REPORT OF THE AUDITOR-GENERAL ON KENYA PORTS AUTHORITY FOR THE YEAR ENDED 30 JUNE 2018

REPORT ON THE FINANCIAL STATEMENTS

Qualified Opinion

I have audited the accompanying financial statements of Kenya Ports Authority set out on pages 49 to 112 which comprise the statement of financial position as at 30 June 2018, and the statement of profit and loss and other comprehensive income, statement of changes in equity, statement of cash flows, and statement of comparison of budget and actual amounts for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 35 of the Public Audit Act, 2015. I have obtained all the information and explanations which, to the best of my knowledge and belief, were necessary for the purpose of the audit.

In my opinion, except for the effect of the matters described in the Basis for Qualified Opinion section of my report, the financial statements present fairly, in all material respects, the financial position of Kenya Ports Authority as at 30 June 2018, and of its financial performance and its cash flows for the year then ended, in accordance with International Financial Reporting Standards(IFRS) and comply with Kenya Ports Authority Act CAP 391.

Basis for Qualified Opinion

1.0 Inaccuracies in the Financial Statements

The financial statements for the year ended 30 June 2018 contained casting errors totaling to Kshs.4,910,000 in absolute terms as detailed below:

S/No.	Description	Figure as Per Financial Statement (Kshs.)	Re-casted Figure (Kshs.)	Absolute Casting Error (Kshs.)
1.	Statement of comparison of budget and actual amounts - Profit before tax	8,461,059,000	8,456,060,000	4,999,000
2.	Note 11- Property, Plant and Equipment – net book value as at 30 June 2018	144,614,772,000	144,614,861,000	(89,000)
	Total	**153,075,831,000**	**153,070,921,000**	**4,910,000**

Consequently, the accuracy and completeness of the property, plant and equipment balance of Kshs.144,614,772,000 and the statement of comparison of budget and actual amounts net profit of Kshs.8,461,059,000 for the year ended 30 June 2018 could not be confirmed.

2.0 Other Income

Note 7 to the financial statements for the year ended 30 June 2018 reflects sale of passes amounting to Kshs.115,049,000. However, the management, through a notice addressed to port users dated 24 January 2014 varied the Gazetted port passes charges by making the port passes VAT inclusive without Board approval. This is contrary to Section 10(b) of Kenya Ports Authority Act CAP 391 and the Authority's Gazetted tariff book of 1 December 2012 which provides that all charges and fees in the tariff book are exclusive of VAT and which may have resulted to loss of revenue and VAT to Government as tabulated below:

Sale of passes as per Statement Kshs.	**Sale of passes as per Tarrif book Kshs.**	**VAT on sales as per Statement (Revenue Loss) Kshs.**	**VAT on sales as per Tarrif book Kshs.**	**VAT variance Kshs.**
115,049,699	133,457,650	18,407,952	21,353,224	2,945,272

Consequently, the management is in breach of the Law and its own tariff and may have occasioned loss of revenue amounting to Kshs.18,407,952 and VAT due to the Government amounting to Kshs.2,945,272 for the year ended 30 June 2018.

3.0 Establishment Expenses

3.1 Incentive Scheme

Note 9 to the financial statements for the year ended 30 June 2018 reflects incentive scheme of Kshs.29,607,000. However, payroll records availed for audit review indicated that the actual amount paid was Kshs.97,398,000, resulting to a variance of Kshs.67,791,000 which was not explained nor reconciled.

Consequently, the accuracy and completeness of incentive scheme expenses of Kshs.29,607,000 for the year ended 30 June 2018 could not be confirmed.

3.2 Overtime Allowances

Note 9 to the financial statements for the year ended 30 June 2018 reflects overtime allowances of Kshs.2,688,474,000. Included in the overtime allowances of Kshs.2,688,474,000 are third shift allowances of Kshs.352,823,224 paid during the year under audit review. Records availed for audit indicated that basic pay for third shift was Kshs1,505,224,910. However, according to the Collective Bargaining Agreement of 2018/2019 paragraph 14(e) third shift is regarded as a normal shift like the first and second shifts but due to the odd hours worked, the compensation is 15% of the basic monthly salary. Therefore, the maximum amount payable as third shift overtime allowances should have been Kshs.225,783,737, being basic pay of Kshs.1,505,224,910 per annum x 15% for the year 2017/2018. This resulted to overpayment of Kshs.127,039,487.

Consequently, the overtime allowances amounting to Kshs.127,039,487 paid to the staff during the year ended 30 June 2018 are irregular and not proper charge to public funds.

3.3 Staff Allowances

Note 9 to the financial statements reflects staff allowances of Kshs.1,936,776,000, out of which Kshs.91,844,375 was paid as follows:

	Allowance type	Amount (Kshs)
1	Pilot Trainee Allowance	11,745,000
2	Pilot Survey Fees	9,270,000
3	Pilotage Allowance	69,309,375
4	Pilot Trips	1,520,000
	Total	**91,844,375**

However, the Ministerial approval for the above allowances was not availed for audit. This is contrary to Section 11(c) of the Kenya Ports Authority Act Cap 391 of 1978 which requires Ministerial approval of major alterations of salaries and wages or other terms and conditions of service of employees.

Consequently, the propriety and validity of staff allowances of Kshs.91,844,375 for the year ended 30 June 2018 could not be confirmed.

4.0 Operating Expenses

4.1 Marine Spares

Note 10 to the financial statements for the year ended 30 June 2018 reflects marine spares expenses of Kshs.302,581,000. However, included in the amount is Kshs.9,604,552 on servicing of marine equipment and pilot boat-Nahodha II whose support invoice was issued on 29 March 2018, before Local Service Order of 4 April 2018 was issued.

Further, report of the inspection and acceptance committee was not availed for audit review nor the replaced parts produced for audit inspection.

Consequently, the propriety and validity of Kshs.9,604,552 on marine spares for the year ended 30 June 2018 could not be confirmed.

