NAIROBI CITY COUNTY

Papers laid by Chair PAC on 03/5/18

CCA 03/5/18

NAIROBI CITY COUNTY ASSEMBLY
SECOND ASSEMBLY – SECOND SESSION

THE REPORT OF THE SELECT COMMITTEE ON PUBLIC ACCOUNTS

ON

THE CONSIDERATION OF THE REPORT OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENTS OF NAIROBI CITY COUNTY EXECUTIVE FOR THE YEAR ENDED 30TH JUNE, 2016

Approved 3/5/2018

Clerks Chambers
Nairobi City County Assembly
City Hall Buildings
NAIROBI

MAY 2018

TABLE OF CONTENTS

ABBREVIATIONS

CFO	-	Chief Finance Officer
CBK	-	Central Bank of Kenya
CRF	-	County Revenue Fund
CEC	-	County Executive Committee
CEO	-	Chief Executive Officer
DPP	-	Director of Public Prosecutions
EACC	-	Ethics and Anti-Corruption Commission
FY	-	Financial Year
ICT	-	Information Community and Technology
IFMIS	-	Integrated Financial Management and Information Systems
KCB	-	Kenya Commercial Bank
KENAO	-	Kenya National Audit Office
KEMSA	-	Kenya Medical Supply Agency
KRA	-	Kenya Revenue Authority
MCA	-	Member of County Assembly
MOH	-	Ministry of Health
NCC	-	Nairobi City Council
NCCG	-	Nairobi City County Government
NLC	-	National Land Commission
NSSF	-	National Social Security Fund
PAC	-	Public Accounts Committee
PFM	-	Public Finance Management

1.0. PREFACE

Hon. Speaker,

On behalf of the Public Accounts Committee (PAC) and pursuant to the provision of Standing Order 191(6), it is my pleasant privilege and honour to present to this Assembly this report of the Public Accounts Committee on the consideration of the ***"The report of the Auditor General on the financial Statements of Nairobi City County Executive for the year ended 30th June, 2016".***

1.1. Mandate of the Public Accounts Committee

The Public Accounts Committee derives its mandate from Standing Order 197 (2) of the Nairobi City County Assembly, which provides that:-

*"The Public Accounts Committee shall be responsible for the examination of the **accounts showing the appropriations of the sum voted by the County Assembly to meet the public expenditure** and of such other accounts laid before the **County Assembly** as the **Committee** may think fit".*

The primary mandate of the Committee is therefore to oversight the expenditure of public funds by Nairobi City County entities, to ensure value for money and adherence to government financial regulations and procedures. The Committee further aims at ensuring that Nairobi City County public funds are prudently and efficiently utilized. The Committee executes its mandate on the basis of annual and special audit reports prepared by the Kenya National Audit Office (KENAO).

Article 229 (8) of the Constitution provides that within three months after receiving the report of the Auditor General, Parliament or the **County Assembly** shall debate and consider the report and take appropriate action. It is on this basis that this report has been produced by the Committee for consideration and adoption by the County Assembly.

1.2. Guiding principles

In the execution of its mandate, the Committee is guided by core constitutional and statutory principles on public finance management, as well as established customs, traditions, practices and usages. These principles include the following:-

(a) Constitutional Principles on Public Finance

Article 201 enacts fundamental principles aimed at guiding all aspects of public finance in the Republic. It states that the principles are, *inter alia, openness and accountability, including public participation in financial matters; public money shall be used in a prudent and responsible way; and financial management shall be responsible, and fiscal reporting shall be clear.* The Committee places high regard on these principles, among others, and has been guided by them in the entire process that has led to this report.

(b) Direct Personal Liability

Article 226(5) of the Constitution is unequivocal that: - *"If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not".* Consequently Section 203(1) of the PFM Act, 2012 enacts that: - *"A public Officer is personally liable for any loss sustained by a county government that is attributable to-*

(a) the fraudulent or corrupt conduct, or negligence, of the officer; or

(b) the officer's having done any act prohibited by sections 196, 197 and 198"

The Committee considers this Constitutional and legal provisions as the basis for holding Accounting Officers and other Public Officers directly and personally liable for any loss of public funds that may occur under their watch.

1.3. Obligations of the Accounting Officer

Article 226(2) of the Constitution provides, inter alia, that: *"the Accounting Officer of a national public entity is accountable to the National Assembly for its financial management, and the Accounting Officer of a county public entity is accountable to the County Assembly for its financial management".* Subsequently, Section 149(1) of the

Public Finance Management (PFM) Act, 2012 provides that: *"An accounting officer is accountable to the County Assembly for ensuring that the resources of the entity for which the officer is designated are used in a way that is—*

(a) lawful and authorized; and

(b) Effective, efficient, economical and transparent."

These provisions obligate all the Accounting Officers to appear before the PAC to respond to audit queries raised by the Auditor General. It is impressive to note that the CEC Member for Finance and Economic Planning at the time of interrogation of this audit report had designated the Ag. Chief Officers as the Accounting Officers of their Departments/Sectors.

1.4. Committee Membership

The Committee comprises of the following members:-

1. **Hon. Wilfred Odalo, MCA-Chairperson**
2. **Hon. Fredrick Njogu, MCA-Vice Chairperson**
3. Hon. Anthony Karanja, MCA
4. Hon. Peter Wanyoike, MCA
5. Hon. Charles Thuo, MCA
6. Hon. Chege Mwaura, MCA
7. Hon. Elizabeth Nyambura, MCA
8. Hon. Peter Warutere, MCA
9. Hon. Joseph Wambugu, MCA
10. Hon. Silvia Museiya, MCA
11. Hon. Rose Adhiambo Ogonda, MCA
12. Hon. Moses Ogeto Nyangaresi, MCA
13. Hon. Lawrence Otieno, MCA
14. Hon. Clarence Munga, MCA
15. Hon. Esther Nyangweso, MCA
16. Hon. Redson Otieno, MCA

17. Hon. David Mberia, MCA
18. Hon. Millicent Jagero MCA
19. Hon. June Juliet Ndegwa, MCA

Allow me **Hon. Speaker** to thank the entire membership of this Committee for its hard work and commitment which made the taking of evidence and production of this Report a success.

1.5. Background

The audit involved auditing of the financial statements of Nairobi City County Assembly by the Auditor General which comprise statement of financial assets as at 30th June, 2016, and statements of receipts and payments, statement of cash flows, statements of comparison of budget and actual amounts recurrent, development, and combined for the year then ended and a summary of significant accounting policies and other explanatory information.

1.6. Auditor-General's Responsibility

The Auditor General's responsibility was to express an opinion on the financial statements in accordance with Section 48 of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). Those standards require compliance with ethical requirements and that the audit be planned and performed to obtain reasonable assurance about whether the financial statements are free from material misstatement. The matters mentioned in the audit report were identified through tests considered necessary for the purpose of the audit and it is possible that there might be other matters and/or weaknesses that were not identified.

1.7. Evidence taken

The Committee held thirty (30) sittings during which it interrogated all the Accounting Officers and mentioned witnesses on audit queries raised by the Auditor General.

Similarly, the Committee received written responses to the audit queries and conducted site inspection visits. The minutes of the Committee's sittings are attached to this report.

While taking evidence, the Committee was guided by the existing procedures and modalities of operations of the Nairobi City County Assembly derived from the Constitution of the Republic of Kenya, Acts of National Parliament, Acts of Nairobi City County Assembly and Nairobi City County Assembly Standing Orders, conventions, usages, practices and rulings and directives of the Chair.

1.8. The Big Issues (Highlights from the Report of the Auditor General)

Hon. Speaker,

The Committee identified key issues from the report of the Auditor General that hampers effective service delivery to Nairobians especially during the year under review. The issues include financial mismanagement, deficient policies and non-compliance with public finance management regulations:-

1. ***Poor/Improper financial records keeping.***

The Auditor General raised issues regarding poor financial records keeping and non-submission of key accounting documents such as the trial balance and the ledgers at the time of audit. The Committee notes that this has been a recurrent issue and concluded that responsible officers especially the Chief Finance Officer (CFO) during the period under review might have wanted to conceal vital information regarding the financial position of the County Government for reasons only known to them. **In view of the foregoing, the Committee, accordingly, has recommended that all accounting Officers must institute measures to ensure that their Departments/entities adheres to International Public Sector Accounting Standards (IPSAS) consistent with the Public Finance Management Act, 2012. In addition, the Committee has recommended that administrative action be taken against the relevant officers for negligence of duty and be reported to the relevant professional bodies for their misconduct.**

2. *Lapses in local revenue collection and accountability.*

Another issue that caught the attention of the Committee was non-accountability in the collection and management of local revenue. The Auditor General revealed that during the period under review, the County Government on several occasions spent locally generated revenue at source contrary to Section 109(2) of the Public Finance Management (PFM) Act, 2012. This in the opinion of the Committee is a recipe for misappropriation of public funds and a tactic to evade accountability by the relevant officers. In addition, the report of the Auditor General raised concern regarding non-accountability in street parking fees collection where motorists and County officials collude to evade payment of parking fees. **The Committee has in this regard recommended for immediate automation of all local revenue collection especially parking fee revenue collection and immediate sweeping of all the locally collected revenue to the County Revenue Fund (CRF) account. In addition, the Committee has recommended that parking attendants and relevant officers who occasioned loss of public funds be sanctioned.**

3. *Violation of procurement laws and procedures.*

The County Executive undertook several procurement exercises. However, the Auditor General noted that procurement laws were violated. For instance, in the ICT Sector, prices for purchase of furniture were inflated and supporting documents for the entire procurement process were unavailable. Restricted tendering as opposed to competitive bidding was applied to award a tender for construction of a perimeter wall at Mji wa Huruma and automation of Macmillan Library without proper reasons being given. This is a clear indication that individuals had personal interests in the tenders. **The Committee has consequently recommended for reprimanding and surcharging where applicable of all officers involved in the irregular procurement.**

4. ***Misappropriation of funds especially in the Legal Services Department.***

One of the areas where public funds were blatantly misappropriated during the period under review was expenditure on legal fees. The Auditor General reported that the County Treasury paid Kshs. 580,270,149 outside the Integrated Financial Management Information System (IFMIS) for legal costs contrary to the National Treasury regulations and that part of the said amount totaling to Kshs. 480,270,149 was spend outside the approved budget of Kshs 100, 000,000 and no supplementary budget was presented for approval by the Assembly to regularize the expenditure in compliance with Section 135 of the Public Finance Management Act, 2012. In essence, the County Treasury illegally spent Kshs. 480,270,149 being money for Nairobians and never bothered to regularize the same. The Auditor General went further to raise the issue of whether the County got value for money on the illegal expenditure since the basis of the expenditure was questionable. **The Committee has consequently recommended for prosecution of the County Executive Committee Member for Finance and Economic** Planning and the CFO **for breach of the law. In addition, the Committee** has recommended for an overhaul of the Legal Department **and a forensic audit of all the pending legal fees before being settled by the County Government.**

5. ***Huge pending Bills.***

The County has huge pending bills amounting to Kshs 48,297,618, 839. The Auditor General raised concern on the validity of the pending bills. Notably some of the pending bills are as a result of non-submission of employee statutory deductions. The Committee is in support of the pending bills Committee established by **H.E. the Governor** and has **recommended** that the said **Committee conducts a forensic audit of all pending bills** before they are **settled** with a **priority** on the **historical bills**. In **addition**, the **Committee** has recommended for immediate remittance of employee statutory deductions especially to the retirement benefit schemes.

6. *Irregular borrowing.*

Noted in the report of the Auditor General is the outstanding loan owed to Kenya Commercial Bank (KCB) of Kshs 3.4 billion being a buy-out of Equity bank loan facility that had been extended to the defunct City Council and now inherited by the Nairobi City County Government (NCCG) under new terms and subsequent disbursement of a further Kshs 700 million by KCB to the NCCG. The Committee observed that from the documents submitted, both loans were not properly approved since the County Assembly did not approve the borrowing while the National Treasury did not guarantee the same as required under Article 212 of the Constitution. **The Committee has recommended for prosecution of all persons involved in the irregular borrowing and a review of the payment terms in view of the illegality committed and the exorbitant interest charged on the same.**

7. *Irregular allocation and encroachment of County Government properties.*

Several parcels of land owned by the County Government have either been irregularly allocated or encroached by private developers. Some of the parcels include parcels of land hosting Komarock Ward offices, Mutuini Hospital, High Ridge Health Centre, Nanyuki Road Stores and Depots, Karen Health Centre and Highways Stores. The Committee observed that errand County Officials collude with private developers and allow the encroachment and the irregular allocation. In addition, some of the allocations were conducted during the period of the defunct Nairobi City Council (NCC) with due disregard of procedures and the law. The Committee has directed that the Chief Officer Lands immediately engages relevant state institutions such as the National Land Commission (NLC) with a view of reverting the parcels of land to the County Government. The Committee has also invited the Ethics and Anti-Corruption Commission (EACC) and the Director of Criminal Investigations (DCI) to investigate all dealings on the County Land especially those mentioned in the report and take appropriate action.

8. *Challenges in the operations of Jambopay revenue collection system.*

This was a prior-year audit query which the First Assembly had considered and made recommendations but they were never implemented. The Auditor General has raised concern over the delay of remittance of collected funds to the County Revenue Fund (CRF) account. Evidence adduced to the Committee indicated that on one occasion (21st January, 2015) Kshs 2,827,640 was delayed for remittance to the CRF by 57 days while on another occasion (2nd February, 2018) Kshs 51,036,914.94 was delayed for six (6) days. In their reply, Webtribe Ltd, the provider of Jambo pay revenue collection system, accused Cooperative bank for the delay. The Committee opined that the delay of the monies puts at risk public resources and observed that the delay is meant for trading with County funds for personal interests only known to Cooperative Bank and Web tribe Ltd. **In this regard, the Committee has recommended that the County Government should invoke the provisions of Clause 17 of its agreement with Webtribe Ltd and terminate the agreement following the breach of Clauses 24 and 25 by Webtribe Ltd. In addition, the County Government should within five (5) months of adoption of this report develop its own internal and foolproof automated revenue collection system.**

1.9. Appreciation

Hon. Speaker,

The Committee would like to thank the **CEC Member for Finance & Economic Planning**, the **Ag. Chief Officer Finance** and all other **Ag. Chief Officers** (Accounting Officers) at the time of the consideration of the Auditor General's report and various witnesses who appeared before it and subsequently submitted written responses which provided valuable insights into the issues raised by the Auditor General.

Hon. Speaker,

The Committee further wishes to appreciate the Officers from the Kenya National Audit Office and the Office of the Clerk of the County Assembly for their exemplary advisory services.

The Committee also wishes to sincerely thank the Offices of the Speaker and the Clerk for the support to the committee, and to the Secretariat for their steadfast support and services extended to the Committee to enable Members execute their work.

Hon. Speaker,

On behalf of the Committee, I now wish to table this report and urge the Assembly to adopt it and the recommendations therein.

SIGNED ....

HON. WILFRED ODALO (CHAIRPERSON)

DATE ...3/5/18...

We Members of the Public Accounts Committee (PAC) do hereby affix our signatures to this report to affirm the correctness of the contents and support for the report:-

NAME	SIGN
1. **Hon.** Wilfred Odalo, MCA-Chairperson	....
2. **Hon. Fredrick Njogu, MCA-Vice Chairperson**	....
3. Hon. Moses Ogeto Nyangaresi, MCA	....
4. Hon. Chege Mwaura, MCA	....
5. Hon. David Mberia, MCA	....
6. Hon. Rose Adhiambo Ogonda, MCA	....
7. Hon. Anthony Karanja, MCA	....
8. Hon. Peter Wanyoike, MCA	....
9. Hon. Charles Thuo, MCA	....
10. Hon. Peter Warutere, MCA	....
11. Hon. Juliet June Ndegwa, MCA	....
12. Hon. Joseph Wambugu, MCA	....
13. Hon. Silvia Moseiya, MCA	....
14. Hon. Lawrence Otieno, MCA	....
15. Hon. Esther Nyangweso, MCA	....
16. Hon. Redson Otieno, MCA	....
17. Hon. Clarence Munga, MCA	....
18. Hon. Millicent Jagero	....
19. Hon. Elizabeth Nyambura	

2.0. CONSIDERATION OF THE REPORT OF THE AUDITOR GENERAL REPORT ON THE FINANCIAL STATEMENTS OF NAIROBI CITY COUNTY EXECUTIVE FOR THE YEAR ENDED 30TH JUNE 2016.

2.1. Non Submission of a Trial Balance

The County Executive has not provided a trial balance to support balances in the financial statements for the year ended 30 June, 2016. In the circumstance, completeness, accuracy and authenticity of the balances reflected in the financial statements cannot be confirmed.

The Ag. Chief Officer Finance (CFO) submitted that:-

i) An IFMIS generated Trial Balance could not be provided because it was not balanced. This is as a result of revenues not being captured in the system because of Accounts Receivables Module was not activated by the National Treasury at the time of reporting. In addition, there were payments which were made outside the IFMIS, these related to legal fees and KRA payments where court orders, garnishees and agency notices had been issued against the county.

ii) A manually prepared trial balance capturing all off-IFMIS transactions was submitted and a copy of the same is available.

iii) The following interventions have been put in place to forestall a similar occurrence:-

- The Accounts receivable module is now operational and the revenue budget for the current financial year has now been uploaded in IFMIS.
- Officers have been trained on the AR Module and revenues for the FY 2017/18 and are now being captured in IFMIS the exercise shall be complete by the close of the financial year to enhance prudent financial reporting.
- Going forward all expenditures incurred has been processed through IFMIS and internet banking.

The Committee observed that:-

i) Failure by the Chief Finance Officer to submit the trial balance which is a primary accounting tool at the time of audit implies that the Officer never intended to fully disclose the financial status of the County Executive; and

ii) Had the Chief Finance Officer provided the information to the Auditor General during the audit period, this matter would not have been an audit query.

The Committee recommends that:-

i) The Chief Finance Officer should institute measures to ensure that the County Executive adheres to International Public Sector Accounting Standards (IPSAS) **consistent** with the Public Finance Management Act, 2012;

ii) **The Chief Finance Officer** should institute measures to ensure that the County Executive always act in time when dealing with the Auditor General to forestall audit queries; and

iii) The Chief Officer, Public Service Management (PSM) should take **administrative** action against the Chief Finance Officer during the period **under review** for negligence of duty and report him to the relevant professional body for professional misconduct.

2.2. Discrepancies between Ledgers and Financial Statements.

The ledger reflects in respect of use of goods and services eight (8) expenditure items totaling Kshs.2,144,530,016 whereas the financial statements reflect an amount of Kshs.2,807,874,954 in respect to the account resulting in an unexplained variance of Kshs.663,344,938. The details by line item are as follows;-

	Line Item	Financial Statements Balance(Kshs)	Ledger/Analysis Balance (Kshs)	Variance
1	Foreign Travel & subsistence	27,028,533	67,275,818	-40,247,285

2	Advertising and information	28,767,666	28,269,666	498,000
3	Training Expenses	189,740,891	189,196,292	544,600
4	Hospitality Supplies and services	131,914,108	132,727,108	-813,000
5	Other Payments	1,731,060,811	1,027,710,337	703,350,474
6	Specialized Material and services	383,565,742	383,641,738	-75,996
7	Office and General Supplies and Services	210,577,593	209,991,343	586,250
8	Fuel and Lubricants	105,219,610	105,717,714	-498,104
	Total	**2,807,874,954**	**2,144,530,016**	**663,344938**

In the circumstances the accuracy of reported expenditure on use of goods and services of Kshs. 5,562,994,850 cannot be confirmed.

The Accounting Officer submitted that:-

i) Foreign travel and subsistence ledger balances are inclusive of County Assembly's figures as per the attached Account Analysis report. For other line items (i.e. 2, 3, 4, 6, 7, and 8), the variances are attributed to end year adjustments which were made after the Account Analysis reports had been generated compared to the final Appropriation Accounts which were the basis upon which the financial statements were prepared;

ii) Regarding line Items No. 5 other payments, the ledger balances have been generated from IFMIS whereas figures appearing in the financial statements include all payments made by the County Government during the financial year processed through IFMIS and off-IFMIS.

iii) The off-IFMIS payments were necessitated by various factors including IFMIS system down-time, emergency cases that included decretal amounts awarded by courts, garnishee orders, agency notice payments to KRA and Kenya Power contractual obligations.

iv) Currently all expenditure is now going through IFMIS and internet banking.

The Committee noted that had the CFO ensured timely action on the Auditor General's management letter, and kept proper accounting records this matter would not have been audit query.

The Committee recommends that:-

i) **The Chief Finance Officer should institute measures to ensure that the County Executive adheres to International Public Sector Accounting Standards (IPSAS) consistent with the Public Finance Management Act, 2012.**

ii) **The Chief Finance Officer should institute measures to ensure that the County Executive always act in time when dealing with the Auditor General to forestall audit queries; and**

iii) **The Chief Officer, Public Service Management (PSM) should take administrative action against the Chief Finance Officer at the time of audit for negligence of duty and report him to the relevant professional body for professional misconduct.**

2.3. Local revenue management

2.3.1. Non-sweeping of Local Revenue to County Revenue Fund Account

The County Government did not pay all its local revenues collections in 2015/2016 into the County Revenue Fund (CRF) prior to spending during the collections contrary to the provisions of Section 109(2) of the PFM Act, 2012. During the year under review local revenue receipts reported total Kshs.11, 237,972,877 as disclosed under note 11 in the financial statements. However only an amount of Kshs.2, 829,526,519 was deposited into the County Revenue Fund (CRF) account, with the remainder of Kshs.8, 408,446,358 having been spent at source.

The CEC Member, Finance & Economic Planning submitted that:-

i) The County collects funds which are mainly deposited in to the Co-operative Bank Revenue account. However, due to historical debt repayment arrangements, court orders, warrant of arrests against senior officers for payment of decrees and other fees, erratic cash flows and operational crises facing the County which in many occasions require urgent attention forces the County to spend some funds from the cooperative bank account before it has been swept to the Central Bank revenue account.

ii) Currently all revenue collected is swept daily into the Nairobi City County Revenue Account at Central Bank of Kenya. In addition, the County Government is re-negotiating the terms of payment with creditors as well as working tirelessly to increase revenue collection which will enable proper planning and execute payments as per the requirements.

The Committee observed that:-

i.) The County Executive failed to adhere to Article 207 of the Constitution and Section 109(2) of the PFM Act, 2012 which stipulates that all funds raised or collected on behalf of the County Government should be deposited into the County Revenue Fund account.

ii.) The County Executive failed to keep proper financial records with respect to the locally collected revenue.

The Committee recommends that:-

i.) The CEC Member Finance & Economic Planning and the Chief Finance Officer must take necessary steps and ensure that all funds raised or collected on behalf of the County Government are deposited in the County Revenue Fund;

ii.) The County Treasury should always keep up-to-date records of all the revenue collected locally; and

iii.) The Director of Public Prosecution should institute prosecution proceedings against the CEC Member Finance and the Chief Officer Finance at the time of the audit for breach of Article 207 of the Constitution and Section 109(2) of the PFM Act, 2012.

2.3.2. Street Parking

2.3.2.1. Unpaid for parking

Note 11 to the financial statements shows that an amount of Kshs.2, 037,870,304 was realized from the motor vehicle parking fees in the year under review. Examination of parking system reports maintained by the County Government, however, indicated that of 2,117,165 vehicles eligible to pay parking fees at the designated on-street parking lots during the year under review only 1,321,565 vehicles paid. Consequently, 795,600 vehicles or 38% of the expected payees did not pay. The management is yet to put in the place adequate measures to cap the non-compliance.

The Ag. CFO and the Officer in charge of parking submitted that:-

i) It is true that street parking revenue collection is not 100% but the numbers of eligible vehicles and the non-compliant indicated in the Auditor General's report is not entirely true.

ii) The high numbers of non-compliant vehicles was occasioned by several factors as follows:

   a) Lack of special towing vehicles: The current towing vehicles cannot be used to tow automatic vehicles which make up the bulk of vehicles parked. Thus, we end up unclamping non-compliant vehicles to avoid vandalism of clamps.

   b) Insufficient clamps: The County was experiencing a shortage of clamps making it difficult for the enforcement teams to clamp all non-compliant vehicles.

   c) Some motorists drive away when they notice that the attendants are querying their vehicles. This is also a factor leading to the high non-compliance rate.

iii) The County Government has instituted the following interventions:-

a) Attendants have been further enlightened on need to be more careful in querying.
b) Introduction of Pin Tap gadgets to reduce errors.
c) Continuous training of staff.
d) 2000 clamps already procured to reduce non- compliance.
e) Automated tow trucks already procured (one already hired).
f) Communicated to Web tribe on anomalies resulting from its query system which occasionally result in having both compliance and non-compliance vehicles simultaneously appearing in their database even after the non-compliance vehicles have paid.
g) Formed a rapid response team to enforce in areas with high default rate.

