditor LRO

5. Mr. Trevor Odhiambo	Auditor Assistant
6. Mr. Daniel Wambua	Senior Inspector **(ISC)**

MIN/PIC SSAA/2023/138 **PRELIMINARIES**

The Chairperson informed the meeting that he had earlier attended to House business before heading for the meeting. He called the meeting to order at 9:30 am. This was followed by a word of prayer from Hon. Joshua Kimilu, MP.

MIN/PIC SSAA/2023/ 139 **MEETING THE KENYA MEDICAL SUPPLIES AUTHORITY TO CONSIDER THE AUDITOR-GENERAL REPORTS ON THE ACCOUNTS OF KEMSA FINANCIAL YEARS 2017/2018, 2018/2019, 2019/2020 AND 2020/2021**

Dr. Andrew Mulwa (Acting CEO- KEMSA) accompanied by Mr. Enos Namasaka (Human Resource Manager), Mr. John Kabuchi (Acting Procurement Director), Ms. Carol Anunda (Finance Manager), Elizabeth Mwai (Public Relations and Communications), Mr. Gilbert Mamati (Ag. Procurement Director), Mr. Waiganjo Karanja (Director- Finance and Strategy), Mr. Edward Buluma (Procurement Manager), Dr. Shyreen Khalid (CEO-TA), Dr. George Walukana (Programmes Manager), and Mr. Edward Njoroge (Operations Director) appeared before the committee to adduce evidence on the status of KEMSA. Others members of the delegation were: Dr. John Aduda (Manager – Quality Assurance), Ebbla Mohamed (HR and Administration Manager) and Ms. Jackline Mainye (Ag. DCS).

The Committee administered the oath to the witnesses: Dr. Andrew Mulwa, Mr. Gilbert Mamati, Mr. Edward Buluma, Mr. Waiganjo Karanja Mr. Edward Njoroge, and Mr. Enos Namasaka.

FY 2018/2019

10. Unsupported Medical Commodity Fund

The Committee was informed that as disclosed under Note 28 to the financial statements, the statement of financial position reflects medical commodity fund balance of Kshs.7,407,088,246 comprising of third-party stocks balance of Kshs.7,390,181,509 and global funds account balance of Kshs.16,906,736.

Committee Observations

The committee observed that:

The medical commodity fund balance comprising of third-party stocks balance of Kshs.7,390,181,509 and global funds account balance of Kshs.16,906,736 did not have supporting documents and schedules for the two balances .

The Committee observed that;

i. KEMSA did not satisfactorily provide supporting documents and schedules for the two balances for audit review at the time of the audit.

Committee Resolutions

The Committee resolved that;

i. KEMSA tables certified bank statements in support of the cited balances.
ii. The auditors from the OAG and the secretariat to be provided with the necessary documents and examine them to verify their authenticity.

1. Budgetary Control and Performance

The Committee heard that, the statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.4,356,834,000 and Kshs.3,707,974,000 respectively resulting to revenue shortfall of Kshs.648,860,000 or 15% of the budget. Similarly, the statement reflects final expenditure budget and actual on comparable basis of Kshs.2,583,703,000 and Kshs.2,557,267,000 respectively resulting to an under expenditure of Kshs.26,436,000 or 1% of the budget. The revenue shortfall was in respect of other income which had actual collection of Kshs.2,051,110,000 against budgeted receipts of Kshs.2,676,285,000 resulting in a shortfall of Kshs.625,175,000. The underfunding and underperformance affected the planned activities and may have impacted negatively on service delivery to the public.

Management Response

NO RESPONSE

Committee Observations

The committee observed that;

i. The Acting CEO- KEMSA did not have a written submission to the audit query on budgetary performance.
ii. The revenue shortfall in respect of other income which had actual collection of Kshs.2,051,110,000 against budgeted receipts of Kshs.2,676,285,000 resulting in a shortfall of Kshs.625,175,000.
iii. The Authority's actual expenditure for the year amounted to Kshs.2,557,267,000 against budgeted expenditure of Kshs.Kshs.2,583,703,000 resulting in an overall under absorption of Kshs.26,436,000. Therefore, the Authority did not fully achieve its budget objectives which could have adversely affected delivery of the intended services to the public.

2. Unresolved Prior Year Matters

The Committee heard that, in the audit report of the previous year, several issues were raised under the Report on Financial Statements, Report on Lawfulness and Effectiveness in Use of

Public Resources, and Report on Effectiveness of Internal Controls, Risk Management and Governance. However, the Management had not resolved all the issues or given any explanation for failure to adhere to the provisions of the Public Sector Accounting Standards Board templates and The National Treasury's Circular Ref: PSASB/12/1/(44) of 25 June, 2019.

Management Response

NO RESPONSE

Committee Observations

The committee observed that

KEMSA failed to adhere to the provisions of the Public Sector Accounting Standards Board templates and The National Treasury's Circular Ref: PSASB/12/1/ (44) of 25 June, 2019 yet they had not resolved all the issues or given any explanation.

Committee Resolution

The committee reprimanded the Accounting officer for not addressing the audit query on Unresolved Prior Year Matters

11. **Non-Compliance with Internal Recruitment Guidelines**

The Authority's career progression guideline of 2016 and roles profile require distribution loaders and drivers to have a minimum requirement of Kenya Certificate of Secondary Education (KCSE) D+ for job entry. A review of personal files, however, revealed that four distribution loaders and one driver were recruited during the year despite the fact that they did not have KCSE certificates.

Committee Observations

i. The committee observed that four distribution loaders and one driver were recruited during the year despite the fact that they did not possess KCSE certificates.
ii. KEMSA bypassed their own career progression guideline of 2016 and roles profile that required distributions loaders and drivers to have a minimum requirement of Kenya Certificate of Secondary Education (KCSE) D+ for job entry

Committee Resolutions

The Committee resolved that;

i. Management is in breach of law and its own internal recruitment policy by hiring staff without the requisite minimum academic qualification of a KCSE certificate.

12. Delay in Completion of Work

During the year under review, the Authority continued to implement a contract for Phase 1 of the Proposed Construction of KEMSA Modern Warehouse and Office Block at Embakasi.

Although the contract had provided for completion of work within a duration of fifty-two (52) weeks ending 28 March, 2018, the project had taken one hundred and sixteen (116) weeks by 30 June, 2019, and was therefore behind schedule by sixty-four (64) weeks which may lead to cost escalation.

Committee Observations

i. The committee observed that the project had taken an inordinate amount of time to complete from fifty-two (52) weeks ending 28 March, 2018, to one hundred and sixteen (116) weeks by 30 June, 2019, and therefore behind schedule by sixty-four (64) weeks which may lead to cost escalation.
ii. The Main Contractor did not have the requisite capability to undertake the project, due to the additional workload, the specialized nature of the works, requiring specialized equipment at specialized locations for works. This meant that due diligence were not undertaken during technical evaluation and after preliminary evaluations.
iii. The cited delay in receipt of tax exemption where in July 2018 KEMSA had requested for a Master List of items to be exempted was far beyond after the project completion date 28 March, 2018. Although, the general Tax Waiver was acquired on 29th March 2019, which was longer than expected (52no. weeks) this was a sign of poor planning on the part of KEMSA.
iv. The Auditor-General had raised an audit query for the same project citing arbitrage payments in respect of unsubstantiated provisional items on interest on anticipated delayed payments and 'substructure' balance of Kshs.21,657,121 and Kshs.25,000,000 respectively.

Committee Resolutions

The Committee resolved that;

i. The excuses provided by the contractors for the delay in completion of works are not plausible. They still bear responsibility for breach of contract by failing to complete the construction within the timelines provided of 52 weeks ending 28 March, 2018.
ii. Committee to invite some of the said contractors cited in the delay of completion of works. They include Vaghjiyani Enterprises who was the main contractor.
iii. KEMSA to provide the Committee with details on the warehouse construction in Embakasi and provide: a copy of the advertisement of the tender, the tender evaluation process, the contract document and contract sum.

13. Long Outstanding Balances

13.1 Receivables from Exchange Transactions

The statement of financial position reflects receivables from exchange transactions balance of Kshs.5,112,529,398 which constitutes receivables totaling Kshs 3,996,038,344 comprising of Kshs 2,642,507,670 from all the forty-seven (47) Counties and Kshs.1,353,530,674 due from

the Ministry of Health that have been outstanding for more than one year and whose recovery is doubtful. No explanation has been provided for failing to recover these long outstanding debts.

Committee Observations

The committee observed that the issue had been deliberated upon in the committee report for 2017/2018 and noted ;

i. That as per the KEMSA response for 2018/2019, as at 27th March 2020, KEMSA had collected a total of Ksh. 3,693,998,151.71 from the counties against the debts outstanding as at 30th June 2019 while in their response to 2017/2018 KEMSA stated that as at 11th August 2020, KEMSA has collected a total of Ksh 2,193,622,288.76 from the counties against the debts outstanding as at 30th June 2018. The response is contradictory as it appears that the debts collected do not relate to the long-outstanding balances. Similarly, there is no evidence that the debts owing from the counties has been cleared.
ii. Despite KEMSA indicating that follow-up with the Ministry of Health was done through correspondences, there's no evidence that the pending bills have been cleared or the commitment that the Ministry of health will clear the debt.
iii. Since the Ministry ought to have provided Funding to KEMSA first before provision of the mentioned services, it's not clear how the debt arose from the Supply Chain Services (Warehousing, Procurement and Distribution) offered by KEMSA to the various national programs under the Ministry of Health.
iv. PIC in its 22nd report had discussed the audit issue and observed that The National government had spent approximately Kshs. 600,000,000 to procure drugs from KEMSA in a period of 90 days during the 2016/17 financial year. This was despite the national government having no role in purchase of drugs (for counties) as per the fourth schedule of the constitution which delimits the roles to be performed by the two levels of government.
v. Despite assurances by Management, KEMSA still lacks effective debt collection measures to discharge its obligations as they fall due.

14. Trade and Other Payables from Exchange Transactions

Further, and as previously reported, trade and other payables from exchange transactions balance of Kshs.3,481,233.696 constitutes long outstanding amounts of Kshs.97,631,797 which constitute medical creditors of Kshs.17,888,530, operation creditors of Kshs.36,170,144, long outstanding suppliers' funds retained a balance of Kshs.16,186,120 and VAT output due of Kshs.27,387.003, all of which have been outstanding beyond one year.