4.2 Repairs of Port Infrastructure

Note 10 to the financial statements for the year ended 30 June 2018 reflects repairs of port infrastructure expenditure of Kshs.1,028,154,000. Included in the expenditure is Kshs.120,964,062 on various works as detailed below:

	Details	Amount (Kshs.)

1	Proposed Civil Works and Rehabilitation of Containers into offices at the Authority's outer ports and Shimoni Station	25,566,339
2	Proposed fencing of parcel MN/111/528 - Takaungu	42,341,802
3	Proposed fencing of parcel MN/111/528 - Takaungu	29,004,015
4	Proposed fencing for LR no. MN/V/162 – Jomvu Kuu	24,051,904
	Total	**120,964,060**

Site visit of Takaungu and Jomvu in the month of October 2018, could not identify the work done. Further, fabricated office containers were not seen at Shimoni outer port during project verification in the same month of October 2018.

Consequently, the propriety and value for money for Kshs.120,964,060 on the four (4) projects for the year ended 30 June 2018 could not be confirmed.

5.0 Administrative Expenses

The statement of profit and loss and other comprehensive income for the year ended 30 June 2018 reflects administrative expenses of Kshs.3,450,148,000, as detailed in note 8 to the financial statements. The following observations were made:

5.1 Water Supply Services

Note 8 to the financial statements for the year ended 30 June 2018 reflects water supply services of Kshs.149,511,000. However, included in this amount is Kshs.98,442,012 whose delivery notes were not availed for audit review.

Consequently, the propriety and validity of Kshs.98,442,012 on water supply services for the year ended 30 June 2018.

5.2 Licenses and Computers

Note 8 to the financial statements for the year ended 30 June 2018 reflects licenses and computers expenditure of Kshs.710,795,000. Included in this expenditure is Kshs.298,253,000(US$ 2,953,000) for integrated security system annual maintenance, out of which Kshs.126,048,000 (US$ 1,248,000) was spent on systems spares and stock parts which was expensed instead of being treated as part of inventory in line with accounting policy disclosed under Summary of Significant Accounting Policies 4(j) which states that, 'The Authority has a policy of stocking consumable strategic spare parts for a line of operational equipment. The spares are included in the inventory.'

Consequently, the validity of Kshs.126,048,000 on licenses and computer expenditure for the year ended 30 June 2018 could not be confirmed.

5.3 Pension Scheme Expenses

As similarly reported in the previous year, the statement of profit and loss and other comprehensive income reflects administrative expenses amount of Kshs.3,450,148,000 for the year ended 30 June 2018. Included in this amount are expenses paid by the Authority on behalf of Kenya Ports Authority's Pension Scheme's administrative expenses amounting to Kshs.62,320,801 as detailed in appendix I. This was done contrary to the Treasury Circular 18/2010-52(10) dated 24 November 2010 which requires the employer to meet the set up costs for the scheme only for the first year. Although the management has indicated that a process of delinking the pension's scheme expenses from the Kenya Ports Authority Board has been initiated, the process had not been concluded as at 30 June 2018.

Consequently, it has not been possible to confirm the propriety of Kshs.62,320,801 on Pension Scheme's administrative expenses for the year ended 30 June 2018.

6.0 Property, Plant and Equipment

The statement of financial position as at 30 June 2018 reflects property, plant and equipment balance of Kshs.144,614,772,000 as detailed in note 11 to the financial statements. The following observations were made;

6.1 Alienated Properties

As similarly reported in the previous year, the statement of financial position as at 30 June 2018 reflects property plant and equipment balance of Kshs.144,614,772,000. The property plant and equipment balance included land leased valued at Kshs.6,162,840,000 and land and buildings balance of Kshs.22,354,767,000.

Information availed for audit review indicated that twenty-nine (29) properties belonging to the Authority had been invaded by third parties as outlined in the Appendix II. The Management indicated that third parties had purportedly acquired ownership rights over the properties and undertaken development. However, the Authority had filed suit in various law courts which were pending determination.

Further, out of these twenty-nine (29) properties, only nine (9) properties had values totaling to Kshs.313,400,000 while twenty (20) properties were included in the fixed assets register at nil values. Consequently, the property plant and equipment balance of Kshs.144,614,772,000 as at 30 June 2018 was therefore not fairly stated.

6.2 Land Without Title Documents

As reported in the previous year, included in the property, plant and equipment balance of Kshs.144,614,772,000 for the year ended 30 June 2018 is land and buildings valued at Kshs.22,354,767,000 owned by the Authority. Documents availed for audit review indicated that the Authority did not have title deeds for thirty-four (34) parcels of land valued at Kshs.3,478,490,000 as detailed in Appendix III.

Although the Management engaged a private consultant in the month of May 2017 to conduct verification of all its properties, the report of the consultant was not availed for audit review.

6.3 Idle Parcels of Land

As reported in the previous years, the property plant and equipment balance of Kshs.144,614,772,000 as at 30 June 2018 includes fourteen (14) pieces of land measuring about 263.47 hectares and valued at Kshs.660,932,445 which are not utilized as detailed in Appendix IV.

Although the management has indicated the proposed action plan for each parcel of land, the actions has not been executed and status remains as reported in the previous year.

6.4 Reclaimed Land

6.4.1 Excision of Part of Harbour Area

As similarly reported in the previous financial year, KPA tariff book pronounces all the tidal waters encircling the Mombasa Island as Harbour Area. However, a firm of private developers has reclaimed part of the waters encircling the island adjacent to the Kenya Ports Authority offices.

The Authority vide a letter Ref TSM/3/1/03 dated 20 September 2010, inquired from the developer the reason for reclaiming land which had not been communicated to the Authority. On 17 December 2015, the National Land Commission vide letter Ref NLC/CHAIRMAN/VOL.XIII/310 indicated to the developer that some of land parcels ref LR NO.MN/VI/4789, LR NO. VI 4180, 3819 and 3823 were reclaimed and which according to the Commission amounted to allocation and had to be sanctioned by the Commission. The Commission requested for letter of application for and approval to reclaim the land. The Commission further instructed immediate cessation of any development on the subject land and its environs until determination of the matter.