The Committee while appreciating the measures put in place by the County Executive was not convinced by the reasons provided by the Ag. CFO and the Head of Parking with respect to variance of the revenue collected at the parking. The Committee holds the view that parking revenue must have been lost through fraud and collusion among motorists, parking attendants and senior County Treasury officials.

The Committee recommends that:-

i) The County Treasury should fully automate all parking fee collection within six(6) months of adoption of this report and disciplinary action must be taken against parking attendants who fail to comply;
ii) The CFO and the Chief Officer, Transport and Public Works should within three(3) months of adopting of this report map-out and clearly mark all public parking areas in the County;
iii) All parking fees charged should be based on the approved County Finance/Revenue Administration Act. Disciplinary action must be taken against any officer who breaches the same;

iv) **The Head of Parking** must ensure that the proposed interventions as stated in the response are enforced and a repeat situation is avoided; and

v) The CEC Member, Finance and Economic Planning should hold the Officer in charge of parking, parking attendants, the responsible revenue officer at the **County Treasury** at the time of non-payment by motorists personally liable for the loss of revenue in accordance with Section 203(1) of the PFM Act, 2012 and take the necessary measures prescribed under Section 203(2) of the PFM Act, 2012 which provides *inter alia* that:-'*the County Treasury may, by civil* ***proceedings brought*** *in a court of competent jurisdiction, recover damages from* ***a public officer*** *for any loss for which the officer is liable under subsection(1).*

2.3.2.2. Unaccounted for Clamps

A review of the internal control system for issuance of clamps and release of clamped vehicles under the revenue enforcement department revealed the following control gaps:

i) The clamping system reflects 27,358 vehicles as having been clamped for non-payment of parking fees in the year under review. However, 10,672 vehicles representing 39% of the number clamped were released without payment or the requisite approval.

Consequently, the County lost revenue equivalent to the unauthorized releases.

ii) Control over issuance and accountability over the clamps are weak and prone to manipulation. For instance, there is no system for monitoring field officers activity on the clamped vehicles whether paid or unpaid.

The Ag. CFO and the officer in charge of parking submitted that:-

i) The clamping of non-compliant vehicles is done on the system and monitored online on real time and reports generated. The de-clamping is also done upon payment or automatically at midnight.

ii) The 39% vehicles clamped but not paid for are those either unclamped with authority & reasons which are documented or the vehicles which fail to pay by 8pm which have to be de-clamped to avoid the clamps being damaged.

iii) The following interventions have been put in place:-

- Specialized towing van received
- Proposed change to the County laws to ensure clamped vehicles are never allowed to pay until the previous days' debts have been cleared.
- The County is in the process of drafting a bill in regards to parking revenue stream.

The Committee observed that:-

i) The County Government lost and continue to lose revenue due to inaction by parking attendants who by design fail to enforce revenue collection.

ii) The existing systems of enforcing parking fee collection and enforcing penalties for non-complying vehicles are weak and prone to manipulation.

The Committee recommends that:-

i) **The Officer in Charge of Parking must take necessary steps and ensure that any clamped vehicle must pay the requisite penalties prior to their release and proper documentation kept;**

ii) **The County Government should immediately procure an automated system to monitor the clamping and unclamping of vehicles; and**

iii) **The County Government should immediately develop a legislation on parking for introduction in the County Assembly within three (3) months of adoption of this report.**

2.3.2.3. Off street parking system downtime

As reported in the 2014/2015 financial year, the County Government in an effort to enhance revenue collections from its off-street parking automated the law courts, Sunken, Mama Ngina and Intercontinental parking areas which hold 70, 240, 22 and 36 parking slots respectively. Nevertheless, the automated system was noted to be down for significantly long durations necessitating use of manual ticketing which is prone to manipulation. Site visits to parking areas on diverse dates in financial year under review revealed that vehicles were normally double parked which is an indication of revenue collection in excesses of parking areas potential. However, examination of revenue returns for the four parking areas indicated annual revenue of Kshs. 19,896,433 for 2015/2016 financial year against a revenue capacity of Kshs 26,496,000 thus resulting in a deficit of Kshs. 6,599,567. Further, the management did not provide for audit review information on off-street parking revenues for the month of September 2015. Consequently, value for money from the computerization of the parking areas may not have been realized.

The Accounting Officer submitted that:-

i) The County used the automated system to collect kshs.26, 647,650 from the off street parking. The automated system is used only when the maintenance service is due or there are no thermo-cards & thermo-rods to ensure continuous use of the system and avoid manual collections.

ii) The County intends to enter into a service maintenance contract with the service providers KAPS to ensure that the machines operate continuously with adequate stock of thermo-cards and thermo-rods.

iii) The County intends to take advantage of clause 18.2 of the S.L.A to ensure compensation. Also, revenue targets are approximated and may not be actually realised due to other factors like political demonstrations, public holidays and visits in the country by high profile international guests.

The Committee observed that:-

i.) Manual collection of parking fees is susceptible to corruption since parking attendants seem to conclude with motorists who intend to evade paying parking fees hence leading to loss of revenue as noted by the Auditor General;

ii.) The automation system adopted by the County Government need to be foolproof and transparent. There should also be a back of the system especially during system downtime.

The Committee recommends that:-

i) The County Government should review its existing automated revenue collection system with a view of ensuring that it is free from manipulation, transparent and has back-up in case of system down-time; and

ii) The CEC Member, Finance and Economic Planning should hold the Officer in charge of parking, parking attendants, the responsible revenue officer at the County Treasury at the time of audit personally liable for the loss of Kshs. 6,599,567 in revenue in accordance with Section 203(1) of the PFM Act, 2012 and take the necessary measures prescribed under Section 203(2) of the PFM Act, 2012 which provides *inter alia that:-'the County Treasury may, by civil proceedings brought in a court of competent jurisdiction, recover damages from a public officer for any loss for which the officer is liable under subsection(1).*

2.3.2.4. Loading zones

As disclosed under note 23 to the financial statements, outstanding loading zones debtors amounted to Kshs 422,300,000 as at 30 June 2016(Year 2014/2015 – Kshs 342,380,800) representing a 23% increase. This amount is represented by private and government institutions dues of Ksh8, 600,000 and Ksh.414, 240,000 respectively. No explanation has been given for non-collection of loading zone debts.

The Accounting Officer submitted that:-

i) The accumulated arrears are by Government institutions who have failed to remit despite several reminders.

ii) The County petitioned the Senate to help in follow up on government debts on loading zones.

iii) The County will number all the loading zones to improve in monitoring of the payments and identify those in arrears for immediate revoking and change to daily parking.

The Committee observed that:-

i) The County Government lost and continues to lose revenue due to non-payment by entities using loading zones i.e. both private and government institutions.

ii) The County Treasury does not have adequate information on the number, location and the designated users/beneficiaries of all loading zones in the County.

iii) The responsible County Officers fail to enforce measures aimed at collecting revenue from the loading zones partly due to negligence and weak legal provisions on loading zones.

The Committee recommends that:-

i) The CEC Member Finance and Economic Planning should immediately follow-up on all the defaulting entities and recover in full all monies with respect to the payment of the loading zone fees. The defaulting loading zones should be reverted to the County Government;

ii) The Chief Finance Officer and the Chief Officer Transport and Public Works should within three(3) months of adopting of this report spearhead the process of identifying and marking all the loading zones within the City and identify their designated users;

iii) The Auditor General should conduct a special audit on the loading zones and report in the next statutory audit report for the Committee to take appropriate action;

iv) The County Treasury and other responsible Departments should introduce a proposed legislation in the County Assembly on loading zones within three (3) months of adoption of this report; and

v) The CEC Member, Finance, the CFO and the Head of Revenue at the time of audit should be held to account for loss of revenue occasioned by non-payment of loading zones pursuant to the PFM Act, 2012 Section 203 of the PFM Act, 2012.

2.3.3. Funding for Pumwani Hospital Operations

During the year under review, the county management resolved to remit an amount of Kshs.500, 000 daily to Pumwani Maternity Hospital to sustain its operations. However records maintained by the County indicate that Kshs 24,800,000 earmarked for the hospitals operation had not been remitted as at 30 June, 2016. This impacted negatively on the hospitals operations and provision of services to tax payers. During the year under review, the hospital spent user service fee of Kshs.3, 455,705 at source on emergencies apparently as a result of failure to receive the earmarked funds when required.

The Ag. Chief Officer, Health Services and the Ag. CFO submitted that:-

i) The shortfall of remittances of daily Kshs.500, 000/= was occasioned by cash flow problems in the County Treasury. However, the county treasury agreed to continue supporting the hospital as and when funds became available. This commitment was fulfilled in the subsequent year.

ii) A daily operational budget has been provided. Currently, the County Treasury pays all public health sector payments that have been processed via IFMIS and prioritized for payment.

The Committee observed that:-

i) Failure to remit funds to Pumwani Hospital stifles the operations at the highly relied upon county facility causing suffering to may Nairobians who depend on it.

ii) Irrespective of the situation, the County Executive failed to adhere to Article 207 of the Constitution and Section 109(2) of the PFM Act, 2012 which stipulates that all funds raised or collected on behalf of the County Government should be deposited into the County Revenue Fund account.

The Committee recommends that:-

i) **The County Treasury should prioritize release of funds to Pumwani Hospital and all other health facilities and institute proper accountability measures to avoid disruption of service provision at the County Health facilities; and**

ii) **The CEC Member Finance, the Chief Finance Officer, the Accounting Officer of the Health Services Sector, and the head of the hospital at the time of the commission of the illegality be held to account for breach of Section 109(2) of the PFM Act, 2012 pursuant to Section 203(1) of the PFM Act, 2012.**

2.3.4. Variance between LAIFOMS Reports and Financial Statements

The statement of receipts and payments reflects other revenues totaling to Kshs.11, 237,972,877 which include an amount of Kshs 8,029,792 in respect of the veterinary department. This amount however differs from LAIFOMS collection report for the department of Kshs. 8,658,931 resulting in an unexplained difference of Kshs 629,139. Similarly, the fisheries department reported collection of Kshs. 1,598,800 included in the other revenues figure of Kshs 11,237,972,877 which differed from LAIFOMS figure of Kshs1, 877,000 resulting in unexplained variances of Kshs. 278,200.

The Accounting Officer submitted that:-

i) The variance was occasioned by revenue collection from the dog pound station by the revenue section in finance while other revenue was banked directly by clients without passing through the departmental records.

ii) The departments of Veterinary and Fisheries also were reporting only revenue records from staff members. However, the actual money collected as indicated in LAIFORM was more than in departmental records. Therefore the Veterinary department was using accounting documents inherited from National Government and had a dispute that has been resolved by inter-governmental

Relations Technical committee through a memorandum of understanding (attached).

iii) The County Government has instituted the following measures:-

a) Revenue officer has been appointed to manage and reconcile all the revenue streams to work with National Government Revenue Sharing Committee and ensure total compliance with client's revenue records.

b) Additionally the County will procure all the necessary revenue documents and stop to rely on National Government Supplies.

c) To increase the coverage of revenue activities more vehicles and staff facilitation will be provided.

The Committee observed that:-

i) LAIFOMS do not conform to the current County Governance structure and therefore they cannot be fully relied on.

ii) The CFO and the Head of Revenue deliberately refused to use IFMIS for reasons only known to them since IFMIS had already been rolled out by the National Treasury.

The Committee recommends that:-

i) **The County Government should immediately transition from the use of LAIFOMS to IFMIS; and**

ii) **The Head of Public Service should take administrative action against the CFO and the Head of Revenue at the time of audit for failing to comply with National Treasury Regulations on the use of IFMIS.**

2.3.5. Manual Collection of Revenue at the Inoculation Centre.

Despite the automation of activities undertaken by the County Government, the revenue collection of the inoculation center is still done manually. During the year under review, the reported revenue receipts under the manual system amounted to Kshs 58,436,800 Manual systems by their nature are prone to human manipulation. No explanation has been provided for the continued usage of manual systems to correct and account for revenue at the center.

The Ag. Chief Officer, Health Services and the Ag. Chief Finance Officer submitted that:-

i) The collection is done manually but all receipts are accounted for through paying in slip (PIS) issued with a LAIFOMS receipts.

ii) The County has engaged the Revenue collection service provider to come up with the stream module for the source, meanwhile the director ICT is doing the cabling to enable automated collection at the centre.

iii) Currently customers are paying using the LIPA-NA-MPESA module (Nairobi County Health – Inoculation Till No.561625) and no cash collections are received at the Centre.

The Committee noted that manual collection of revenue at the inoculation centre reduces accountability and puts public funds at risk of misappropriation.

The Committee recommends that all payments at the inoculation centre should immediately be automated.

2.3.6. Disbursement of Capitation and Free Maternity Funds.

2.3.6.1. Pumwani Maternity Hospital.

Reimbursements received by the County Government on account of free maternity scheme under partnership with the ministry of Health amounted to Kshs. 306,935,271 from inception in June 2013 to June 2016. Pro-rata to the deliveries handled, Pumwani Maternity Hospital was to be reimbursed by the close of the financial year June 2016. However only Kshs 173,851,907 had been reimbursed as at 30 June leaving a balance of Kshs108, 473,093 as analyzed below:

Period	No. of Deliveries	Expected Reimbursement (Kshs)	Amount Received (Kshs)	Balance (Kshs)
June 2013 – June 2014	19,637	98,185,500	154,096,907	(55,911,407)
July 2014 – June 2015	19,116	95,580,000		95,580,000
July 2015-Jan 2016	9,481	47,405,000		47,405,000
Feb 2016-May 2016	6,568	32,840,000	19,755,000	13,085,000
June 2016	1,663	8,315,000		8,315,000
Total	56,465	282,325,500	173,851,907	108,473,593

The Ag. Chief Officer, Health Services and the Ag. CFO submitted that:-

i) During the financial 2015/2016 Kshs. 233,780,000 was received by the County Treasury as follows;

Date	Amount Kshs.
03/11/2015	107,680,000
21/12/2015	32,835,000
05/05/2015	50,425,000
16/06/2015	42,840,000
Total	**233,780,000**

ii) Kshs. 32, 425,000 was disbursed to the County Hospitals during the third quarter of the 2015/16 financial year. The rest of the funds (Kshs. 50,425,000 and Kshs. 42,840,000) were in the payment process by the end of the Financial Year to enable disbursement to the various County facilities.

iii) Currently out of the funds received by the County Treasury, the necessary documents have been prepared to facilitate the transfer of these funds to various facilities. In this instance Pumwani Maternity Hospital was to receive Ksh17, 233,490/=. Mbagathi Kshs. 19,742,025/= and Mama Lucy Kibaki Kshs. 21,647,122/= respectively. These amounts are in the Internet Banking.

iv) The NHIF Capitation is disbursed directly to the facilities Bank accounts by the NHIF Management. However, the disbursement is based on the agreements between the NHIF and the Hospital Management.

The Committee observed that:-

i) Non-disbursement of maternity funds refund by the national government to the County Government is a breach of the agreement entered between the two governments and subsequently hampers service delivery at the County health facilities.

ii) Some of the funds received from the National Government specifically meant for maternity services refund were diverted to other projects/activities.

iii) County Treasury officials and the Health Services at the time failed to adequately follow-up with the National Government on the refund.

The Committee recommends that:-

i.) The CEC Member for Finance and Economic Planning should take personal interest in this matter and ensure that the National Treasury refunds outstanding maternity fees refund since the County Government has already incurred the expenditure;

ii.) The CEC Member Finance and the CFO should ensure that funds are only spend on the intended purpose and/or as approved by the National or County Legislation;

iii.) The County Treasury should put in place adequate budgetary measures to cater for maternity services; and

iv.) **The CEC Member** Finance and the **CFO** in office during the period under review **should be held to account for allowing spending of maternity fee refunds on other activities** contrary to the provisions of **Section** 196 of the PFM, Act, 2012.

2.3.6.2. Mama Lucy Kibaki Hospital

During the year under review, Mama Lucy Kibaki Hospital expected free maternity cover reimbursement of Kshs.41, 115,000 but received Kshs.5, 785,000 only resulting in a balance of Kshs. 35,330,000 as of 30th June 2016. Similarly under the NHIF capitation for civil servants and national schemes, the hospital was to be reimbursed Kshs.9, 401,377 but received Kshs.7, 501,900 only resulting in a balance of Kshs.2, 349,477 as of 30th June, 2016. No explanation has been rendered for the delayed reimbursements by the National Government.

The Ag. Chief Officer, Health Services and the Ag. CFO submitted that:-

i) The hospital management has submitted all the necessary information to facilitate reimbursement by National Government Ministry of Health and NHIF funds.

ii) However, occasionally there is delay in reimbursement of funds from concerned institutions resulting in outstanding balances as stated above.

The Committee observed that:-

i) Non-disbursement of maternity funds refund by the national government to the County Government is a breach of the agreement entered between the two governments and subsequently hampers service delivery at the County health facilities.

ii) County Treasury officials and the Health Services at the time failed to adequately follow-up with the National Government on the refund.

The Committee recommends that:-

i.) **The CEC Member for Finance and Economic Planning should take personal interest in this matter and ensure that the National Treasury refunds outstanding maternity fees refund since the County Government has already incurred the expenditure;**

ii.) **The CEC Member Finance and the CFO should ensure that funds are only spend on the intended purpose and/or as approved by the National or County Legislation;**

iii.) **The County Treasury should put in place adequate budgetary measures to cater for maternity services; and**

iv.) **The CEC Member Finance and the CFO in office during the period under review should be held to account for allowing spending of maternity fee refunds on other activities contrary to the provisions of Section 196 of the PFM, Act, 2012.**

2.3.6.3. Mbagathi Hospital.

Mbagathi hospital registered 825% growth in baby deliveries to 12,405 births in 2015/2016 from the 2014/2015 financial year of 6,832. The cumulative reimbursable amount under the partnership scheme with the Ministry of Health (MOH) stood at Kshs 127,930,000 as of 30 June 2016. However, only Kshs 58,553,190 had been reimbursed as of that date resulting in balance of Kshs 60, 391,810 out of which Kshs34, 108,330 related to the year under review. The reimbursement of free maternity cover scheme had been budgeted for use on hospital operations. With the continued delay in reimbursements of the capitation and free maternity funds, service delivery at the hospitals stands to be adversely affected.

The Accounting Officer submitted that:-

i) During the financial 2015/2016 Kshs. 233,780,000 was received by the County Treasury as follows:-

Date	Amount
03/11/2015	107,680,000
21/12/2015	32,835,000
05/05/2015	50,425,000
16/06/2015	42,840,000
Total	233,780,000

ii) Kshs. 32, 425,000 was disbursed to the County Hospitals during the third quarter of the 2015/16 financial year. The rest of the funds (Kshs. 50,425,000 and Kshs.42, 840,000) are in the payment process to enable disbursement to the various County facilities.

The Committee observed that:-

i.) Non-disbursement of maternity funds refund by the national government to the County Government is a breach of the agreement entered between the two governments and subsequently hampers service delivery at the County health facilities

ii.) County Treasury officials and the Health Services at the time failed to adequately follow-up with the National Government on the refund

The Committee recommends that:-

i) The CEC Member for Finance and Economic Planning should take personal interest in this matter and ensure that the National Treasury refunds outstanding maternity fees refund since the County Government has already incurred the expenditure;

ii) The CEC Member Finance and the CFO should ensure that funds are only spend on the intended purpose and/or as approved by the National or County Legislation;

iii) The County Treasury should put in place adequate budgetary measures to cater for maternity services; and

iv) The CEC Member Finance and the CFO in office during the period under review should be held to account for allowing spending of maternity fee refunds on other activities contrary to the provisions of Section 196 of the PFM, Act, 2012.

2.4. Unsupported Expenditures

2.4.1. ICT Department

Examination of payment vouchers for 2015/2016 under the ICT department revealed the following irregularities;

i) Payment of Kshs. 2,630,749 on account of supply of furniture without the requisite supporting documents and approvals;

ii) The user department had instead requisitioned furniture estimated to cost Kshs. 1,300,000;

iii) The original LPO number 001014 in support of the expenditure was not made available for audit review; and

iv) Justification for expending over and above the user department requisitions and approval was not provided.

In the absence of the supporting documents for the transaction, I cannot confirm propriety of expenditure of Kshs. 2,630,749 reported to have been incurred on purchase of furniture.

The Ag. CFO and the Ag. Chief Officer, ICT submitted that:-

i) The following documents support the procurement process;

  a) Authority to purchase furniture memo ref: NCC/ICT/VOL: II/1/1/108/14 dated 22nd August 2014

  b) County tender committee meeting minutes No. 28/2014-2015 held on 15th and 20th May, 2015

  c) Payment Voucher No. 2849

  d) Local Purchase Order number 000715 of Kshs. 2,630,749–the LPO number related to the expenditure was 000715 and NOT 001014 as stated.

  e) Inspection and acceptance certificate number 001090

ii) The approval memo for furniture was based on the approximated cost of Kshs. 1,300,000. However, after competitive procurement process undertaken 8 months later, the tender was awarded at a sum of Kshs. 2,630,749

The Committee was not convinced with the Officer's response and held the view that the procurement was irregular as pointed out by the Auditor General.

The Committee recommends that the CEC Member for Finance and Economic Planning severely reprimands all persons involved in the irregular procurement.

2.4.2. Health Sector

Payments totaling Kshs. 16,242,604 made on account of supply of surgical items and rehabilitation of Lunga Lunga health Centre were unsupported. The payments were made without the requisite supporting information and documents such as procurement plan, requisitions by the user department, evidence of the process of identifying the contractors, the scope of works to be undertaken, certificates of completion and delivery notes. In the circumstance am unable to confirm the propriety of the expenditure of Kshs. 16,242,604 incurred by the health sector.

The Ag. Chief Officer submitted that:-

i) The rehabilitation of Lunga Lunga Health Centre was done under Minute No.15/2014-2015 in Contract No.NCC/RT/HS/537/2014-2015 at a sum of Kshs. 10,840,780/= awarded to the lowest bidder ISTAHIL EXPRESS LTD. The copy of the relevant minutes is availed as evidence.

ii) The balance of Kshs.5, 401,824 was paid to KEMSA which was then mandated to supply pharmaceuticals and non-pharmaceutical items.

The Committee observed that:-

i) Failure by the Accounting Officer Health Services Sector and the Chief Finance Officer to provide required information at the time of audit implies that the Officers never intended to fully disclose details of the payments; and

ii) As pointed out by the Auditor General apart from the minutes, no evidence was adduced to the Committee on the procedure of identifying the contractor.

The Committee recommends that:-

i) **The Accounting Officer Health Services Sector, the CFO and the Head of Supply Chain Management should institute measures to ensure that the Sector always act in time when dealing with the Auditor General to forestall audit queries; and**

ii) **The CEC Member for Finance should hold the Head of Supply Chain Management at the period under review to account for the irregular procurement process.**

2.4.3. Water, Energy, Environment, Forestry and Natural Resources Sector.

Under Water, Energy, Environment, Forestry and Natural Resources sector, an amount of Ksh.70, 777,871.00 was paid towards solid waste management and disposal services, and supply and delivery of gumboots and uniforms without the requisite documents. The following irregularities were also noted:

i) The zones for which the service providers were prequalified to operate in were not indicated

ii) Allowances paid out were not acknowledged through sign offs by the recipients

iii) The payments were not supported by local purchase orders, invoices, proof of delivery in form of delivery notes and goods received notes at the dumpsite, and

iv) There were no work tickets for the equipment used to confirm works done

In the absence of relevant documentation, the validity and propriety of the expenditure of Kshs. 70,777,871.00 reported to have been incurred on solid waste management cannot be confirmed.