Committee Observations

The committee noted that in their report for 2017/2018 they had observed that;

i. The Committee observed that M/S Med Africa ltd was awarded a Contract to supply, Install, and Commission Diesel Fired Incinerators at Busia, Kitale, and Wajir County Referral hospitals on 25th June 2015 with a delivery period of 24 weeks but the sheds to house the incinerators were not ready since the Ministry of Health that was responsible for the construction of the three incinerator sheds did not prepare the sites as expected. The Principal Secretary had advised KEMSA vide **letter (*REF .NO MOH /ADM/1/1/VOL .1 dated 24th March 2016*** to pay Med Africa Ltd 70% of the contract amount then and 30% of the contract **(Kshs. 14,891,184)** was outstanding awaiting installation and commissioning of the incinerators. The balance reduced by Kshs. 5,000,000 in this year but there were no documents to support the payment to the contractor.

ii. The status of the sheds and installation of the incinerator at Wajir is still unknown since there is no update on the matter.

iii. M/s Meditec Systems Ltd was awarded a contract for procurement of cancer, surgical dental, and diagnostic equipment worth **USD 3,368 374.20** on 28th November 2012. One of the items in the contract was the construction of the bunker and civil works, which was to take 47 weeks to be completed. However, at the time M/s Meditec Systems Ltd were forwarding the final certificate, funds were not enough to service the final payment **(Ksh 2,290,509.84)** due to changes/fluctuations in exchange rates. KEMSA received the extra funds from the Ministry of Health and the supplier paid in FY21/22. The committee did not get any documentary evidence of final settlement.

iv. ***On OMAERA PHARMACEUTICALS LTD with an amount payable of Kshs. 5,706,845.00. The committee observed that the*** **Alimox (Amoxicillin Oral suspension was recalled in 2016 by the Pharmacy and Poisons Board due to quality issues. The Manufacturer could not, therefore, manufacture the product until the Manufacturing Authorization was reinstated. The product was delisted from the Kenya Essential Medicines List and hence the manufacturer could not replace the product with fresh batches.** In July 2019, an agreement was reached between KEMSA and Omaera and the supplier was requested to replace the delisted Alimox with Amoxicillin Dispersible tablets 250mg at the same value of the delisted product which was done in November 2019.

However, no documentary evidence was adduced before the committee to prove the agreement and delivery. Arising from the foregoing the committee was of the view that KEMSA did not assess the quality of the products they received in their stores before acceptance thus breaching section 150 of the Public procurement and Asset Disposal Act 2015 on acceptance of Goods. Works and services.

v. ***The Operational Creditors of KSH (35,681,976.80) related to*** Crown Agents Kenya Ltd, GTZ and John Snow who had formed a consortium with KEMSA for Tendering, Implementation and Winding up Phase for Providing Procurement and Supply Chain Management Services to the GFATM programs in Kenya. However, at the end of the Financial Year, KEMSA had received part of the Procurement and Supply Chain

Management Consortium (PSCMC) fees from the principal recipient hence providing for payables to the partners whose remittance to the consortium partners was delayed until **FY 20/21.**

vi. The delivery note provided for the supply of drugs after an agreement was reached between KEMSA and Omaera and the supplier was requested to replace the delisted Alimox with Amoxicillin Dispersible tablets 250mg was not adding up. It was outside the respective year under review (beyond the financial year cycle.

vii. An amount of Ksh. 3,829,479 included long outstanding customer prepayment was a direct deposit dating back 2016. It was not clear whether there was any refund or how the prepayment was handled by KEMSA.

viii. The amount of Ksh. 9,858,300 was a retention for Alliance Technologies Ltd after the termination of the contract between them and KEMSA arising from failure to meet obligations under the contract. However, Alliance Technologies had sought legal redress and the matter is still in court.

ix. KEMSA still has not paid some suppliers for goods supplied and services rendered from as far back as 2013. There is no justification for the continued

x. KEMSA is still holding funds in its accounts that should ideally be surrendered to the Unclaimed Financial Assets Authority.

Committee Resolutions

The Committee resolved that;

i. KEMSA fast-tracks the process of paying off the pending bills and if it does not have details of suppliers it owes money as it claims, it should surrender the monies to the Unclaimed Financial Assets Authority as required by law.

ii. Management to provide evidence of installation of the diesel-powered incinerators at Busia, Kitale and Wajir County Referral hospitals.

iii. KEMSA to furnish the Committee with details of the Meditec System Ltd contract for procurement of cancer, surgical dental, and diagnostic equipment worth USD 3,368 374.20.

MIN/PIC SSAA/2023/140 **ADJOURNMENT**

The Chair informed the meeting that all Committees had been recalled to Parliament and there being no other business, the adjourned the sitting at 2:12 PM. The next meeting will be held on notice.

Signed.....

Hon. Emmanuel Wangwe CBS, MP – Chairperson

Date.....

MINUTES OF THE 77TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES, ADMINISTRATION, AND AGRICULTURE HELD THURSDAY 26TH OCTOBER, 2023 AT THE COMMITTEE ROOM 7, PARLIAMENT BUILDINGS AT 9:00 AM.

PRESENT:

1. Hon. Emmanuel Wangwe, CBS, MP — **Chairperson**
2. Hon. Caleb Amisi Luyai — Vice Chairperson
3. Hon. Martin Peters Owino, MP
4. Hon. Mary Wamaua Njoroge, MP
5. Hon. Abdi Jehow Fatuma, MP
6. Hon. Bishop Emeritus (Dr.) Jackson Kipkemoi Kosgei, MP
7. Hon. Joshua Kivinda Kimilu, MP
8. Hon. Paul Nabuin Ekwom, MP

APOLOGIES:

1. Hon. Ferdinand Kevin Wanyonyi, MP
2. Hon. (Dr.) Peter Francis Masara, MP
3. Hon. Bernard Kibor Kitur, MP
4. Hon. Nixon Nicholas Ngikolong, MP
5. Hon. Geoffrey Wandeto, MP
6. Hon. Michael Wambugu Wainaina, MP
7. Hon. Elijah Njore Kururia, MP

IN ATTENDANCE:

SECRETARIAT

1. Mr. Aden Abdullahi — Principal Clerk Assistant II
2. Mr. Mark Namaswa — Clerk Assistant III
3. Ms. Christine Kemunto — Clerk Assistant III
4. Mr. Moses Esamai — Audio Officer
5. Mr. Kevin Ojiambo — Media Officer
6. Mr. Noah Chemweno — Sergeant – At – Arms
7. Mr. Derrick Omondi — Intern

OFFICE OF THE AUDITOR GENERAL/INSPECTORATE OF STATE CORPORATIONS

1.	Dr. Dominic Kamenyi	Director of Audit
2.	Mr. Patrick Omenyo	Principal Auditor
3.	Mr. David Githinji	Principal Auditor LRO
4.	Mr. Stephen Mbatia	Principal Inspector
5.	Mr. Wang'ombe Ngugi	The National Treasury
6.	Ms. Mary Mbete	The National Treasury

MIN/PIC SSAA/2023/170 **PRELIMINARIES**

The Chairperson called the meeting to order at 9:30 am followed by a word of prayer from Hon. Bishop Emeritus (Dr.) Jackson Kipkemoi Kosgei, MP.

MIN/PIC SSAA/2023/171 **MEETING THE ACTING MANAGING DIRECTOR-KENYA BROADCASTING CORPORATION TO CONSIDER THE AUDITOR GENERAL'S REPORTS OF THE ACCOUNTS OF KBC**

Mr. Samuel Maina, Ag. Managing Director, Kenya Broadcasting Corporation accompanied by Mr. Samuel Mwanza (Acting Chief Finance Officer), Mr. Robert Wekesa (Procurement Manager), Ms. Risper Kajuju (Accountant), Ms. Pamela Mogaka (Human Resource Manager), Mr. Charles Rotich (Finance Manager), and Ms. Josephine Mwaniki (Senior Accountant) appeared before the committee to adduce evidence on the status of the Kenya Broadcasting Corporation.

The Committee administered the Oath to Mr. Samuel Maina, Ag. Managing Director, Mr. Samuel Mwanza (Acting Chief Finance Officer), Mr. Robert Wekesa (Procurement Manager), Mr. Raphael Bullindah (Administration Manager), and Ms. Margaret Ochieng (Senior Legal Officer).

The Committee noted that the additional information requested from KBC via letter Ref; NA/DAA&OSC/PIC-SSAA/2023/(145) had not be formally received by the Committee and the Office of the Auditor General. The Committee directed that KBC submits the additional information through the formal procedure.

PROPERTY, PLANT, AND EQUIPMENT FYS (2001-2013)
FIXED ASSET REGISTER

The Committee was informed that, as previously reported the Corporation did not maintain a fixed asset register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets. In addition, out of the 33 parcel of land which parcels of land which belongs to the Corporation, only 8 parcels of lands had title deeds while 7 had allotment letters issued. The Corporation therefore does not have title deeds or other legal documents of ownership in respect of 25 parcels of land. In the circumstances, it was not possible to confirm the ownership status of the parcels of land and confirm that the fixed assets totaling Kshs.4,826,664,612.00 are fairly stated in the financial statements.

Committee observations

i. The Corporation did not maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.
ii. The Corporation had title deeds for eight parcles of land with another32 parcels which does not have title deeds or other legal documents of ownership. However, the title deed for LR.NO. 209/5918 -Broadcasting house Nairobi measuring 2.8 acres in which the KBC headquarters are situated, was in the name of CHIEF SECRETARY, COLONY AND PROTECTORATE OF KENYA a body corporate duly established by the chief secretary (incorporation) ordinance 1958. Further, out the seven allotment letters KBC claimed to have, only one was provide but was in the name of KOMAROCK Raching Company. It was not clear how KBC claimed ownership of the same and the status of the other six parcles allotment letters.
iii. The Corporation hired consultants (conveyance lawyers) in 2012 to survey the unsurveyed parcels of land and process the remaining title deeds. However, except for the status report given of 6 January 2014, not further, correspondences thereafter were presented before the committee and the terms of engagement between KBC and the conveyance lawyers, the timelines and the cost of the services were unknown.

Committee Resolutions

The Committee resolved that;

i. KBC to clarify in detail from the information provided which of the 33 parcels of land that belong to the Corporation have title deeds, allotment letters or not and outline steps taken to obtain the said documents.
ii. KBC to provide information on the engagement of a private valuer (Eco-Oryx Solutions Ltd) which includes the advertisement for the tender, the tendering process, tender offer and acceptance of the offer as well as details of the payments made.

POWER GENERATORS

The Committee was informed that the Corporation at the direction of the Government loaned its five power generators valued at Kshs.29,023,200 to KENGEN to alleviate the power crisis during 2000/2001. The generators have not been returned to the Corporation, despite several reminders and demands by the Corporation to KENGEN.

Under the circumstances therefore, it was not a possible to confirm that the five power generators were safe, secure and recoverable by the Corporation.

Committee observations

The Committee observed that;

The Corporation at the direction of the Government loaned its five power generators valued at Kshs.29,023,200 to KENGEN to alleviate the power crisis during 2000/2001. However, The generators had not been returned to the Corporation, despite several reminders and demands by the Corporation to KENGEN. The Corporation had not done enough to follow on the return of the generators and there was loss incurred in respect to the loaned generators valued at Kshs.29,023,200

Committee resolution

The Committee resolved that;

KBC to provide information to the Committee on how the Government of Kenya communicated concerning sending the generators to Jomo Kenyatta and Nairobi Universities under an Emergency power supply project. In this case, the approval should have been granted by the National Treasury.