In the year under review, the Authority did not provide any indication that the National Land Commission had sanctioned reclamation of the land and that the Minister responsible for transport had permitted change of the harbor area as required by Section 34 of the Kenya Ports Authority Act Cap 391.

The developer, therefore, illegally excised part of the harbor area and has proceeded to develop the same against the instruction issued by the National Land Commission.

6.4.2 Approval of Access Road

As similarly reported in the previous financial year, the Authority's Board approved the construction of a road linking the reclaimed parcels of land by the same developer to the Port through a defined route on parcel MSA/BLOCK 1/691 which was reclaimed through dumping material from the Port. The road is restricted for use by the developer only who has installed a weighbridge and an office. The Authority indicated that the title for the reclaimed land was acquired by the developer on behalf of the Authority at the developer's cost. The reclaimed land forms part of the harbor area which could only be amended by a gazette notice by the Minister responsible for transport and not the Authority's Board or management.

The management has not explained how the developer applied for and acquired title for the irregularly reclaimed land on behalf of the Authority and who authorized the management to initiate the transaction. The Authority therefore violated Part IV Section 8(e) of Kenya Ports Authority Act, (Cap 391) of 1978 that requires the Board to ensure that 'no particular person or body is given any undue preference or is subjected to any undue disadvantage'.

In light of the foregoing, it has not been possible to ascertain the accuracy, completeness and ownership of the property, plant and equipment balance of Kshs.144,614,772,000 and that the balance is fairly stated as at 30 June 2018.

6.5 Assets Disclosed on Estimated Values

Note 11 to the financial statements for the year ended 30 June 2018 reflects equipment, motor vehicles and furniture balance of Kshs.24,007,820,000, which includes assets additions of Kshs.7,297,741,000. This includes assets additions of Kshs.1,882,918,233 in respect of assets donated by the National Government through Kenya Railways Corporation. However, no documents were provided to support the values of the donated assets.

Consequently, the accuracy and completeness of assets valued at Kshs.1,882,918,233 included in the property, plant and equipment as at 30 June 2018 could not be confirmed.

6.6 Work in Progress

Note 11 to the financial statements for the year ended 30 June 2018 reflects work in progress (WIP) balance of Kshs.26,660,435,000, out of which Kshs.16,301,660,274 is in respect of Lamu Port Project funded by National Government Grants. However, Lamu Port land costing Kshs.1,925,347,735 was not included in the property, plant and equipment balance of Kshs.144,614,772,000 as at 30 June 2018.

Further, during physical verification of the construction works at Lamu Port in the month of October 2018, it was observed that the Project Affected Persons, were still occupying the land despite receipt of full compensation. In addition, a schedule of compensation of beneficiaries provided by the Authority indicated an amount of Kshs.1,304,487,369 which varied with Kshs.1,925,347,735 which is included in the work in progress resulting to a variance of Kshs.620,860,366. The discrepancy of Kshs.620,860,366 has not been explained or reconciled.

Consequently, the accuracy and completeness of the WIP balance of Kshs.26,660,435,000 as at 30 June 2018 and the propriety of Kshs.620,860,366 paid to Project Affected Persons could not be confirmed as at 30 June 2018.

7.0 Intangible Assets

Note 13 to the financial statements as at 30 June 2018 reflects intangible assets balance of Kshs.675,383,000. Included in this balance is KWATOS marine operation module procured at a cost of Kshs.52,797,750(US$.522,750). However, as at the time of audit in the month of October 2018, the marine module was not operational despite the Final Acceptance Certificate having been signed on 8 August 2009, an indication that the system has been idle for the last nine years. Further, the Authority had continued incurring annual maintenance cost of Kshs.15,913,257 (US$ 157,557).

Consequently, the accuracy and value for money of the intangible assets balance of Kshs.675,383,000 as at 30 June 2018 could not be confirmed.

8.0 Receivables and Prepayments

8.1 Long Outstanding Receivables

As reported in the previous financial year, the receivables and prepayments balance of Kshs.14,500,357,000 as at 30 June 2018, includes Kshs.287,231,000 owed by the Ministry of Transport (Treasury/Dredgco Limited) that has been long outstanding. However, the management has fully impaired this amount owed by the National Government.

Further, included in the balance was trade receivables comprising of cargo, marine and rent receivables of Kshs.91,256,373, Kshs.827,938,040, Kshs.45,076,821 respectively. A review of the aging analysis indicated that Kshs.964,271,233 has been outstanding for more than 1 year while the Authority continued to engaged in business with the debtors.

Under the circumstances, the accuracy and completeness of the receivables and prepayments balance of Kshs.14,500,357,000 as at 30 June 2018 could not be confirmed.

8.2 Advance Lamu Creditors

Note 22(b) to the financial statements for the year ended 30 June 2018 reflects advance Lamu creditors balance of Kshs.2,703,552,000. However, this amount varied with Lamu Port advance payments balance of Kshs.1,987,206,000 disclosed under Note 28 by Kshs.716,346,000. The variance has not been explained nor reconciled.

Consequently, the accuracy and completeness of advance creditors balance of Kshs.2,703,552,000 as at 30 June 2018 could not be confirmed.

9.0 Long Term Investments

The statement of financial position as at 30 June 2018 reflects long term investments balance of Kshs.3,244,997,000 as disclosed in Note 20 to the financial statements which comprised fixed deposits of Kshs.942,342,000, equities of Kshs.29,100,000 and other investments (Chase Bank deposits) of Kshs.2,273,555,000. The following observations were made;

9.1 Equities

Note 20(b) to the financial statements for the year ended 30 June 2018 reflects equities with a nominal value of Kshs.54,346,000 and shares with nominal value of Kshs.100,000,000 in respect of Kenya National Shipping Line Limited and Kenya Ferry Services Limited respectively which were fully impaired. However, share certificates for Kenya National Shipping Line Limited availed for audit review indicated that Kenya Ports Authority owned 70,023 shares with a nominal value of Kshs.70,023,000, resulting to a variance of Kshs.15,677,000. The variance has not been explained nor reconciled. Further, the impairment of these investments is contrary to International Accounting Standard No. 39 paragraph 59 which states that, 'a financial asset or a group of financial assets is impaired and impairment losses are incurred if, and only if, there is objective evidence of impairment as a result of one or more events that occurred after the initial recognition of the asset (a 'loss event') and that loss event (or events) has an impact on the estimated future cash flows of the financial asset or group of financial assets that can be reliably estimated'.