The Ag. Chief Officer, Water, Environment and Natural Resources submitted that:-

i) The Zones for which all the four Solid Waste Management Contractors were prequalified to operate in and the contract agreements are provided.

ii) From the month of October 2015, the Nairobi City County Government (NCCG) hired contractors went on a go-slow on account of prolonged delays in payments for the work done. This was occasioned by exhaustion of the allocated budget and as a result, waste accumulation in various parts of the city were on the rise when the City was going into the Christmas festival period.

iii) As a stop-gap measure, the Government urgently brought National Youth Service (NYS) to remediate the situation via a Memorandum of Understanding (MOU) signed on 23rd December 2015(copy attached). As per the article 6 (I) & (II) of the MOU, NCCG was to remit to the agency all monies related to operational costs, including labour and other incidental costs among others.

iv) Upon receiving the returns/invoices from NYS and confirming details to ensure that the county government was getting value for its money, it was to remit the allowances payable to persons engaged as per articles 7 (XIV) & (XV) of the MOU directly to the NYS account for its administration. Documents of disbursement of allowances to individual beneficiaries are therefore, internal to the NYS.

v) The Authority to procure, Requisition for Local Purchase Order (RLPO), Minutes of Tender Committee meeting, Local Purchase Order (LPO), Delivery Notes, Inspection and Acceptance Certificate, Invoice and Store Receipt Statement are all provided.

vi) Work Tickets for assorted Tippers and Heavy Equipment that were provided by NYS were always presented to NCCG as the basis for the payments. The Tickets and their summaries are provided as attachments.

The Committee observed that:-

i) Failure by the Chief Officer Environment and the Chief Finance Officer to provide required information at the time of audit implies that the Officers never intended to fully disclose details of the payments; and

ii) Had the Chief Finance Officer and the Accounting Officer, Health Services Sector provided the information to the Auditor General during the audit period, this matter would not have been an audit query.

The Committee recommends that:-

i.) **The Chief Officer, Environment Officer and the CFO should institute measures to ensure that the Sector always act in time when dealing with the Auditor General to forestall audit queries; and**

ii.) **The Chief Officer, Environment should fully enforce the Nairobi City County Solid Waste Management Act, 2015 which provides an elaborate mechanism for waste management based on the zones identified therein.**

2.5. Use of funds for unplanned/unbudgeted activities

The department of Agriculture, Livestock and Fisheries incurred expenditure amounting to Kshs.15, 740,886 which was neither budgeted nor planned for during the year. This was contrary to Section 196(1) of the Public Financial Management Act 2012. The expenditure was incurred on payment for supply and delivery of Agricultural items for building purposes and milk dispensing machines at a cost of Kshs.2,912,136 and Kshs.12,828,750 respectively.

The Ag. Chief Officer, Agriculture submitted that:

i) The funds were spent on the following items:-

   a) Renovations which were in the procurement plan and under recurrent budget 2014-2015 but by the end of the financial year the document had not gone through the relevant processes including payment and was therefore captured in internet banking in the period 2015/2016 as appending bill.

   b) Delivery and supply of agricultural items for building of 6 poultry and 5 rabbit units by Haus D&P Supplies at a cost of Kshs 2,912,136. The project was not budgeted for in 2015/16 financial year and hence not in the annual procurement plan. This is because it spilled over from 2014/15; the year the project was budgeted for and was supposed to be implemented fully. However this was not so due to delayed procurement process and the year ended before payments were done. Payments were made financial year 2015/16, using part of Kshs 50 Million allocated to the Sector for development as a way of clearing pending bills. Construction of the units is ongoing. This project was approved during a CEC meeting held on 22nd February 2015.

c) Delivery and supply of 5 milk dispensing machines by Fidelity training services at a cost of Kshs 12,828,750. The project was not budgeted for in 2015/16 financial years and hence not in the annual procurement plan. This is because it spilled over from 2014/15; the year the project was budgeted for and was supposed to be implemented fully. However this was not so due to delayed procurement process and the year ended before payments were done. Payments were made in the financial year 2015/16, using part of Kshs 50 Million allocated to the Sector for development as a way of clearing pending bills.

d) Installation of the 5 milk dispensers was completed in 2015/16. This project was approved during CEC meeting held on 19th December 2013.

ii) The sector will carry out projects appraisal and facilitate prompt procurement processes to enhance timely payment of goods and services within the financial year the activities are budgeted. This will however depend on liquidity situation at the county treasury.

The Committee observed that:-

i.) Failure to settle bills during the year to which they relate distorts the financial statements for that year and adversely affects the provision for the subsequent year to which they have to be charged.

ii.) Failure to settle bills in time inconveniences suppliers and portrays the County Government in bad light.

iii.) Delayed exchequer release was a major contributory factor to pending bills.

The Committee recommends that:-

i.) The Accounting Officer should institute measures to ensure that bills are always cleared within the financial year to which they relate; and

ii.) The County Treasury should ensure timely release of exchequers to Sectors and Departments to enable them settle bills in time.

2.6. Procurement of Goods and Services

2.6.1. Procurement of Works

Contracts for construction of a perimeter wall at Mji Wa Huruma and rehabilitation and automation of Macmillan Library were awarded on 4th May, 2015 and 22nd April, 2015 at contract sums of Kshs.16, 884,600 and Ksha.18, 450,965 respectively through restricted tendering procurement method. However, no reason has been given for using restricted tendering procurement method contrary to the requirements of Section 29(3) of the Public Procurement and Asset Disposals Act 2005, then applicable. In the circumstances, it has not been possible to confirm whether value-for-money was realized from the contracts valued at Kshs.35, 335,565 as a result of application of restricted tendering method.

The Ag. Head of Supply Chain Management submitted that:-

i) The right procurement process as provided for by the Public Procurement and Disposal Act 2005 in sourcing for the contracts for the three projects in question was followed.

ii) The perimeter wall at Mji wa Huruma was procured using other permitted procurement method other than open tender i.e. restricted Tendering. 10 (ten) prequalified firms were invited opening and evaluation was done whereby the winner was competitively awarded at their bid sum of kshs.16, 884,600 for construction of the project.

iii) Macmillan Library was to be rehabilitated and automated at a cost 18,450,965 using other permitted procurement method other than open tendering as stated above for the case of restricted tendering

iv) Pre-qualified suppliers are selected using open tender to come up with the preferred list as per section 73(2) of the Act, Regulation 23, 24 and 25 as permitted under section 32 of the Act and amendment of regulation in 2009 section 32 which deals with days required to complete the procurement process within 7 days. This means that the process of opening and evaluation was followed to the latter. However, it is important to note that Macmillan Library rehabilitation did not proceed as scheduled hence recommended for re-tendering.

v) When it comes to using the pre-qualified suppliers the department uses the restricted procurement method as per regulation 53, 20 of 2006 to come up with the winner of projects whereby the County gets value for money. This is brought about by the timing and planning of the projects from different user, urgency, cost of advertising in at least three print media and finally cost of the project visa vie the other hidden costs involved in the entire procurement process.

The Committee was not convinced with the Ag. Director Procurement's response and held the view that the procurement process of the restricted tendering was irregular as pointed out by the Auditor General.

The Committee recommends that the CEC Member for Finance and Economic should severely reprimands all officers responsible for the irregular procurement process.

2.6.2. Poor record maintenance

Mbagathi Hospital has two main stores namely; pharmaceutical and general stores. The general store was not managed well. For instance, significant numbers of stock card balances were not tallying with the physical store balances, and in addition stores items were arranged in a disorderly manner. In the absence of proper records, it is not possible to confirm that all stores procured during the year under review were received and applied for the intended purposes.

The Accounting Officer submitted that:-

i) On store-keeping at Mbagathi Hospital, there was a challenge in staffing in terms of stores management staff. This has been addressed by deploying professionals who are qualified in store keeping, more knowledgeable and committed personnel.

ii) Proper records have since been maintained for goods and items procured and records are also maintained by different personnel for goods and items issued for use for the intended purpose. Attached find the supporting documents for the same.

The Committee heard evidence that this matter had since been resolved as the Hospital Management had corrected the anomalies and the hospital is now keeping proper records to the satisfaction of the Auditor General.

The Committee treated the audit query as resolved.

2.6.3. Medical stores and unaccounted for drugs

Analysis of medical stores transfers during the year under review revealed that drugs valued at Kshs.907, 740 transferred from Mama Lucy Kibaki Hospital main stores on diverse dates were not received at the intended pharmacies. The stock control cards for the drugs specified had no matching entries to confirm receipt by the reported recipients. Further, duplicate stock control cards numbers 1257867 and 12557884 were maintained for one stores item namely Amoxillin/Clavulanic 625 gm tablets. Details of the transfers that were not received at the intended stores are as follows;

S3 Card Number	Drug of Type	Qtty transferred	Qtty received	Value
298347/93622	Fentolyn 50mg/m/	300	Nil	100,200
950070/Non in Pharmacy	Fentolyn 100mcg/2ml 10s	540	Nil	110,840
85217/Non in Pharmacy	Diclofenanc Injection 75mg	13000	Nil	65,000
298306/92644	Dental Cartridges 1.8ml	1200	Nil	33,600
9812/1257867 and 1257884	Amoxicillin/Clavulanic 625mg tablets	34800	Nil	510,000
9811/1129188	Amoxicillin/Clavulanic 375mg tablets	7000	Nil	88,100
Total				**907,740**

In the circumstances, it was not possible to confirm the drugs were received at the intended pharmacy and was applied for the intended purpose.

The Accounting Officer submitted that:-

i) Documents copies of s11 have been availed as evidence that drugs drawn from the main stores at Mama Lucy Kibaki Hospital were actually received in the pharmacy.

ii) The postings were made in the Bin cards and issues done through s13 forms to the various departments within the Hospital.

Based on the documents submitted to the Committee and site visit findings, the Committee observed that:-

i.) Failure by the Head of Pharmacy at the hospital to provide the documentary evidence at the time of audit implies that the officer never intended to disclose the true position of affairs at the hospital medical stores for reasons only known to the officer.

ii.) The manual process of tracking transfer of medicine is susceptible for manipulation hence loss of drugs at the hospital.

The Committee recommends that:-

i.) **The Chief Officer, Health Services should institute measures within three(3) months of adoption of this report and digitize/automate the movement of drugs inside and outside the medical stores; and**

ii.) **The Chief Officer, Health Services should reprimand the Head of Pharmacy at the hospital for poor performance.**

2.7. Over expenditure on compensation of employees

The total County Executive expenditure on compensation of employees during year under review amounted to Kshs. 12,471,953.548 as disclosed under Note 12 to the financial statements. The expenditure represented 48.8% of the total County revenue. Further, information available indicated that the County management was yet to set thresholds on employee compensation against total revenue as stipulated in the Act. The current expenditure levels of 48.8% of the total County revenue is indicative of over establishment and which impacts negatively on the development budget sectors of the County Government. The County Government has, therefore, contravened Section 107 (2) of the Public Finance Management Act. 2012.

The Accounting Officer submitted that:-

i) The total expenditure for the county on compensation of employees for the financial year 2015/ 2016 was 12,808,838,825. This is equivalent to 50% of the county total receipts for the year which amounted to Kshs. 25,568,309,010. However, the county is up to date and has not set a percentage level at which to maintain its expenditure on wages and salaries as required by the act.

ii) Nairobi City County through consultants Price water house Coopers undertook a survey and came up with a report on the proposed the optimal staffing levels. This is because most of the staff in the county were inherited from the defunct Nairobi City Council while some staff devolved from National Government. However, its implementation was hampered by salaries and remuneration

Commission (SRC) and Ministry of Devolution capacity Assessment and Rationalization program for public service, CARPS, initiative.

iii) The county Government has since frozen employment awaiting CARPS report before implementing rationalization program.

The Committee observed that the County Government wage Bill has run out of control and almost 50% of the annual county revenues are spent on employee wages hence compromising service delivery.

The Committee recommends that:-

i) The County Public Service Board (CPSB) should within six (6) months of adoption of this report review the entire County workforce and retire all employees who are passed the legal retirement age.

ii) The CPSB and the Head of Public Service should immediately follow-up with the Ministry of Devolution on the out-come of the Capacity Assessment and Rationalization program and take appropriate action.

2.8. Legal Costs

Included in other operating of Kshs. 1,657,620,265 disclosed under Note 13 to the financial statements are legal costs amounting to Kshs. 580, 270, 149. This amount was paid outside the Integrated Financial Management Information System (IFMIS) contrary to the National Treasury provisions on processing of all payments within the system. Further, the County Government's actual expenditure on legal services of Kshs. 580,270,149 exceeded its approved budgetary allocation of Kshs. 100,000,000 resulting in an over-expenditure of Kshs. 480,270,149 or 480%. No authority for the supplementary expenditure was sought from the County Assembly contrary to Section 196 (1) of the PFM Act 2012. Further, review of sample case files revealed that six (6) files with payments to lawyers totaling to Kshs. 113,618,092 were inadequately supported with information and documentary evidence. The details are as follows:

Legal Firm		Amount Paid (Kshs)	Case File No./Details	Deficiency
1.	Mugoye and Associates Advocates	4,825,000	HC ELC No. 135 of 2015 Gatkin Enterprises Ltd. Vs County Government of Nairobi and 3 others (George Theuri Robert Mbatia, Nicholas Maingi)	The value of land in dispute which forms the basis for computing legal fees has not been disclosed.
2.	Koceyo and Company Advocates	6,675,640	HCCC No. 193 of 2011 Lafey Trading Company Ltd vs Abdi Dahir Ali, Adow Dakane Rafat, City Council of Nairobi, Commissioner of Lands, Register of titles	The value of the dispute is not supported.
3.	Rustam Hira Advocates	38,680,852	HCC Misc Application No. 289 of 1999 Lalji Bhimji Sanghan Builders and Contractors vs City Council of Nairobi.	No clarity as to whether the fee note was final fee or whether the payee will be demanding further payments as the decretal sum was contested.
4.	Kithi and Company Advocates	23,436,600	PET, No. 775 of 2015 Sound Equipment Ltd vs City Council of Nairobi and Others.	Documents confirming the value of the property as Kshs. 358,000,000 which formed the basis for the taxes due were not made available for audit review
5.	KTK Advocates	20,000,000	HC No. 282 of 2012 City Council of Nairobi Vs The Attorney General and Kenya Defense Forces.	The said discounted fee note was not made available for review; furthermore, the option of out of Court settlement

				proposed for application was unclear.
6.	Kithii and Company Advocates	20,000,000	Appeal No. NET/146 of 2015 High Court Misc. No. 223 of 2015 (Exparte Homoescope Properties Republic Vs Nairobi City County) Jacline Marie ,David Ssegawa Sally Mukwana, Khadija Shamte, Eric Muriuki, Eva Kariuki Vs NEMA, Nairobi City County and others	The basis for the value of property quoted (Kshs. 2.5Billion) used by the lawyer to estimate fees could not be verified.
	TOTAL	113,618,092		

Consequently, the validity and propriety of the expenditure of Kshs. 113,618,092 on payment of legal fees cannot be confirmed.

The former CEC Member, Finance, former Ag. Chief Officer, Finance and former Head of Treasury Accounting submitted that:-

i) That it is true that the County spent outside the IFMIS since it was still being implemented at the time and expenditure was done through LAIFOMS

ii) That the legal cost was part of the pending bills and therefore the expenditure was not budgeted under the Legal Services Department budget.

iii) That an attempt was made to present the supplementary budget through the Justice and legal affairs Committee.

iv) That some payments on legal costs were made under duress since warrants were issued that the same be paid.

v) That correctional journals are available for verification.

The Ag. Director Legal Services submitted that:-

i) The legal fees was not entirely based on the value of the properties but also on the Advocates Remuneration Order.

ii) Some of the properties were privately owned hence they were not valued.

iii) The following are the details of each of the cases involved:-

a) The A Mugoye and Associates Advocate's Kshs. 4,825,000

- The Commissioner of Lands allocated the parcel of land for residential purposes instead of public utility, the said office had powers to allocate Government land and acted independently us such. No consent of the Council was required.
- The party filing has discretion to either disclose the value or not depending on the progress sought.
- The current status is that parties have filed all the relevant responses including submissions and the Judge has reserved the ruling on Notice.

b) RustamHira Advocates Kshs. 38,680,852

- RustamHira Advocates was paid Kshs.38,680,852.00 on 2nd March 2016 through cheque number 9835 being legal fee for case number HCC Misc Application No.289 of 1999 Lalji Bhimji Sanghan Builders and Contractors vs City Council of Nairobi.
- The decretal sum was Kshs.59,221,185.34 ,taxed cost Kshs.1,612,555 ,interest Kshs.576,576,783 further costs -Kshs.1,125 court fees - Kshs.1,500 total Kshs.637,424,241.48.The amount was re-assed by Prof. Tom Ojienda and Co. Advocates to be Kshs.38,680,851.
- County Advocate's review of the decretal sum was not acceptable to the decree holder and an application was filed in Court to enable the Judge make a final determination of the matter. The application is pending hearing.
- The amount in contention is the decretal sum inclusive of interest and not legal fees.

c) Kithi and Company Advocates Kshs.23,436,600

- The petitioner herein Sound Equipment Limited filed certificate of Urgency dated 21st August, 2014, Chamber Summon on even date and the High Court Constitutional and Human Right Division.
- The matter was served upon the County wherein, the County instructed the Firm of Kithi& Company Advocates, to defend it and protect its interest and position.
- The pleading filed quoted the cost of the project is Kshs.330million as per Folio 32, paragraph 2.
- The suit property LR. 209/12184 is situated in Lower Kabete Road, in Kibarage Valley Nairobi.
- The current position is that the Petitioner withdrew his petition against the Nairobi City County on 30th August, 2016.

d) Koceyo and Co. Advocates- Kshs. 6,675,640

- A query was raised as to whether the County conducts interviews on the tenants/plaintiffs. The procedure is that the Plaintiff files its case with accompanying supporting documents inclusive of witnesses' statements and the County as the defendant is afforded an opportunity to Cross examine the plaintiff on all its documents during the hearing of the case.
- The County also files their documents inclusive of witness statements where necessary.

e) Koceyo and Company Advocates-7,000,000

- The case regarded removal of illegally erected Billboards in the CBD by the County Government.
- The amount of Kshs.500, 000,000/- was arrived at from the schedule of advertisement debtors provided herewith.

- The case has been heard and is pending judgment which will be delivered on notice.

f) Park Towers Ltd Kshs. 37,822,759.

- The Council was in possession of the land when it allowed the Plaintiff to construct the Kiosk's prior to the Court decree that the land belonged to Park Towers. It was after the decree that survey was done and established that the kiosk had encroached on the land belonging to Park Towers Ltd.
- The current status of the suit by Park Towers Ltd is that there is an appeal pending against the entire judgment.

g) Legal Fees to Momanyi and Associates Advocates Kshs.19,561,200

- The subject matter of this suit is LR 209/11803/2 and 209/11803/2 off Mombasa Road. The property has been subject to numerous court cases involving several parties. The issue of Council being unable to pay the allocation money to the Government even after being given ample time to do so. Consequently to which the Government being forced to allocate the plot to private developers in 1996.
- The variation of case number HCCC No. 746 of 2011 as per the letter Ref: LA/LIT/E/123/15 and Civil Application No. 269 of 2013. The position is that 746 of 2011 is a High Court case which was dismissed and the Plaintiff having being dissatisfied with it dismissal appealed against the decision vide Civil Application 269 of 2013 in Court of Appeal.
- The current position is that the Civil Appeal No. 269 of 2013 has been dismissed in favor of the County.

h) KTK Advocates Kshs.20,000,000

- The subject matter is a piece of Land known as Land reference No. 41/3 initially granted to Kayole Estate Limited by the Government. The Land measures 5639 acres less 16 acres being Road Reserve. The Land was granted on 21st February, 1964.
- The then City Council of Nairobi instructed the firm of KTK Advocates to prosecute its claim for ownership of the said land and or comparison in terms of the current valued rate of the Land.
- The County Chief Valuer valued the said parcel of land at the market value of Kshs. 61.5billion.
- The firm of KTK Advocates representing the County in the case processed a fee note of Kshs. 1,153,690,500.00 which the County on 9th September, 2015 wrote to them calling for a meeting to negotiate the same. The fee was based on the value of the subject matter.
- The meeting parties agreed and signed that the legal Fee was to be discounted to Kshs. 576,845,125 discounting over Kshs. 400,000,000.00 (Four Hundred Million Shillings).
- The County is amenable to an out of court settlement but the initiative has been ignored to settle the case by the National Government. The Government has resisted committing itself not the County. It has been reluctant and the county has petitioned the Senate.

i) Kithi and Company Advocates Kshs.20, 000,000-
   - The amount of Kshs.585, 000,000/- is derived from the applicant's application dated 14th July 2015 and not from a valuation report. Further the same is not legal fees payable to the said lawyers.

- This was the amount applied for as a deposit for security for pecuniary losses to be suffered by the Applicant in case the claimant succeeded.
- The position of the above Judicial Review Application is that the same was dismissed on 21st April 2016. However there are other related suits in respect of the same subject matter that is L.R. No. 209/12184 over ownership and development of the same. The cases are:-

j) HC Misc Application No. 255 of 2016
   - The last position of this suit is that it was listed for hearing on 25th October 2016 when the same was taken out of the hearing list due to shortage of judges.
   - The matterawaits' fixing of a hearing date by the Applicant.

i) High Court petition no. 177 of 2016 Homoescope properties ltd - vs - the honorable attorney general and Nairobi city county and others
   - Provided is a copy of the Applicants Application dated 14th July 2015 highlighting where the amount of Kshs.585, 000,000/- was derived from. The fee to the lawyers is therefore based on this figure.
   - In this matter there are conservatory orders issued on 26th May 2016 staying the proceedings and or decisions or any orders and or findings at the Environmental Tribunal being NET 146 of 2016 pending the hearing of the Petition. The current status of the petition is that the same is pending fixing of a hearing by the petitioner. It was last taken out of the hearing list due to lack of judges.

The Committee invited all the advocates mentioned in the Audit Report to come and shed light on the issues raised. However, only Koceye and Company Advocates and KTK Advocates appeared before the Committee while Rustam Hira Advocate is now deceased. In their submissions, they claimed that the fees charged was based on the

Advocates Remuneration Order and after negotiating with the **County Government officials responsible for Legal Affairs.**

The Committee observed that:-

i.) The explanation by the **Ag. Director Legal Services** on the basis for the payment of legal fees was not justified since legal fees regarding properties especially public properties must not only be based on the advocates remuneration order but also the value of the properties. The valuation must be arrived at through a professional manner.

ii.) The continued procurement of legal services at extremely high rates yet the County Government has a fully-fledged Legal Department is unjustifiable. In addition, over expenditure on payment of legal services is extremely high yet the County Government still loses some of the cases thus there is no value for money spent.

iii.) Irrespective of the court warrants issued against County Government officers, the former County Treasury officials at the time of the payment breached the following provisions of the law:-

   i) National Treasury regulations which require all government expenditure to be done through IFMIS.

   ii) Section 135 of the PFM Act, 2012 by failing to regularize the funds spent outside the approved budget since no supplementary budget was presented or approved by the County Assembly with respect to Kshs. 480,270,149 spend outside the approved budget of Kshs 100, 000,000 and hence committed an offence under Section 196 of the PFM Act, 2012 which provides inter alia:- *"(1)A public officer shall not spend public money otherwise than authorized by the Constitution, an Act of Parliament or County legislation.*

   iii) The warrants provided were not all related to the cases mentioned.

The Committee recommends that:-

i) The Chief Officer, PSM in conjunction with the County Public Service Board and state agencies should subject the current Legal Officers in the Legal Department to a rigorous vetting process to eliminate those who collude with external lawyers and entities to defraud the County. Those found liable should be subjected to summary dismissal and reported to the Law Society of Kenya for professional misconduct. A report on the vetting process should be tabled in the Assembly within Four (4) months of adoption of this report;

ii) The Chief Officer, PSM and the County Public Service Board should put in place a performance management system for staff of the Legal Department to enhance performance;

iii) In the event there is need for outsourcing of legal services, a competitive procurement process should be instituted in line with the Public Procurement and Disposal Act, 2015;

iv) The Director of Public Prosecution (DPP) should immediately institute charges against Mr. Gregory Mwakanongo (former CEC Member, Finance & Economic Planning, Mr. Luke Gatimu (Former Chief Finance Officer) and Mr. Maurice Okere (Former Head of Treasury Accounting) for breach of Section 196 of the PFM Act, 2012;

v) The CEC Member, Finance and Economic Planning should hold the Accounting Officer of the Legal Services Department, the Director Legal Services, former County Treasury officials (Mr. Gregory Mwakanongo, Mr. Luke Gatimu and Mr. Maurice Okere) at the time of the irregular expenditure responsible for the irregular payment of legal fees leading to loss of public funds in accordance with Section 203(1) of the PFM Act, 2012 and take the necessary measures prescribed under Section 203(2) of the Act;

vi) The CEC Member for Finance in collaboration with relevant state agencies should institute measures to recover the money irregularly paid to the law firms with interest at the prevailing market interest;

vii) The Accounting Officer, Legal Services Department, the Director, Legal Services, the former County Treasury officials (Mr. Gregory Mwakanongo, Mr. Luke Gatimu and Mr. Maurice Okere) at the time of expenditure should not hold any other public office. Those still serving in the Legal Services Department should be suspended pending investigations; and

viii) The pending bills task force appointed by H.E. the Governor should enlist services of the EACC and DCI to determine the authenticity of all the pending legal before settling them.