FIXED ASSETS

The Committee was informed that as previously reported the Corporation did not maintain any fixed assets register contrary to Section 43 of Kenya Broadcasting Corporation Act (Cap 221), and although the Corporation all indicated that valuation of its assets has started, the exercise was hindered by liquidity problems mentioned in paragraph 1 above. Under the circumstances it was not possible to confirm the correctness of Non-Current Assets balance of Kshs.4,465,539,969 as at 30 June, 2002.

Committee observations

i. The Corporation did not maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

ii. The Corporation had title deeds for eight parcles of land with another 32 parcels which does not have title deeds or other legal documents of ownership. However, the title deed for LR.NO. 209/5918 -Broadcasting house Nairobi measuring 2.8 acres in which the KBC

headquarters are situated, was in the name of CHIEF SECRETARY, COLONY AND PROTECTORATE OF KENYA a body corporate duly established by the chief secretary (incorporation) ordinance 1958. Further, out the seven allotment letters KBC claimed to have, only one was provide but was in the name of KOMAROCK Raching Company. It was not clear how KBC claimed ownership of the same and the status of the other six parcles allotment letters.

iii. The Corporation hired consultants (conveyance lawyers) in 2012 to survey the unsurveyed parcels of land and process the remaining title deeds. However, except for the status report given of 6 January 2014, not further, correspondences thereafter were presented before the committee and the terms of engagement between KBC and the conveyance lawyers, the timelines and the cost of the services were unknown.

Committee resolution

The Committee resolved that;

i. KBC to provide information on the engagement of a private valuer (Eco-Oryx Solutions Ltd) which includes the advertisement for the tender, the tendering process, tender offer and acceptance of the offer as well as details of the payments made.

FIXED ASSETS

The Committee was informed that as pointed out in previous report, the Corporation does not maintain a fixed assets register for the assets reflected in the balance sheet at Kshs.4,144,871,879. Consequently, it is not possible to confirm whether the carrying values as stated in the financial statements reflect the fair values of fixed assets at the balance sheet date. Included in the Corporation's assets are 33 parcels of land in various parts of the country whose value has not been determined. Land parcels numbering 23 out of 33 have no title deeds and have not therefore been registered in the Corporation's name.

The unregistered land includes KBC Headquarters Complex LR 15090 (40.47 ha), Karen LR 10956 (10 ha) and KBC Norfolk 209/10370(0.0061 ha). Under the circumstances it has not been possible to confirm the ownership and security of these parcel of land.

Committee observations

i. The Corporation did not maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

ii. The Corporation had title deeds for eight parcles of land with another32 parcels which does not have title deeds or other legal documents of ownership. However, the title deed for LR.NO. 209/5918 -Broadcasting house Nairobi measuring 2.8 acres in which the KBC

headquarters are situated, was in the name of CHIEF SECRETARY, COLONY AND PROTECTORATE OF KENYA a body corporate duly established by the chief secretary (incorporation) ordinance 1958. Further, out the seven allotment letters KBC claimed to have, only one was provide but was in the name of KOMAROCK Raching Company. It was not clear how KBC claimed ownership of the same and the status of the other six parcles allotment letters.

iii. The Corporation hired consultants (conveyance lawyers) in 2012 to survey the unsurveyed parcels of land and process the remaining title deeds. However, except for the status report given of 6 January 2014, not further, correspondences thereafter were presented before the committee and the terms of engagement between KBC and the conveyance lawyers, the timelines and the cost of the services were unknown.

Committee Resolution

The Committee resolved that;

i. The KBC management to provide a tabulated document showing the current position of ownership of the land including:
   - Parcel of land
   - Claimants of the land
   - Nature of infrastructure on the land for example masts
   - Status of the land whether secured or unsecured
   - Current value
   - Date of acquisition

FIXED ASSETS

The Committee was informed that the Corporation does not maintain a fixed assets register. Although the Corporation explained that the problem was inherited from the Ministry of Information and Broadcasting which did not hand over proper records of assets taken over by the Corporation at its incorporation. In the absence of an appropriate fixed assets register, it is not possible to confirm whether all fixed assets as reported in the financial statements reflect the fair values of fixed assets as at balance sheet date.

Committee Observations

The Committee observed that;

The Corporation engaged a private valuer to ascertain the status of its asset instead of a government valuer. This decision might end up not reflecting the fair value of fixed assets as at balance sheet date.

PROPERTY PLANT AND EQUIPMENT

The Committee was informed that as previously reported, the Corporation does not maintain a register of its properties, plant and equipment. In the absence of an

appropriate fixed assets register, the Corporation is in breach of section 43 (1) of the KBC Act, Cap 221 which stipulates that the Board shall cause to be kept proper books and records of account of assets among other things. Under the circumstances, it is not possible to confirm whether the carrying value of Kshs.3,545,858,382 reflected in the balance sheet is fairly stated.

Committee observations

i. The Corporation did not maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.
ii. The Corporation indicated that the problem had been inherited from the Ministry of Information and Broadcasting which did not hand over proper records of assets taken over by the Corporation at its incorporation.
iii. KBC has not indicated how their listed asset value depreciated to Ksh. 3,545,858,382.

Committee resolution

The Committee resolved that;

i. KBC to explain why the value of assets that would ideally appreciate such as land, would remain static or depreciate.

5. GENERATORS

The Committee was informed during the power crisis in the country in the year 2000, the Corporation loaned five generators valued at Kshs.29 Million to KenGen following a request by its Parent Ministry that KBC assists in alleviating the temporary power crisis. Although the crisis is long gone, the generators have not yet been returned to KBC. KBC has also not been compensated for the generators in any way. No indication has been seen on how or when these generators are likely to be returned or compensation for them received.

Committee observations

The Committee observed that;

The Corporation at the direction of the Government loaned its five power generators valued at Kshs.29,000,000 to KENGEN to alleviate the power crisis during 2000/2001. However The generators had not been returned to the Corporation, despite several reminders and demands by the Corporation to KENGEN. The Corporation had not done enough to follow on the return of the generators and there was loss incurred in respect to the loaned generators valued at Kshs.29,000,000

Committee Resolution

The Committee resolved that;

KBC to provide information to the Committee on how the Government of Kenya communicated concerning sending the generators to Jomo Kenyatta and Nairobi Universities under an Emergency power supply project. In this case, the approval should have been granted by the National Treasury.

4 GENERATORS

As previously reported, during the power crisis in the country in 2000, the Corporation loaned five generators to KenGen valued at Kshs.29 Million following a request by its parent ministry that KBC assist in alleviating the temporary power crisis. Although the crisis is long gone, the generators have not yet been returned to KBC. KBC has also not been compensated in any way. No indication has been given as to how or when these generators are likely to be returned or compensation for them received.

Committee observations

The Committee observed that;

The Corporation at the direction of the Government loaned its five power generators valued at Kshs.29,000,000 to KENGEN to alleviate the power crisis during 2000/2001. However The generators had not been returned to the Corporation, despite several reminders and demands by the Corporation to KENGEN. The Corporation had not done enough to follow on the return of the generators and there was loss incurred in respect to the loaned generators valued at Kshs.29,000,000

Committee Resolution

The Committee resolved that;

KBC to provide information to the Committee on how the Government of Kenya communicated concerning sending the generators to Jomo Kenyatta and Nairobi Universities under an Emergency power supply project. In this case, the approval should have been granted by the National Treasury.

2. PROPERTY PLANT AND EQUIPMENT

The Corporation did not maintain a fixed assets register to record it property, plant and equipment. Further, and as disclosed in Note 12 to the financial statements, the values of land and buildings have been combined and subjected to 2% depreciation, resulting in a net value of Kshs.875,993,125 as at 30 June 2008 contrary to the International Accounting Standard No. 16 on property, plant and equipment which requires items with significant cost to be depreciated separately. Further, the property, land and equipment balance of Kshs.3,284,331,627 excludes undermined value of 6 parcels of land in unadjudicated areas, 6 others in unsurveyed areas, 4 others in forest reserve, 3 others under dispute and 2 others with allotment letters but whose title documents were not made available for audit review.

Although indications are that the Corporation has made several attempts to the Ministry of Lands to have the above issues resolved and title documents obtained, limited success appears to have

been achieved. In the circumstances, it was not possible to confirm the ownership and fair presentation of property, plant and equipment
balance of Kshs.3,284,331,627 as at 30 June 2008.

Committee observations

i. The Corporation did not maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

ii. The Corporation failed to comply with the International Accounting Standard No. 16 on property, plant and equipment by subjecting the land to 2% depreciation.

iii. The Corporation had undermined the value of 6 parcels of land in unadjudicated areas, 6 others in unsurveyed areas, 4 others in forest reserve, 3 others under dispute and 2 others with allotment letters. All these did not have title deeds or ownership documents.

Committee Resolutions

The Committee resolved that;

ii. The KBC management to provide a tabulated document showing the current position of ownership of the land including:

- Parcel of land
- Claimants of the land
- Nature of infrastructure on the land for example masts
- Status of the land whether secured or unsecured
- Current value
- Date of acquisition

iii. KBC to table its asset register during the meeting to be held on Tuesday 31st October, 2023.

2. PROPERTY, PLANT AND EQUIPMENT

(i) As previously reported the Corporation did not during the year maintain a Fixed Assets Register for its property, Land and Equipment. Further, and as disclosed in Note 12 to the financial statements, the values of land and buildings have not been combined and subjected to a 2% depreciation, resulting in a net value of Kshs 858,973,435.The treatment of this class of assets is, as similarly observed in 2007/2008,contrary to the International accounting Standards no.16 which requires items with significant cost to be depreciated separately and be adequately provided for.

Although the management has explained that a consultant was contracted in April , 2008 to carry out a detailed valuation report was seen as at the date of this report.

(ii) Further, the Property, Plant and Equipment balance of Kshs 3,130,341,695 excludes undetermined value of 6 parcels of land in unadjudicated areas,6 in unsurveyed areas,4 in a forest reserve,3 under dispute and 2 others with allotment letters but whose title documents were not

available. Although indications are that the Corporation has made several attempts at the Ministry of Lands to have the above issues resolved and the title documents obtained, minimal success appears to have been achieved.

(iii) In July 2000, the Corporation made an arrangement with Kenya Electricity Generating Company Ltd (KenGen) whereby the Corporation loaned the Company 5 generators which were subsequently installed at Jomo Kenyatta, Kenyatta and Nairobi Universities under an Emergency Power Supply Project. The 5 generators with an estimated value of Kshs. 29 million are part of the Corporation's portfolio of assets. However, no compensation for use of the generators appears to have been paid to the Corporation during the year which raises the issue of how the sets will be replaced as per their useful life.