However, Kenya National Shipping Line Limited and Kenya Ferry Services Limited are still operational.

Consequently, the accuracy of Kshs.29,100,000 equities balance as at 30 June 2018 and validity of the impairment of Kshs.154,346,000 could not be confirmed.

9.2 Other Investments

Note 20(c) to the financial statements for the year ended 30 June 2018 reflects investment in Chase Bank of Kshs.2,273,555,000 after impairment by Kshs.757,852,000. Available information indicates that the impairment resulted from a moratorium on 25% of the deposits. The information further indicated that up to 50% of deposits taken up by State Bank of Mauritius be placed in fixed deposit and savings deposits account earning 6.65% per annum. However, this material matter has not been disclosed in these financial statements.

Consequently, the accuracy and validity of other investments balance of Kshs.2,272,555,000 as at 30 June 2018 could not be confirmed.

The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAIs). I am independent of Kenya Ports Authority in accordance with ISSAI 30 on Code of Ethics. I have fulfilled other ethical responsibilities in accordance with the ISSAI and in accordance with other ethical requirements applicable to performing audits of financial statements in Kenya. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my qualified opinion.

Key Audit Matters

Key audit matters are those matters that, in our professional judgment, are of most significance in the audit of the financial statements of the current year. These matters were addressed in the context of the audit of the financial statements as a whole, and in forming my opinion thereon, and I do not provide a separate opinion on these matters. For each matter below, a description of how the audit addressed the matter is provided in that context.

1.0 Standard Gauge Railway (SGR) Loan Agreements and Payment Arrangement Agreement

Records availed for audit review indicated that the Authority entered into a 'Payment Arrangement Agreement, which referred to two loans, for the Mombasa –Nairobi Standard Gauge Railway project' with Kenya Railways Corporation (KRC), Government of Kenya and Export-Import Bank of China (China Eximbank) on 6 November 2014. The following observations were made;

1.1 Payment Arrangement Agreement – Disclosure

Under clause 1.4 of the payment arrangement agreement, Kenya Ports Authority (KPA) and Kenya Railways Corporation (KRC) were required to enter into a Long Term Service Agreement which provides under paragraph(C) of the preamble that 'the repayment of the principal and payment of the interest and fees of the loans are to be secured, inter alia, by a Long Term Service Agreement with an aim of guaranteeing a minimum amount of freight throughout the term of the agreement to be charged and received by the operator for the Project, which shall be used to secure the repayment of principal and interest'.

Further, the Long Term Service Agreement between KRC and KPA also provides under clause 7 (c) that "that KPA shall make good any short fall arising either on account of failure to consign the minimum cargo as stipulated in Schedule 1 or to remit the amount of money commensurate with the volume of cargo so consigned and shall pay to Kenya Railways Corporation such an amount as is required to make good the short fall within a period of 30 days following the completion of reconciliation exercise". In the event of default by Kenya Railways Corporation to pay China Eximbank collected freight and service charges, Kenya Ports Authority would be compelled to deposit the amount due to Kenya Railways Corporation to bank account designated by the China Eximbank.

However, this information is not disclosed in the financial statements, contrary to International Accounting Standards No. 1 paragraph 17(c) which states that, 'a fair presentation also requires an entity, to provide additional disclosures when compliance with the specific requirements in International Financial Reporting Standards is insufficient to enable users to understand the impact of particular transactions, other events and conditions on the entity's financial position and financial performance'.

1.2 Payment Arrangement Agreement – Misrepresentation

The Agreement in clause 17.5 also refers to Kenya Ports Authority as a borrower, contrary to the aforementioned details that Kenya Ports Authority's only obligation is to facilitate/guarantee minimum freight volumes to meet the requirements of the Long Term Service Agreement. Under this Clause, the Agreement provides that each of the borrowers, in this case Kenya Railways Corporation and Kenya Ports Authority agrees that any proceedings against them or any of their assets (present or future) in connection with the Agreement, no immunity from such proceedings shall be claimed by it or with respect to its assets and they irrevocably waive any right of immunity whether characterized as sovereign immunity or otherwise'.

1.3 Missing Loan Agreements

According to the agreement, the Bank is the lender while the Government of Kenya is the borrower. The loan amount consisted of preferential credit loan agreement of 11 May 2014 for Kshs.161.6 billion (US$ 1,600,000,000) and a buyer credit loan agreement of the same date for Kshs.202.36 billion (US$ 2,003,584,028) all totaling to Kshs.363.96 billion (US$.3,603,584,028), from China Eximbank. These two loans had two separate loan agreements. However, the two loan agreements were not availed for audit review.