2.9. Cash and Cash Balances

The statement of assets under cash and cash equivalents reflects a negative bank balance of Kshs. 1,276,874,863 as at 30th June 2016 (Year 2014/2015 Kshs. 1,306,819,844) and further disclosed under Note 22A to the financial statements. The following unsatisfactory matters were noted with regard to the reported cash-and-cash equivalent balances.

2.9.1. Mama Lucy Hospital bank balance

Included in the bank balance figure is Mama Lucy Kibaki Hospital bank balance of Kshs.32, 268,064 as of 30 June 2016. However, there was no cashbook or bank statement to support the existence of the reported balance. In the circumstances, I am unable to confirm the accuracy of the reported bank balance of Kshs.1, 276,874,863.

The Ag. Chief Officer Health and Ag. CFO submitted that:-

The cashbooks, bank reconciliations and bank confirmation certificates are now forwarded to the auditors for review.

The Committee observed that:-

i) Failure by the Chief Finance Officer to provide required information at the time of audit implies that the Officers never intended to fully disclose the true financial position of the County Executive;; and

ii) Had the Chief Finance Officer provided the information to the Auditor General during the audit period, this matter would not have been an audit query.

The Committee recommends that the CFO should institute measures to ensure that the Sector always act in time when dealing with the Auditor General to forestall audit queries.

2.9.2. Overdraft - Co-operative Bank Beautification Account

Co-operative Bank Beautification Account Number 01141232396608 was overdrawn severally during the year under review on the following instances on 31st July 2015, 19th September 2015 and 3rd October 2015 by Ksh.39,551,850.00, Ksh.47,798,934.00, and Ksh.48,457,095.00 respectively. The County Government therefore incurred finance costs amounting to Ksh.5, 372,381 during the year on the account for which no authorization was granted, contrary to section 196(1) and (2) of the PFM Act 2012.

The Ag. Chief Finance Officer submitted that:-

i) The overdrawn Co-operative bank Beautification account was as a result of expenditure incurred during President Obama and His Holiness the Popes state visits within the financial year.

ii) The National Government pledged to finance the beautification to a tune of Kshs. 60,000,000.00 which they failed to honor thus the County Government had to pay the suppliers.

The Committee was not convinced with the CFO's response and held the view that the expenditure was in of breach of Section 196(1) and (2) of the PFM Act 2012.

The Committee recommends that:-

i) **The DPP should institute prosecution proceedings against the CEC Member Finance and Economic Planning and the CFO during the period under review for breach of Section 68(1) and (2) of the Public Finance Management Act of 2012; and**

ii) **The CEC Member, Finance should take necessary steps and ensure that the National Government reimburse the monies due as promised.**

2.10. Imprest Management

The statement of assets reflects accounts receivable balance on account of outstanding imprests of Kshs.25, 199,363 as at 30th June 2016(Year 2014/2015 Kshs.39, 754,600) and as further disclosed under Note 23 to the financial statements. However, the outstanding imprests were not supported by an updated register. Consequently, it has not been possible to confirm the completeness and accuracy of the imprests balance of Kshs.25, 199,363 as of 30th June, 2016.

The Ag. Chief Finance Officer submitted that:-

i) Imprest section was operationalized in the middle of the financial year, with an aim of improving on the efficiency and accountability of management of imprest within the County. The need for the formation of the section arose out of the previous challenges faced and gaps identified in the management of imprests.

ii) IFMIS is an information system that tracks financial events and summarizes financial information. One of the notable functionalities of the system is that it recognizes imprests after they have been validated and paid unlike the manual register which is real time and does not indicate the status of the imprest whether paid, unpaid or cancelled.

iii) Also it's good to note the large number of imprest holders in the county which surpasses 800 and as such the reconciliation of the manual and electronic registers is overwhelming.

iv) IFMIS therefore enhances efficiencies, effectiveness, accountability and transparency in the management of imprest.

v) All these challenges are being addressed through strengthening and enhancing IFMIS to provide accurate and up to date information and using the manual record as a control tool.

vi) Despite the many challenges faced by the county in the management of imprests, major steps have been undertaken by the management to ensure all applicable accounting and financial controls, systems, standards and procedures are followed in its issuance, usage and surrender of imprests. This includes and it's not limited to the formation of an imprest control section in February 2016 which has led to

- Maintenance of electronic imprest register through Validation and better management and control of imprest data in IFMIS by ensuring all imprests warrants are captured and processed through the system.
- Introduction and maintenance of a manual imprest register in the county as a control tool.
- Frequent and continuous monitoring of outstanding balances and issuance of necessary advices through memos to affected sector heads and accountants.
- Issuing reminders to various sectors on conditions of usage of imprest and ensuring adherence to the same.
- Issuance of imprest recovery instructions to the Public service management and follow up on its implementation. In September 2016 an instruction memo was done to the human resource management to recover a total of Ksh.64.6m from the staff that had outstanding imprests as at 30thAugust 2016.Evidence of recovery attached

vii) The outstanding Imprest balance of Kshs. 25,199,363 is a blend of both the electronic and manual imprest register.

The Committee while appreciating the efforts being put in place to manage imprest, noted with concern that Accounting Officers continue to contravene Government financial regulations and procedures on imprest as supplemented by various circulars issued by National Treasury.

The Committee recommends that:-

i) All accounting Officers must immediately take necessary steps to ensure that all outstanding imprests are fully recovered as per the applicable laws failure to which they should be held to account by the appointing authority;
ii) All Accounting Officers should institute measures to ensure that County Government staff adhere to government regulations and procedures on imprests to guard against malpractices; and
iii) All accounting officers must keep proper and up-to-date imprest records and should benchmark with the imprest management procedures/systems in place at the County Assembly.

2.11. Pending Bills

Note 26.1 to the financial statements discloses pending accounts payable amounting to Kshs.48,297,618,839 as at 30th June 2016 (Year 2014/2015 – Kshs.41,039,185,553). The breakdown of the pending bills by category is as detailed below:

Item	Amount (Kshs)
Creditors	5,332,716,053
Pending Bills Staff	107,548,846
Other Pending Bills	39,422,844,055
Outstanding Loan	3,434,509,885
Total	48,297,618,839

The following unsatisfactory matters regarding these pending bills were noted:

2.11.1. Creditors – Kshs.5, 332,716,053

i) The creditors' ledger in support of the balances is not broken down to show individual creditor balances.

ii) There is no ageing report for the outstanding creditors

iii) There are no monthly reports tracking the movements in the creditors' ledger.

Consequently, the accuracy, validity and valuation of County Executives indebtedness to the creditors of Kshs.5, 332,716,053 cannot be confirmed.

The Ag. CFO submitted that:-

i) The following is the creditors ledger in support of balances-

No	Item	Amount (Kshs.)
1	Construction of buildings	385,267,361
2	Construction of civil works	1,394,238,914
3	Supply of goods	651,878,482
4	Supply of Services	
	a) Pumwani Maternity and hospitals	125,856,713
	b) Other supply of services	285,451,053
	c) Legal Creditors	2,088,543,410
	d) KPLC	401,480,120
	TOTAL	5,332,716,053

ii) Creditor's ledgers are updated on a daily basis however each voucher is entered as a separate payment for compilation to allow the section track payment of individual vouchers.

iii) The creditors' ledger broken down to individual vouchers/schedules that constitute the Kshs.5.3M have been provided. This consists of the individual balances owed to contractors and supplier for construction and refurbishment of buildings, construction of civil works (roads, drainages' & refurbishments), supply of goods and supply of services and the hospital creditors. (Appendix CR1)

iv) Pending bills presented in the creditor's ledger for the FY 2015/2016 relate to bills accumulated during the year, for projects rolled over from FY 2014/2015 and other historical creditors, however the age of each creditor can be ascertained by the FY in which the contract was issued as indicated in column 3 of the provided schedules. A month report of statutory creditors has been provided.

v) The County through the ICT department procured for the installation and commissioning of the data Centre which has recently been launched allow the County acquire a financial management system to manage the financial reporting process and management of creditors is one of the key components that will enhance itemized individual management of the suppliers and contractors.

vi) The credit control section maintains incoming and outgoing ledgers for vouchers and merchants which are updated on a daily basis and the same struck out as at when the creditor is paid. The same data is captured into an excel worksheet ledger and is used for compilation of creditors schedules on a monthly and quarterly basis for preparation of reports.

vii) Quarterly reports and the final end of year report are generated from a ledger of pending merchants analyzed from the monthly creditors' schedule.

The Committee observed that:-

i) The County Government has a huge pending bill which needs to be urgently addressed before it runs out of control.

ii) The authenticity of some of the pending bills can only be determined through a forensic audit.

iii) There is no accurate record of all pending Bills since there is no monthly tracking.

iv) Failure to settle bills in time inconveniences suppliers and portrays the County Government in bad light. Some of the contractors have been rendered bankrupt for having either provided services or supplied commodities using their funds but have since not been paid while some have resolved not to ever transact with the County Government.

The Committee recommends:-

i.) **The task-force appointed by H.E. the Governor should conduct a forensic audit of all pending bills before settling the same. Priority should be given to historical pending bills that have left suppliers and service providers bankrupt;**

ii.) **The County Treasury to prioritize remittance of employee deduction to relevant entities; and**

iii.) **The Auditor General should in the next audit report indicate the status of the pending Bills for the Committee to take appropriate action.**

2.11.2. Other pending Bills- Kshs 39,422,844,055

Other pending bills as of 30th June, 2016 amounted to Kshs.39,422,844,055 (Year 2014/2015 – Kshs.34,740,17,487) compromised mainly of unremitted statutory deductions as analyzed below:

Creditor	2015/16 FY Amount (Kshs.)	2014/15 FY Amount (Kshs.)	Change(Kshs)
KRA	3,128,673,889	2,543,360,606	585,313,283
NSSF	509,097,305	602,394,826	-93,297,521
Government Guaranteed Loans	3,815,640,000	3,815,640,000	0
On Water Lent Loans	15,328,285,000	15,328,285,000	0
Laptrust Principal	5,296,304,468	4,066,606,379	1,229,698,089
Laptrust Penalties	1,904,323,121	1,003,965,095	900,358,026
Lapfund Principal	2,031,894,745	2,005,242,904	26,651,841
Lapfund Penalties	4,784,252,954	2,750,310,104	2,033,942,850
Laptrust Actuarial Deficit	2,624,372,573	2,624,372,573	
Total	39,422,844,055	34,740,177,487	4,682,666,568

The increase of Kshs.4, 682,666,568 is largely attributed to penalties accrued on late remittances of Laptrust and Lapfund dues (Kshs.2, 934,300,876). The County continues to incur penalties with the delayed remittance and settlement of statutory deductions.

The Ag. CFO submitted that:-

i) The County has been experiencing challenges budgeting for pending bills that are historical in nature and which were inherited from the defunct Council due to financial constraints and late disbursement of exchequer releases. Budgetary provisions are not adequate enough to clear pending bills in one financial year. Statutory creditors charge high interests and penalties with Lap-trust charging 1.25% per month compounded and Lap-fund Charging 3% per month compounded on debt accruing, negotiations with the various statutory creditors is ongoing to negotiate for debt swaps, interest waiver or freeze of interest to reduce the debt burden.

ii) The County is currently negotiating with the National government to pay it obligation in contribution in lieu of rates and reserved parking. These resources will be used to retire some of these historical debts that have high interest rates.

iii) Currently monthly statutory deductions are remitted as at when salary is paid.

The Committee observed that:-

i) Pending Bills relating to statutory deductions of employees is as a result of complete failure by the County Treasury to remit the deducted amounts to the relevant statutory entity thus exposing the County Government to huge unnecessary penalties every month.

ii) Non-remittance of employee deductions risks employee benefits and exposing the County to unnecessary litigations.

iii) Some of the loans regarded as pending bills were illegally acquired by the County Executive hence they require forensic auditing before they are settled.

The Committee recommends that:-

i.) The County Treasury should immediately prioritize remittance of employee deductions to the relevant entities to save the County Government from incurring unnecessary cost in terms of penalties and to secure employee retirement benefits;

ii.) The task-force appointed by H.E. the Governor should conduct a forensic audit of the financial statements by the LAPFUND, LAPTRUST, KRA and NSSF before settling the bills. In addition, the task force should audit the outstanding loans to determine their legality/authenticity before allowing for their servicing by the County Government;

iii.) The CEC Finance and CFO at the time of the audit should be held to account for occasioning loss of funds by the County Government for failing on their responsibility of remitting employee deductions thus making the County Government to be slapped with huge penalties; and

iv.) The Auditor General should in the next audit report indicate the status of these pending bills for the Committee to take appropriate action.

2.12. Non-Current Assets

2.12.1. Maintenance of Fixed Asset Register and Disclosure

The Public Sector Accounting Standards Board requires all public entities to maintain an updated fixed asset register with its summary annexed to the financial statements. Annex 4 to the financial statements is the summary of fixed asset register indicating total assets owned by the County Government valued at Kshs.16, 606,168,629 (Year 2014/2015 – Kshs.14, 177,945,024) as at 30th June 2016. However, as similarly reported in 2014/2015, the County Government still does not maintain a fixed asset register. In the absence of a detailed fixed asset register, it is not possible to confirm the completeness, accuracy and existence of the balance assets of Kshs.16, 606,168,629 reported under Annex 4.

The Ag. CFO submitted that:-

i) Prior to the devolved system of government management of county assets was done at departmental level in the former of city council of Nairobi, and the assets were not being management centrally.

ii) After the formation of Nairobi City County, the Department of Asset Management was formed by H.E The Governor on April 2015 whose mandate was to manage all county assets. Prior to this, the Transition Authority (TA) was in place and whose mandate was to prepare and validate the inventory of all existing assets and liabilities of Local Authorities as was provided in section 7 (2) of Devolved Government Act 2012. A pilot study was carried in selected Counties so as collect missing information on assets and liabilities that existed as at 27thmarch 2013.

iii) The exercise was carried out between October to December 2014 by the task force and TA was to oversee completion of the exercise. The exercise was completed and an interim Asset Register of unaudited assets and liabilities was handed over to the Governor on the 20th January 2015.

iv) The Inter Government Relations Technical Committee took over the residual functions of the Transition Authority (now defunct) pursuant to Section 12 (b) of the Intergovernmental Relations Act, 2012.One of its functions is to validate, verify and transfer all assets that belonged to the defunct local authorities. The IGRTC has established the process to be followed vide a legal notice no. 858 published in the Kenya Gazette of 27th January, 2017. Under clause no 7 the notice provides for the formation of a County Assets and Liabilities Committee (CALC) to undertake the validation, verification, transfer process and to develop a County Asset Register.

v) It is anticipated that once this exercise is completed by June 2017, the County will have a comprehensive Asset Register. Thereafter, the County intends to procure an asset management system which will facilitate prudent management of asset database.

The Committee observed that:-

i) The absence of a comprehensive fixed asset register was putting the County's assets in a vulnerable position as they became increasingly susceptible to theft through fraud;
ii) The process of updating the asset register has taken far too long than expected; and
iii) Lack of valuation of fixed assets like land was making the County lose revenue through the collection of rates.

The Committee recommends that the CEC Member for Finance and Economic Planning should ensure that the County Government cooperates with the Inter-Governmental Relations Technical Committee and prepares a comprehensive digitized fixed assets register and table a report on the same in the County Assembly within six (6) months of adoption of this report.

2.12.2. Asset Acquisition

The statement of receipts and payments reflects expenditure of Kshs.2, 428,223,605 (Year 2014/2015 – Kshs.2, 110,303,407) on acquisition of assets and as further disclosed under Note 18 to the financial statements. However, audit examination of a sample of 82 transactions made in respect of acquisition of assets amounting to Kshs. 1477390106 revealed that only 12 transactions amounting to Kshs. 174,581,971 or 11.8% of the total sample were confirmed as paid according to the bank statements. How the remaining transactions amounting to Kshs 1,302,808,135 were paid has not been explained. In the circumstances I am unable to confirm the accuracy and validity of the reported expenditure totaling Kshs.2, 428,223,605 reported on acquisition of assets during the year under review.

The Ag. CFO submitted that:-

i) All County Government suppliers who delivered the assets as indicated in the Financial Statements were paid either through Central Bank internet banking system or Co-operative Bank Account.

ii) In some instances, due to cash-flow problems, some payments are split and paid in installments during the year.

The Committee observed that the Accounting Officer provided this information to the Auditor General during the audit period; this matter would not have been an audit query.

The Committee recommends that the CFO should in future ensure that:-

i.) Adequate explanation and disclosures are given for any payments made and supporting documents are submitted to the auditors alongside the financial statements at the commencement of the audit; and

ii.) Bank reconciliations are done promptly for all bank Accounts.

2.12.3. Irregular transfer of Mariakani Estate.

Information available indicates that the defunct Nairobi City Council (NCC) and Local Authorities Provident Fund (Lapfund) management during its meeting of 7 August, 2012 resolved and subject to board approval to waive 50% interest amounting Kshs.958, 696,388.75 owed to the latter. Consequently the amount owed to the Fund by the defunct NCC reduced from the then balance of Kshs 2,218,488,958.50 to Kshs.1, 259,792,569.75. Further and to clear the outstanding debt, the following properties were to be relinquished by the Council to the Fund subject to adoption and approval by the full Council: Jamhuri Estate in Dagoretti, Ring Road Estate in Westlands and Jevanjee Estate in Kariokor. This was approved on 10th August, 2012, by the defunct NCC through a Special Finance Committee meeting. However, the following gaps were noted in the Minutes of the meeting that authorized the transfers;

i) Count of the members who supported and those who voted against the transfer was not recorded in the minutes;

ii) There is no mention of Mariakani Estate title No. 209/6612 in the minutes as one of the properties that was to be transferred to the Fund, although it was subsequently transferred;

iii) There is no Minute on confirmation of the defunct NCC indebtedness as having been audited and agreed to prior transfers as stipulated;

iv) Due diligence on transfer of public property requires that both the Ministry of Lands and at least two independent valuers undertake valuations prior to transfer.

    However, It is not clear how the valuation for Mariakani Estate was undertaken; and

v) The memorandum of registration of transfer of land dated 18th March, 2013 indicates the transfer of the property as the defunct NCC but by that date, the Council was non-existent in law.

The CFO and the Chief Valuer submitted that:-

i.) The property is located along Mariakani Krishna and Shiraz road, south B next to Mater Hospital and measures 10.13 Acres (4.0995 Hectares). The land is developed with blocks of flats comprising 240 three bed roomed residential units.

ii.) The Council at a Special Finance meeting held on 10th August, 2012 recommended and approved asset swap as a way of sorting out statutory debts owed to Lapfund and Laptrust in order for the Council to access LATF. The properties that were proposed for transfer included but not limited to Jamhuri Estate, Old and New Ngara Estate, Jevanjee/Bachelors Quarters, Sunken Car Park. The authorized officers of the then defunct City Council namely the Town Clerk, HW the Mayor, Chairman Finance Committee were tasked to execute negotiations and the transfer of the identified properties.

iii.) Mariakani estate was chosen because it was the only property at that time which had a title despite not having been among the proposed properties during the Council meeting. The Ministry of Local Government approved the debt swap vide a letter Ref. No. MLG/2310/V (32) and dated 1st November, 2012. The transfer was executed on 18th February, 2013 and the title of the property registered in favour of Lapfund on 3rd April, 2013.

iv.) The property was valued at a market value of Kshs 1,450,000,000.00 as at February, 2012 which value was used to settle the outstanding balance owed to Lapfund. The election and subsequent takeover of the County Government necessitated the revaluation of the property which revised the valuation from 1.4 billion to 1.95 billion. This was further factored as part of payment to Lapfund.

The CEO Lapfund submitted that:-

i.) Lapfund board is a body corporate established under section 5 of the Local Authority Provident Fund Act Cap 272 of the laws of Kenya whose mandate includes to receive contributions from its bodies and Members who are employees of the County Government (formerly local authorities) and partly from the employer's contribution to constitute the monthly statutory contributions. Lapfund is also administered under the provisions of the Constitution and the Retirement Benefits (RBA) Act, 1997.

ii.) Members statutory contributions which are deducted from source as reflected in their pays lips ought as a matter of law to be remitted to Lapfund immediately and by law within fifteen days of such deductions. However, this has not been the case especially for the defunct City Council of Nairobi and its successor, the County Government. As such employee deductions held by the County Governments attract a heavy penalty including criminal sanctions under section 53(A) of the RBA, Act, 1997.

iii.) The defunct Nairobi City Council (NCC) entered into an arrangement with Lapfund to settle the then outstanding statutory debt. Such arrangements used to happen under the previous dispensation where the parent ministry would approve such arrangement in order for the local authority to clear its statutory obligations before such authority could access funding under Local Authority Transfer Fund (LATF).

iv.) In the settlement of the debt, NCC offered several properties which were to be swapped with the debt upon their valuation. The NCC sought relevant approvals specifically from the parent ministry and a resolution of the Council as required. Indeed, the Special Finance Committee made the resolution on 10th August, 2012 at 0830hrs which was then ratified by a special full council meeting held on the same date at 1000hrs at the Council Chambers. After several negotiations supervised by the ministry officials the agreement to swap the debt for property was entered.

v.) LAPFUND preferred Mariakani estate being property situated on LR No.209/6612. Besides, NCC then claimed that the other estates did not readily have their respective titles. The property was valued by NCC then at Kshs 1.4 billion which was agreed by LAPFUND.

vi.) NCC was required to pay the stamp duty for the transfer of the property whose value was 1.4 billion. However, the Council did not have the money occasioning delay. Lapfund therefore decided to pay the stamp duty and outgoings in order to settle the same. Subsequently, the transfer of Mariakani estate was effected from the City Council of Nairobi to Lapfund. The title of the property is now registered in favour of Lapfund.

vii.) Following the election of the Nairobi City County Government, the debt swap was brought to its knowledge in order to assist in ensuring a smooth handover of the property to Lapfund since Lapfund had not taken over yet or given possession. It was agreed that since this was a different regime, the agreement be adopted as regularized so as to give effect to the transaction. As such, another agreement christened 'settlement agreement' was entered into by

Lapfund and NCCG in respect of the transferred Mariakani estate. The agreement took into consideration the pre-existing agreement with NCC as well as a running court case in Nairobi High Court Civil case No. 380 of 2012, LAPFUND Board versus City Council of Nairobi for recovery of the outstanding balance.

viii.) One of the key issues taken upon the settlement agreement was that a re-evaluation was to be done to take into account the value of the property so that the County Government could satisfy itself on the value. The valuation done by NCCG was an upward revision from 1.4 billion to 1.95 billion a figure Lapfund agreed with. The amount was to settle part of the statutory debt outstanding.

ix.) The pending issue then and now has been the handing over of the property to LAPFUND since NCCG continue to collect rent from Mariakani Estate tenants without remitting to LAPFUND. This issues has been raised by the Auditor General in his report on the Financial Statements of LAPFUND inquiring why LAPFUND is not collecting rent from the estate yet the estate is part of their assets. Notably, this money belongs to the County Government employees.

x.) The debt swap has gone a long way to partly settle the outstanding debt which would otherwise saddle the development of the County and service delivery to Nairobi residents. Notably, the outstanding statutory debt, where monies were deducted from County employees but not remitted taking into account the swap is Kshs 20,220,860, 307.87 while if the value of Mariakani estate is not taken into consideration, the debt outstanding would stand at Kshs 26,216,688.089.

