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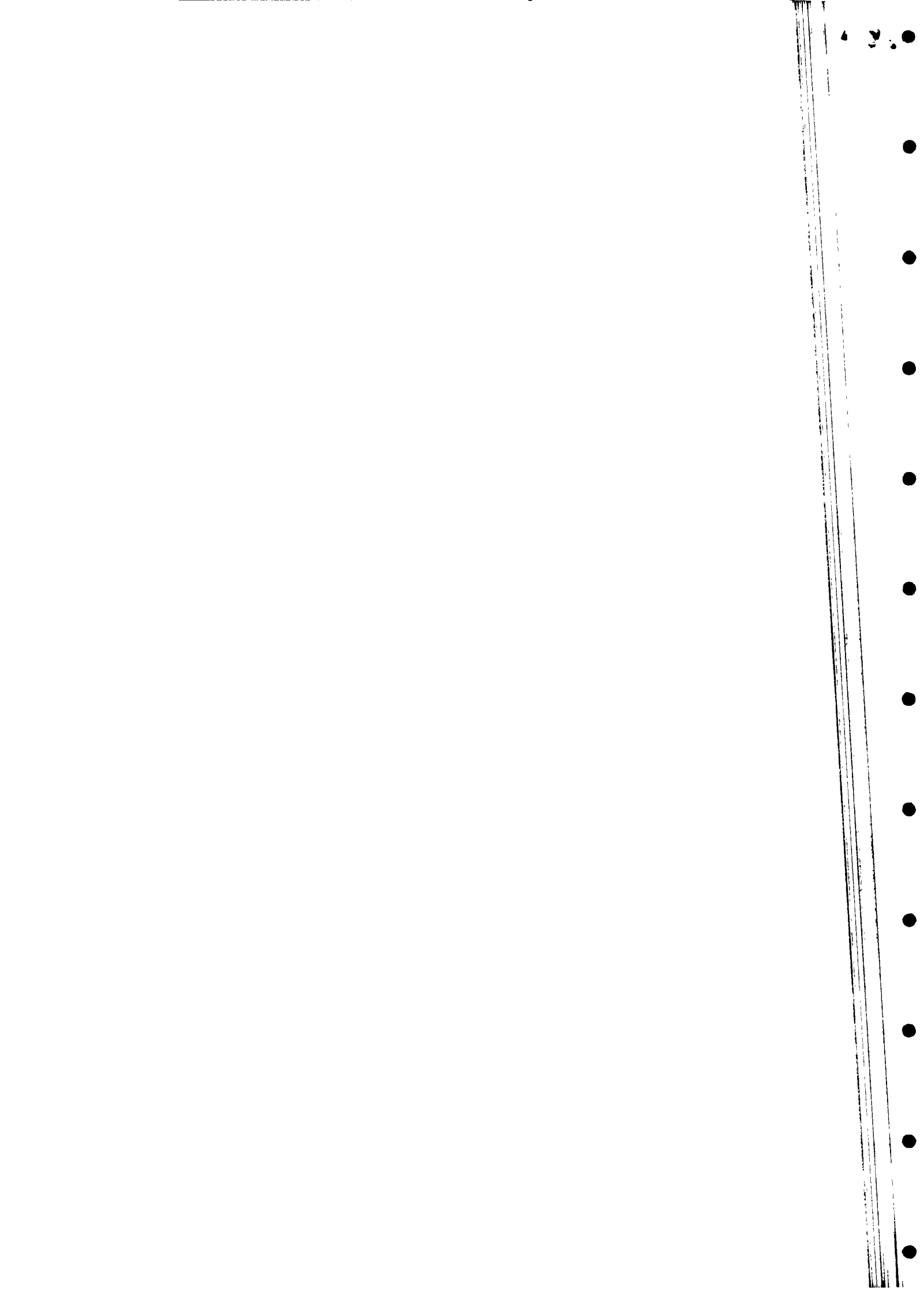