1.4 Payment Arrangement Agreement – Risks

From analysis of the terms of the Agreements referred to above, the Authority faces the following risks;

i. The terms of the payment arrangement agreement are unfavorable to Kenya Railways Corporation, Government of Kenya and Kenya Ports Authority as regards to the dispute resolution between them and the Bank since all disputes are to be referred to China International Economic and Trade Arbitration Commission as provided in the Payment Arrangement Agreement of 6th November 2014 under paragraph 17 on Governing Law and settlement of disputes. Paragraph 17.2 states that, "It is agreed that any dispute arising out of or in connection with this agreement or any non-contractual obligation arising out of or in connection with this agreement to which China Eximbank is party or in which China Eximbank is involved, which shall not be settled by mutual agreement of the parties, shall be referred by any party to China International Economic and Trade Arbitration Commission ("CIETAC") for arbitration in accordance with CIETAC's applicable rules. The place of arbitration shall be Beijing, PRC. The language of arbitration shall be English. Each arbitration award shall be final and binding on all parties'.

ii. The Payment Arrangement Agreement substantively means that the Authority's revenue would be used to pay the Government of Kenya's debt to China Eximbank if the minimum volumes required for consignment are not met as per Schedule 1 Paragraph 7(c) of the Long Term Service Agreement between KPA and KRC which states that, 'KPA shall be responsible to make good any shortfall arising either on account of the failure to consign the minimum volume of cargo as stipulated in schedule 1 or remit the amount of money commensurate with the volume of cargo so consigned and shall pay to KRC such an amount as is required to make good the shortfall within a period of (30) calendar days following the completion of the reconciliation exercise.'

iii. Kenya Ports Authority assets are exposed to risk of takeover by the lender since the Authority signed the Payment Arrangement Agreement. Clause 17.5 of the agreement states that, 'Each of the Borrower, KRC and KPA agrees that in any proceedings against it or any of its assets (present or future) in connection with this agreement no immunity (whether characterized as sovereign or otherwise) from such proceedings shall be claimed by it or in respect to its assets(present or future) and it irrevocably waives any right of immunity (whether characterized as sovereign immunity or otherwise)'.

Consequently, it appears from the Payment Arrangement Agreements that Kenya Ports Authority's revenue and assets have expressly guaranteed the repayment of the loan amounting to Kshs.363.96 billion financing the standard gauge railway, a material fact which has not been disclosed in the financial statements for the year ended 30 June 2018.

Other Matter

1. Budget Control and Performance

1.1 Revenue Budget

During the year under review, the Authority had a total revenue budget of Kshs.42,434,260,000 against actual revenue collections of Kshs.45,314,169, resulting to net over collection of Kshs.2,879,909,000 or 7% as summarized below:

Details	Final Budget	Actual Collections for 2017/2018	Under Collection	Over Collection	%
	Kshs '000'	Kshs'000'	Kshs'000'	Kshs'000'	
Operating Revenue	41,101,260	42,738,520	-	1,637,260	4
Finance Income	884,759	1,728,950	-	844,191	95
Other Incomes	444,684	891,023	-	446,339	100
Other Gains	3,557	(44,324)	47,881	-	-
Total	**42,434,260**	**45,314,169**	**47,881**	**2,927,790**	**7**

The table able above indicates that the Authority realized 95% over collections on finance income, and 100% over collection on other income. Although the over collection on other incomes is due to accrued income on salvage operations of a ship which had run aground, no satisfactory explanation has been given for the significant variance in finance income. Further, excess collection of 7% could be a sign of under budgeting on the side of revenue, an indication that the entity has room for more revenue collection.

1.2 Expenditure Budget

During the year under review, the Authority had a total budget Kshs.33,978,200,000 while expenditure totalled Kshs.35,005,690,000 or 103%, resulting to a net over-expenditure of Kshs.1,027,490,000 or 3% as detailed below:

	Final Budget	Actual Expenditure for 2017/2018	Over expenditure	Under expenditure	
Details	**Kshs.'000'**	**Kshs.'000'**	**Kshs.'000'**	**Kshs.'000'**	**%**
Administrative Expenses	3,491,817	3,450,148	-	41,669	1
Establishment Expenses	17,890,921	17,789,138	-	101,783	1
Operating Expenses	4,846,363	4,899,622	53,259	-	1
Depreciation & Amortization	7,400,000	7,658,763	258,763	-	3
Finance cost	319,099	170,624		148,475	47
Impairment Loss	30,000	1,037,395	1,007,395	-	3,358
Total	**33,978,200**	**35,005,690**	**1,319,417**	**291,927**	**3**

The over expenditure on impairment was mainly as a result of provision for loss on cash deposits in Chase Bank which went under after the budget had been approved. The Bank's unplanned liquidation may have curtailed the Authority's ability to execute its mandate for the year ended 30 June 2018.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Conclusion

As required by Article 229(6) of the Constitution, based on the audit procedures performed, except for the matters described in the Basis for Conclusion on Lawfulness and Effectiveness in Use of Public Resources section of my report, I confirm that, nothing else has come to my attention to cause me to believe that public resources have not been applied lawfully and in an effective way.

Basis for Conclusion

1. Recruitment

Note 9 to the financial statements for the year ended 30 June 2018 and related human resource records indicate that during the year under review, the Authority recruited six hundred and thirty-five (635) new staff, comprising twenty-three (23) management positions and six hundred and twelve (612) unionisable employees. However, the management did not provide details of how the number recruited was determined and approval of the Board to recruit.

Further, no application letters were availed for audit review while ninety-eight (98) new employees were not assigned specific roles after appointment, an indication that the Authority may have recruited excess staff with no value addition.

Consequently, it has not been possible to ascertain that the recruitment of the staff was in line with establishment laws and regulations and that the same was in line with KPA establishment.

2. Gender Composition

The biodata presented for audit review indicated that the Authority had 7,012 employees as at 30 June 2018, out of whom men were 5,586 (79.7%) while women were 1,426(20.3%). This contravened the Head of Public Service Circular No OP/CAB.13/5A of 7th November 2006 which directed that 30% of recruitments and promotions should be women in order to enhance gender equity. As such the Authority is in breach of the Law.

3. Short Term Deposits

The statement of financial position as at 30 June 2018 reflects short-term deposits balance of Kshs.17,988,504,000. Records availed for audit review indicated that the management made call deposit investments in commercial banks for periods between 1-182 days during the period under audit review. This is contrary to the National Treasury Circular No.13/2017 paragraph 34 which prohibits state corporations from investing surplus funds in any financial institution without prior approval of the National Treasury other than when the investment is in Treasury bills or bonds. The management engaged in this practice despite having Kshs.3billion locked in a collapsed commercial bank with a probable loss of over Kshs.757,852,000 as disclosed in note 16 to the financial statements.