The Committee observed that: -

i) A debt swap is a legally and acceptable means of settling debts between two entities and therefore the transfer of Mariakani estate to Lapfund through a debt swap was in all means well intended since it helped in reducing the outstanding balance the defunct City Council of Nairobi and its successor the

County Government owes Lapfund. Notably, the debt was due to the failure of the defunct City Council of Nairobi to remit employee deductions to LAPFUND;

ii) Although it is claimed by both LAPFUND and the NCCG that the property was valued with initial valuation showing that the property was valued at Kshs 1.4 billion and later revised upwards to Kshs 1.95 billion as evidenced in the letter reference NCC/CECM (FEP) 354/014 dated 3rd December, 2014, documents adduced to the Committee did not show any independent and professional valuation of the property thus casting aspersion on the disclosed value of the property;

iii) The officials of the defunct City Council of Nairobi did not commit any offence by transferring the estate to Lapfund since the debt swap, which is an acceptable form of settling debts, was approved by the Ministry of Local Government vide a letter Ref. No. MLG/2310/V (32) and dated 1st November, 2012 as required. In addition, based on the documents submitted to the Committee, the process of transfer had been commenced well before the moratorium order stopping such transfer had been issued by the then Transition Authority;

iv) The process of the transfer was not flawed since authorized officers of the Council namely: the Town Clerk, the Mayor and the Chairperson of the Finance Committee were the ones who executed the transfer documents following a resolution of a Special Finance Committee and ratified by the full Council at their meetings held on 10th August, 2012 at 0800hrs and 1000hrs respectively. This was the only avenue where such decisions could be made and thereafter with the approval of the parent Ministry;

v) Despite LAPFUND crediting the Nairobi City County Government's account with the property, the County Government still collects rent from the tenants hence undermining the essence of the debt swap and further risking the benefits of the County Government employees and exposing the County Government to unnecessary litigation. This issue has been raised by the Auditor General in his own report on the Financial Statements of LAPFUND; and

vi) In the event the County Government decides to reprocess the property, it must go through the due process which will lead to the County incurring unnecessary legal costs leading to loss of public funds. Similarly, the debt owed to LAPFUND would tremendously increase in terms of the principal amount and accrued penalties/interest leading to further loss of public funds.

The Committee recommends that:-

i.) **The County Government should not lay any claim against Mariakani Estate since the property was properly transferred to the LAPFUND as part of the settlement of the debt owed to the pension fund. However, in future, the County Government should desist from selling/swapping residential properties as it affects the livelihoods of city residents;**

ii.) **The Chief Officer Lands should within three (3) months of adoption of this report engage three independent valuers to determine the exact value of the property which should be used as the basis of the debt swap. The valuation report should be tabled in the County Assembly within one(1) months after the valuation exercise;**

iii.) **The County Government should immediately stop collecting rent from Mariakani Estate tenants and allow LAPFUND full possession of the property in order to forestall unnecessary litigation and to safeguard the retirement benefits of County Government employees;**

iv.) **LAPFUND should not evict the current residents of the estate especially those who were clients of the County Government. Both parties should enter into a normal tenancy agreement with a priority being given to the current tenants including an option of the tenants purchasing the houses. Should there be need for sale of the houses, the current tenants should be given priority of** purchasing the houses if interested. However, in case of any disagreements, due process must be followed; and

v.) **Before the County Government decides to transfer or sell any County property to settle debts or otherwise, there must be adequate public participation with the approval of the County Assembly as required by the Constitution and other applicable laws.**

2.12.4. Lapfund Account

Included in other pending bills balance of Kshs.39,422,844,055 as at 30 June, 2016 and further disclosed under Annex 2 is the amount of Kshs.10,080,557,422 due to Lapfund on account of principal and interest penalties on delayed remittance of contributions. Information available indicates that the amounts owed to Lapfund by the defunct NCC at the time of the transfer of Mariakani Estate stood at Kshs.1, 314,698,348. Review of records maintained then highlighted the following discrepancies in arriving at the closing balance:

i) The amount owed to the Fund as at March, 2011 was Kshs.704,179,386, upon payment of Kshs.700,000,000 in April,2011 the balance decreased to Kshs. 8,993,966 but as at June, 20111 had risen to Kshs.26,672,936.

ii) A hefty penalty of Kshs.405, 394,824 was levied on the account in July, 2011 despite the low opening balance of Kshs.26, 672,936 and thus raised the balance to Kshs.432, 067,760.

iii) The reported closing balance of the debt as of June, 2012 of Kshs.324,537,661 differs from the July, 2012 opening balance of Kshs.37,994.871 by Kshs286,542,790.

iv) During the month of August 2012, a penalty of Kshs.1, 259,792,570 was levied on the account raising the balance owed to Kshs.1, 314,698,348.

v) Analysis of the ledger entries in the Fund Account for the period January, 2009 to February, 2015 reflects total payments to Lapfund of Kshs.1,376,446,289 and excludes value of the properties of Kshs.1,450,000,000 transferred into the Fund.

Following the foregoing, the accuracy and completeness of amounts owed to Lapfund on account of principal and interest penalties of Kshs.10, 080,557,422 as at 30 June, 2016 cannot be confirmed.

The Ag. CFO submitted that:-

i) The County used to operate an internal provident Fund Scheme whereby staff were deducted pension amounts at rate of 12% of basic and house allowance and the Council contributed 15% of the same. This amounts used to be invested in fixed deposit account and interest earned distributed to members as per the Fund balances.

ii) In October 2008 LAPUND wrote to the Council proposing to take over the approximately 1700 internal provident fund scheme members. This was implemented in January 2009 and monthly contributions remitted. A team of officers from Council and LAPFUND was constituted to negotiate the amounts to be transferred to LAPFUND being the balances of the internal scheme as at December 2008. The principal amount agreed as at 31st December 2008 was Kshs.701, 016,573.74 and the issue of interest was never agreed upon.

iii) On 7th April 2011 officers from the City Council and LAPFUND held a meeting in which it was greed the that the total amount outstanding is Kshs.1,511,806.221.54 made up of Kshs.701,016,574 as the principal amount and Kshs.810,789,647,.80 being interest accrued on internal scheme transferred from 2003 to 2011. At the same meeting it was resolved that LAPFUND will grant interest waiver of 50% and that interest would no longer accrued thereafter. In April 2011 the County made a lump sum payment of Kshs.700, 000,000 to settle off the principal amount

iv) The balance being interest accrued on the internal scheme which had accumulated to over 1.5billion be settled through a property swap.

v) Due to the issues raised on the Lap-fund account the County has initiated meetings with the stakeholder to reconcile the account and deal with the issue of the transfer of Mariakani estate which has continually been subject to audit queries.

The Committee observed that:-

i) The Auditor General did not capture the correct outstanding balance owed to Lapfund by the County Government as at 30th June 2016. The actual balance as per the documents submitted by Lapfund and not contested by the County Government was Kshs 11,243,079,746.72;

ii) Under Section 53(A) (3) of the Retirement Benefits Act, unremitted contributions attracts a penalty at a compound interest of 3% per month until is paid in full. There is no provision for waiving of interest under the Act and therefore the assertion by the Ag. CFO that it was agreed that the interest could be waived contradicts the provisions of the Act and its therefore invalid; and

iii) Failure by the County Government to remit employee contributions is not only illegal but it puts at risk employees benefits when they retire.

The Committee recommends that:-

i) The County Treasury should within three(3) months of adopting this report institute measures aimed at settling all amount owed to Lapfund as at 30th June, 2016 amounting to Kshs 11,243,079,746.76 to avoid the ever increasing interest accrued on penalties on the outstanding balance and to safeguard the retirement benefits for the County Government employees; and

ii) The Auditor General should in the next audit report indicate the status of the payment of the outstanding balance and interest for the Committee to take appropriate action.

2.13. Accounts Receivables

Note 23 to the financial statements discloses pending accounts receivables of (Kshs. 209,008,496,109 as at June, 2016 up from Kshs.133, 660,923,327) in Year 2014/2015. Included in this amount is a rates receivable balance of Kshs.207, 587,128,035 (Year 2014/2015 -Kshs.132, 595,445,156) which constitutes 99% of the balance. Information available indicates that management has appealed to the defaulters who are mainly National Government Offices to pay but no response has been received. The likelihood of collecting the outstanding rates from the defaulters therefore appears to be too low. This is indicative of significant impairment on the accounts receivable balance of Kshs.209, 008,496,109 as of 30 June, 2016. Further the ageing analysis for the accounts receivables has not been made available for audit review.

The Accounting Officer submitted that:-

i) Collection of Rates as a property tax is not the easiest to enforce even when such incentives as partial waiver on accrued interest is offered. A lot of effort has been channeled towards collecting these receivables and that's why there has been an increase in collection every consecutive year. The efforts include:-
   a) The County sends out demand notes to defaulters at least three times in the year i.e. December to January for demand of rates for the preceding year, in May/June reminders are sent and in August legal notices are sent out. These are sent out through the post office, the Debt Collection Unit and the Sub County personnel who deliver the demands physically on each property. This is our billing/demand cycle.
   b) Increased physical service though the Sub County administration personnel as the lowest and best level of customer contact.
   c) Publicity; occasional placement of advertisements in the newspaper calling property owners to come out and pay rates. This has also been done through public forums under the Sub County administration.

d) Enforcement is done through the legal department which files cases of defaulters in court with a view to recover the defaulted amount. Afew properties have been auctioned. Clamping is another enforcement tool where a board is erected on the defaulting property proclaiming attachment of any rental income to be paid to the County until the defaulted amount is recovered in full. Normally such defaulters pay up immediately or in installments to avoid further embarrassment. There is a full-fledged Task force engaged in this.

ii) The government is a most reluctant and unwilling payers of land rates in form of CILOR which is running to billions hence a corresponding interest, which is not payable in CILOR and only exaggerates the receivables.

iii) A lot of land in the East-lands and Industrial area is encroaching upon by squatters and the legal owners therefore refuse to pay rates since they have been dispossessed of their property. The squatters also don't pay anything to the County. However the County Valuation and Rating Act still pending in the County Assembly is expected to address this issue where the squatters would be allowed/ compelled to pay rates but the same does not in any way of legitimize their ownership of the Land.

The Committee while noting the efforts put in place by the County Government to collect receivables observed that there were no schedules showing the County debtors, the amount and supporting evidence and whether the debtors are committed to pay.

The Committee recommends that:-

i.) The CEC Member Finance and Economic Planning should spearhead in the development of a policy/mechanism on how to manage/collect all accounts receivables; and

ii.) **The CFO should prepare schedules showing the County debtors, the amount and supporting evidence of all accounts receivables.**

2.14. Outstanding Loans

2.14.1. Current Liabilities

Disclosed under Note 26.1 and Annex 3 to the Financial Statements, is a Kenya Commercial Bank Loan balance of Kshs.3, 434,509,885 as at 30 June, 2016 (Year 2014/2015- Kshs. 3,126,141,774). The following unsatisfactory matters have been noted in respect of the loan:

i) The default interest charge during the year 2015/2016 amounted Kshs.565,669,735 as analyzed below:

Month	Interest Paid	Interest Accrued	Capitalized Interest	Principal Paid	Balance
Balance B /Fwd as of 1/7/15					2,925,153,543
15-Jul-15	32,296,901	32,296,901	-	20,027,593	2,905,125,950
15-Aug-15	9,827,493	34,493,255	24,665,762	-	2,929,791,713
15-Sep-15	24,754,431	37,913,879	13,159,447	18,823,313	2,924,127,847
15-Oct-15	-	39,295,257	39,295,257	-	2,963,423,103
15-Nov-15	-	64,183,153	64,183,153	-	3,027,606,256
15-Dec-15	2,656,594	48,559,399	45,902,804	15,099,801	3,058,409,260
16-Jan-16	837,957	46,935,919	46,097,962	25,889,970	3,078,617,252
16-Feb-16	-	43,008,191	43,008,191	-	3,121,625,442
16-Mar-16	-	44,017,283	44,017,283	-	3,165,642,725
16-Apr-16	-	161,066,121	161,066,121	-	3,326,708,846

16-May-16	-	43,453,001	43,453,001	-	3,370,161,847
16-Jun-16	-	40,820,753	40,820,753	-	3,410,982,600
	70,373,376	**636,043,110**	**565,669,734**	**79,840,677**	

ii) The December 2015 principal repayment of Kshs. 15,099,801 was excluded from expenditure repayment of principal on domestic lending and on - lending.

iii) Material inconsistencies between bank statements provided during the audit and post audit covering the same period, resulting to upward revaluation of the loan balance by Kshs. 10,614,756.

iv) The County defaulted in servicing interest due in the year review except for July 2015.

From the foregoing, I am unable to confirm the lawful and effective use by management of public resources of the Nairobi City County for the benefit of its citizens with respect to the ban.

The Accounting Officer submitted that:-

i) The County transferred the loan incurred by the defunct City Council of Nairobi from Equity bank to Kenya Commercial bank due to the favorable loan terms offered by the latter as opposed to the former. This is mainly on repayment period and interest rate.

ii) Kenya Commercial Bank Loan balance of Kshs 3,434,509,885 as at June 2016, which default interest charge amounted to Kshs 565,669,734. Increase in interest has been due to inability of the county to repay the principal sum and monthly interest when they fall due this is as a result of cash flow problem however; the county has enhanced repayment by effecting a standing order to clear outstanding principal and interest.

iii) December 2015 principal repayment of Kshs. 15,099,801 excluded from expenditure repayment of principal on domestic lending and an on lending was an oversight and the same will be captured in the 2016/2017 financial reports.

The CEO KCB submitted that:-

i.) KCB provides term loans for capital commitments and long term developments. The bank entered into an agreement with NCCG to provide a term loan of Kshs 3.3 billion being a takeover from Equity Bank. The NCCG indicated that it had paid over Kshs 1.5 b from initial loan drawn.

ii.) In the offer letter by KCB, the facility was to be available for eight years inclusive of six months grace period. The interest was to be charged at the rate of 4% less base rate per annum (Base-4) %. Other fees included negotiation fees of 1.0% and legal and out of pocket expenses to be borne by NCCG

iii.) The following security were required as a condition for satisfactory approval by the bank:-

- Undertaking from the County to remit all receivables through KCB account and exclusive banking with KCB
- As principal bank to NCCG,KCB required the following accounts to be opened: main revenue account, project accounts, Ward Development Accounts and cash back facilities for MCAs
- KCB to open a branch at City Hall to facilitate revenue collection
- County Assembly resolution authorizing the borrowing
- Floating debenture over County receivables and debtors
- Duly executed facility agreement in the bank's standard letter of offer
- Insurance over the assets to be taken, with KCB's interest noted if any
- Letter of awareness from parent ministry and concurrence letter from treasury

iv.) A memorandum of understanding between NCCG and KCB was entered on 11th April, 2014 to set out the parameters between KCB and NCCG for the provision of the aforementioned facility and banking services. The MOU was drawn by Wairoma Advocates and signed by James Agin for KCB and H.E. Dr. Evans Kidero and Mr. Gregory Mwakanongo, CEC Member Finance on behalf of the County Government.

v.) The National Treasury vide a letter Ref. DMD/4/250 "A" dated 2nd April, 204 declined to guarantee the loan advising that the loan from Equity Bank to the defunct NCC was not guaranteed by the National Government and therefore it could not guarantee retrospectively. However, the National Treasury promised to guarantee a further loan facility of Kshs 700 million from KCB vide a letter Ref. DMD/4/248 and dated 25th April, 2014 upon the County Government meting conditions set therein.

vi.) That it was the responsibility of NCCG to seek all the approvals including County Assembly approval which was not available although it was part of the conditions to be met before the loan is issued.

The Committee observed that:-

i) Whereas the buy-off of equity bank loan by KCB was a deal aimed at saving County funds and ease the County in repayment of the loan at an exorbitant interest rate, the end result was further loss of public funds as demonstrated by the overpriced payoff demand of Kshs.198,358,812, high interest rates on both the loan and the bank-overdraft;

ii) The process on how the County Government settled on KCB was not clear one cannot tell whether other lenders would have offered a better deal were the process competitive;

iii) The process of acquisition of the loan was irregular since it was not in compliance with Article 212 of the Constitution and Section 142 of the Public Finance Management Act, 2012 on approval of borrowing by the County

Assembly since the buy-out was under new terms. In addition, the subsequent loan of Kshs 700 million was neither guaranteed by the National Treasury nor approved by the County Assembly; and

iv) KCB failed to conduct due diligence on its part on whether relevant approvals especially approval by the County Assembly before buying out the loan from Equity bank and offering a subsequent loan and must have colluded with corrupt County Officials who were signatories to the agreement to break the law on borrowing namely; the former Governor H.E. Evans Kidero, former CEC Member for Finance Mr. Gregory Mwakanongo and the former CFO Mr. Luke Gatimu.

The Committee recommends that:-

i) **The CEC Member for Finance should review the County Government engagement on this matter by particularly invoking the termination clause of the loan agreement and only pay the principal amount borrowed and immediately suspend servicing of the interest accrued on the KCB loan due to the irregularities committed during its acquisition;**

ii) **The DPP should take necessary legal actions against all persons involved in the irregular acquisition of the loan namely: the former Governor H.E. Evans Kidero, former County Treasury Officials (i.e. former CEC Member for Finance Mr. Gregory Mwakanongo and the former CFO Mr. Luke Gatimu) and responsible KCB officials for contravening Article 212 of the Constitution and Section 142 of the Public Finance Management Act, 2012 when instituting the buy-out of the loan facility; and**

iii) **The County Executive should always follow due process as provided for in the PFM Act, 2012 and attendant regulations when applying for loans and bank-overdrafts.**

2.15. Budgetary Performance and Controls

2.15.1. Budget Information

The budgeted and the actual revenues collected for the financial year under review amounting to Kshs.32,467,172,329 and Kshs.25,568,309,010 respectively were not uploaded into the Integrated Financial Management Information System (IFMIS). In addition, the format used to present reported revenues was at variance with the budget. Consequently, it has not been possible to ascertain the reliability of the budget information provided, or to carry out a comparative analysis between budget and actual revenues across the various sources.

The Accounting Officer submitted that:-

The budgeted and collected revenues were not uploaded in IFMIS for the financial year 2015/2016. This was the first time revenue was being captured into IFMIS thus there were challenges in the uploading. Currently revenues budgeted and collected are uploaded in IFMIS.

The Committee observed that:

i) The CFO and the Head of Revenue during the period under review deliberately refused to use IFMIS for reasons only known to them since IFMIS had already been rolled out by the National Treasury.

ii) Failure to use IFMIS leads to accountability challenges and it is a potential cause of loss of funds through misappropriations.

The Committee recommends that:-

i) The County Treasury should at all times carry-out transactions through IFMIS as required.

ii) The Head of Public Service should take administrative action against the CFO and the Head of Revenue at the time of audit for failing to comply with National Treasury Regulations on the use of IFMIS.

2.15.2. Failure to Disclose reasons for material variances

No explanations have been provided for the material variances between the approved budget and the actual expenditure contrary to the requirements under Section 164(2) (a) of the Public Financial Management Act 2012 and International Public Sector Accounting Standards (IPSAS) Cash Basis of Accounting Reporting Framework. Consequently, the financial statements presented for audit are not fully IPSAS Cash Basis Compliant.

The Accounting Officer submitted that:-

i) Material variance between the approved budget and the Actual expenditure was brought about by the low consumption level of the development vote.

ii) Most of the development votes had not been utilized by the end of the financial year due to the fact that the projects had started but had not reached the level of raising the certificates. These projects were rolled over to the financial year 2016/2017.

The Committee recommends that the CEC Finance and Economic Planning and the CFO Officer should institute measures to ensure that the County Executive adheres to International Public Sector Accounting Standards (IPSAS) consistent with the Public Finance Management Act, 2012

2.15.3. Under-expenditure Recurrent

The County's approved recurrent budget for the 2015/2016 financial year was Kshs. 19,707,848,157. However examination of the IFMIS account analysis report revealed that the County Government did not adhere to the budget. Twelve (12) sectors/departments incurred under-expenditure in the recurrent vote on five hundred and sixty eight (568) line items amounting to Kshs. 1,741,969,399. The County Government did not provide reasons for the under-expenditures. From the foregoing, it has not been possible to confirm whether the budget and the budgetary controls were adhered to.

The Accounting Officer submitted that:-

i) The under-expenditure was occasioned by fall in revenue hence necessitating revision of budget downwards through the supplementary budget. Any comparisons should be done against the supplementary budget as opposed to the original.

ii) The National Government ministries and agencies failed to honor their debt obligations even after making efforts to recover the same.

iii) Under expenditure on some of the recurrent votes was brought about by the fact that some codes in IFMIS could not allow direct invoicing but required the whole process of procure to pay. We had challenges in implementing the process but after reporting this to IFMIS department we were allowed to use Auto creation in the financial year 2016/2017.

iv) The County Government has now put up measures to address variances between budget and actual revenue collected to ensure more realistic budget

The Committee recommends that:-

i.) The County Treasury should ensure that all the County Government entities adhere to approved plans and budgets and any spending outside the budget should be within the tenets of the procedures set in the PFM Act, 2012(supplementary budget);

ii.) The County Treasury should plan in advance and ensure that in the event there is need for a supplementary budget it is prepared on time so that it doesn't adversely affect Sector Programs/projects; and

iii.) The Accounting Officers should ensure that each Sector/Department prepares a procurement plan at the commencement of the Financial Year and the said plans should strictly be adhered to; and

iv.)The CEC Member Finance and Economic Planning should ensure that IFMIS is fully implemented.

2.15.4. Unbudgeted Expenditure off IFMIS

Included in the use of goods and services expenditure of Kshs. 5,562,994,850, and as further disclosed under Note 13 to the financial statements, are expenditures totaling Kshs. 2,807,874,954 on various vote heads as analyzed in the table below:

Item	Financial Statements Balance (Kshs)	Ledger/Analysis Balance (Kshs)	Variance (Kshs)
Foreign travel and Subsistence	27,028,533	67,275,818	(40,247,285)
Printing, Advertising and Information Supplies and Services	28,767,666	28,269,666	498,000
Training Expenses	189,740,891	189,196,292	544,600
Hospitality Supplies and Services	131,914,108	132,727,108	(813,000)
Other Payments	1,731,060,811	1,027,710,337	703,350,474
Specialized Materials and Services	383,565,742	383,641,738	(75,996)
Office and General Supplies and Services	210,577,593	209,991,343	586,250
Fuel and Lubricants	105,219,610	105,717,714	(498,104)
Legal Fees	580,270,149	-	580,270,149
Total	**2,807,874,954**	**2,144,530,016**	**1,243,615,087**

The ledger extracts from IFMIS where, ideally, all transactions should be processed reflects an aggregate amount of Kshs. 2,144,530,016 resulting to a difference of Kshs. 1,243,914,243. The management explained the difference to have arisen out of transactions processed manually and outside the IFMIS. No reason has been given for the failure to use IFMIS in processing the payments contrary to the National Treasury requirements. In addition, the statement of receipts and payments reflects an expenditure on other payments of Kshs. 1,822,383,369. There was no budgetary provision for the expenditure contrary to requirements of Sections 196 (1) and (3) of the Public Finance Management (PFM) ACT 2012.

The Ag. CFO submitted that:-

i) The payments totaling Kshs. 1,243,914,243 were made towards repayments of domestic borrowings namely the KCB loan whereas Kshs. 1,822,383,369 under other payments in the statement of receipts and payment comprised of bank charges and debt repayment as per the reporting template note 21. These were budgeted for in Finance and Economic Planning sector under the following codes;

Code	Economic item
211301	Bank service commission and charges
2420499	Other creditors

ii) As acknowledged earlier, the reporting template is different from the way budget estimates are presented hence the likelihood of finding some line items in the budget in another heading in the template. Several reasons necessitated use of manual system including:

a) IFMIS related challenges: Direct invoicing module was blocked by National Treasury hence payments for urgent garbage collection during clean up exercises could not be done via IFMIS.

b) KRA issued agency notices that had not been factored in the budget yet they had to be paid before unfreezing the accounts

c) The county government received several Court decretal orders with arrest warrants that are difficult to budget for.

d) There were several fire disaster and flood related emergencies whose payments exceeded budgeted amounts.

e) Payments relating to state visits by the Pope and USA president had not been budgeted for hence could not be processed in IFMIS

The Committee observed that:

i) The County Treasury deliberately refused to use IFMIS for reasons only known to them since IFMIS had already been rolled out by the National Treasury.

ii) Spending off- IFMIS leads to accountability challenges and it is a potential cause of loss of funds through misappropriations. Worse of, the expenditure was on unbudgeted items.

iii) The CEC Member for Finance and Economic Planning during the period under review failed to regularize the unbudgeted expenditure in compliance with Section 135 of the Public Finance Management Act, 2012.

The Committee recommends that:-

i.) The CEC Member Finance and the CFO should ensure that funds are only spend on the intended purpose and/or as approved by the County Legislation;

ii.) The CEC Member, Finance should ensure that the County Treasury fully adopts IFMIS in its transactions;

iii.) The CEC Member Finance and the CFO in office during the period under review should be held to account for breach of Section 196 of the PFM, Act, 2012.