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# SPECIAL AUDIT REPORT OF THE AUDITOR-GENERAL ON

## SUPPLEMENTARY BUDGET EXPENDITURE, INCLUDING WITHDRAWALS UNDER ARTICLE 223 OF THE CONSTITUTION OF KENYA, 2010

NOVEMBER 2023



## Table of Contents

FOREWORD .....	1
1.0 EXECUTIVE SUMMARY .....	3
2.0 INTRODUCTION AND BACKGROUND INFORMATION .....	26
Introduction.....	26
Background Information.....	27
The Annual Budget Process .....	28
The Supplementary Budget Process .....	31
Institutions and Stakeholders in the Budget Process .....	32
Audit Objective .....	33
Terms of Reference .....	33
Thematic Areas Covered in the Audit Report.....	34
Mapping the Terms of Reference to the Key Thematic Areas Covered in the Audit .....	34
Scope of the Audit .....	35
Methods Used to Gather Audit Evidence .....	36
Reporting Structure .....	37
3.0 AUDIT FINDINGS .....	38
I. Supplementary Budget Analysis.....	38
II. Variance Analysis on Supplementary Budgets .....	43
III. Compliance with Laws, Regulations and Policies in Supplementary Budget .....	45
IV. Value for Money on Expenditure Incurred Under Article 223 of the Constitution.....	47
a) The National Treasury.....	47
b) The Agriculture Sector .....	50
c) The Public Service, Labour and Social Protection Sector.....	53
d) The Health Sector .....	57
e) The Education Sector.....	66
f) The General Economic and Commercial Affairs Sector.....	76
g) The Energy, Infrastructure and Information and Communication Technology .....	80
V. Risks and Policy Gaps in the Supplementary Budget Process .....	84
a) Lack of Guidelines for Additional Funding Under Article 223(1)(a) of the Constitution .....	84
b) Increase in Requests for Additional Funding Under Article 223(1)(a) of the Constitution as Compared to the Contingencies Fund .....	85

c)	The National Treasury did not have Guidelines Detailing the Criteria for Approval of Requests for Additional Funding .....	87
d)	Lack of Guidelines on How to Use the Information Provided by Ministries, Departments and State Agencies in the Template for Reporting Actual Expenditure Under Article 223 of the Constitution .....	88
e)	Lack of Guidelines on Withdrawals Under Article 223 of the Constitution not Approved by the National Assembly .....	89
f)	Lack of Public Participation in the Supplementary Budget Process .....	90
g)	Lack of Specific Details on Requests for Additional Funding Under Article 223 of the Constitution .....	91
h)	Conflict in the Law on the Interpretation of the 10% Limit for Supplementary Appropriation .....	92
4.0	IRREGULARITIES AND RECOMMENDATIONS .....	94
5.0	APPENDICES .....	104
	Appendix 1: Analysis of Percentage Deviation Per Vote Head for Ministries, Departments and State Agencies .....	104
	Appendix 2: List of Millers and Amount of Probable Interest .....	110
	Appendix 3: Quantity of Fertilizer Delivered in the Sampled Counties .....	111
	Appendix 4: Medical Equipment Not in Working Condition .....	112
	Appendix 5: List of Health Facilities That Were Supplied with CT Scan Machines .....	114
	Appendix 6 : Analysis of Expenditure from the Contingencies Fund .....	115

### List of Tables

Table 1:	Trend of Request for Additional Funding Under Article 223 of the Constitution by Sector .....	41
Table 2:	Comparison of Funds Withdrawn Under Article 223 of the Constitution to Additional Funds Granted Through Supplementary Estimates .....	42
Table 3:	Variations Between Additional Funding Approved by The National Treasury and the Controller of Budget .....	44
Table 4:	Variations Between Additional Funding Approved by The National Treasury and Actual Expenditure Incurred by Ministries, Departments and State Agencies .....	45
Table 5:	Percentage Deviation on the Overall National Budget .....	46
Table 6:	Ministries, Departments and State Agencies with Expenditure Exceeding the 10% Threshold .....	47
Table 7:	Details on Purchase of Shares from Financial Institutions .....	48
Table 8:	Unverified Miller Transactions .....	51
Table 9:	Amounts Allocated for Relief Food .....	54
Table 10:	Medical Equipment Not in Use .....	59
Table 11:	Summary of Equipment Not in Working Condition .....	59
Table 12:	Equipment Not in Use Due to Lack of User Training .....	61

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

Table 13: Equipment Delivered but Not Yet Installed.....	64
Table 14: Details of Expenditure Incurred on Fuel Subsidy .....	81
Table 15: General Request for Funding Under Article 223 of the Constitution .....	92
Table 16: Irregularities, Weaknesses and Recommendations.....	94