In the circumstances, it has not been possible to confirm the balance of Kshs. 3,130,341,696.00 under Property, Plant and Equipment as at 30th June 2009.

Committee observations

i. The Corporation did not maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.

ii. The Corporation failed to comply with the International Accounting Standard No. 16 on property, plant and equipment by subjecting the land to 2% depreciation.

iii. The Corporation had undermined the value of 6 parcels of land in unadjudicated areas, 6 others in unsurveyed areas, 4 others in forest reserve, 3 others under dispute and 2 others with allotment letters. All these did not have title deeds or ownership documents.

Committee resolutions

The Committee resolved that;

i. The write-off of the five (5) generators from the Corporation's statement of financial position is in breach of public procurement laws. The Corporation should provide evidence that the write-off was authorised by the National Treasury.
ii. KBC to table its asset register during the meeting to be held with the Committee.

2. PROPERTY PLANT AND EQUIPMENT

Similar to the previous year, the Corporation did not in 2009-2010 maintain a Fixed Assets Register for the Property, Plant and Equipment. Further, and as disclosed in Note 15 to the financial

statement , the values of land and buildings have been combined and subjected to a 2% depreciation, resulting in a net value of Ksh.848,766,138.The treatment of this class of assets is as similarly observed in 2008/2009, contrary to the International Accounting Standard No 16 which requires that items with significant cost be depreciated separately and be adequately provided for.

The Property, Plant and Equipment balance of Ksh. 3,093,992,523 excludes undetermined value of 6 parcels of land in unadjudicated areas , 6 in unsurveyed areas ,4 in a forest reserve , 3 under dispute and 2 others with allotment letters but whose ownership documents were not available. Although as in the previous year indications are that the corporation has made attempts at the ministry of lands to have the above issues resolved , no meaningful progress appears to have been achieved in this regard, as at 30 June, 2010.

In July 2000, the Corporation made an arrangement with Kenya Electricity Generating Company Ltd (KenGen) whereby the Corporation loaned the Company 5 generators, which were subsequently installed at Jommo Kenyatta, Kenyatta and Nairobi Universities under an Emergency Power Supply PROJECT. The generators with an estimated value of Kshs. 29 million are part of the Corporations portfolio of assests. However, and as observed in the previous year, no compensation for the use of the generators appears to have been paid to the Corporation during the year under review and no explanation has been provided for the anomaly.
On 20th May 2010, the Corporation received from a supplier, a transmitter equipment, Turnkey Encoding system valued at 171.498 Euros (equivalent to Kshs. 17,000,000) as part of its additional equipment during the year.
However, the value of Kshs.17,000,000 does not appear to have been incorporated in the Property, Plant and Equipment balance of Kshs. 3,093,0992,523 as at 30th June 2010
In the circumstances, it has not been possible to confirm that the balance of Kshs. 3,093,0992,523 under Property, Plant and Equipment as at 30th June is fairly stated.

Committee observations

i. The Corporation did not maintain a fixed assets register contrary to Section 43 of the Kenya Broadcasting Corporation Act (Cap 221) which requires maintenance of proper books and records of accounts of assets and Section 161 of the Public Procurement and Asset disposal Act CAP 412C.
ii. The Corporation failed to comply with the International Accounting Standard No. 16 on property, plant and equipment by subjecting the land to 2% depreciation.
iii. The Corporation had undermined the value of 6 parcels of land in unadjudicated areas, 6 others in unsurveyed areas, 4 others in forest reserve, 3 others under dispute and 2 others with allotment letters. All these did not have title deeds or ownership documents.

Committee resolutions

i. KBC to provide information on how the Turnkey Encoding System was procured
ii. KBC to explain how the purchase of the Turnkey Encoding System was funded to the value of 171.498 Euros or Kshs. 17,000,000.
iii. KBC to provide minutes of the Board meeting that resolved to write off the five generators on 28th August 2013 from the Corporation's statement of financial position.
iv. KBC to provide a written approval from the National Treasury for the write off the five (5) from the Corporation's statement of financial position.
v. Provide details on the full back ground for Kshs. 17,000,000 used to purchase a transmitter equipment, Turnkey Encoding system valued at 171.498 Euros (equivalent to Kshs. 17,000,000) as part of its additional equipment during the year.

3 PROPERTY, PLANT AND EQUIPMENT

The property, plant and equipment balance of Kshs.4,690,513,926 includes Kshs.2,001,374,696 in respect of land which includes unsurveyed land valued at Kshs.135,125,000 in various parts of the country.

Further, included in the value of land of Kshs.2,001,374,696 as at 30th June 2011 is unadjudicated piece of land valued at 1,980,000 Kshs.1,980,000 located at Voi and forest lands in Nyeri and Nakuru valued at Kshs.3,500,000 and Kshs.13,000,000 respectively.

No explanation has been given as to why nine (9) Parcels of land have not been surveyed to date and further, no meaningful progress appears to have been achieved in respect of unadjudicated land in Voi and forest lands in Nyeri and and Nakuru with the relevant Ministry. Management has however explained that the survey process will commence in July 2012.

In July, 2000, the Corporation made an arrangement with Kenya Electricity Generating Company Limited (KenGen) whereby the Corporation loaned the company five (5) generators which were subsequently installed at Jomo Kenyatta University of Science and Technology, Kenyatta University and University of Nairobi under the Emergency Power supply project. The generators which had an estimated value of Kshs.29 Million are part of the Corporation's portfolio of assets. However, and as observed in the previous year, no compensation for use of generators appears to have been paid to the Corporation during the year under review and no explanation has been provided for the anomaly.

In the circumstances, it has not been possible to confirm that property, plant and equipment balance of Kshs. 4,690,513,926 as at 30th June 2011 is fairly stated.

Committee observations

The Committee observed that;

i. The Corporation land valued at Kshs.135,125,000 located in various parts of the Country has not been surveyed and therefore its fair value cannot be ascertained. The corporation possess adjudicated piece of land valued at Kshs.1,980,000 located at Voi and forest lands in Nyeri and Nakuru valued at Kshs.3,500,000 and Kshs.13,000,000 respectively.

ii. Further, included in the value of land of Kshs.2,001,374,696 as at 30th June 2011 is unadjudicated piece of land valued at 1,980,000 Kshs.1,980,000 located at Voi and forest lands in Nyeri and Nakuru valued at Kshs.3,500,000 and Kshs.13,000,000 respectively.

iii. The Corporation did not give sufficient explanation as to why nine (9) Parcels of land have not been surveyed to date.

iv. The Corporation at the direction of the Government loaned its five power generators valued at Kshs.29,000,000 to KENGEN to alleviate the power crisis during 2000/2001. However The generators had not been returned to the Corporation, despite several reminders and demands by the Corporation to KENGEN. The Corporation had not done enough to follow on the return of the generators and there was loss incurred in respect to the loaned generators valued at Kshs.29,000,000

Committee Recommendations

The Committee recommended that;

KBC to provide information to the Committee on how the Government of Kenya communicated concerning sending the generators to Jomo Kenyatta and Nairobi Universities under an Emergency power supply project. In this case, the approval should have been granted by the National Treasury.

The KBC management to provide a tabulated document showing the current position of ownership of the land including:

- Parcel of land
- Claimants of the land
- Nature of infrastructure on the land for example masts
- Status of the land whether secured or unsecured
- Current value
- Date of acquisition

iv. KBC to table its asset register during the meeting to be held on Tuesday 31st October, 2023.

3. PLANT AND EQUIPMENT

In July 2000, and as previously reported in 2010/2011, the Corporation made an arrangement with Kenya Electricity Generating Company Ltd (KenGen) whereby the Corporation loaned the company five (5) generators which were subsequently installed at Jomo Kenyatta and Nairobi Universities under an Emergency power supply project. The generators which had an estimated value of Kshs.29 Million are part of the Corporation's portfolio of assets. However, and as observed in the previous year (2010/2011), no compensation for use of generators appears to have been paid to the Corporation during the year under review and no explanation has been provided for the anomaly.

Committee observations

The Committee observed that;

The Corporation at the direction of the Government loaned its five power generators valued at Kshs.29,000,000 to KENGEN to alleviate the power crisis during 2000/2001. However The generators had not been returned to the Corporation, despite several reminders and demands by the Corporation to KENGEN. The Corporation had not done enough to follow on the return of the generators and there was loss incurred in respect to the loaned generators valued at Kshs.29,000,000

Committee resolution

The Committee resolved that;

i. KBC to provide information to the Committee on how the Government of Kenya communicated concerning sending the generators to Jomo Kenyatta and Nairobi Universities under an Emergency power supply project. In this case, the approval should have been granted by the National Treasury.

3. PROPERTY, PLANT AND EQUIPMENT

In July, 2000, and as previously reported in 2011/2012,The Corporation made an arrangement with Kenya Electricity Generating Compant Limited (KenGen) whereby the Corporation loaned KenGen five (5) generators which were subsequently installed at Jomo Kenyatta University, Kenyatta University and University of Nairobi under an Emergency Power supply project. The generators which had an estimated value of Kshs.29 Million are part of the Corporation's portfolio of assets.

However, and as observed in the previous year (2011/2012), no compensation for use of generators appears to have been paid to the Corporation during the year under review and no explanation has been Provided for the anomaly.

Committee observations

The Committee observed that;

The Corporation at the direction of the Government loaned its five power generators valued at Kshs.29,000,000 to KENGEN to alleviate the power crisis during 2000/2001. However The generators had not been returned to the Corporation, despite several reminders and demands by the Corporation to KENGEN. The Corporation had not done enough to follow on the return of the generators and there was loss incurred in respect to the loaned generators valued at Kshs.29,000,000

Committee Resolutions

The Committee resolved that;

i. KBC to provide information to the Committee on how the Government of Kenya communicated concerning sending the generators to Jomo Kenyatta and Nairobi Universities under an Emergency power supply project. In this case, the approval should have been granted by the National Treasury.

MIN/PIC SSAA/2023/ 172 ANY OTHER BUSINESS

i. The Inspectorate of State Corporations brought to the attention of the Committee that the KBC has not been submitting managerial reports to the Inspectorate. Consequently, the ISC was in the process of instituting an audit on KBC.
ii. The Committee resolved to invite the ISC in-camera to shed more light about KBC before it officially invites the KBC Board.
iii. The Committee will be seeking to get more insights on what has been transpiring concerning KBC assets such as land and equipment.
iv. The Committee will also be seeking to get more insights concerning KBC, its inability to commercialize its assets and get an understanding concerning its revenues, agreements and shareholding with other players in the media landscape such as Multichoice Africa and DSTV.

MIN/PIC SSAA/2023/ 173 **ADJOURNMENT**

The Committee was apprised of Parliament going on a weeklong recess from Thursday 26th October but would proceed with Committee meetings. The Committee is set to meet KBC on Tuesday 31st October, 2023.