The audit was conducted in accordance with ISSAI 4000. The standard requires that I comply with ethical requirements and plan and perform the audit to obtain assurance about whether the activities, financial transactions and information reflected in the financial statements are in compliance, in all material respects, with the authorities that govern them. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

Conclusion

As required by Section 7 (1) (a) of the Public Audit Act, 2015, based on the audit procedures performed, except for the matters described in the Basis for Conclusion on Effectiveness of Internal Controls, Risk Management and Governance section of my report, I confirm that, nothing has come to my attention to cause me to believe that internal controls, risk management and overall governance were not effective.

Basis for Conclusion

1. Manual Processing of Marine Bills

The Authority has a major application system for management of its operations (KWATOS - Kilindini Waterfront Automated Terminal Operating System) and for financial management (SAP- Systems Applications and Products). However, as at the time of audit in October 2018, the marine module part of the KWATOS that was procured at a cost of Kshs 52,797,750 (USD 522,750) was not operational although the system had been fully paid for by the Authority. Due to this shortcoming, staff at marine department prepare marine records (Pilotage, Navigational Dues, Tug services, Mooring, Dockage and Fresh water for ships) manually, which are later filed per vessel and taken to finance department for billing in SAP. This exposes the marine billing to manipulation and errors.

The audit was conducted in accordance with ISSAI 1315 and ISSAI 1330. The standards require that I plan and perform the audit to obtain assurance about whether effective processes and systems of internal control, risk management and governance were operating effectively, in all material respects. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my conclusion.

Responsibilities of Management and Those Charged with Governance

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Financial Reporting Standards (Accrual Basis)] and for maintaining effective internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error and for its assessment of the effectiveness of internal control. In preparing the financial statements, management is responsible for assessing the Authority's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the applicable basis of accounting unless the management either intends to liquidate the Authority or to cease operations, or have no realistic alternative but to do so.

Management is also responsible for the submission of the financial statements to the Auditor-General in accordance with the provisions of Section 47 of the Public Audit Act, 2015.

In addition to the responsibility for the preparation and presentation of the financial statements described above, management is also responsible for ensuring that the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities which govern them, and that public money is applied in an effective manner in line with article 229(6) of the constitution of Kenya 2010.

Those charged with governance are responsible for overseeing the Authority's financial reporting process, reviewing the effectiveness of how the entity monitors compliance with relevant legislative and regulatory requirements, ensuring that effective processes and systems are in place to address key roles and responsibilities in relation to governance and risk management, and ensuring the adequacy and effectiveness of the control environment.

Auditor-General's Responsibilities for the Audit

The audit objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion in accordance with the provisions of Section 48 of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISSAIs will always detect a material misstatement and weakness when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

In addition to the audit of the financial statements, a compliance review is planned and performed to express a conclusion with limited assurance as to whether, in all material respects, the activities, financial transactions and information reflected in the financial statements are in compliance with the authorities that govern them in accordance with the provisions of Article 229(6) of the Constitution and submit the audit report in compliance with Article 229(7) of the Constitution. The nature, timing and extent of the compliance work is limited compared to that designed to express an opinion with reasonable assurance on the financial statements.

Further, in planning and performing the audit of the financial statements and review of compliance, I consider internal control in order to give an assurance on the effectiveness of internal controls, risk management and governance processes and systems in accordance with the provisions of Section 7 (1) (a) of the Public Audit Act, 2015 and submit the audit report in compliance with Article 229(7) of the Constitution. My consideration of the internal control would not necessarily disclose all matters in the internal control that might be material weaknesses under the ISSAIs. A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

Because of its inherent limitations, internal control may not prevent or detect misstatements and instances of non-compliance. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate.

As part of an audit conducted in accordance with ISSAIs, I exercise professional judgement and maintain professional skepticism throughout the audit. I also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.

- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the management.

- Conclude on the appropriateness of the management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Authority's ability to continue as a going concern or to sustain its services. If I conclude that a material uncertainty exists, I am required to draw attention in the auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my audit report. However, future events or conditions may cause Kenya Ports Authority to cease to continue as a going concern or to sustain its services.

- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

- Obtain sufficient appropriate audit evidence regarding the financial information and business activities of Kenya Ports Authority to express an opinion on the financial statements.

- Perform such other procedures as I consider necessary in the circumstances.

I communicate with the management regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that are identified during the audit.

I also provide management with a statement that I have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on my independence, and where applicable, related safeguards.

FCPA Edward R. O. Ouko, CBS
AUDITOR-GENERAL

Nairobi

17 April 2019

Appendices
Appendix I

Pension Department Expenses

Pension Department Expenses		
	Expenditure	**Kshs**
1	Basic salary	39,321,010.50
2	Overtime	2,800,228.71
3	Staff allowances	2,780,358.50
4	Norm. Staff house Allowance	8,104,983.87
5	Duty travel	1,838,445.00
6	Leave travel	926,000.00
7	Motor mileage	5,015,500.00
9	Fuel	211,039.59
12	Clean implements	121,400.32
13	Print stationary	186,005.39
15	Office incidentals	261,979.00
19	Victuals & snacks	235,060.00
20	Professional	518,789.70
Total Expenditure		**62,320,800.58**

Appendix II
Alienated Properties

	Plot No.	Financial Statement Value Kshs	Allocated to	Status	Case No./ Lawyers
1.	XLVII/112 0.7503 Acres	80m	Stone Wave Limited P.O. Box 82576 Mombasa Directors Abbasali A.G. Dossa Naushad A. Merali	Warehouses	HCCC NO. 499/01 Timamy & Co. Advocate A.B. Patel & Patel Advocates
2.	XLVII/113 0.535 Acres	31m	Supernova Properties P. O. Box 82077 Mombasa Directors Ashok L.Doshi Doshi Group of Companies	An office block has been constructed on the plot	HCCC NO. 40/05 Timamy & Co. Advocate A.B. Patel & Patel Advocates
3.	XLVII/114 0.363 Acres	19.8m	Suntania Limited P. O. Box 87270 Mombasa	A boundary stone wall has been built	HCCC NO. 40/05 Timamy & Co. Advocate A.B. Patel & Patel Advocates
4.	XLVII/115	23.2m	Freight Constructions services	Boundary wall and offices constructed	HCCC No.43/05 Timamy & Co. Advocate A.B. Patel & Patel Advocates