### **List of Figures**

Figure 1: Analysis of Supplementary Budget Changes.....	39
Figure 2: Trend of Request for Additional Funding Under Article 223 of the Constitution.....	40
Figure 3: Comparison of Funds Withdrawn Under Article 223 of the Constitution to Additional Funds Granted Through Supplementary Estimates .....	43
Figure 4: The Flow of Financial Inclusion Funds.....	79
Figure 5: Comparison of Funds Withdrawn Under Article 223(1)(a) of the Constitution and the Contingencies Fund .....	86
Figure 6 : Illustration of the Template for Reporting Actual Expenditure Under Article 223 of the Constitution.....	89

### **List of Pictures**

Picture 1: Stalled Construction of the Africities Convention Centre in Kisumu County.....	57
Picture 2: Fully Installed Oxygen Plants Not in Use .....	60
Picture 3: Medical Equipment in Storage .....	62
Picture 4: Classrooms with Poorly Constructed Floors .....	68
Picture 5: Incomplete Classrooms.....	69
Picture 6: Classrooms Used for Storage .....	70
Picture 7: The OI Kalou Cold Storage Facility Not in Use.....	77

## List of Abbreviations

Abbreviation	Full Description
ASAL	Arid and Semi-Arid Land
BOQ	Bill of Quantities
COVID	Corona Virus Disease
CRH	County Referral Hospital
EXIM	Export-Import
FY	Financial Year
JSS	Junior Secondary School
KCB	Kenya Commercial Bank
KPC	Kenya Pipeline Company
MDA	Ministries, Department and State Agencies
MTRH	Moi Teaching and Referral Hospital
NA	National Assembly
NCPB	National Cereals and Produce Board
NDMA	National Management Drought Authority
NEMIS	National Education Management Information System
NOFBI	National Optic Fibre Backbone Infrastructure Project
OCOB	Office of the Controller of Budget
SEQIP	Secondary Education Quality Improvement Project
TNT	The National Treasury
TSA	Transport and Storage Agreement
TSC	Teachers Service Commission
TTI	Technical Training Institute
TVET	Technical and Vocational Education and Training Institutions

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

## FOREWORD

This special audit report responds to a request by the Public Accounts Committee of the National Assembly through a letter Ref: NA/DAASC/PAC/2023/106 dated 26 April, 2023 to the Auditor-General to undertake a special audit on all expenditure incurred under Article 223 of the Constitution for the financial year 2022/2023.

This special audit is also part of Kenya's fulfilment to the implementation of a structural benchmark under the International Monetary Fund (IMF) Extended Credit Facility Program which required the Auditor-General to undertake a special audit on the supplementary budget expenditure for the last three years including withdrawals under Article 223 of the Constitution.

The objective of the special audit therefore was to determine the mechanism, efficiency and effectiveness of supplementary budgeting process, including funds issued under Article 223 of the Constitution, with a view to provide proper accountability and transparency on the supplementary budget spending by the various Ministries, Departments and State Agencies and to establish potential risks.

The special audit intended to cover the aforementioned activities for a period of ten (10) years from the financial year 2013/2014 to the financial year 2022/2023, to establish trends and inform on policy, however, this special audit only obtained records for activities for a period of nine (9) years between the financial year 2014/2015 to the financial year 2022/2023, as there was no credible information provided for audit verification for the financial year 2013/2014.

In executing this special audit, we were guided by Article 229 of the Constitution of Kenya, where the Auditor-General is mandated to audit and report on the use of public resources by all entities funded from public funds. Specifically, Article 229(6) requires the Auditor-General to confirm whether or not public resources have been applied lawfully and in an effective way. Further, Article 254(2) requires that at any time, the President, the National Assembly or the Senate may require a commission or holder of an independent office to submit a report on a particular issue. In addition, Section 37 of the Public Audit Act, 2015, provides that the Auditor-General may, upon request by Parliament, conduct forensic audits to establish fraud, corruption or other financial improprieties. It is on these legislative grounds that the Office of the Auditor-General undertook this special audit and report therewith as provided for under Section 39 of the of the Public Audit Act, 2015.

The Office of the Auditor-General has been continuously improving on the effectiveness and quality of the audit process to ensure that the results of our audits and the recommendations thereof are credible, relevant, reliable and of value to our


auditees. This is geared towards influencing improved decision making and positive impact on the lives and livelihoods of citizens and our stakeholders.