2.15.5. Over-expenditure on recurrent vote

The recurrent vote expenditure account analysis reflects over expenditure of Kshs. 48,470,543 in respect of twenty-five (25) vote items across sectors as analyzed below:

Sector	No. of Items	Approved Estimates	Actual Expenditure	Over Expenditure	Percentage
		Kshs.	Kshs.	Kshs.	%
County Public Service Board	1	2,601,200	2,814,800	-213,600	(8.21)

Office of The Governor and Deputy Governor	3	6,000,000	6,872,208	-872,208	(14.54)
Finance and Economic Planning	2	6,450,000	6,976,249	-526,249	(8.16)
Health	1	9,000,000	9,256,547	-256,547	(2.85)
Physical Planning	1	1,068,584	1,176,380	-107,796	(10.09)
Public Works Transport And Infrastructure	1	259,472,185	259,698,029	-225,844	(0.09)
Education	7	27,130,000	36,493,292	-9,363,292	(34.51)
Trade	1	0	90,000	-90,000	-
Public Service Management	6	134,248,810	5,380,000	-6,436,007	(4.79)
Environment	2	- 24,999,000	5,380,000	-30,379,000	121.52
Total	25	420,971,779	469,442,322	-48,470,543	(11.51)

The management has not rendered explanations for the over-expenditure. Consequently the budget and related budgetary controls have not been adhered to.

The Accounting Officer submitted that:-

i.) The recurrent vote expenditure account analysis reflects over expenditure of Kshs. 48,470,543.00 in respect to twenty-five (25) vote items across various sectors as analyzed below:

a) CPSB

- The over expenditure was due to delay in approval of the supplementary budget which affected commitments captured early in the financial year resulting to the over expenditure on the budgetary provision for the year.

b) Trade Sector

- The Sector had an over expenditure of Ksh.90, 000/= which was incurred due to late uploading of the supplementary budget in IFMIS that was done a week before the end of the Financial year.

- The budget was reduced from Ksh150, 000/= to Zero and Ksh.90, 000/= had already been committed.

c) Planning

- During the financial years 2015/16 the department over spent Ksh 107,796 in running its official duties.
- This was due to the delay experienced in the implementation of the supplementary budget.

d) Environment Sector

- In the Financial Year 2015/2016, the Solid Waste Management Programme was allocated a budget of Kshs.30 M under Supplementary Budget. The entry of a negative allocation under the Economic Item Code No. 2640500 described as Capital Grants and Transfers was a system error since the minimum allocation to a code can only be a Zero and never a negative.

ii.) The over-expenditure on Economic Item Code No. 2210100 described as Utilities, Supplies and Services was occasioned by delay in uploading the Supplementary Budget. As a result, the Sector continued to incur expenditure as per the Initial Budget yet, when the Supplementary Budget was uploaded, the allocation under the Code was reduced by Kshs.862, 462.00 from Kshs.5, 863,462.00 to Kshs.5, 001,000.00. Attached is a copy of the Supplementary Budget FY 2015/16 for your reference.

iii.) The over expenditure on recurrent vote came about when preparing the supplementary budget. Errors were made during the reallocation of funds from one vote to another this resulted to some votes being over spent while other under spent but the ultimate result is that the overall budget was not overspent. It is our responsibility to ensure that the budgetary controls are adhered to.

The Committee recommends that:-

i) **The County Treasury should ensure that all the County Government entities adhere to approved plans and budgets and any spending outside the budget should be within the tenets of the procedures set in the PFM Act, 2012;and**

ii) **The County Treasury should plan in advance and ensure that in case there is need for a supplementary budget it is prepared on time so that it doesn't adversely affect Sector Programs/projects.**

2.15.6. Adherence to 30% threshold on Development Budget

The summary statement of appropriation – development reflects final approved budget of Kshs. 7,550,700.152 representing 27.7% of the total County budget, which is below the threshold set out in Section 107 (2) (b) of the PFM Act 2012. The statement also reflects budget utilization of Kshs. 2,387,219,112 or 32%. Apart from the County being in breach of the provisions of Section 92) of the Public Financial Management Act, 2012, no reasons have been provided for under-utilization of the voted provisions.

The Accounting Officer submitted that:-

i.) The approved budget for the financial year 2015/2016 for the development vote had approved budget of Ksh.7, 550,700,152 representing 27.7% of the total County budget.

ii.) The short fall was brought about by the revision of the budget downwards due to short fall in revenue collection. The PFM Act section 107 also requires that the threshold of 30% be attained in the medium term thus the short fall can be covered in the subsequent years.

The Committee observed that this was a recurrent matter that cast aspersions on the development initiatives propagated by the County Government.

The Committee recommends that:-

i) **The CEC Member for Finance and Economic Planning should strive and ensure that thirty percent of the County government's budget is spent on** development expenditure as provided for in Section 107(2)(b) of the PFM Act, 2012;

ii) The Accounting Officers should institute measures to ensure that projects are always implemented within the financial year to which they relate; and

iii) The County Treasury should ensure timely release of exchequers to Sectors and Departments to enable them implement projects in time.

2.15.7. Development vote implementation

2.15.7.1. Physical Planning, Lands and Housing

i) According to the approved estimates, the Physical Planning, Lands and Housing Sectors final approved budget for the year was Kshs. 172,000,000. Schedules provided in support of development expenditure during the year amounted to Kshs. 51,394,446 or 29.9% resulting in under –expenditure of Kshs. 120,605,554. No explanations have been provided for the under-absorption of budgeted expenditure.

ii) To ascertain the status of development activities undertaken by the department in the year under review, the project status report detailing the planned activities payments made to 30th June 2016 and their status as at that date were requested for from the management. However, as at the time of concluding the audit, the report had not been made available for review. From the foregoing, it has not been possible to confirm whether the sector implemented its development budget effectively during the year under review.

The Ag. CFO and the Ag. Chief Officers (Lands, Urban Planning and Housing) submitted that:-

Under absorption of Kshs 120,605,554 in the financial years 2015/16 was due to under facilitation and failure to meet revenue target resulting to cash flow problems.

The Committee observed that:-

i) Failure by the Sector Accounting Officer to provide the information required by the Auditor General at the time of audit implies that the Officer never intended to fully disclose the financial status of the Sector; and

ii) Under expenditure results to non-implementation of development projects hence affecting the livelihoods of Nairobi residents.

The Committee recommends that:-

i) **The Sector should always fully implement its budget as approved;**

ii) **The County Treasury should always set realistic revenue targets and develop achievable budgets; and**

iii) **The Sector Accounting Officers should institute measures to ensure that the Sector always act in time when dealing with the Auditor General to forestall audit queries**

2.15.7.2. Education, Youth, Sports, Gender, Culture and Social Services Sector

i) According to the approved estimates for the aggregate County, the Education, Youth Affairs, Sports, Culture and Social Services Sectors' approved budget for the year under review was Kshs 311,000,000. Schedules provided in support of development budget implementation for Year 2015/2016 indicates absorption of Kshs 136,375,415 or 43.9% resulting in under-absorption of Kshs 174,624,585. The under-absorption has not been justified given that the budget was revised downwards to factor revenue shortfalls.

ii) Physical verification of the department revealed that, two projects with works done valued at Kshs 26,800,000 had stalled due non-payment. The projects are rehabilitation of Joseph Kang'ethe and construction of perimeter wall at Mji wa Huruma. Stalled projects may attract unnecessary costs in contractor claims on time extension.

From the foregoing it has not been possible to confirm whether the sector implemented its development budget effectively during the year under review.

The Accounting Officer submitted that:-

i) The under absorption in development expenditure amounting to Kshs. 174,624,585.00 was due to the following factors.
   a) Cash flow constraints – The implementation of projects were negatively affected due to the delay in payments for works done.
   b) The preparation of the bill of quantities and the entire procurement process took longer to the extent that award of contracts were done towards close of the financial year leading to low absorption.

ii) The under-expenditure was occasioned by fall in revenue hence necessitating revision of County Budget downwards trough the supplementary budget.

iii) The National Government Ministries, Departments and Agencies (MDAs) failed to honor their debt obligations even after making efforts to recover the same.

iv) The County Government has now put up measures to address variances between budget and actual revenue collected to ensure more realistic budget.

v) The following interventions have been put in place
   - The sector has planned to undertake specific projects to ensure efficiency in project implementation i.e. F/Y 2017/2018. This will be done by narrowing down
   - The number of projects to be implemented each financial year to avoid implementation of too many projects at a time.
   - In the Education sub-sector the sector is rolling out a capitation programme for the pre-primary/ECDE refurbishment geared towards equal distribution of funds to all pre-school going children. This will ensure effective implementation of the rehabilitation programmes. Provided is a copy of cabinet memo approving free ECDE

- For the Social Services sub-sector, the sector intends concentrate on completion of the construction of the rehabilitation centre for the street families in Ruai ward which is half way done.
- The sector is intending to complete the construction of 17 No. new ECDE centers whose tender is already awarded, through liaising with the Finance and Economic Planning Sector to avail funds as and when certificates for works done are raised.
- Arising from the above proposals the sector intends to achieve high rate of development absorption in future

The Committee was satisfied with the Accounting Officer's response and treated the audit query as resolved.

2.15.7.3. Roads, Public Works, Transport and Infrastructure

Physical verification of projects implemented by the departments of Roads, Public Works Transport and Infrastructure revealed that contractors for the following two projects had abandoned the sites reportedly due to failure buy the County Executives' to pay for works done. The projects were behind schedule and meeting of the contract completion timeline didn't seem feasible.

Project	Value of Certificate (Kshs)	Date of Completion	%Work Done
Upendo Road NCC/T/RPT/254/2014/5	36,224,988.60	4th Dec, 2016	65
Park Road Public transport facility	14,879,132	7th June, 2016	98
Improvement of Limuru/Rd/UN/Redhill Junction	30,289,869	21st October, 2012	65

The County executive's credit worthiness may be undermined by the continued delay in settling contractor bills that are overdue for payment

The Ag. Chief Officer, Transport and Public Works submitted that:-

i) Due to financial constraints it has not been possible to make payments to contractors whenever the certificates are raised and submitted for payments. This has always forced the Contractors to desert sites.

ii) A pending bills committee is in the process of being formed which will verify the outstanding arrears to merchants and for payment to be initiated.

The Committee recommends that the Accounting Officer should institute measures to ensure that contracts are always executed within the financial year to which they relate.

2.15.8. Education and Social Services

2.15.8.1. Waithaka Technical Training Center

An audit verification site visit to Waithaka Technical Training Centre on 3rd October, 2016 under the Education Sector revealed the following gaps.

i) The Centre did not have competent personnel in stores and accounts departments. Record keeping was done by staff without the requisite skills, while stores issues were done by the tutors. Environment management was undertaken by the students and casuals.

ii) The Centre did not have a clear procurement plan for all activities undertaken during the financial year under review. As a result, procurement of various requirements was undertaken on and hoc basis by persons other than procurement officers.

iii) Further, the procured items were not formally receipted in the stores.

iv) The payment vouchers used to pay for goods and services were not of the recommended standard i.e. not pre-numbered, approved, properly filed and stamped paid.

v) The Centre's buildings were dilapidated and needed urgent rehabilitation and renovation. There was no perimeter fence to safeguard the encroaching and security on the Centre.

The Ag. Chief Officer Education and Social Services submitted that:-

i) The sector requested Finance and Economic Planning to deploy qualified personnel to all Vocational Training Centers on 5th September, 2016.

ii) During the financial year 2015/2016 priority was given to refurbishment of 3 No. Vocational Centers namely (copy attached);
   - Construction of a dining hall, kitchen and block toilet at Kiwanja VTC.
   - Construction of 4 classrooms at Bahati VTC.
   - Construction of a twin workshop at Kangemi VTC.

iii) The following interventions have been put place:-
   - To address S/no i-iv above, the sector prepared a draft cabinet memorandum requesting for employment of staff in various cadres in all the Vocational Training Centres.
   - Towards the renovation of Waithaka Vocational Training Centre, the sector intends to prioritize the refurbishment in the FY 2018/2019.

The Committee observed that:-

i) Waithaka Technical Training Centre is critical in empowering the youth with life skills for future economic independence.

ii) The mismanagement of the institution would lead to killing the hope of the youth who depend on it to secure their future.

iii) The County Treasury has not put in place adequate financial management structures in most of the technical facilities.

The Committee recommends the CFO in collaboration with the Chief Officer, Public Service Management should immediately second qualified accountant and procurement officer to Waithaka Technical Training Centre to streamline and implement sound financial and procurement procedures

2.15.8.2. Mji Wa Huruma Centre

The following areas of concern were noted from the visit to the Centre on 9th August, 2016.

i) The funding for the Centre's expenditure was by way of a cash float. The reimbursement process for the standing imprest was very slow.

ii) The Centre's did not have its own transport for ambulance services despite this being a necessity in light of the emergencies related with dealing with elderly.

iii) The Centre was understaffed especially in regard to support staff who are expected to provide personalized care for the elderly.

iv) Drug supplies and replenishments were inadequate.

v) The Centre has a spacious hall funded by private donors. However it was not furnished. Consequently the elderly take their meals away from the hall in the dormitories.

vi) The Centre was in dire need of a perimeter fence for security and safeguarding the County property.

The insufficient resourcing of the Centre has impacted its operations and hence service delivery for the elderly negatively.

The Ag. Chief Officer, Education and Social Services submitted that:-

i) The sub-sector has always prepared the supporting documents for re-imbursement on time but due to cash flow constraints in the county, the approval for funds is usually slow.

ii) The Nairobi County Government operates under a centralized system for ambulances and other emergency services. In this case, the sector has in the past been allocated ambulance services upon request to the Health Sector.

iii) The Nairobi County Government has experienced a high attrition rate and there being an embargo on staff recruitment has led to shortage of technical staff. This has affected additional deployment of staffs to the Centre

iv) The Centre has a dispensary to address all medical needs for the elderly persons. This is purely managed by the Health sector.

v) The sector has been equipping the Centre on yearly basis depending on the budgetary allocations.

vi) The construction of the perimeter fence in the Centre was awarded to M/s Cykka Works Ltd in July 2015 at a cost of Kshs. 16,884.600.00. However, the construction works stalled due to non-payment of first certificate for works done of Kshs. 4.8 Million (copy attached).

vii) The following interventions have been put in place
   - The sector intends to procure a motor vehicle to effectively address all the emergency services at the Centre.
   - The sector has also recommended to Human Resource Department for recruitment of additional staff in all the technical areas experiencing staff shortages.
   - To address the construction of the perimeter wall, the sector is in liaison with the finance sector to avail funds to complete the projects for all the pending bills.

The Committee observed that Mji Wa Huruma Centre is one of the centres that provide comfort to the elderly and its mismanagement risks the lives of the senior citizens.

The Committee recommends that:-

i) **The County Treasury makes adequate budgetary allocation to the centre in the next Financial Year to support its activities.**

ii) **The Chief Officer Education and Social Services should ensure that the interventions stated are fully implemented.**

2.16. Prior year Audit issues

The following prior-year audit issues remained unresolved as at the time of the audit of the financial statements and operations for the year ended 30 June, 2016.

2.16.1. Assets and Liabilities Inherited from the Defunct City Council of Nairobi

The statement of receipts and payments reflects an amount of Kshs. 2,428,223,605 2014/2015 – Kshs. 2,110,303,407 under acquisition of assets for the year ended 30 June, 2016. However, as reported in the previous year, the County's statement of receipts and payments and asset register figure of Kshs. 2,428,223,605 and the summary of fixed asset figure of Kshs. 16,606,168.629 reflect in Annex 4 to the financial statements do not include the assets and liabilities of the defunct City Council of Nairobi despite the County management having taken possession of the assets. In addition, the Inter-Government Relations Technical Committee which took over the Transition Authority is yet to formally hand over the assets and liabilities of the Local Authorities to the County Government. It is not known when their assets and liabilities will be handed over to the County Government.

The Ag. CFO admitted to the audit finding and submitted that:-

i) Assets transferred from defunct Nairobi City Council still have outstanding issues that have not been resolved. However, the Inter Government Relations Technical Committee took over the residual functions of the Transition Authority (now defunct) pursuant to Section 12 (b) of the Intergovernmental Relations Act, 2012 one of its functions is to validate, verify and transfer all assets that belonged to the defunct local authorities. The IGRTC has established the process to be followed vide a legal notice no. 858 published in the Kenya Gazette of 27th January, 2017. Under clause no 7 the notice provides for the formation of a County Assets and Liabilities Committee (CALC) to undertake the validation, verification, transfer process and to develop a County Asset Register.

ii) In May 2017, the Land & Building Subcommittee embarked on a identification of all land & building in the IGRTC'S inventory that was handed over by the Nairobi City County Government. The aim of the analysis was to identify gaps that would form the baseline of improving the inventory. The following is the current situation:-

a) The IGRTC'S inventory had 1059 properties which included but not limited to: -Educational institutions, Housing Estates, Commercial properties (office block), Parking and Parks, Fire stations, Water infrastructure, Health facilities among others.

b) The template was populated with the missing data in some instances where it was missing and also where data in the template was found to be incorrect was corrected.

c) Data was captured from available files, ownership documents, survey maps, RIMS and also searches from the Lands office. In our estimation, collection of the data is about 70% complete and a lot still need to be done.

iii) The following are the challenges encountered:-

a) Information on land was collected from various sources including internally, Ministry of Lands and the Survey offices. In so many instances the information/data was not available.

b) Some surveyed properties have not been allocated with Land reference numbers and collection of data on such properties proved difficult.

c) Nairobi County has landed properties spread in over four Counties including Muranga, Kiambu, Nyandarua and Machakos. It was hence difficult to collaborate data collection at the headquarters with the people on the ground.

d) No training for the champions for the exercise was carried out hence their performance was not as expected.

e) Lack of actual Title deeds for the various Land were not available.

f) Transport was inadequate for the officer to visit all the properties to confirm their status and physical locations.

g) The process of audit of titles that had earlier been undertaken by the County was not conclusive and as such the number of properties with tittles and those without cannot be easily ascertained.

h) The team members were not exempted from their normal duties and this was a major challenge in collecting of data in the various assigned places.

i) Lack of office equipment and stationery was also a hindrance.

iv) The noble exercise of identifying Lands and buildings belonging to Nairobi City County is estimated to about 70% complete. More information/data still need to be collected to complete and update the existing inventory. It is recommended that a multi sectorial standing committee be established to move forward the exercise. The mandate of the committee to include but not limited to:

a) Embark on full time basis on validation of data and information already captured.

b) Embark on full time basis on verification including physical inspection of the properties already captured.

c) Embark on full time basis on collection of the missing data.

d) Perform any other activity that may be geared towards realization of a reliable Asset Register.

v) The Sector is in the process of constituting the Multi-Sectoral Committee to address the matter.

The Committee while appreciating measures being taken by the County Executive observed that it has taken far too long to transfer assets of the defunct City Council to the County Government. In these circumstances, many assets have fraudulently been acquired by private entities/individuals.

The Committee recommends that the CEC Member for Finance and Economic Planning should ensure that the aforementioned multi-sectoral committee is immediately established and it is fully supported. The said Committee should work closely with the Inter Government Relations Technical Committee and prepares a comprehensive digital fixed assets register and table a report on its work in the Assembly within six (6) months of adoption of this report.

2.16.2. Land and Buildings – Encroachment of County Government Properties

a) Encroachment on the Komarock Ward Offices-Embakasi Central Sub-county the land in which the Komarock ward offices are located has been claimed by private developers.

The Ag. Chief Officer Lands submitted that:-

i.) The entire plot was surrendered back to the former City Council by HFCK. It was planned with the Commissioner of Lands authority and allocated out to private developers.

ii.) Survey plan FR 281/20 dated 23rd January, 2018 did not include any ward offices, since no wards or sub-county existed by the year 1998, the ward offices encroached onto the private land which was vacant then.

The Committee observed the following based on the documents submitted to the Committee and its site visit findings:-

i.) That Komarock Ward Office is built on a parcel of land which is rightfully owned by the County Government although the registration number of the plot is not indicated on the survey plan submitted to the Committee;

ii.) That there are overt actions by private developers to encroach on the parcel of land as evidenced by temporary structures constructed on the land; and iii.) That the County Government officials especially from the Lands Department seem not concerned with protecting the parcel of land from grabbing even after the matter had been raised by the Auditor General.

The Committee recommends that:-

i) The Chief Officer, Lands should immediately institute measures aimed at repossessing the property and all other County properties that have been grabbed or are on the verge of being grabbed yet they have proper ownership documents;

ii) The Chief Officer, Lands and the Chief Valuer should ensure the property is properly registered and safely keep the title of the property;

iii) The Chief Valuer should be the only designated officer responsible for keeping of County Property titles for accountability reasons;

iv) The Chief Officer Lands, Chief Officer Urban Planning should ensure that all illegal structures on the parcel of land are demolished and the property is well fenced; and

v) The EACC and National Land Commission should immediately institute investigations on all County land transactions with a view of exposing and prosecuting County officials abating grabbing of County land.

b) Encroachment of Mutuini Hospital- the hospital land is not fenced and has been invaded by squatters

The Ag. Chief Officer Lands submitted that:-

i.) A site visit revealed no encroachment in terms of human settlements, but the following was noted:-

- A temporary milk collection point in one corner of the property on the front side.
- The neighboring plots i.e. no. 477-485 have positioned their access in the hospital compound

ii.) The milk point can easily be removed on short notice and the neighbors ought to be told to remove offending access and shift to their official access which also exists on the ground.

iii.) Beacons were pointed to the in charge of the health center by the county surveyor; there is no access road in Mutuini Health Centre for the neighboring property.

The Committee observed that:-

i.) Mutuini hospital is one of the critical health facility owned by the County Government serving Nairobi residents yet County Officials are treating the matter of protecting its land casually. The Chief Officers responsible for Health Services, Lands and Urban Planning ought to have issued eviction notices to all the trespassers and secured funds for fencing of the hospital.

ii.) The overt actions by the private citizens are an avenue meant to grab the land. Lack of fencing of the land exacerbates the matter.

The Committee recommends that:-

i.) The Chief Officers responsible for Lands and Urban Planning to immediately issue eviction orders to all persons encroaching on the Land and trespassers and follow-up on the implementation of the said notices; and

ii.) The CEC Member for Finance and Economic Planning to make adequate budgetary allocation for fencing of the property and all other properties owned by the County Government.

c) Komarock playing ground in Embakasi Central Sub-County, lacks a perimeter fence and is susceptible to encroachment by private developers.

The Ag. Chief Officer Lands submitted that:-

i.) The property was allocated to the late Hon. Mwenje back in 1981 and survey done Via FR -156/140 authority from Commissioner of Lands Letter Ref: 7085/Vol.1 of 9/6/81.

The Committee observed the following based on the documents submitted and its site visit findings:-

i.) That the information provided by the Ag. Chief Officer was not true and was meant to mislead the Committee since the playing ground is still and should be owned by the County Government. No developments had been commenced on the property and it was being used by residents as a playing field.

ii.) That the information provided by the Ag. Chief Officer demonstrates the lack of interest County Government officials have in protecting County properties.

iii.) That non-fencing of the property makes it susceptible for grabbing by greedy private developers and it is and indictment on the responsible County Departments i.e. Social Services and Lands.

The Committee recommends that:-

i) The Chief Officers responsible for Lands, Urban Planning, Social Services and Finance should within six (6) months of adopting of this report ensure that the property is surveyed, demarcated and fenced to deter any encroachment by private developers;

ii) The Head of the County Public Service should take disciplinary action against the Ag. Chief Officer Lands for misleading the Committee regarding the status of the Land; and

iii) The Chief Officer Lands should establish a task force to identify, survey and clearly demarcate County owned land and acquire proper ownership documents. A report of the task force should be tabled before the Assembly within six (6) months of adoption of this report.

2.16.3. Allocation of County Land to private developers

The then defunct City Council of Nairobi allocated various parcels of land to private developers. Some of the developers have since demolished properties previously owned by the defunct Council. The process of allocating the land to private developers could not be confirmed as transparent given that no records were provided to confirm the process. Some of the land issued to private developers included:-

i) High Ridge Health Centre where the health center was demolished and the parcel of land allocation to private developers.

The Ag. Chief Officer Lands submitted that:-

i.) There are two properties LR No. 209/6260 measuring approximately 0.479 ha.(1.184 Acres) and LR No. 209/6261 measuring approximately 0.211 ha(0.522 Acres).

ii.) Both parcels of land were allocated to the City Council of Nairobi sometimes in 1961for a term of 99 years with effect from 1st January, 1952for construction of a Day Nursery School and a Clinic

iii.) Around August, 2012, Golden Crest Properties obtained titles for the two parcels of land.

iv.) The two parcels of land purportedly changed land reference numbers after a purported change of user to multi-dwelling units to LR Nos. 209/19441 and 19442.

v.) The defunct City Council wrote to the Commissioner of Lands informing him that the properties are public land and were illegally acquired and as such the registration should be cancelled. However, at one point the Council entered into consent with the title holders.