	Plot No.	Financial Statement Value Kshs	Allocated to	Status	Case No./ Lawyers
5.	XLVII/116	35m	Freight Constructions services	Boundary wall and offices constructed	HCCC No.43/05 Timamy & Co. Advocate A.B. Patel & Patel Advocates
6.	XLVII/117 0.558 Acres	22.9m	Nature System Limited P. O. Box 19002 Nairobi Directors Abdul-Gaffur Abdulgani Pastor Abdulgani Abdul-Gaffur Pastor	Boundary wall constructed	HCCC No. 496/01 Timamy & Company Advocates A.B.Patel & Patel Advocates
7.	XLVII/118	51.1m	TSS Grain Millers P. O. Box 85039 Mombasa	Boundary wall constructed	HCCC No.41/2005 Timamy & Company Advocates A.B.Patel & Patel Advocates
8.	XXVI/1001 0.1805 Ha	6m	Wayland Limited P. O. Box 12416 Nairobi Directors Not on company registry database Geometer Ltd – Directors Godon Wayumba , Alice Ochieng , Francis Odhiambo	KPA house occupied by OCPD Port	HCCC No. 500/01 Timamy & Company Advocates A.B. Patel & Patel Advocates
9.	XLVII/155 0.0675 Ha	44.4m	Oceanfreight (MSC) P. O. Box 80637 Mombasa	Grabbed and sold to MSC. Car Park built	As above
10.	**313.4m**				
11	XLVII/111 0.2833 Ha	0	Robert Mutiso P. O. Box 285587 Nairobi	2. No.semi-detached staff quarters. Authority’s employees in occupation	HCCC No.495/01 Timamy & Co. Advocate A.B. Patel & Patel Advocates
12	XLVII/179 0.0336 Ha	0	Akaba Investment P. O. Box 8997 Mombasa Directors Abdikarim Shigog	Construction had commenced but was stopped by a court order	HCCC No.124/01Karigithu & Company Advocates
13	1/469 0.2501 Ha	0	Hydery (P) Limited P. O. Box 82576 Mombasa	Warehouse built on plot	No court case

	Plot No.	Financial Statement Value Kshs	Allocated to	Status	Case No./ Lawyers
			Masumali G. Merali Naushad A. Merali		
14	XXVII/508 0.1278 acres	0	Essam Properties P. O. Box 82578 Mombasa Directors Masumali G. Merali Naushad A. Merali	KPA house demolished. A boundary stone wall built on the plot	HCCC No. 497/01 Timamy & Co. Advocates A.B. Patel & Patel Advocates
15	XXVI/928 0.900 acres	0	Kilifi Gardens Limited P. O. Box 82576 Mombasa Directors Masumali G. Merali Naushad A. Merali	KPA house demolished. A boundary wall built around the plot.	HCCC No. 498/01 Timamy & Company Advocates A.B. Patel & Patel Advocates
16	XLVII/149	0	Osman Taraab and Zera Taraab	Warehouses	No court proceedings
17	XLVII/150 0.1551 Ha	0	Sunnex Ent. Limited P. O. Box 82077 Mombasa Directors Ashok L.Doshi Doshi Group of Companies	Plot created from road reserve at either side of road at Dockyard and adjacent to Port fence	No court proceedings
18	XLVII/151 0.450 Ha	0	Venezia Ent. Limited P. O. Box 86029 Mombasa Directors Abdul-Gaffur Abdulgani Pasta Abdulgani Abdul-Gaffur Pasta	As above. No development	No court proceedings
19	XLVII/152 0.450 Ha	0	Venezia Ent. Limited P. O. Box 86029 Mombasa Abdul-Gaffur Abdulgani Pasta Abdulgani Abdul-Gaffur Pasta	As above	As above
20	XLVII/153 0.450 Ha	0	As above	As above	As above
21	XLVII/154 0.0450	0	As above	As above	As above
22	XLVII/162 0.0451 Ha	0	Vanezia Ent. Limited P. O. Box 86029 Mombasa	As above. Plot created from road reserve being managed by KPA.	As above

	Plot No.	Financial Statement Value Kshs	Allocated to	Status	Case No./ Lawyers
			Abdul-Gaffur Abdulgani Pasta Abdulgani Abdul-Gaffur Pasta		
23	XLVII/163 0.0531	0	Osman Hajj Talab & Zera Osman Talab P. O. Box 98142 Mombasa	As above. Plot created from railway reserve Boundary wall and buildings	Railway siding plots allocated to private individuals. No Advocates are handling these cases.
24	XLVII/164 0.500 Ha	0	As above	As above	As above
25	XLVII/165 0.0496 Ha	0	As above	As above	As above
26	XLVII/166 0.0497	0	Joseph Ngetich P. O. Box Mombasa	As above	As above
27	XLVII/167 0.0502 Ha	0	Lumda Ent. P. O. Box 20712 Nairobi. Mwenda Mbogori Lucy G. Mwenda	As above	As above
28	XLVII/168 0.0501 Ha	0	Gladys Tesot	As above	As above
29	XLVII/169	0	Not registered	As above	As above
30	I/528 & 529	0	Chembe Holdings and Musk Deer Daniel N Kihiko Abbas M Yusuf	Road reserve	Ethics & Anti-Corruption Commission

Appendix III
Pieces of Land Without Title

	Land Description	County	Value Kshs
1	Plot No. MSA/BLOCK XI/66-0.1773HA/TUDOR	Mombasa	15,000,000.00
2	Plot No. MSA/TUDOR/BLOCK XI/613 & 614-0.1771HA	Mombasa	10,000,000.00
3	Plot No. MSA/BLOCK 1/315-3.13 ACRES SHIMANZI	Mombasa	68,000,000.00
4	MSA/BLOCK 1/358 0.389 ACRES SHIMANZI	Mombasa	10,000,000.00
5	L.R. No MI/BLOCK 1/14R 7.29 ACRES (KHL) SHIMANZI	Mombasa	180,000,000.00