Provision of quality and effective audit services and confirmation of the lawfulness and effectiveness in programme implementation requires comprehensive scrutiny and evaluation of supporting documents. Most critical is the physical confirmation of the existence to give evidence on utilization of public funds for projects or programmes implemented throughout the Country. To achieve this requires an independent and well-resourced audit.

I therefore wish to sincerely appreciate the National Assembly through the various oversight Committees for the confidence they have portrayed towards my Office and entrusting me with the duty to ensure that public resources are utilized for the intended purposes. Further, I also appreciate the International Monetary Fund (IMF) and the Development Partners for the confidence they have accorded our Country and entrusting the Government with resources to deliver on its promises to the public.

I also thank the Principal Secretary in charge of The National Treasury and his team for facilitating the provision of numerous records and documentations which formed the basis of this special audit. Special appreciation to all the Accounting Officers of the State Departments and State-Owned entities involved in this exercise as well as County Government Officers who in one way or another facilitated my Officers through provision of records and information as well as accompanying them for field inspections.

Finally, I wish to sincerely thank my Officers for their commitment, passion and professionalism in carrying out their duties despite the challenges posed by lack of adequate funds. Special appreciation goes to the team that undertook the audit and prepared this Special Report.

  
CPA Nancy Gathungu, CBS  
AUDITOR-GENERAL

**Nairobi**

**29 November, 2023**

## **1.0 EXECUTIVE SUMMARY**

### **Introduction and Background**

- 1.1 The Public Accounts Committee of the National Assembly requested the Auditor-General through their letter Ref: NA/DAASC/PAC/2023/106 dated 26 April, 2023 to undertake a special audit on all expenditure incurred under Article 223 of the Constitution for the financial year 2022/2023. The letter indicated that the National Government spent a total of Kshs.130billion in the financial year 2022/2023 on account of expenditure relating to fuel stabilization, flour and fertilizer subsidies, provision for relief food, and enhanced security operations.
- 1.2 The special audit is also part of the implementation of structural benchmarks for the Kenya International Monetary Fund (IMF) Extended Credit Facility Program which required the Auditor-General to undertake an audit on the supplementary budget expenditure for the last three (3) years, including withdrawals under Article 223 of the Constitution.
- 1.3 To execute these requests, the Auditor-General expanded the scope of the special audit to cover ten (10) years, from 2013/2014 to 2022/2023 financial years. However, it was not possible to obtain credible information for the financial year 2013/2014. The special audit report therefore covers nine (9) years, between 2014/2015 to 2022/2023 financial years.

### **Audit Objective**

- 1.4 The objective of the special audit was to determine the mechanism, efficiency and effectiveness of supplementary budgeting process, including funds issued under Article 223 of the Constitution, with a view to provide proper accountability and transparency on the supplementary budget spending by the various Ministries, Departments and State Agencies and to establish potential risks.

## Terms of Reference

- 1.5 The special audit was guided by the following Terms of Reference (TORs): -
- i) To analyze the budgeting and procurement process in relation to supplementary expenditure incurred under Article 223 of the Constitution;
  - ii) To ascertain the authenticity, effectiveness, and nature of supplementary expenditure incurred;
  - iii) To establish whether approval of the monies used was sought either within two months of the first disbursement or at least two weeks after the resumption of the House from a recess as contemplated under Article 223 (3) of the Constitution.
  - iv) To establish whether the supplementary expenditure incurred was subject to a maximum of ten percent (10%) of the approved estimates of that particular financial year on each vote;
  - v) To establish whether the process of approval was lawful, transparent, accountable, and without collusion, conflict of interest, or abuse of power;
  - vi) To ascertain the value for money in all the supplementary expenditure incurred; and
  - vii) Any other matter that may interest the Auditor-General in the supplementary expenditure.

## Thematic Areas Covered in the Audit Report

- 1.6 The Terms of Reference (TORs) were further classified in five (5) key thematic areas, namely: -
- i) Supplementary budget analysis;
  - ii) Variance analysis on supplementary budgets;
  - iii) Compliance with laws, regulations and policies in the supplementary budget process;
  - iv) Value for money; and
  - v) Risks and policy gaps.

### Audit Scope

- 1.7 The audit reviewed supplementary budgets, including withdrawals under Article 223 of the Constitution, for the financial years 2014/2015 to 2022/2023. The team examined the activities of The National Treasury, the Controller of Budget, the National Assembly, and Ministries, Departments and State Agencies (MDAs) that incurred expenditure under supplementary budgets, including withdrawals under Article 223 of the Constitution.