There being no other business, the Chairman adjourned the sitting at 13:06 PM.

Signed.....

Hon. Emmanuel Wangwe CBS, MP – Chairperson

Date.....

MINUTES OF THE 78TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES, ADMINISTRATION, AND AGRICULTURE HELD TUESDAY 31ST OCTOBER, 2023 AT THE COMMITTEE ROOM 7, PARLIAMENT BUILDINGS AT 9:30 AM.

PRESENT:

1. Hon. Emmanuel Wangwe, CBS, MP — **Chairperson**
2. Hon. Caleb Amisi Luyai — Vice Chairperson
3. Hon. (Dr.) Peter Francis Masara, MP
4. Hon. Bernard Kibor Kitur, MP
5. Hon. Geoffrey Wandeto, MP
6. Hon. Bishop Emeritus (Dr.) Jackson Kipkemoi Kosgei, MP
7. Hon. Joshua Kivinda Kimilu, MP
8. Hon. Michael Wambugu Wainaina, MP
9. Hon. Paul Nabuin Ekwom, MP

APOLOGIES:

1. Hon. Ferdinand Kevin Wanyonyi, MP
2. Hon. Martin Peters Owino, MP
3. Hon. Mary Wamaua Njoroge, MP
4. Hon. Nixon Nicholas Ngikolong, MP
5. Hon. Abdi Jehow Fatuma, MP
6. Hon. Elijah Njore Kururia, MP

IN ATTENDANCE:

SECRETARIAT

1.	Mr. Aden Abdullahi	Principal Clerk Assistant II
2.	Mr. Mark Namaswa	Clerk Assistant III
3.	Mr. Wesley Abuga	Researcher
4.	Mr. Thomas Ogwel	Fiscal Analyst
5.	Mr. Moses Esamai	Audio Officer
6.	Mr. Kevin Ojiambo	Media Officer
7.	Mr. Derrick Omondi	Intern

OFFICE OF THE AUDITOR GENERAL/INSPECTORATE OF STATE CORPORATIONS

1.	Dr. Dominic Kamenyi	Director of Audit
2.	Mr. Patrick Omenyo	Principal Auditor
3.	Mr. David Githinji	Principal Auditor LRO
4.	Mr. Stephen Mbatia	Principal Inspector
5.	Mr. Wang'ombe Ngugi	The National Treasury

MIN/PIC SSAA/2023/174 **PRELIMINARIES**

The Chairperson called the meeting to order at 9:30 am followed by a word of prayer from Hon. Michael Wambugu Wainaina, MP.

MIN/PIC SSAA/2023/175 **MEETING THE ACTING MANAGING DIRECTOR-KENYA BROADCASTING CORPORATION TO CONSIDER THE AUDITOR GENERAL'S REPORTS OF THE ACCOUNTS OF KBC**

Mr. Samuel Maina, Ag. Managing Director, Kenya Broadcasting Corporation accompanied by Mr. Samuel Mwanza (Acting Chief Finance Officer), Mr. Robert Wekesa (Procurement Manager), Ms. Margaret Ochieng (Senior Legal Officer), Ms. Risper Kajuju (Accountant), Ms. Pamela Mogaka (Human Resource Manager), Mr. Charles Rotich (Finance Manager), Mr. Job Karimi (Technical Officer), Mr. Daniel Okoth (Human Resource Manager), Mr. John Tile and Ms. Josephine Mwaniki (Senior Accountant) appeared before the committee to adduce evidence on the status of the Kenya Broadcasting Corporation.

The Committee administered the Oath to Mr. Samuel Maina, Ag. Managing Director, Mr. Samuel Mwanza (Acting Chief Finance Officer), Mr. Robert Wekesa (Procurement Manager), Mr. Raphael Bulindah (Administration Manager), Mr. Job Karimi, Mr. Daniel Okoth, Mr. John Tile and Ms. Margaret Ochieng (Senior Legal Officer).

The Committee noted that the additional information requested from KBC via letter Ref; NA/DAA&OSC/PIC-SSAA/2023/(145) had not be formally received by the Committee and the Office of the Auditor General. The Committee directed that KBC submits the additional information through the formal procedure.

3.PAYABLES

2001: 6. Payment for goods not delivered

The Committee was informed that, In September, 2001 the Corporation, when launching the Metro Tv Station, contracted private firm to supply goods and accessories at a cost of Kshs.1,940,400.00. Although the contract provided that a down payment of 25 % was to be made at the commencement of the job and the balance when the job is completed, the Corporation cleared the total bill in four instalments of Kshs.485,025 each between March and November, 2000, while only work valued at Kshs.310,00.00 had been done. The balance of goods and accessories valued at Kshs.1,630,000 paid in advance of delivery could not be ascertained.

Committee observations

The Corporation, in September, 2001 when launching the Metro Tv Station, contracted private firm to supply goods and accessories at a cost of Kshs.1,940,400.00, Although the contract provided that a down payment of 25 % was to be made at the commencement of the job and the balance when the job is completed, the Corporation made an excess payment of 59% before the work was completed contrary to the provisions of the contract.

4 RECEIVABLES

2001: 7 Debtors

The Committee was informed that the Debtors balance at 30 June 2001 amounted to Kshs.395,819,069 out of which Debts amounting to Kshs.242,700,140 have remained outstanding since 1996. The bad debts provision of Kshs.68,631,756 made in the accounts by the Corporation would therefore, appear to be inadequate. Further, the Government owes the Corporation a total of Kshs.774,995,767 charged for public airtime which, however, was excluded from the Balance Sheet Debtors figure of shs.395,489,069.00. Although a Debt Recovery Committee had been formed some four years ago to recover the long outstanding debts, there was no evidence of any effective recovery and the debts may have to be written off.

Committee observations

i. The Corporation has not demonstrated the efforts made to recover the long outstanding debts. Despite the explanation by the corporation management that they employed several debt management strategies including the formation of a debt recovery committee in 2005 to recover the debts, there was no evidence of any effective recovery.
ii. The bad debts provision of Kshs.68,631,756 made in the financial year 2000/2001 accounts by the Corporation on the debts amounting to Kshs.242,700,140 which had remained outstanding since 1996 appear to be inadequate.
iii. The government owes the Corporation a total of Kshs.774,995,767 charged for public airtime which was excluded from the Balance Sheet Debtors figure of shs.395,489,069.00.

Committee Resolution

The Committee resolved that;

i. KBC to table the Corporation's Credit Policy document.
ii. KBC to provide evidence that amounts it was owed have been paid.

DEBTORS

The Committee was informed that the Debtors figure of Kshs.55,420,873 in the balance sheet includes debts totaling Kshs.396,722,458 or 87% which are aged over 120 days. Included among the debtors is advertising firm which owes the Corporation a total of Kshs. 38,638,324. The firm is no longer in existence and its business has been taken over by another firm. It is not clear whether the new firm took over the debts owed to KBC. It has not been possible to confirm whether, and

if so, when the Corporation will be able to recover these amounts. Any additional provision that would have been necessary in relation to this uncertainty has not been incorporated in these financial statements

Committee observations

i. The Corporation has not demonstrated the efforts made to recover the long outstanding debts. Despite the explanation by the corporation management that they employed several debt management strategies including the formation of a debt recovery committee in 2005 to recover the debts, there was no evidence of any effective recovery.
ii. The bad debts provision of Kshs.68,631,756 made in the financial year 2000/2001 accounts by the Corporation on the debts amounting to Kshs.242,700,140 which had remained outstanding since 1996 appear to be inadequate.
iii. The government owes the Corporation a total of Kshs.774,995,767 charged for public airtime which was excluded from the Balance Sheet Debtors figure of shs.395,489,069.00.

Committee Resolution
That KBC strengthens its credit policy mechanisms to prevent further losses owing to bad debts and inability to collect amounts owed.

Debtors

The Committee was informed Debtors balance of Kshs.460,773,451 as disclosed in Note 5 to the financial statements include net trade debtors of Kshs.429,115,721 after providing for doubtful debts of Kshs.132,551,088. Age analysis of Trade Debtors indicate that a total of Kshs.369,002,626 or 80% are between 1 and 5 years old and 48% are over 5 years old. It has not been possible to confirm whether the Corporation will be able to recover these debts. Any additional provision that would have been necessary in relation to this uncertainty has not been incorporated in these financial statements.

Committee observations

i. The Corporation has not demonstrated the efforts made to recover the long outstanding debts. Despite the explanation by the corporation management that they employed several debt management strategies including the formation of a debt recovery committee in 2005 to recover the debts, there was no evidence of any effective recovery.
ii. The bad debts provision made in the financial year 2003/2004 accounts by the Corporation on the long outstanding debts appear to be inadequate.

Committee Resolution
That KBC strengthens its credit policy mechanisms to prevent further losses owing to bad debts

and inability to collect amounts owed.

DEBTORS

The Committee was informed that the debtors Account reflects a balance of Kshs.682,797,245 while the supporting documents show a figure of Kshs.1,070,774,894. The difference of Kshs. 387,977,649.00 between the two sets of records has not been reconciled or explained. Although the management has explained that the variance was caused by mis postings during the change over from the old accounting system to the new one and that a reconciliation between the two balances was in progress, it has not however been clarified as to when the exercise will be concluded. In the circumstance, it has not been possible to confirm the accuracy of the debtors' balance of Kshs.682, 797,245 as at 30th June 2009.

Committee observations

The committee observed that there were glaring inaccuracies in the financials statements. However, although the accounting officer indicates that the errors were corrected, the point in time when they were corrected and the documentary evidence of the corrections were not submitted to the committee. Therefore, the errors might have remained uncorrected and could have resulted from manipulation of financial records.

Committee Resolution

That KBC strengthens its finance management systems and mechanisms to prevent further losses due to erroneous reporting on account balances.

3. DEBTORS

The Committee was informed that the financial statements reflect a debtor's balance of Ksh. 731,558,962, while the supporting documents show a figure of Ksh .663,146,667,resulting in an unreconciled difference of Ksh 68,412,295.Although as similarly reported in 2008 /2009, the management has explained that the variance was caused by mispostings during the change over from the old accounting system to the new one, and that a reconciliation between the two balances was in progress, it has not however been clarified as to when the issue would be resolved. In the circumstances, it has not been possible to confirm the accuracy of the debtor's balance of Ksh. 731,558,962 as at 30 June 2010

Committee observations

The committee observed that there were glaring inaccuracies in the financial statements. However, although the Accounting officer indicates that the errors were corrected, the point in time when they were corrected and the documentary evidence of the corrections were not submitted to the committee. Therefore, the errors might have remained uncorrected and could have resulted from manipulation of financial records.

Committee Resolution

That KBC strengthens its finance management systems and mechanisms to prevent further losses due to erroneous reporting on account balances.