The Committee observed the following based on the documents submitted and its site visit findings:-

i.) That the land belongs to the County Government of Nairobi having been allocated to the defunct City Council of Nairobi for a term of 99 years with effect from 1st January, 1952.

ii.) That there are no records to show that the land was allocated to a private developer and therefore any person who may claim to have the properties' title must have fraudulently acquired it having colluded with County and state Officials.

iii.) That the County Government officials seem not interested in protecting County Properties.

iv.) That the area residents continue to suffer due to lack of a health centre or a nursery school yet that land lie idle and has been converted into a garage. County Government Officials seem not interested in protecting the land.

The Committee recommends that:-

i.) **The Chief Officer Lands and the Director Legal Services should immediately follow-up with the Commissioner of Lands and the NLC to ensure that the fraudulently acquired titles for the two properties are revoked;**

ii.) **The CEC Member and the Chief Officer for Lands should take personal interest in this matter and ensure that within three (3) months of adoption of this report they survey, demarcate and fence the property and put it to the original intended use;**

iii.) **All title deeds for County Government owned properties must with immediate effect be in the custody of the County Chief Valuer for accountability purposes; and**

iv.) **The Ethics and Anti-Corruption Commission (EACC) and the National Land Commission (NLC) should immediately commence investigations in dealings involving this property and all other County properties with a view of prosecuting persons involved in their grabbing.**

d) Nanyuki Roads Store and Depots; the land was reserved for road maintenance materials. It was demarcated and 1.227 ha hived off and allocated to M/S Hass Petroleum Ltd. It was further noted that the depot lost materials estimated to be worth Kshs. 22 million.

The Ag. Chief Officer Lands submitted that:-

i) The Parcel of land LR. No. 209/7750/3 measures 3.75 ha. (9.266 Acres) and was allocated to the defunct City Council of Nairobi on 12th March, 1988 by the Commissioner of Lands for a period of 76 years and three months with effect from 1st October, 1971(expiring in 2047)

ii) The land was to be used for godown or factory purposes. The Council was to pay annual ground rent of Kshs 48,635 to the Government

iii) On 3rd February, 2011, the Council gave a lease to Hass Petroleum for part of the land (equivalent to 5 acres) to hold for 50 years from 1st January, 2010(expiring in 2016) at an annual ground rent of Kshs 650,000 for use as a fuel depot. This was approved vide General Purpose Committee meeting under minute 17 item No. 925 of 19th January, 2010 and ratified at the full Council meeting held on 26th January, 2010.

iv) In April, 2013, ground rent was revised from Kshs 650,000 to Kshs 1,500,000. Rates were also assed at Kshs 167,365 p.a at 17 %.

v) In July, 2013, a survey was carried out to determine the actual acreage for the leased area. The survey indicated that the actual area leased to Hass Petroleum is 1.277 hectares or 3.031 acres and the one left with the County Government as 2.464 hectares or 6.089 acres.

The Committee observed that:-

i.) The entire parcel of land belongs to the County Government of Nairobi having been allocated to the defunct City Council by the Commissioner of Lands until 2047.

ii.) Despite the defunct City Council of Nairobi having leased part of the land to Hass Petroleum, the leasehold expired in 2016 and as such, the land need to be reverted to the County Government unless the lease is renewed.

iii.) The County Government lacks a policy on allocation of County land thus the process is not transparent and vulnerable to abuse.

The Committee recommends that:-

i.) The Chief Officer Lands should immediately reposes the land for the County Government to put it into its original intended use since the lease hold issued to Hass Petroleum has expired;

ii.) The Chief Officer Lands should review all parcels of land allocated to private persons and entities by the defunct City Council of Nairobi to ascertain the veracity of the leases and revoke irregularly allocated land so that the land can be used to develop public utilities; and

iii.) The Lands department should develop a more transparent policy/legislation on allocating of County land to private citizens.

2.16.4. Karen Health Centre Land Dispute

A neighboring PCEA Church according to the management of the facility had encroached the Karen Health Centre land.

The Ag. Chief Officer Lands Officer submitted that:-

i) The original Karen Health Centre land is L.R. No. 1159/70. The land was allocated to the defunct City Council of Nairobi in the year 1969. The PCEA church was allocated part of the land by the defunct City Council of Nairobi in the year 2002 and was surveyed in the year 2005(FR 446/59).

ii) The Nairobi County Government gave a contract for the fencing of the original land L.R. No. 1159/70, disregarding its allocation of 2002 to PCEA Church leading to the dispute.

iii) The PCEA contested the constructing of the fence, filed a case in court, got a court order stopping the fencing and were awarded approval to construct on the said piece of land.

iv) Nairobi City County Government has appealed against the decision under case No. JR/195 of 2014 which is still pending in court. The County Government has also communicated to EACC and the NLC in respect to the portion of the land claimed by the PCEA.

The Committee observed the following based on the documents submitted and its site visit findings:-

i.) That as per the documents submitted, the land is owned by the County Government and was meant for construction of a health facility which was a noble idea since it would serve Nairobians. Indeed, a health centre that requires further expansion was constructed on the property.

ii.) That whereas PCEA church was allocated part of the original land LR. No. 1159/70 in 2002, the transfer was irregular since there are no documents to back the transfer. As such, the defunct Council rightfully revoked the transfer.

iii.) That whereas PCEA church has a right to seek Court redress, the Court process is a detriment to public good.

The Committee recommends that:-

i) **The County Government proceeds to survey, demarcate and fence the part of the land LR No 1159/70 that is not contested pending determination of the Court case No. JR/195 of 2014; and**

ii) **In the event of unfavorable outcome of the Court case No. JR/195 of 2014 the County Government should appeal and vigorously defend against acquisition of the Land by PCEA and seek intervention of the NLC since the parcel of land is ideally located for expansion of the health facility.**

2.16.5. Irregular Allocation and Disposal of County Land LR No. 209/2531/1.

The above land measuring 20.5 acres, now occupied by Highways Stores was originally allocated to the then Municipal Council of Nairobi title No. LR 4786, LR No. 209/2531 for a term of 99 years from 1st October, 1929 to 1 October, 2028. On 18 June, 1952 the Kenya Meat Commission was allocated to St. Peter Claviers' and Muthurwa Primary

Schools. A visit to the site showed that portion of the remainders of the land 8.5 acres has been allocated to unknown private developers as follows:

(i) Part of County Bus Station Phase 2

(ii) Part of the Nairobi City County Department.

No documentation has so far been presented to show how the private developers were allocated the land.

The Chief Officer Lands submitted that:-

i) This land originally, L.R. No. 209/2531 allocated to Municipal Council of Nairobi in the year 1929. Part of the land was earlier allocated to the Kenya Meat Commission, Stage Market, the Kenya Cold Storage and Muthurwa Primary School.

ii) The remainder of the land, as stated in the auditors' report have been allocated.

The Committee observed that:-

i.) The mere fact that the Lands Department could not provide documents supporting the allocation of the land to private developers confirmed that the transfer may have been irregular since the Department ought to be the custodian of all documents pertaining to ownership and transfer of County Land; and

ii.) Private developers always collude with rogue County staff and other state agencies to grab County land.

The Committee recommends that:-

i) The County Government proceeds to survey, demarcate and process proper ownership documents for the part of the land LR. No. 209/2531 that it still owns; and

ii) The Chief Officer liase with state agencies such as the EACC and NLC and institute measures aimed at repossessing all parcels of land that were hived from LR NO. 209/2531 and irregularly allocated to private developers.

2.16.6.Jambo Pay Revenue Collection and Management- Failure to Remit Collected Funds in Time

As reported in previous year the County Government has implemented the above cashless payment system that allows Nairobi motorists, tenants, contractors, business men and women, to use their mobile phones to pay for daily parking, seasonal parking, parking form Matatu Sacco's, land rates, rent for County houses, construction fee and to check the status of their payment. The contract provides that funds collected should be remitted to the County Government within seventy two (72) hours upon receipt. However, review of records reveals that it takes up to a month to remit the funds, which is contrary to the agreement between the County Government and the contracted firm. Consequently, the County Government is not in full control of its revenue collection process.

The Accounting Officer submitted that:-

i) Delayed settlements to Nairobi City County arose out of issues surrounding Cooperative bank. Cooperative bank through its online platform (i.e. bank transfer system) was experiencing a system downtime and hence were unable to finalize processing of payments.

ii) Evidence of such delays are available upon request from the Trustee with confirmation that any correspondence shared will be held in strict confidentiality since they contain confidential details regarding the Trust account that cannot be shared. The assertion that settlements were done at most twice a month is completely untrue and this is demonstrated on the schedule sent to the Auditors for confirmation.

iii) Currently Jambo Pay is making remittances in strict compliance with our contract with them (See Annex 3).

iv) Further, the County is engaging JAMBO – Pay with the aim of reviewing the Service Level Agreement (SLA) from 72 hours to same day remittance.

The Chief Executive Officer (CEO) Web tribe Ltd submitted that:-

i) The tender notice for expression of interest for supply, implement and maintain an electronic revenue collection and payment system was floated by the County Government and advertised in the Daily Nation newspaper and other local dailies on Monday, September, 16th2013. Webtribe Ltd bided for the tender and was award the tender and subsequently contracted by the NCCG to provide a revenue collection and payment solution to the NCCG.

ii) The agreement was executed on 8th April, 2014 and was to last for a period of five (5) years from the date of its execution. In the agreement, Webtribe was obligated to among others provide citizens with convenient and secure electronic payment options for all services provided by NCC.

iii) It is true that as per the agreement, Webtribe was supposed to remit a net value of successful transactions of NCC transactions through Jambopay within twelve (12) hours for cash transactions and seventy two (72) hours for VISA and other electronic card transactions in daily batches to a NCC nominated account. To actualize this, a trust account was opened with the Central Bank of Kenya (CBK) and domiciled at Cooperative Bank where funds would be transferred to before hitting the CRF account equally held at Cooperative Bank at City Hall Branch. No person has access to the trust account.

iv) That delay in remittance of the collected funds to the CRF was due to system downtime at the Cooperative Bank which Webtribe have no control over.

The Branch Manager, Cooperative Bank, City Hall Branch submitted that:-

i) Cooperative bank provides banking services to NCCG and therefor it responsible for banking of the revenues collected through the Jambopay system.

ii) The bank has no access or control of the Jambopay trust account.

iii) The bank facilitates instant remittance of funds collected through the Jambopay revenue collection system to the CRF and in cases where there was delay it could have been due to system downtime.

The Committee observed that:-

i) Jambopay system lacks the requisite capacity to collect revenue on behalf of the County Government as it is prone to manipulation as demonstrated by the delay in remittance of the collected revenue as pointed out by the Auditor General;

ii) Cooperative Bank which is a Commercial Bank licensed by the Central Bank of Kenya colludes with web tribe Ltd, the provider of Jambopay revenue collection system, to delay remitting of revenue to the CRF account held at its City Hall Branch. It is suspected that the delay is meant for trading with County funds for personal interests only known to Cooperative Bank and Web tribe Ltd. Evidence adduced to the Committee indicated that on one occasion(21st January, 2015) Kshs 2,827,640 was delayed for remittance to the CRF by 57 days while on another occasion(2nd February, 2018) Kshs 51,036,914.94 was delayed for six(6) days;

iii) By delaying remittance of collected funds to the CRF, Webtribe Ltd and its associates was in breach of Clause 24 of its agreement with NCCG and on "settlement duration" which provides that:- "*Webtribe shall settle net value of successful transactions of NCC transactions through Jambopay within twelve(12) hours for cash transactions and seventy two(72) hours for VISA and other electronic card transactions in daily batches to a NCC nominated account(s)*"; In addition, Webtribe failed to provide weekly reconciliations to NCC hence breached Clause 25 of the aforementioned agreement which provides inter alia:- "*Webtribe shall send NCC a settlement report every week detailing total amounts settled*".

iv) The County Government requires an internal foolproof automated revenue collection system that it has control over for maximum revenue collection to be realized and to secure county resources; and

v) Delay to submit collected revenue to the County Government puts at risk revenues collected.

The Committee recommends that:

i) **The County Government should invoke the provisions of Clause 17 of its agreement with Webtribe Ltd and terminate the agreement following the breach of Clauses 24 and 25 by Webtribe Ltd of the said agreement;**
ii) The County Government should within five (5) months of adoption of this report develop its own internal and foolproof automated revenue collection system;
iii) The DPP and the DCI should investigate all persons within Cooperative Bank and Webtribe Ltd regarding the delay in remittance of public funds to the CRF and institute criminal proceedings where necessary; and
iv) **The Auditor General should conduct a forensic audit on all the Jambopay transactions for reporting in the next statutory audit report for the Committee to take appropriate action.**

2.16.7. Garbage Collection and other Environmental Matters

As was reported in the previous year, physical verification of the operations at the Dandora dumpsite during the audit exercise revealed a number of anomalies that included the following: -

i) Lack of standby power back-up for the weighbridge in cases of power failures.
ii) Lack of adequate protective tools and equipment for the staff working at the dump site
iii) Lack of offices, computers and safes for keeping cash. It was indicated by a staff member that they sometimes receive students from universities and colleges on field studies and therefore require a classroom to accommodate the groups during discussion sessions
iv) Most of the County heavy equipment used at the dumpsite are grounded and as a result the County relies heavily on hired ones.

v) Lack of proper facilities may compromise effective operations at the dumpsite

Dandora Power Project worth Kshs 28 billion has stalled due to lack of the title deed as demanded by the financier.

The Ag. Chief Officer, Environment submitted that:-

i) A petrol driven generator of 9KVA capacity and Serial Number BAA0019870 Model Promax 9000 EA has already been procured and supplied. It is awaiting installation after construction of a secure structure which is budgeted for in the current financial year. Procurement documents are attached.

ii) All staff working at the dumpsite are periodically issued with Personal Protective Equipment (PPE) and working tools. Attached are duly signed issuance schedule for period under review.

iii) Construction of offices was part of the contracts awarded for construction of perimeter wall around the Dumpsite. Offices have already been constructed at either gates of the Dumpsite, and their equipping and commissioning is awaiting installation of the new weighbridge.

iv) The staff working at the dumpsite no longer receive payments in cash (payments done through *Jambo-pay*), therefore no need for a safe.

v) As concerns rooms for training, it is true that a number of institutions do conduct academic tours at the site. However, considering the nature of activities that goes on at the site and the fact that the site was not originally planned as a landfill facility, it has not been possible to incorporate this need in any improvement plan for the site. Furthermore, the County has plans to relocate the disposal services to other area where a fully-fledged facility would be established. Rooms for training and other purposes would be incorporated in the Decommissioning and Rehabilitation Plan that would be executed once the Government relocates disposal activities to an alternative and properly designed facility that is currently being pursued

vi) The Management of solid waste deliveries at Dandora Dumpsite is indeed done using heavy machinery. These may include the Bulldozers, Excavators and compactors. The County Government inherited three such machines from the defunct City Council, which were unfortunately grounded at the time of transition. These machines were procured over 30 years ago and our past efforts to repair them have not been fruitful due to a number of reasons but mainly financial. Furthermore, owing to the many number of years that the machines had been grounded, it is doubtful whether it is prudent to repair them given that they are very old and a new one would cost about Kshs. 40 M and is likely to be of a better and longer performance. The County Government has since then procured a Landfill Compactor and a Bulldozer that are already working at the site and the fleet strength will be progressively improved with a view to achieving complete reliance on our own internal capacity.

vii) Acquisition of NCCG own Heavy Equipment and the construction of perimeter fence and offices among other facilities as detailed in (ii), (iii), &(iv) above are clear indications of the government's resolve to promote efficiency and effectiveness in the operation of the Dumping site. Owing to the current situation of the site particularly in terms of waste capacity, the government has however been pursuing various options that would provide better system of managing solid waste at the final disposal end. The Dandora Power Project worth Ksh.28 B proposed by a foreign investor has didn't kick of stalled due to lack of Title Deed for the land where the Dumpsite sits as demanded by the financier. The County Government is however evaluating possibility of establishing an alternative waste disposal facility in Ruai, the land originally proposed for a Sanitary Landfill but couldn't materialize due to sustained objection by the Kenya aviation industry. The process of acquiring ownership documents for the new candidate site to be hived from parcel LR No. 12979/1/R-Ruai Sewerage Plant has already commenced.

The Committee noted that:-

i.) There is need for a complete paradigm shift in how the County manages waste. In addition, the whole concept of dumping of waste at Dandora dumpsite as a mode of waste management is not working; and

ii.) The County is spending substantive amount of resources on waste management yet results are minimal.

The Committee recommends that:-

i.) The County Government should explore on the use of modern cost effective waste management technologies which include recycling, compacting, and landfilling to eliminate dumping of waste at Dandora dumpsite which is both costly and environmentally detrimental. Adequate research should be conducted before adoption of the alternative mode of waste management;

ii.) The County Government should in the meantime identify and designate a new dumping site since Dandora dumpsite has surpassed its capacity;

iii.)The Chief Officer should ensure that all expenditure records on waste management are properly maintained for full accountability of public funds. In addition, contracted garbage collectors should be closely supervised to ensure that they deliver on their mandate. Monitoring of their work should be aided by modern technology;

iv.)The Environment Sector should fully enforce the Nairobi City County Solid Waste Management Act, 2015 and prepare regular reports on its enforcement to the County Assembly;

v.) The Accounting Officer should ensure that all sub-counties are allocated with Nairobi City County owned waste collection trucks to ensure equity and improved service delivery. Their performance should also be monitored with the aid of modern technology; and

vi.)The Committee recommends that the Accounting Officer should fast-track the provision adequate facilities at the dumpsite. These facilities include power back-ups, computers, modern technology monitoring equipment, protective equipment for staff, and adequate office space.

2.16.8. Malfunctioning of the Integrated Urban Surveillance System for Nairobi Metropolitan Area- Nairobi Central Business District

As similarly reported in the previous year, the installation, testing and commissioning of an integrated urban surveillance system for Nairobi Metropolitan Area (Nairobi Central Business District) was implemented by Ministry of Nairobi Metropolitan at a contract sum of Kshs 437,405, 895.36. The contract was awarded to M/S Nanjing Les Information Technology Limited on 14 September, 2012. The project entailed installation of surveillance cameras, installation of new traffic management system, construction of a centre and installation of associated software. No information has been provided so far on action taken to obtain the requisite equipment, previously reported as lacking to enable communication between the control centre and several surveillance points. In addition, no new information has been provided on the twenty six (26) out of the forty two (42) cameras that were not functional. Further, it has not been clarified whether the cameras as now capable of detecting motor vehicle number plates. In the circumstances, the surveillance system and security installations may still not be relied upon to enhance security for the County's residents.

The Ag. CFO and the Ag. Chief Officer, Transport and Public Works submitted that:-

i) The project is yet to be handed over to the County Government of Nairobi by the ministry of transport, Infrastructure, Housing and Urban Development thus issues of Maintenance are still being handled by the implementing contractor i.e. M/s Nanjing Les Information Technology Ltd. In view of this the county has no control over the status of these assets.

ii) On 28th June, 2016 the County Government of Nairobi wrote to the Ministry highlighting lack of maintenance of the project by the contractor and also requesting the Ministry to fast track the completion of the project and handover to the county for maintenance *(See attached copy of the letter to the Ministry).*

iii) On 1st August, 2016 a meeting between the county and the ministry was held to address issues of maintenance and handover of the project *(see attached copy of the minutes)*. To date the project is yet to be handed over to the county.

iv) This matter has been earlier addressed in the previous audits. However, we have also written to Director, Metropolitan Development concerning the matter of handing over the project to the County (vide letter CW/1/44/2141/TU3A/TU2G dated 27th November 2017) attached.

The Committee observed that:-

i) Whereas the National Government through the defunct Ministry of Nairobi Metropolitan was responsible for the project, the ultimate beneficiary is the County Government the successor of the defunct Nairobi City Council. In fact, the server is located at City Hall Annex premises owned by the County Government; and

ii) The project was a noble initiative that would have aided the County Government in controlling traffic. However as observed by the Auditor General, the project has been a total failure despite a colossal sum of public money having been spent.

The Committee recommends that the CEC Member Finance and Economic Planning and the Chief Officer Security and Compliance takes personal interest in this matter and engage the National Government and find a way on how to revamp the project so that the noble objectives of the project can be realized and save public funds that were invested in the project.

3.0. CONCLUSION

The Committee having considered both the "**Report of the Auditor-General on the Financial Statements of Nairobi City County Executive for the year ended 30th June 2016**" and oral and written responses to the audit queries from theCEC Member, Finance and Economic Planning, Ag. CFO, Ag. Chief Officers and mentioned persons (witnesses), made various observations on each audit query and subsequently provided recommendations. The recommendations targets, the appointing authorities, the CEC Member for Finance and Economic Planning, Accounting Officers, County Chief Officers and a number of Public Officers. In addition, the Committee has recommended various measurers that state agencies such as the **Ethics and Anti-Corruption Commission (EACC)**, the **National Land Commission**, the **Office of the Director of Public Prosecutions** and **the Auditor General** need to consider and enforce. The recommendations are aimed at streamlining revenue collection, financial reporting/accountability and correcting mistakes committed by serving and former officers. The Committee has also recommended sanctioning and prosecution of culpable officers as a measure of deterrence of similar actions in future.

4.0. SUMMARY OF ALL RECOMMENDATIONS

Following the Committee's consideration of the **"Report of the Auditor-General on the Financial Statements of Nairobi City County Assembly for the year ended 30th June 2016"**and having considered responses from the Accounting Officer, the Committee urges the County Assembly to resolve as follows: -

1. **Non Submission of a Trial Balance**
   i) The Chief Finance Officer should institute measures to ensure that the County Executive adheres to International Public Sector Accounting Standards (IPSAS) consistent with the Public Finance Management Act, 2012;
   ii) The Chief Finance Officer should institute measures to ensure that the County Executive always act in time when dealing with the Auditor General to forestall audit queries; and
   iii) The Chief Officer, Public Service Management (PSM) should take administrative action against the Chief Finance Officer at the time of audit for negligence of duty and report him to the relevant professional body for professional misconduct.

2. **Discrepancies between Ledgers and Financial Statements.**
   i) The Chief Finance Officer should institute measures to ensure that the County Executive adheres to International Public Sector Accounting Standards (IPSAS) consistent with the Public Finance Management Act, 2012.
   ii) The Chief Finance Officer should institute measures to ensure that the County Executive always act in time when dealing with the Auditor General to forestall audit queries; and
   iii) The Chief Officer, Public Service Management (PSM) should take administrative action against the Chief Finance Officer at the time of audit for negligence of duty and report him to the relevant professional body for professiona misconduct.

3. Local Revenue Management.

3.1. **Non-sweeping of Local Revenue to County Revenue Fund Account**

i) The CEC Member Finance & Economic Planning and the Chief Finance Officer must take necessary steps and ensure that all funds raised or collected on behalf of the County Government are deposited in the County Revenue Fund;

ii) The County Treasury should always keep up-to-date records of all the revenue collected locally; and

iii) The Director of Public Prosecution should institute prosecution proceedings against the CEC Member Finance and the Chief Officer Finance at the time of the audit for breach of Article 207 of the Constitution and Section 109(2) of the PFM Act, 2012.

3.2. **Street Parking**

3.2.1. **Unpaid for parking**

i) The County Treasury should fully automate all parking fee collection within six(6) months of adoption of this report and disciplinary action must be taken against parking attendants who fail to comply;

ii) The CFO and the Chief Officer, Transport and Public Works should within three(3) months of adopting of this report map-out and clearly mark all public parking areas in the County;

iii) All parking fees charged should be based on the approved County Finance/Revenue Administration Act. Disciplinary action must be taken against any officer who breaches the same;

iv) The Head of Parking must ensure that the proposed interventions as stated in the response are enforced and a repeat situation is avoided; and

v) The CEC Member, Finance and Economic Planning should hold the Officer in charge of parking, parking attendants, the responsible revenue officer at the County Treasury at the time of non-payment by motorists personally liable for the loss of revenue in accordance with Section 203(1) of the PFM Act, 2012 and take the necessary measures prescribed under Section 203(2) of the PFM Act, 2012 which provides *inter alia that:-'the County Treasury may, by civil proceedings brought in a court of competent jurisdiction, recover damages from a public officer for any loss for which the officer is liable under subsection(1).*

3.2.2. Unaccounted for Clamps

i) The Officer in Charge of Parking must take necessary steps and ensure that any clamped vehicle must pay the requisite penalties prior to their release and proper documentation kept;

ii) The County Government should immediately procure an automated system to monitor the clamping and unclamping of vehicles; and

iii) The County Government should immediately develop a legislation on parking for introduction in the County Assembly within three (3) months of adoption of this report.