### Limitation of Scope

- 1.8 The special audit team was not able to obtain credible information for the financial year 2013/2014 in order to review and report on the expanded scope of the special audit of ten (10) years from 2013/2014 to 2022/2023 financial years; and
- 1.9 The audit was not provided with information relating to The National Treasury expenditure of purchase of shares from the Eastern and Southern African Trade Development Bank, Africa-Export Import Bank (AFREXIMBANK) and Jamhuri Holdings Limited.

### Audit Approach

- 1.10 A sample of twenty-seven (27) counties was selected from the audit population. Document review, interviews, analytical review, and physical inspections were used to gather audit evidence.

### Summary of Audit Findings

#### I. Supplementary Budget Analysis

##### a) Analysis of the Approved Budget Estimates and Supplementary Budgets

- 1.11 Supplementary budgets are the in-year budgetary adjustments for different government programmes under the various Ministries, Departments and State Agencies (MDAs). These adjustments can have a significant impact on the funding of key priorities. Every financial year, The National Treasury

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure and Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

prepares supplementary budgets and the National Assembly approves the expenditure without public participation.

- 1.12 Further, expenditure that would have otherwise received scrutiny by the National Assembly is approved post facto. Based on these changes, one would not be sure of the budget until the last supplementary is approved. This undermines the budgeting process as envisaged in the Constitution. The Government has passed two (2) supplementary budgets in each of the last nine (9) financial years, except in the financial year 2019/2020 where a third supplementary budget was passed.

#### **b) Analysis of Withdrawals Under Article 223 of the Constitution**

- 1.13 Document review and analysis of information from The National Treasury on additional expenditure funded through Article 223 of the Constitution of Kenya, revealed that there has been a gradual increase in requests for funding under Article 223 of the Constitution. From an amount of Kshs.1.10billion requested in the financial year 2014/2015 to Kshs.147.39billion in the financial year 2022/2023, representing a percentage increase of 13,299% over the past nine (9) years.
- 1.14 Analysis of additional funding approved in the Supplementary Estimates against the funds withdrawn under Article 223 of the Constitution indicates that the National Government had already spent between 0.4% and 67.8% of the funds during the aforementioned period before seeking approval from the National Assembly.

#### **II. Variance Analysis on Supplementary Budgets**

- 1.15 Analysis of information on additional funding granted under Article 223 of the Constitution revealed that there were requests by five (5) MDAs that were approved by the Controller of Budget but were not disclosed in the information submitted by The National Treasury. The requests amounted to Kshs.5.13billion for recurrent expenditure and Kshs.2.81billion for development expenditure.

*al Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including  
awals Under Article 223 of the Constitution of Kenya, 2010*

- 1.16 Further analysis of the approved additional funding under Article 223 of the Constitution revealed that the records maintained at The National Treasury differed with the actual expenditure incurred by MDAs. This implies that MDAs incurred expenditure over and above the amount approved by The National Treasury as additional funding granted under Article 223 of the Constitution.

### **III. Compliance with Laws, Regulations and Policies in Supplementary Budget**

#### **a) The 10% Threshold was not Exceeded on the Overall National Budget**

- 1.17 The special audit revealed that the expenditure under Article 223 of the Constitution was within the ten percent (10%) threshold set in the Constitution for eight (8) years. This was with the exception of the financial 2014/2015 where the threshold was surpassed by 17.03%.

#### **b) Expenditure Vote Heads Exceeded the 10% Threshold in Supplementary Budgets**

- 1.18 Analysis of Ministries, Departments and State Agencies expenditure per Vote Head level revealed that there were instances when the original budgets varied by more than 10% for the nine (9) year period under review. The notable instances were in the financial year 2021/2022 where nineteen (19) MDAs exceeded the 10% threshold by a range of 10.09% to 2,069.07% and for the financial year 2022/2023, where sixteen (16) MDAs exceeded the 10% threshold by a range of 10.29% to 914.96%. This is contrary to Regulation 40(9) of the Public Finance Management (National Government) Regulations, 2015 which states that in approving any estimates under Section 43 and Section 44 of the Act, the National Assembly approval shall not exceed ten (10) percent of the approved budget estimates of a program or Sub-Vote unless it is for an unforeseen and unavoidable need as defined in Section 21 of the Act.