	Land Description	County	Value Kshs
6	Plot No.Msa/ Shimanzi/Block 1/253(254-1.4043) HA	Mombasa	60,000,000.00
7	Plot No. MSA/MBARAKI/BLOCK XLVII/155-0.4491HA	Mombasa	44,400,000.00
8	Plot No. MSA/BLOCK XLVIII/131-1.796HA-MBARAKI	Mombasa	200,000,000.00
9	Plot No. MSA/MBARAKI/BLOCK XLVIII/156-0.3024HA	Mombasa	30,000,000.00
10	Plot No. MSA/MOI AVE/BLOCK XLVII/84-0.1854HA	Mombasa	27,480,000.00
11	Plot No. MSA/LIWATONI/BLOCK XLVII/67-0.8499HA	Mombasa	84,000,000.00
12	Plot No. MSA/BLOCK XLVIII/43-3.7798HA-MBARAKI	Mombasa	373,600,000.00
13	Plot No. MSA/MBARAKI/BLOCK XLVIII/44-0.5140HA	Mombasa	50,800,000.00
14	Plot No. MSA/MBARAKI/BLOCK XLVIII/45-7.3654HA	Mombasa	728,000,000.00
15	MSA BLOCK XLVIII/164-0.2017 HA MBARAKI	Mombasa	22,500,000.00
16	MSA BLOCK XLVIII/173- LIWATONI	Mombasa	213,500,000.00
17	MSA BLOCK XLVIII/189-0.2017 HA MBARAKI	Mombasa	23,500,000.00
18	MSA BLOCK XLVIII/558-0.5539 HA MBARAKI	Mombasa	64,000,000.00
19	MSA BLOCK XLVIII/119-0.1012 HA MBARAKI	Mombasa	9,000,000.00
20	Plot No. Msa/MBARAKI/BLOCKXLVII/135-1.4314HA	Mombasa	141,400,000.00
21	Plot No. Msa/MBARAKI/BLOCK XLVII/138-0.4249HA	Mombasa	42,000,000.00
22	Plot No. Msa/MBARAKI/BLOCK XLVII/140-0.8739HA	Mombasa	86,300,000.00
23	PLOT NO. XLVII/III -0.2849 ACRES-PUTNEY BRIDGE	Mombasa	35,190,000.00
24	PLOT NO. XLVIII/121 -0.4571 Hectares-MBARAKI CLUB	Mombasa	48,900,000.00
25	PLOT NO .XLVIII/122 -0.2627 ACRES-MBARAKI CLUB	Mombasa	20,000,000.00
26	PLOT NO .BLK NO.XLVII/112 -0.7503 ACR BANDARI/W.HOUS	Mombasa	80,000,000.00
27	PL NO.BLK XLVII/113 -0.2165 ACR-BANDARI/WHITE HSE	Mombasa	31,000,000.00
28	PLOT NO.BLKXLVII/114/14 -0.1496 ACR-BANDARI/WHITE HS	Mombasa	19,800,000.00
29	PLOT NO. BLK XLVII/117 -0.2258 ACR-BANDARI/WHITE HSE	Mombasa	22,900,000.00
30	PLOT NO. BLK XLVII/118 -0.3759 ACR-BANDARI/WHITE HSE	Mombasa	51,100,000.00
31	PLOT NO .XLVII 174/77/78/79 -2.4071 ACR-B/ COLLEGE	Mombasa	453,900,000.00
32	Plot No. MSA/BLOCK XLVII/106-1.3946 HA LIWATONI	Mombasa	59,000,000.00
33	PLOT NO. I/471 BLOCK 1MSA-SHIMANZI ESTATE	Mombasa	108,000,000.00
34	LR BLOCK 15/1817 - ICD ELDORET 17.63Ha	Eldoret	65,220,000.00

	Land Description	County	Value Kshs
	Total		**3,478,490,000**

Appendix IV
Unutilized Pieces of Land

	Parcel	County	Location(Area)	Size (Ha.)	Value (Kshs)	Status
1	MSA/XLVII/ 81, 82 & 83	Mombasa	Mombasa town along Moi Avenue	0.58	84,380,000.00	Six(6) Very old and dilapidated developments
2	MN/III/528/E	Kilifi	Takaungu Area	173.21	233,783,200.00	Occupied by squatters
3	LR/9093	Kilifi	Opposite Malindi Airport	7	66,585,000.00	Occupied by squatters
4	MS/46/1	Mombasa	Likoni Area	5.07	9,000,000.00	Open field utilized for social activities by locals
5	MS/1682/I	Mombasa	Likoni Area	2.71	26,765,000.00	Occupied by squatters
6	MS/137/II	Mombasa	Mtongwe Area	2.46	21,600,000.00	Occupied by squatters
7	LR/16121	Kwale	Shimoni Area	2.50	9,325,550.00	Vacant
8	MV/V1614	Mombasa	Kibarani Area	2.50	18,820,000.00	Occupied by squatters
9	MN/V/1683	Mombasa	Miritini Area	1.02	6,288,695.00	Vacant
10	MN/V/196	Mombasa	Jomvi Kuu Area	25.50	63,000,000.00	Vacant
11	LR 24588	Busia	Malaba town	9.181	19,650,000.00	Vacant and Fenced
12	MN/17944/4 5	Kisumu	Kisumu town	2.40	8,500,000.00	Being cultivated by locals
13	MN/VII/3794	Mombasa	Chaani Area	12.24	90,735,000.00	Occupied by squatters
14	MN 5325	Taita-Taveta	Taita Taveta town	17.10	2,500,000.00	Vacant and fenced
	Totals			**263.471**	**660,932,445**	