3.2.3. Off street parking system downtime

i) The County Government should review its existing automated revenue collection system with a view of ensuring that it is free from manipulation, transparent and has back-up in case of system down-time; and

ii) The CEC Member, Finance and Economic Planning should hold the Officer in charge of parking, parking attendants, the responsible revenue officer at the County Treasury at the time of audit personally liable for the loss of Kshs. 6,599,567 in revenue in accordance with Section 203(1) of the PFM Act, 2012 and take the necessary measures prescribed under Section 203(2) of the PFM Act, 2012 which provides *inter alia that:-'the County Treasury may, by civil proceedings brought in a court of competent jurisdiction, recover damages from a public officer for any loss for which the officer is liable under subsection(1).*

3.2.4. Loading zones

i) The CEC Member Finance and Economic Planning should immediately follow-up on all the defaulting entities and recover in full all monies with respect to the payment of the loading zone fees. The defaulting loading zones should be reverted to the County Government;

ii) The Chief Finance Officer and the Chief Officer Transport and Public Works should within three(3) months of adopting of this report spearhead the process of identifying and marking all the loading zones within the City and identify their designated users;

iii) The Auditor General should conduct a special audit on the loading zones and report in the next statutory audit report for the Committee to take appropriate action;

iv) The County Treasury and other responsible Departments should introduce a proposed legislation in the County Assembly on loading zones within three (3) months of adoption of this report; and

v) The CEC Member, Finance, the CFO and the Head of Revenue at the time of audit should be held to account for loss of revenue occasioned by non-payment of loading zones pursuant to the PFM Act, 2012 Section 203 of the PFM Act, 2012.

3.3. Funding for Pumwani Hospital Operations

i) The County Treasury should prioritize release of funds to Pumwani Hospital and all other health facilities and institute proper accountability measures to avoid disruption of service provision at the County Health facilities; and

ii) The CEC Member Finance, the Chief Finance Officer, the Accounting Officer of the Health Services Sector, and the head of the hospital at the time of the commission of the illegality be held to account for breach of Section 109(2) of the PFM Act, 2012 pursuant to Section 203(1) of the PFM Act, 2012.

3.4. Variance between LAIFOMS Reports and Financial Statements

i) The County Government should immediately transition from the use of LAIFOMS to IFMIS; and

ii) The Head of Public Service should take administrative action against the CFO and the Head of Revenue at the time of audit for failing to comply with National Treasury Regulations on the use of IFMIS.

3.5. Manual Collection of Revenue at the Inoculation Centre.

— All payments at the inoculation centre should immediately be automated.

3.6. Disbursement of Capitation and Free maternity funds

3.6.1. Pumwani Maternity Hospital

i) The CEC Member for Finance and Economic Planning should take personal interest in this matter and ensure that the National Treasury refunds outstanding maternity fees refund since the County Government has already incurred the expenditure;

ii) The CEC Member Finance and the CFO should ensure that funds are only spend on the intended purpose and/or as approved by the National or County Legislation;

iii) The County Treasury should put in place adequate budgetary measures to cater for maternity services; and

iv) The CEC Member Finance and the CFO in office during the period under review should be held to account for allowing spending of maternity fee refunds on other activities contrary to the provisions of Section 196 of the PFM, Act, 2012.

3.6.3. Mama Lucy Kibaki Hospital

i) The CEC Member for Finance and Economic Planning should take personal interest in this matter and ensure that the National Treasury refunds outstanding maternity fees refund since the County Government has already incurred the expenditure;

ii) The CEC Member Finance and the CFO should ensure that funds are only spend on the intended purpose and/or as approved by the National or County Legislation;

iii) The County Treasury should put in place adequate budgetary measures to cater for maternity services; and

iv) The CEC Member Finance and the CFO in office during the period under review should be held to account for allowing spending of maternity fee refunds on other activities contrary to the provisions of Section 196 of the PFM, Act, 2012.

3.6.2. Mbagathi Hospital.

i) The CEC Member for Finance and Economic Planning should take personal interest in this matter and ensure that the National Treasury refunds outstanding maternity fees refund since the County Government has already incurred the expenditure;

ii) The CEC Member Finance and the CFO should ensure that funds are only spend on the intended purpose and/or as approved by the National or County Legislation;

iii) The County Treasury should put in place adequate budgetary measures to cater for maternity services; and

iv) The CEC Member Finance and the CFO in office during the period under review should be held to account for allowing spending of maternity fee refunds on other activities contrary to the provisions of Section 196 of the PFM, Act, 2012.

4. Unsupported Expenditures

4.1. ICT Department

— The CEC Member for Finance and Economic Planning severely reprimands all persons involved in the irregular procurement.

4.2. **Health Sector**

i) The Accounting Officer Health Services Sector, the CFO and the Head of Supply Chain Management should institute measures to ensure that the Sector always act in time when dealing with the Auditor General to forestall audit queries; and

ii) The CEC Member for Finance should hold the Head of Supply Chain Management at the period under review to account for the irregular procurement process.

4.3. **Water, Energy, Environment, Forestry and Natural Resources Sector**

i) The Chief Officer, Environment Officer and the CFO should institute measures to ensure that the Sector always act in time when dealing with the Auditor General to forestall audit queries; and

ii) The Chief Officer, Environment should fully enforce the Nairobi City County Solid Waste Management Act, 2015 which provides an elaborate mechanism for waste management based on the zones identified therein.

5. **Use of funds for unplanned/unbudgeted activities.**

i) The Accounting Officer should institute measures to ensure that bills are always cleared within the financial year to which they relate; and

ii) The County Treasury should ensure timely release of exchequers to Sectors and Departments to enable them settle bills in time.

6. **Procurement of Goods and Services**

6.1. **Procurement of Works**

— The CEC Member for Finance and Economic should severely reprimands all officers responsible for the irregular procurement process

6.2. **Poor record maintenance**

— The Committee treated the audit query as resolved.

6.3. Medical stores and unaccounted for drugs

i) The Chief Officer, Health Services should institute measures within three(3) months of adoption of this report and digitize/automate the movement of drugs inside and outside the medical stores; and

ii) The Chief Officer, Health Services should reprimand the Head of Pharmacy at the hospital for poor performance.

7. **Over expenditure on compensation of employees**

i) The County Public Service Board (CPSB) should within six (6) months of adoption of this report review the entire County workforce and retire all employees who are passed the legal retirement age.

ii) The CPSB and the Head of Public Service should immediately follow-up with the Ministry of Devolution on the out-come of the Capacity Assessment and Rationalization program and take appropriate action.

8. **Legal Costs**

i) The Chief Officer, PSM in conjunction with the County Public Service Board and state agencies should subject the current Legal Officers in the Legal Department to a rigorous vetting process to eliminate those who collude with external lawyers and entities to defraud the County. Those found liable should be subjected to summary dismissal and reported to the Law Society of Kenya for professional misconduct. A report on the vetting process should be tabled in the Assembly within Four (4) months of adoption of this report;

ii) The Chief Officer, PSM and the County Public Service Board should put in place a performance management system for staff of the Legal Department to enhance performance;

iii) In the event there is need for outsourcing of legal services, a competitive procurement process should be instituted in line with the Public Procurement and Disposal Act, 2015;

iv) The Director of Public Prosecution (DPP) should immediately institute charges against Mr. Gregory Mwakanongo (former CEC Member, Finance & Economic Planning, Mr. Luke Gatimu (Former Chief Finance Officer) and Mr. Maurice Okere (Former Head of Treasury Accounting) for breach of Section 196 of the PFM Act, 2012.

v) The CEC Member, Finance and Economic Planning should hold the Accounting Officer of the Legal Services Department, the Director Legal Services, former County Treasury officials (Mr. Gregory Mwakanongo, Mr. Luke Gatimu and Mr. Maurice Okere) at the time of the irregular expenditure responsible for the irregular payment of legal fees leading to loss of public funds in accordance with Section 203(1) of the PFM Act, 2012 and take the necessary measures prescribed under Section 203(2) of the Act.

vi) The CEC Member for Finance in collaboration with relevant state agencies should institute measures to recover the money irregularly paid to the law firms with interest at the prevailing market interest.

vii) The Accounting Officer, Legal Services Department, the Director, Legal Services, the former County Treasury officials (Mr. Gregory Mwakanongo, Mr. Luke Gatimu and Mr. Maurice Okere) at the time of expenditure should not hold any other public office. Those still serving in the Legal Services Department should be suspended pending investigations.

viii) All the law firms mentioned in the audit report should be blacklisted from dealing with the County Government. Meanwhile the pending bills task force appointed by H.E. the Governor should enlist services of the EACC and DCI to determine the authenticity of all the legal fees pending bills before settling them.

9. Cash and Cash Balances

9.1. Mama Lucy Hospital bank balance

— The CFO should institute measures to ensure that the Sector always act in time when dealing with the Auditor General to forestall audit queries.

9.2. Overdraft - Co-operative Bank Beautification Account

i) The DPP should institute prosecution proceedings against the CEC Member Finance and Economic Planning and the CFO during the period under review for breach of Section 68(1) and (2) of the Public Finance Management Act , 2012; and

ii) The CEC Member, Finance should take necessary steps and ensure that the National Government reimburse the monies due as promised.

10. Imprest Management

i) All accounting Officers must immediately take necessary steps to ensure that all outstanding imprests are fully recovered as per the applicable laws failure to which they should be held to account by the appointing authority;

ii) All Accounting Officers should institute measures to ensure that County Government staff adhere to government regulations and procedures on imprests to guard against malpractices; and

iii) All accounting officers must keep proper and up-to-date imprest records and should benchmark with the imprest management procedures/systems in place at the County Assembly.

11. Pending Bills

11.1. Creditors – Kshs.5, 332,716,053

i) The task-force appointed by H.E. the Governor should conduct a forensic audit of all pending bills before settling the same. Priority should be given to historical pending bills that have left suppliers and service providers bankrupt;

ii) The County Treasury to prioritize remittance of employee deduction to relevant entities; and

iii) The Auditor General should in the next audit report indicate the status of the pending Bills for the Committee to take appropriate action.

11.2. Other pending Bills- Kshs 39,422,844,055

i) The County Treasury should immediately prioritize remittance of employee deductions to the relevant entities to save the County Government from incurring unnecessary cost in terms of penalties and to secure employee retirement benefits.

ii) The task-force appointed by H.E. the Governor should conduct a forensic audit of the financial statements by the LAPFUND, LAPTRUST, KRA and NSSF before settling the bills. In addition, the task force should audit the outstanding loans to determine their legality/authenticity before allowing for their servicing by the County Government.

iii) The CEC Finance and CFO at the time of the audit should be held to account for occasioning loss of funds by the County Government for failing on their responsibility of remitting employee deductions thus making the County Government to be slapped with huge penalties

iv) The Auditor General should in the next audit report indicate the status of these pending bills for the Committee to take appropriate action.

12. Non-Current Assets

12.1. Maintenance of Fixed Asset Register and Disclosure

— The CEC Member for Finance and Economic Planning should ensure that the County Government cooperates with the Inter-Governmental Relations Technical Committee and prepares a comprehensive digitized fixed assets register and table a report on the same in the County Assembly within six (6) months of adoption of this report.

12.2. Asset Acquisition

i) The CFO ensures that adequate explanation and disclosures are given for any payments made and supporting documents are submitted to the auditors alongside the financial statements at the commencement of the audit; and

ii) The CFO ensures that Bank reconciliations are done promptly for all bank Accounts.

12.3. Irregular transfer of Mariakani Estate.

i) The County Government should not lay any claim against Mariakani Estate since the property was properly transferred to the LAPFUND as part of the settlement of the debt owed to the pension fund. However, in future, the County Government should desist from selling/swapping residential properties as it affects the livelihoods of city residents;

ii) The Chief Officer Lands should within three (3) months of adoption of this report engage three independent valuers to determine the exact value of the property which should be used as the basis of the debt swap. The valuation report should be tabled in the County Assembly within one(1) months after the valuation exercise;

iii) The County Government should immediately stop collecting rent from Mariakani Estate tenants and allow LAPFUND full possession of the property in order to forestall unnecessary litigation and to safeguard the retirement benefits of County Government employees;

iv) LAPFUND should not evict the current residents of the estate especially those who were clients of the County Government. Both parties should enter into a normal tenancy agreement with a priority being given to the current tenants including an option of the tenants purchasing the houses. Should there be need for sale of the houses, the current tenants should be given priority of purchasing the houses if interested. However, in case of any disagreements, due process must be followed; and

v) Before the County Government decides to transfer or sell any County property to settle debts or otherwise, there must be adequate public participation with the approval of the County Assembly as required by the Constitution and other applicable laws.

12.4. Lapfund Account

i) The County Treasury should within three(3) months of adopting this report institute measures aimed at settling all amount owed to Lapfund as at 30th June, 2016 amounting to Kshs 11,243,079,746.76 to avoid the ever increasing interest accrued on penalties on the outstanding balance and to safeguard the retirement benefits for the County Government employees; and

ii) The Auditor General should in the next audit report indicate the status of the payment of the outstanding balance and interest for the Committee to take appropriate action.

13. Accounts Receivables

i) The CEC Member Finance and Economic Planning should spearhead in the development of a policy/mechanism on how to manage/collect all accounts receivables; and

ii) The CFO should prepare schedules showing the County debtors, the amount and supporting evidence of all accounts receivables.

14. Outstanding Loans

14.1. Current Liabilities

i) The CEC Member for Finance should review the County Government engagement on this matter by particularly invoking the termination clause of the loan agreement and only pay the principal amount borrowed and immediately suspend servicing of the interest accrued on the KCB loan due to the irregularities committed during its acquisition;

ii) The DPP should take necessary legal actions against all persons involved in the irregular acquisition of the loan namely: the former Governor H.E. Evans Kidero, former County Treasury Officials (i.e. former CEC Member for Finance Mr. Gregory Mwakanongo and the former CFO Mr. Luke Gatimu) and responsible KCB officials for contravening Article 212 of the Constitution and Section 142 of the Public Finance Management Act, 2012 when instituting the buy-out of the loan facility; and

iii) The County Executive should always follow due process as provided for in the PFM Act, 2012 and attendant regulations when applying for loans and bank-overdrafts.

15. Budgetary Performance and Controls

15.5. Budget Information

i) The County Treasury should at all times carry-out transactions through IFMIS as required; and

ii) The Head of Public Service should take administrative action against the CFO and the Head of Revenue at the time of audit for failing to comply with National Treasury Regulations on the use of IFMIS.

15.2. Failure to Disclose reasons for material variances

— The CEC Finance and Economic Planning and the CFO Officer should institute measures to ensure that the County Executive adheres to International Public Sector Accounting Standards (IPSAS) consistent with the Public Finance Management Act, 2012

15.3. Under-expenditure Recurrent

i) The County Treasury should ensure that all the County Government entities adhere to approved plans and budgets and any spending outside the budget should be within the tenets of the procedures set in the PFM Act, 2012(supplementary budget);

ii) The County Treasury should plan in advance and ensure that in the event there is need for a supplementary budget it is prepared on time so that it doesn't adversely affect Sector Programs/projects; and

iii) The Accounting Officers should ensure that each Sector/Department prepares a procurement plan at the commencement of the Financial Year and the said plans should strictly be adhered to; and

iv) The CEC Member Finance and Economic Planning should ensure that IFMIS is fully implemented.

15.4. Unbudgeted Expenditure off IFMIS

i) The CEC Member Finance and the CFO should ensure that funds are only spend on the intended purpose and/or as approved by the County Legislation;

ii) The CEC Member, Finance should ensure that the County Treasury fully adopts IFMIS in its transactions;

iii) The CEC Member Finance and the CFO in office during the period under review should be held to account for breach of Section 196 of the PFM, Act, 2012.

15.5. Over-expenditure on recurrent vote

i) The County Treasury should ensure that all the County Government entities adhere to approved plans and budgets and any spending outside the budget should be within the tenets of the procedures set in the PFM Act, 2012;and

ii) The County Treasury should plan in advance and ensure that in case there is need for a supplementary budget it is prepared on time so that it doesn't adversely affect Sector Programs/projects.

15.6. Adherence to 30% threshold on Development Budget

i) The CEC Member for Finance and Economic Planning should strive and ensure that thirty percent of the County government's budget is spent on development expenditure as provided for in Section 107(2)(b) of the PFM Act, 2012;

ii) The Accounting Officers should institute measures to ensure that projects are always implemented within the financial year to which they relate; and

iii) The County Treasury should ensure timely release of exchequers to Sectors and Departments to enable them implement projects in time.

15.7. Development vote implementation

15.7.1. Physical Planning, Lands and Housing

i) The Sector should always fully implement its budget as approved;

ii) The County Treasury should always set realistic revenue targets and develop achievable budgets; and

iii) The Sector Accounting Officers should institute measures to ensure that the Sector always act in time when dealing with the Auditor General to forestall audit queries

15.7.2. Education, Youth, Sports, Gender, Culture and Social Services Sector

— The Committee was satisfied with the Accounting Officer's response and treated the audit query as resolved.

15.7.3. Roads, Public Works, Transport and Infrastructure

— The Accounting Officer should institute measures to ensure that contracts are always executed within the financial year to which they relate.

15.8. Education and Social Services

15.8.1. Waithaka Technical Training Center

— The CFO in collaboration with the Chief Officer, Public Service Management should immediately second qualified accountant and procurement officer to Waithaka Technical Training Centre to streamline and implement sound financial and procurement procedures.

15.8.2. Mji Wa Huruma Centre

i) The County Treasury makes adequate budgetary allocation to the centre in the next Financial Year to support its activities.

ii) The Chief Officer Education and Social Services should ensure that the interventions stated are fully implemented.

16. Prior year Audit issues

16.1. Assets and Liabilities Inherited from the Defunct City Council of Nairobi

— The CEC Member for Finance and Economic Planning should ensure that the multi-sectoral committee is immediately established and it is fully supported. The said Committee should work closely with the Inter Government Relations Technical Committee and prepares a comprehensive digital fixed assets register and table a report on its work in the Assembly within six (6) months of adoption of this report.

16.2. Land and Buildings – Encroachment of County Government Properties

a) **Encroachment on the Komarock Ward Offices-Embakasi Central Sub-county the land in which the Komarock ward offices are located has been claimed by private developers.**

i) The Chief Officer, Lands should immediately institute measures aimed at repossessing the property and all other County properties that have been grabbed or on the verge of being grabbed yet they have proper ownership documents;

ii) The Chief Officer, Lands and the Chief Valuer should ensure the property is properly registered and safely keep the title of the property;

iii) The Chief Valuer should be the only designated officer responsible for keeping of County Property titles for accountability reasons;

iv) The Chief Officer Lands, Chief Officer Urban Planning should ensure that all illegal structures on the parcel of land are demolished and the property is well fenced; and

v) The EACC and National Land Commission should immediately institute investigations on all County land transactions with a view of exposing and prosecuting County officials abating grabbing of County land.

b) **Encroachment of Mutuini Hospital- the hospital land is not fenced and has been invaded by squatters**

i) The Chief Officers responsible for Lands and Urban Planning to immediately issue eviction orders to all persons encroaching on the Land and trespassers and follow-up on the implementation of the said notices; and

ii) The CEC Member for Finance and Economic Planning to make adequate budgetary allocation for fencing of the property and all other properties owned by the County Government.

c) **Komarock playing ground in Embakasi Central Sub-County, lacks a perimeter fence and is susceptible to encroachment by private developers.**

i) The Chief Officers responsible for Lands, Urban Planning, Social Services and Finance should within six (6) months of adopting of this report ensure that the property is surveyed, demarcated and fenced to deter any encroachment by private developers;

ii) The Head of the County Public Service should take disciplinary action against the Ag. Chief Officer Lands for misleading the Committee regarding the status of the Land; and

iii) The Chief Officer Lands should establish a task force to identify, survey and clearly demarcate County owned land and acquire proper ownership documents. A report of the task force should be tabled before the Assembly within six (6) months of adoption of this report.

16.3. Allocation of County Land to private developers.

a. High Ridge Health Centre

i) The Chief Officer Lands and the Director Legal Services should immediately follow-up with the Commissioner of Lands and the NLC to ensure that the fraudulently acquired titles for the two properties are revoked;

ii) The CEC Member and the Chief Officer for Lands should take personal interest in this matter and ensure that within three (3) months of adoption of this report they survey, demarcate and fence the property and put it to the original intended use;

iii) All title deeds for County Government owned properties must with immediate effect be in the custody of the County Chief Valuer for accountability purposes; and

iv) The Ethics and Anti-Corruption Commission (EACC) and the National Land Commission (NLC) should immediately commence investigations in dealings involving this property and all other County properties with a view of prosecuting persons involved in their grabbing.

b. Nanyuki Roads Store and Depots.

i) The Chief Officer Lands should immediately reposes the land for the County Government to put it into its original intended use since the lease hold issued to Hass Petroleum has expired;

ii) The Chief Officer Lands should review all parcels of land allocated to private persons and entities by the defunct City Council of Nairobi to ascertain the veracity of the leases and revoke irregularly allocated land so that the land can be used to develop public utilities; and

iii) The Lands department should develop a more transparent policy/legislation on allocating of County land to private citizens.

16.4. Karen Health Centre Land Dispute

i) The County Government proceeds to survey, demarcate and fence the part of the land LR No 1159/70 that is not contested pending determination of the Court case No. JR/195 of 2014; and

ii) In the event of unfavorable outcome of the Court case No. JR/195 of 2014 the County Government should appeal and vigorously defend against acquisition of the Land by PCEA and seek intervention of the NLC since the parcel of land is ideally located for expansion of the health facility.

16.5. Irregular Allocation and Disposal of County Land LR No. 209/2531/1.

i) The County Government proceeds to survey, demarcate and process proper ownership documents for the part of the land LR. No. 209/2531 that it still owns; and

ii) The Chief Officer liase with state agencies such as the EACC and NLC and institute measures aimed at repossessing all parcels of land that were hived from LR NO. 209/2531 and irregularly allocated to private developers.

16.6. Jambo Pay Revenue Collection and Management- Failure to Remit Collected Funds in Time

i) The County Government should invoke the provisions of Clause 17 of its agreement with Webtribe Ltd and terminate the agreement following the breach of Clauses 24 and 25 by Webtribe Ltd of the said agreement;

ii) The County Government should within five (5) months of adoption of this report develop its own internal and foolproof automated revenue collection system;

iii) The DPP and the DCI should investigate all persons within Cooperative Bank and Webtribe Ltd regarding the delay in remittance of public funds to the CRF and institute criminal proceedings where necessary; and

iv) The Auditor General should conduct a forensic audit on all the Jambopay transactions for reporting in the next statutory audit report for the Committee to take appropriate action.

16.7. Garbage Collection and other Environmental Matters

i) The County Government should explore on the use of modern cost effective waste management technologies which include recycling, compacting, and landfilling to eliminate dumping of waste at Dandora dumpsite which is both costly and environmentally detrimental. Adequate research should be conducted before adoption of the alternative mode of waste management;

ii) The County Government should in the meantime identify and designate a new dumping site since Dandora dumpsite has surpassed its capacity;

iii) The Chief Officer should ensure that all expenditure records on waste management are properly maintained for full accountability of public funds. In addition, contracted garbage collectors should be closely supervised to ensure that they deliver on their mandate. Monitoring of their work should be aided by modern technology;

iv) The Environment Sector should fully enforce the Nairobi City County Solid Waste Management Act, 2015 and prepare regular reports on its enforcement to the County Assembly;

v) The Accounting Officer should ensure that all sub-counties are allocated with Nairobi City County owned waste collection trucks to ensure equity and improved service delivery. Their performance should also be monitored with the aid of modern technology; and

vi) The Committee recommends that the Accounting Officer should fast-track the provision adequate facilities at the dumpsite. These facilities include power back-ups, computers, modern technology monitoring equipment, protective equipment for staff, and adequate office space.

16.8. Malfunctioning of the Integrated Urban Surveillance System for Nairobi Metropolitan Area- Nairobi Central Business District

— The CEC Member Finance and Economic Planning and the Chief Officer Security and Compliance takes personal interest in this matter and engage the National Government and find a way on how to revamp the project so that the noble objectives of the project can be realized and save public funds that were invested in the project.

ANNEXURES

i) Minutes

ii) Key Submissions by the Accounting Officer and witnesses.