OTHERS MATTER

4. CASH AND CASH EQUIVALENTS

The Committee was informed that as disclosed in note 7 to the financial statements, Cash and Cash Equivalent negative balance of Kshs. 15,736,351 consist of bank overdraft balance of Kshs. 15,737,183 which includes a Broadcaster bank account balance of Kshs.2,898,692 whose bank reconciliation statement could not be prepared due to missing bank statements. Also included in the cash balance are reconciling items described as dishonored cheques totalling Kshs. 29,316,798.86.

The dishonored cheques amount relate to period before 1991 during the Voice of Kenya era and could not be verified. Under the circumstances, it is not possible to confirm the accuracy of Cash and Cash equivalent overdraft balance of Kshs.15,736,451 as at the balance sheet date.

Committee observations

i. The committee observed that the bank reconciliation statement for the Broadcaster bank account was not prepared due to missing bank statements as at the time of audit.
ii. There were dishonored cheques relating to the period before 1991 during the Voice of Kenya era that could not be verified.
iii. KBC Management indicates that the dishonored cheques were replaced in subsequent year and the balance amount of dishonored cheques was reversed and reinstated under debtors. However, there was no documentary evidence of the replacements, reversals and reinstatements under debtors.

5. STOCKS

The Committee was informed that the stocks balance of Kshs. 73,863,929 was not physically verified as at 30 June 2003. There were no certificates confirming the value and existence of the items making up the stock balance reflected in the balance sheet.

Consequently, it is not possible to confirm whether the carrying values as stated in the financial statements reflect the fair value of the stock as at balance sheet date.

Committee observation

The Committee observed that

The stock was not physically verified and there were no stock take certificates confirming the value and existence of the items.

2. STOCKS

The Committee was informed that stocks of Kshs.71,961,044 at 30 June 2006 includes spare parts valued at Kshs.45,947,314 or 66% lying at Lang'ata transmission station. These spare parts are mainly part of the 1991 Japanese loan for modernization project that has remained stagnant for many years and are apparently obsolete because they were meant from medium wave transmitters service which has since changed to FM. The management however, insists that the spare parts are useful and therefore no specific provisions has been made in these financial statements to recognize the possibility of obsolescence of the spare parts and other stocks. Consequently, it was not possible to express an opinion on the stocks balance of Kshs.71,961,044 as at 30 June 2006.

Committee observation

The Committee observed that;

The obsolete spare parts were useful for transmission in Wajir, Garissa, Marsabit, Maralal, Ngong and Kapsimotwa which were still on medium wave and that part of the obsolete stock was recognized in the annual accounts for the year ended 30th June 2007. However, there was no evidence of the disposal process of the obsolete stock or the issuance of the useful transmission spare parts to the stated stations.

3. CASH AND BANK BALANCE

The Committee was informed that, included in the balance sheet cash and cash equivalents balance of Kshs.210,119,990 as at 30 June 2007 are KCB bank account balances for Nakuru, Kisumu, Maralal and Eldama Ravine of Kshs.17,413,290.90, Kshs.12.045.95, Kshs.23,957.05 and Kshs.4,151.95 whose cash books were not produced for audit verification. Further the cash and cash equivalents balance includes Central Bank Account No. 0300079001 cash book balance of Kshs.18,102,127.45 Dr which was at variance with the bank reconciliation statement balance of Kshs.10,130,817.30 Dr by an unreconciled amount of Kshs.7,971,310.15. Under the circumstances it was not possible to confirm the accuracy and validity of the cash and cash equivalents balances of Kshs.210,119,990 as at 30 June 2007.On 20th May 2010, the Corporation received from a supplier, a transmitter equipment, Turnkey Encoding system valued at 171.498 Euros (equivalent to Kshs. 17,000,000) as part of its additional equipment during the year.
However, the value of Kshs.17,000,000 does not appear to have been incorporated in the Property, Plant and Equipment balance of Kshs. 3,093,0992,523 as at 30th June 2010
In the circumstances, it has not been possible to confirm that the balance of Kshs. 3,093,0992,523 under Property, Plant and Equipment as at 30th June is fairly stated.

Committee observations

i. The committee observed that KBC had no account at the Central Bank of Kenya instead it was at Citibank and the bank reconciliation was prepared and balances harmonized.

However, there was no documentary evidence that the cash book balance which was at variance with the bank reconciliation statement was eventually reconciled.

ii. The cash books for Nakuru, Kisumu, Maralal and Eldama Ravine were not availed for audit verification as at the time of audit contrary to Section 68(2)(k) of the PFM Act Cap 412A by providing supporting documentation to the Auditors General on time.

5. KBC DIGITAL TERRESTRIAL (DVB-T) PROJECT

The Committee was informed that, during the year under review, the corporation received an approval of tax waiver for an unspecified amount from Treasury, in respect of the Digital Terrestrial (DVD-T) project. However, and although according to information available the waiver was utilized as intended, the equipment does not appear to have been received by the corporation and its whereabouts had not been clarified as at 30 June 2010.

Committee observations

The committee observed the waiver obtained was for the Digital TV set-top boxes that had not been imported. Although, the information available indicated that the waiver was utilized as intended, the KBC management did not explain how it was utilized and by who.

6. POSTING IN THE CASHBOOK

The Committee was informed that the Cashbook as at 30 June reflects a bank balance of Ksh. 9,794,624 in respect of one of the Corporation's accounts, while the bank Reconciliation statement as at the same date shows an overdraft Ksh. 3,837,686 against the account. The difference of Ksh. 13,632,310 between the two sets of records has not been reconciled or explained. Further and during the same period Reconciliation statements for four other bank accounts maintained by the Corporation had not been prepared as at 30 June, 2010.

In the circumstance, it has not been possible to confirm that the cash and cash equivalent balance of kshs 64,265,534 as at 30th June 2010 is fairly stated.

Committee observations

i. The committee observed that bank Reconciliation statements for four other bank accounts maintained by the Corporation had not been prepared as at 30th June 2010 contrary to Regulation 90 of the PFM (National Government) Regulations 2015.

ii. Although the KBC management indicates that the difference of Ksh. 13,632,310 between the cash book balance and the bank reconciliation statement was eventually reconciled, there was no documentary evidence that the cash book balance and the bank statement were eventually reconciled.

MIN/PIC SSAA/2023/ 176 **ANY OTHER BUSINESS**

i. The Committee noted that the survival of the State Broadcaster was paramount to the future of media in Kenya hence KBC should be taken seriously.

ii. The Committee also took note that it was important for the Corporation to clearly define its infrastructure and properly document its net value.

iii. The business partnership agreements between KBC, Multichoice Africa, DSTV and GoTV on the use of KBC land and installations for telecommunication purposes remains unclear.

iv. KBC needs to elaborate on the total acreage of land it owns and which is leased out and the total income generated from leasing the land and any other contractual agreements between KBC, local television and radio stations on the use of the Broadcaster's land and installations needs.

v. The Inspectorate of State Corporations suggested that KBC seeks out strategies for competitive engagement in the media landscape market for future survival.

MIN/PIC SSAA/2023/ 177 **ADJOURNMENT**

There being no other business, the Chairman adjourned the sitting at 12:30 PM.

Signed.....

Hon. Emmanuel Wangwe CBS, MP – Chairperson

Date.....

MINUTES OF THE 85TH SITTING OF THE PUBLIC INVESTMENTS COMMITTEE ON SOCIAL SERVICES, ADMINISTRATION, AND AGRICULTURE HELD TUESDAY 28TH NOVEMBER, 2023 AT THE COMMITTEE ROOM 7, PARLIAMENT BUILDINGS AT 9:30 AM.

PRESENT:

1. Hon. Emmanuel Wangwe, CBS, MP — **Chairperson**
2. Hon. Caleb Amisi Luyai — Vice Chairperson
3. Hon. Ferdinand Kevin Wanyonyi, MP
4. Hon. Martin Peters Owino, MP
5. Hon. (Dr.) Peter Francis Masara, MP
6. Hon. Michael Wambugu Wainaina, MP
7. Hon. Paul Nabuin Ekwom, MP

APOLOGIES:

1. Hon. Mary Wamaua Njoroge, MP
2. Hon. Nixon Nicholas Ngikolong, MP
3. Hon. Abdi Jehow Fatuma, MP
4. Hon. Bernard Kibor Kitur, MP
5. Hon. Geoffrey Wandeto, MP
6. Hon. Bishop Emeritus (Dr.) Jackson Kipkemoi Kosgei, MP
7. Hon. Joshua Kivinda Kimilu, MP
8. Hon. Elijah Njore Kururia, MP

IN ATTENDANCE:

SECRETARIAT

1. Mr. Aden Abdullahi — Principal Clerk Assistant II
2. Mr. Mark Namaswa — Clerk Assistant III
3. Ms. Christine Mariita — Clerk Assistant III
4. Ms. Mercy Kinyua — Legal Officer
5. Mr. Wesley Abuga — Researcher
6. Mr. Thomas Ogwel — Fiscal Analyst
7. Mr. Moses Esamai — Audio Officer
8. Mr. Kevin Ojiambo — Media Officer
9. Mr. Derrick Omondi — Intern

OFFICE OF THE AUDITOR GENERAL/INSPECTORATE OF STATE CORPORATIONS

1. Dr. Dominic Kamenyi — Director of Audit
2. Mr. Patrick Omenyo — Principal Auditor
3. Mr. John Karanja — Senior Inspector

MIN/PIC SSAA/2023/ 238 PRELIMINARIES

The Chairperson called the meeting to order at 9:30 am followed by a word of prayer from Hon. Michael Wambugu Wainaina, MP.

MIN/PIC SSAA/2023/239 MEETING THE ACTING MANAGING DIRECTOR-KENYA BROADCASTING CORPORATION TO CONSIDER THE AUDITOR GENERAL'S REPORTS OF THE ACCOUNTS OF KBC

Mr. Samuel Maina, Ag. Managing Director, Kenya Broadcasting Corporation accompanied by Mr. Samuel Mwanza (Acting Chief Finance Officer), Ms. Margaret Ochieng (Senior Legal Officer), Ms. Risper Kajuju (Accountant), Mr. Charles Rotich (Finance Manager), Mr. Job Karimi (Technical Officer), Mr. Daniel Okoth (Human Resource Manager), Mr. John Tile, Ms. Tracyanne Metobo (Chief Procurement Officer), and Ms. Josephine Mwaniki (Senior Accountant) appeared before the committee to adduce evidence on the status of the Kenya Broadcasting Corporation.

The Committee administered the Oath to Mr. Samuel Maina, Ag. Managing Director, Mr. Samuel Mwanza (Acting Chief Finance Officer), Ms. Tracyanne Metobo (Chief Procurement Officer), Mr. Raphael Bulindah (Administration Manager), Mr. Job Karimi, Mr. Daniel Okoth, Mr. John Tile and Ms. Margaret Ochieng (Senior Legal Officer).