#### **IV. Value for Money on Expenditure Incurred Under Article 223 of the Constitution**

##### **a) Purchase of Shares by The National Treasury**

- 1.19 During the financial year 2022/2023, the Government of Kenya, through The National Treasury acquired shares valued at Kshs.12,506,539,749 being Kshs.1,296,754,668, Kshs.5,013,200,450 and Kshs.6,196,584,631 from the Eastern and Southern African Trade Development Bank, Africa-Export Import Bank (AFREXIMBANK) and Jamhuri Holdings Limited, respectively.
- 1.20 The total amount of Kshs.12,506,539,749 was withdrawn under Article 223 of the Constitution. Requests for information from the Banks' Headquarters were either declined or not responded to. It was therefore not possible to confirm the ownership of the shares acquired and to determine whether there were any benefits that may have accrued to the Government of Kenya for the purchase of the said shares.
- 1.21 In particular, review of the National Assembly's Report on the Supplementary Estimates 1 for financial year 2022/2023 indicated that there was no justification for acquiring Telkom Kenya Limited shares under Article 223 of the Constitution and that there was no reason why the payment could not be budgeted for in the normal budget process. As a result, the amount of Kshs.6,196,584,631 paid for the acquisition of Telkom Kenya Limited shares was not approved by the National Assembly.

##### **b) Disbursement of Loan to Kenya Airways PLC Without a Valid Loan Agreement**

- 1.22 During the financial years 2021/2022 and 2022/2023, the Government of Kenya (GOK), through The National Treasury, disbursed a shareholder loan amounting to Kshs.16,270,000,000 to Kenya Airways PLC. Review of the loan process revealed that the company did not open a GOK loan designated account, which led to commingling of funds by Kenya Airways PLC.

1.23 Further, the shareholder loan agreement had not been signed by the Government and Kenya Airways PLC as at the time of disbursing the funds. The National Treasury failed in its fiduciary role by releasing public funds without an effective mechanism of recovery, while Management of Kenya Airways PLC failed to act in good faith by not complying with the agreed covenant clauses thereto.

**c) The Sifted Maize Flour Subsidy Programme**

1.24 The Sifted Maize Flour Subsidy Programme was implemented in the month of August 2022. The National Treasury approved an amount of Kshs.4billion under the programme. One hundred and twenty-nine (129) millers signed contracts, but only one hundred and sixteen (116) millers participated in the Programme.

1.25 Document review of invoices from the sixty-seven (67) sampled millers revealed that they supplied subsidized maize flour valued at Kshs.5,124,869,649, out of which an amount of Kshs.2,498,828,880 had been paid, leaving a balance of Kshs.2,626,040,768 as pending bills. The contract stated that failure by the Government to remit the monies on time shall result in the miller having to raise an invoice for interest on the monies outstanding and at the government rate of interest, accruing from the first day of default. Analysis of the pending bills owed to the sampled millers indicated that the unpaid amount of Kshs.2,626,040,768 had accumulated a probable interest of Kshs.355,055,101 as at 31 October, 2023.

1.26 Interviews with the sampled millers revealed that the objective of the sifted maize flour subsidy programme of mitigating the high cost of maize flour was not met as there was no mechanism of ensuring that the subsidized maize flour was sold to the final consumers at the subsidized price.

**d) The Fertilizer Subsidy Programme**

1.27 The Government, through the Ministry of Agriculture and Livestock Development (MALD), launched the fertilizer e-subsidy programme in

September, 2022. In the financial year 2022/2023, The National Treasury approved Kshs.7,493,923,200 for the programme.

- 1.28 The special audit sampled 55 (fifty-five) fertilizer depots in seventeen (17) counties. The audit revealed that the fertilizer had been distributed to farmers across the sampled counties. However, the audit revealed that farmers did not effectively benefit from the program as the distribution of the fertilizer was not in time for the planting season.
- 1.29 Further, the audit revealed that staff had challenges using the ERP - Mezzanine system that was used for distribution of fertilizer. The data captured in the ERP - Mezzanine system did not align to the records maintained in the depots; this was due to varied understanding on the operation of the ERP - Mezzanine system.