LOSS OF SALARIES

i. **The Committee had sought a comprehensive response to the audit query on loss of salaries including the court ruling involving the two officers who fraudulently obtained a total of Kshs.22,572,966 from the corporation's bank account, the approval from the Attorney General to engage external legal services, the process used to procure external legal services and the amount of money paid to the law firm);**

KBC informed the Committee that the two officers, Soulman Odhiambo Nyandiek and Grace Adhiambo Owaga, were suspended from service on 24th January, 2002 after having been arrested by the Kenya Police following investigation conducted by the Internal Audit. They were dismissed from service via the letters dated 10th December, 2002.

The Corporation record of a Charge Sheet against the two officers and three others: (Nicholas Ngugi, Kenneth Kaburu and Julie Madusa) for the Charge of Fraudulent False Accounting contract to Section 330(b) of the Penal Code. The Police Case Number as stated in the Charge Sheet is 111/122/02 and the Court File number is indicated as 391/02. There is no other information on the progress of the case. However, our Principal Internal Auditor, was one of the witnesses in the case,

and has confirmed that at one point he gave his testimony on the case at Kibera Law Courts; but that he is aware that at some point the officer from Banking Fraud Unit who was investigating the case resigned and that the Court file went missing.

We are making efforts to trace the Court file with a view to establishing what the outcome of the Criminal case was and to obtain the Court verdict on the same.

M/s Mwangi Sumbeiywo Advocates

a) Court Ruling

Available records show that M/s Mwangi Sumbeiywo & Company Advocates was one of the law firms in the Corporation's panel of advocates. The law firm later merged with Robson Harris & Co. Advocates and was to trade as Robson Harris & Co. Advocates with effect from 15th September, 2003 to trade in the name of Robson Harris & Co. Advocates ***(Appendix 2(i)).*** We have checked our records but unfortunately we have not found any information on the case in question, nor any correspondence with M/s Mwangi Sumbeiywo & Associates on the same, which could shed light on the matter. The Corporation therefore wrote to Robson Harris LLP Advocates on 15th November, 2023 ***(Appendix 2(i)).*** requesting the information regarding the case in question, and their response is awaited.

In the meantime, the Corporation's Principal Internal Auditor has clarified that to his recollection, the law firm represented some staff members, including himself, in an internal administrative investigation relating to the allegations of fraud for which they were subsequently cleared and instead they became the Corporation's witnesses in the Criminal Case.

Nevertheless, we have sought for the case number, parties, pleadings, Court Ruling, Judgement and status of the case from Robson Harris LLP Advocates which could shed light on the matter.

b) Amount of money paid to the law firm

The internal Memo dated 13th April, 2004 ***(Appendix 2(i))*** from the then Corporation Secretary to the then Managing Director states that M/s Mwangi Sumbeiywo & Associates Advocates were paid Kshs.57,632.00 to defend some staff over the fraud case, which could be referring to the internal administrative investigations that the Principal Internal Auditor has alluded to above.

However, we are hopeful that M/s Robson Harris LLP Advocates will give more details on this having requested them to provide their Fee Notes and any documentary evidence of payment of legal fees for the services rendered in the case in question.

c) Process used to procure external counsel

Unfortunately, we have no record on how M/s Mwangi Sumbeiywo & Associates Advocates were engaged by the Corporation. We have requested Robson Harris LLP Advocates to provide the Corporation's instruction letter, which could shed light on this.

d) Approval from the Attorney General to involve the external legal services

We have no record of the Attorney General's approval to engage the law firm. However, it is worthy to note that the requirement for seeking of the Attorney General's approval before engaging external Counsel came in place on 2018 as per the Attorney General Circular Ref. AG/CIRCULAR/2018 dated 1st March, 2018 . Under Paragraph 77, the Circular also makes reference to previous Circulars of 16th April 2014 and 6th April 2017 which required prior Attorney General's approval before engaging external counsel.

As the case in question dates back to the year 2002 when the Attorney General's approval to engage external counsel was not a requirement, it is most likely that no such approval was sought.

Committee Observations

The Committee observed that;

i. Only two junior officers from KBC were pinpointed in the fraud case that would ideally involve a chain of officers from the lowest to the highest level of approval.
ii. KBC did not show commitment towards recovery of the Kshs.22,572,966 obtained from the corporation's bank account.

Committee Recommendations

i. The data manipulation that occurred during the fraud could not have succeeded without the help of senior officers. They too, should be held responsible.

STATUS OF LIABILITIES

ii. **The Committee sought a comprehensive response to the audit query on liabilities as at 30th June 2001 including the scope of the loan of Kshs.7,543,422,121 obtained from Overseas Economic Co-operation Fund (OECF) Japan in 1989. The loan was intended to fund the modernization project. The Committee also sought to examine the feasibility study undertaken before initiating the modernization project, the Board of Directors approval of the project, the approval of the Attorney General, the Cabinet Memo detailing the amount and the specific request for the government to write-off the Japanese loan related debt and the amount of accrued interest).**

RESPONSE:

Scope of the Loan

Due to the poor coverage of broadcasting services in the country, the Government decided to conduct a study in 1987 with a view to modernizing the Kenya Broadcasting Corporation. The report of the study, which was accepted and approved for implementation by the Government,

identified Radio Medium Wave (MW) transmission as one of the areas that required modern equipment.

The loan agreement No.KE-P12 was signed on 28th June, 1989 between the Overseas Economic Cooperation Fund and Kenya Broadcasting Corporation for a principal sum of sixteen billion one hundred ninety-eight million Japanese Yen (¥ 16,198,000,000). The Government of Kenya guaranteed the loan.

The general objective was expansion of Medium Wave broadcasting network in Kenya and upgrading of the existing MW radio station in Kenya, in the following areas owned by KBC:

- Voi, Marania, Malindi, Nyamninia, Kitale, Maralal, Marsabit, Garissa, Wajir and Ngong

Scope of the work was as follows:

(a) Procurement, installation, commissioning of MW radio transmitters and their associated equipment including technical training and maintenance assistance.

(b) Civil works associated with the stations.

(c) Upgrading the existing MW radio station facilities and their associated equipment.

(d) Provision of training equipment and materials and consultancy services.

The proceeds of the Loan were available for the foreign local currency portion of items (a) through (d). However, the proceeds of the Loan were not to be used for the local currency portion of such items in excess of a total of TWO BILLION SIX HUNDRED ELEVEN MILLION Japanese Yen (¥2,611,000,000). The foreign and local currency portions were to be determined by the Fund. Any balance remaining on the aforementioned items and all other items were to be financed by the Borrower. Disbursement of the proceeds of the Loan was to be made within the limit of the Japanese Government's annual budgetary appropriations for the Fund. On 25th of August 2021, the National Treasury wrote to KBC vide letter Ref. DGIPE/LOANS/70 detailing the current status of the Loan with an attached amortization table (copies of the letter and the table are attached).

The Cabinet Memo, Board of directors' approval and Loan agreement are also attached, however the corporation has not been able to trace records of any feasibility study undertaken and/or the Attorney General's approval.

(Appendix 2(ii)).

Committee Observations

The Committee observed that;

i. The figures provided by the Corporation and National Treasury as the loan and its principal are not realistic. KBC does not have an independent figure of the loan and its principal.

ii. The loan was taken without a clear feasibility study which rendered the corporation as a dumping ground for obsolete technology from Japan.

Committee Recommendations

i. The Corporation to provide documents on the delivery and commissioning of the equipment sourced in the form of a loan from Japan.

STATUS OF IRREGULAR PAYMENTS

iii. **The Committee sought a detailed response to the audit query on irregular payments (in your submission include the circular/government directive which you relied on that required public officers intending to seek elective posts to resign by 15th August, 2002 and the National Treasury circular you relied on in making payment to the former Managing Director);**

RESPONSE:

The Government directive that required public officers intending to seek elective posts to resign is attached. Mr. Joseph Matano Khamisi was engaged by the Corporation with effect from 17th February, 2000 on a three year contract as the Managing Director. In his contract of service, clause 15 indicates: "The Government may at any time terminate his contract upon giving three months notice to the Person Engaged." Along with clause 16 which states thus; "The person engaged may at any time after completion of three months continuous service terminate his engagement on giving to the Minister three (3) months notice in writing PROVIDED THAT notwithstanding that the person engaged has complied with this paragraph, he may not vacate his office until his notice of termination of engagement has been accepted"

However, in December 2002 (being an electioneering year), there was a Government directive through circular Ref. OP.53/1A dated 19th July, 2002 directing all public officers wishing to seek elective posts at both Parliamentary and Civic levels that they **must** resign from their Public Offices by 15th August, 2002 in accordance with Regulation G.11 of the Code of Regulations.

Considering the terms of his engagement as stated in paragraph one above, this did not accommodate Mr. Khamisi's interest and was therefore not able to give the required three months of notice since he had to comply with the directive. It is therefore envisaged that the officer was paid by the Corporation three months in lieu of notice due to the compelling nature of the termination of his contract of service. If the Government circular had not been released at the time it was, the officer had enough time to give notice, with effect from the month of September 2002 to November, 2002 thereby serving a three months' notice. Nevertheless, there is no circular available from the National Treasury which may have been used to pay Mr. Khamisi.

Currently, this is not the practice. Officers wishing to contest in any elective position are required to terminate their services (resign) by giving one (1) month notice in writing or paying one month's salary in lieu of notice before they exit. This is according to the code of regulations B.2 (ii) f. It therefore lies squarely on the interest of the officer to organize themselves in time.

Committee Observations

The Committee observed that;

i. The Corporation relied on the misinterpretation of the circular on government officers resigning to join politics.

Committee Recommendations

i. The then KBC managing director, Joe Khamisi to be invited before the Committee to shed light on the circumstances around the payout as he joined politics without meeting the requisite three months' notice as stipulated in the circular.

BUDGETARY CONTROL

iv. **The Committee had sought a detailed response to the audit query on the budgetary control (in your submission include the National Treasury and the Board of Directors approvals that sanctioned overspending of the budgetary provision by Kshs.1,298,014,923, the details and the schedule of the ten (10) items that prompted the over expenditure);**

RESPONSE:

The Corporation's total budgetary provision was overspent by Kshs.1,298,014,923. However, the Corporations Audited Financial Statements reported 10 items which were overspent in respect to the approved budget as per the Audit query which is contrary to the provisions of the State Corporations Act. The overspent items are as follows; Personnel costs, transport operating expenses, travelling and accommodation, legal fees and commissions, official entertainment, maintenance of plant &equipment, telephone expenses, electricity water and conservancy, purchase of consumables, Printing & Stationery and Agency Commission. (a tabulation showing the over-expenditure amounts is attached)

The corporation could not trace any approvals from National Treasury and Board of directors for the over expenditure.

Committee Observations

The Committee observed that;

i. The Corporation did not provide proper justification for approval for overspending either from the National Treasury or the Board of Directors.

Committee Recommendations

ii. The respective managers responsible to be invited before the Committee to shed light on the circumstances around the overspending without the requisite approvals.

FIFA TV AND RADIO BROADCASTING RIGHTS

v. **The Committee asked for a detailed response to the audit query on the Television and Radio broadcasting rights for the FIFA World Cup 2010 (in your submission include the contract agreement between you, FIFA and the African Union of Broadcasting (AUB);**

RESPONSE:

The third party agreements entered between KBC and Radio Africa Ltd, Cellucom (K) Ltd, M Tech (K) Ltd and Royal Media Services to air the FIFA world cup 2010 resulted in the dismissal of the then Managing Director David Waweru and the Corporation Secretary Hezekiel Oira. The two were taken to court and declared innocent as per the attached court ruling.

The contract between FIFA and the African Union of Broadcasting (AUB) is attached.

Committee Observations

The Committee observed that;

i. The Corporation provided insufficient information on what KBC actually lost as a result of the decisions made by the dismissed officers concerning the agreements entered between KBC and Radio Africa Ltd, Cellucom (K) Ltd, M Tech (K) Ltd and Royal Media Services to air the FIFA world cup 2010

Committee Recommendations

i. KBC to provide evidence on what they actually lost in the KBC-Radio Africa Ltd-Cellucom (K) Ltd, M Tech (K) Ltd and Royal Media Services deal to air the FIFA world cup 2010.

THIRD-PARTY AGREEMENTS WITH RADIO AFRICA LTD, CELLUCOM (K) LTD, M TECH (K) LTD AND ROYAL MEDIA SERVICES

vi. **The Committee sought for details of the third-party agreement you signed with Radio Africa Ltd, Cellucom (K) Ltd, M Tech (K) Ltd and Royal Media Services. (in your submission include how the four firms were identified, the Board of Directors minutes and resolutions, offer and acceptance letters for the contract);**

RESPONSE:

The details of the third-party agreements KBC signed with Radio Africa Limited, Royal Media Services are contained in agreements attached herewith and also attached are Minutes of the KBC Board of Directors as follows: -

a. Memorandum of Understanding between Kenya Broadcasting Corporation and Radio Africa Limited dated 22nd December, 2009.

b. License agreement between Kenya Broadcasting Corporation and Royal Media Services dated 9th June, 2023.

c. Minutes of the KBC Board of Directors meeting held on 30th June, 2010 and signed on 1st July, 2010.

We have still not been able to trace the third-party agreement signed between Cellucom (K) Limited and M Tech (K) Limited.

We have, however come across a letter Ref No. KBC/MKTG/158 dated 3rd August, 2010 authored by the then, Business Development Manager, who is no longer in the Corporation addressed to the Inspectorate of State Corporations which makes reference to the said Agreements as having been signed between the two firms and KBC/Radio Africa Ltd.

We have also attached letters dated 14th December 2010 from the Managing Director to Safaricom, Airtel and Telkom making reference to Kenya Broadcasting Corporation having engaged Cellucom Kenya Ltd and M Tech Kenya Ltd as premium rate service providers.

Committee Observations

The Committee observed that;

The Corporation was unable to provide the third-party agreement signed between Cellucom (K) Limited and M Tech (K) Limited.

INACCURACIES IN FINANCIAL STATEMENTS FY 2005/2006

vii. **The Committee asked for a comprehensive response to the audit query on inaccuracies in the financial statements for the financial year 2005/2006 (in your submission include a detailed explanation of the unreconciled variances between the financial statements balances and the supporting schedules of the debtors, cash and cash equivalent and stocks);**

RESPONSE:

In the FY 2005/2006 the Corporation was keeping its books of accounts using Fox Pro accounting system. Unfortunately, there was no backup thus hindering retrieval of data. Hence it was apparently impossible to explain the un-reconciled variances between the financial statements and the supporting schedules of the respective ledgers. Further, physical records available did not seem to explain the cause for the differences.

Committee Observations

The Committee observed that;

i. The Corporation could not explain the un-reconciled variances between the financial statements and the supporting schedules of the respective ledgers. Further, physical records available did not seem to explain the cause for the differences.

Committee Recommendations

i. The absence of financial records for the FY 2005/2006 is indicative of possible fraud and a cover-up for the same. Committee to invite then CEO Mr. David Waweru to explain circumstances around the lack of records during this period.

INACCURACIES IN FINANCIAL STATEMENTS FY 2006/2007

viii. **The Committee sought for comprehensive response to the audit query on inaccuracies in the financial statements for the financial year 2006/2007 (in your submission include a detailed explanation of the un-reconciled variances between the financial statements balances and the supporting schedules of the debtors, cash and cash equivalent and stocks);**

RESPONSE:

In the FY 2006/2007 the Corporation was using Fox Pro accounting system. Unfortunately, there was no backup thus hindering retrieval of data. Further, from our physical documents archives we could not find any documentary evidence to support or explain the differences between the financial statements and the supporting schedules.

Committee Observations

The Committee observed that;

i. The Corporation could not explain the un-reconciled variances between the financial statements and the supporting schedules of the respective ledgers. Further, physical records available did not seem to explain the cause for the differences.

Committee Recommendations

i. The absence of financial records for the FY 2005/2006 is indicative of possible fraud and a cover-up for the same. Committee to invite then CEO Mr. David Waweru to explain circumstances around the lack of records during this period.

QUERY ON PROCUREMENT PROCEDURES

ix. **The Committee sought for a comprehensive response to the audit query on procurement procedures (in your submission include the contract agreement between you and the firm contracted to supply station indent accessories for Metro TV Logo and the status of implementation of the Inspectorate of State Corporations recommendations to surcharge the former Managing Director for inflating the contract amount)**

RESPONSE:

Details from a report of a Human Resource Sub-committee of the Board dated 16/4/2003 investigating the "irregular procurement of the Metro Television station logo and other allied accessories," It was confirmed therein that only goods worth Ksh.330,000.00 out of a total contract sum of Ksh.1,940,400.00 were supplied. However, a total of Ksh.1,940,000.00 was paid. This caused the corporation a loss of Ksh.1,630,000.00. After the investigations the following officers were found culpable namely; Messers Oyando, Joe Khamisi and M/s Grace Makuku. Joe Khamisi's case was referred to the Inspector General of Corporations for further investigations. Grace Makuku, who the head of Metro Television then, was demoted to be the controller of programmes and consequently redeployed to another department.

Mr. Sammy Oyando, P/NO.000411, received a retirement notice under 50 year old rule on 26/10/2001 and appealed against the same. He received notice of retirement under Public interest w.e.f. 01/12/2002 and appealed against the same then the matter was taken to the Board.

In the officer's letter of retirement dated 20th May, 2003, signed by the HRM, Mr. A.O. Mailo, the officer was informed that the Board resolved to uphold his retirement w.e.f. 28th November, 2002

but recovery from his benefits of losses to the Corporation related to the Metro Logo was set aside. The officer was therefore advised to submit clearance documents to facilitate processing of his final dues which he did.

In an internal memo from the Corporation Secretary (CS) to the Human Resource Manager dated 6th January, 2004 on appeals, (folio 145 of the officer's file (Vol. II), the CS indicated that the Board in its meeting on 23rd December 2003 rejected the appeals and resolved:

- That the officer be retired under the 50 year rule
- That copies of all documents appertaining to the fraudulent Procurement leading to loss of KES. 1,630,000/= be certified and forwarded to the Inspector General (Corporations) for further investigations. (See the attached copy of the memo, ***Appendix 2(xi)***)

According to the file records, the Corporation cleared with the officer, he was paid his final dues and receives his monthly pension as confirmed by the officer handling pension.
As to whether the former Managing Director, Mr. Joe Khamisi, was surcharged for inflating the contract amount, there was no evidence found to indicate that the said Mr. Joe Khamisi was punished.
KBC moved to court seeking to recover the lost amount in CMCC NO.3742 OF 2008.

NAIROBI CMCC NO.3742 OF 2008: KENYA BROADCASTING CORPORATION VERSUS JOEL MUSUNDI AND SPECTRUM PICTURES LIMITED

The records we have show that this matter was filed against the Defendants (Joel Musundi and Spectrum Pictures Ltd) to recover Kshs.1,660,000.00 for failure to produce new station indent accessories for one of the Corporation's stations known as Metro TV despite being paid. The Defendants did not file their Defense within the prescribed time. Our lawyers on record, M/s Musyoki, Mamwacha & Company Advocates, proceeded to apply for Summary Judgment where they obtained the Decree and Certificate of Costs dated 4th February 2009.
The law firm engaged Warleen Traders Auctioneers to attach the firm's movable assets to recover the decretal sum of Kshs.1,908,579.00 as at the time of Proclamation.
However, the Defendant moved to court under Certificate of Urgency after being served with Warrants of Attachment and obtained an interim order dated 8th September 2009 staying the execution decree pending inter party hearing. Our lawyers filed a Replying Affidavit challenging the application.
However, we are not able to trace information on neither the outcome nor the status of the case. We sought for information on this case from the Court and were advised that the Court file was closed/removed in the year 2014.
From our initial research, the firm of M/s Musyoki, Mamwacha & Company Advocates which represented KBC in the case is no longer in existence hence we have requested the Law Society of Kenya, as per our letter dated 21st November, 2023 (attached as appendix 2(xi)) to help us track the Partners of the law firm with a view to shed light on the matter.

Committee Observations

The Committee observed that;

i. The Corporation did not provide evidence of having issued an offer and acceptance letter for the tender award.

ii. KBC has displayed a lapse in following up on cases and claims for the recovery of its monies.

MIN/PIC SSAA/2023/ 240 ANY OTHER BUSINESS

The Committee sought to know the role that the Inspectorate of State Corporations (ISC) plays in the oversite role of state entities.

The Committee further advised the ISC to keep copies of PIC Reports so as to be updated on how best to keep in check and advise boards of state corporations.

The Committee directed the Corporation to provide the following additional information with regard to the audit queries on the financial statements for the Financial Year 2000/2001-2012/2013:

i) a comprehensive response to the audit query relating to liabilities as at 30th June, 2001 to include the details of the company that was contracted for the expansion of medium wave broadcasting network in Kenya and upgrading of the of the existing MW Radio station in Kenya and the evidence that the project was completed and commissioned; and

ii) a comprehensive response to the audit query relating to Television and Radio broadcasting rights for the FIFA World Cup 2010 to include the details of the third party agreement signed with Cellucom (K) Ltd and M Tech (K) Ltd, the offer and acceptance letters for the four companies involved in the agreement.

MIN/PIC SSAA/2023/ 241 ADJOURNMENT

There being no other business, the Chairman adjourned the sitting at 1:12 PM.

Signed.....

Hon. Emmanuel Wangwe CBS, MP – Chairperson

Date.....28/2/24.....