**e) Distribution of Relief Food**

- 1.30 During the 2016/2017, 2017/2018, 2021/2022 and 2022/2023 financial years, a total of Kshs.21,359,088,000 was withdrawn under Article 223 of the Constitution for relief assistance to emergency, disaster and drought affected persons in the Country. The audit team sampled thirty-four (34) Sub-counties. The audit revealed that there were minimal guidelines on relief food distribution, failure to prepare and submit returns on food distribution, failure to fund authority to incur expenditure at the county level and incomplete distribution lists.

**f) Delay in the Completion of the Africities Conference Centre in Kisumu County**

- 1.31 Africities is the United Cities and Local Governments of Africa's (UCLG- Africa) flagship Pan-African event that is held every three years in one of the five regions of Africa. The Ministry of Devolution was allocated an amount of Kshs.250,000,000 for the construction of the Africities Convention Centre in the financial year 2021/2022.

1.32 Physical inspection carried out in the month of September, 2023 revealed that the works on the exhibition centre was ongoing while works on the Amphitheatre had stalled. The project was behind schedule and the Management attributed the delay to lack of funding. As at the time of the audit, the project was not complete, nine (9) months after the expiry of the extension period, delaying service delivery.

**g) Supply of Medical Equipment and Associated Services to Public Health Institutions**

1.33 The Governments of Kenya and France signed a Financial Protocol of Euro32,167,787 on 27 August, 2020 for supply of medical equipment to cater for emergency response to fight COVID-19 and to fight maternal and infant mortality. The Ministry of Health was granted an amount of Kshs.247,082,750 as part payment for the equipment in the financial year 2022/2023.

1.34 The special audit sampled seventeen (17) health facilities and established that equipment valued at Euro.4,477,664.37, equivalent to Kshs.555,230,381 were not in use due to various reasons such as hospitals lacking buildings and the required infrastructure to install the equipment while some of the equipment had broken down. This indicates that the project had implementation challenges and was not fully enhancing service delivery to citizens.

1.35 Further, the sampled hospitals had faulty equipment valued at Euro1,496,378.20, equivalent to Kshs.185,550,897. In addition, equipment worth Euro1,279,212.97, equivalent to Kshs.155,803,495 were yet to be installed as at the time of the special audit.

**h) Supply of Computed Tomography (CT) Scans to Health Facilities**

1.36 The National Government, through the Ministry of Health, equipped thirty-seven (37) health facilities with Computed Tomography (CT) scans. In the financial year 2017/2018, The National Treasury granted an additional funding of Kshs.1,740,000,000 to the Ministry of Health, as advance payment for the project.

1.37 Physical inspection in twenty-one (21) hospitals revealed that the Computed Tomography (CT) scans have greatly improved the accessibility of health services to the public. The audit revealed that service contracts for CT scan machines in six (6) of the sampled hospitals had expired.

1.38 Further, in four (4) hospitals, CT scan machines had Uninterrupted Power Supply (UPS) batteries which drained out frequently. Four (4) hospitals experienced internet connectivity challenges that interrupted service delivery. In addition, six (6) CT scan machines had broken down or other supporting equipment were not working.

**i) The Competency Based Curriculum Classroom Construction Project**

1.39 The focus of the Competency Based Curriculum (CBC) Classrooms Construction Project was to transition learners from the Primary Level to the Junior Secondary Level. On 22 October, 2021, the Head of Public Service directed The National Treasury to appropriate to the Ministry of Education an amount of Kshs.2billion for the construction of over ten thousand (10,000) classrooms in secondary schools across all Counties in the Country.

1.40 The special audit sampled two hundred and fifteen (215) secondary schools in twenty-seven (27) Counties that had been funded for construction of CBC classrooms. Physical inspection of the CBC classrooms revealed that there was poor workmanship in classrooms, there were nine (9) incomplete classrooms at the time of the audit and thirty (30) classrooms were not in use.

**j) Capitation of Grade Seven (7) Learners in Junior Secondary Schools**

1.41 The State Department for Early Learning and Basic Education was allocated an amount of Kshs.13,512,377,184 for capitation of Grade Seven (7) learners who were expected to transition to Junior Secondary Schools (JSS) with effect from 30 January, 2023. The audit special audit sampled three hundred and twelve (312) Junior Secondary Schools in twenty-seven (27) counties.

1.42 Capitation of Grade 7 learners in JSS was successful in many of the sampled schools. However, the audit established that 187 out of the sampled 312 Junior

Secondary Schools had students that did not receive capitation. The actual enrolment of the 187 JSSs was 29,653 learners, however, they received capitation for 22,313 learners, leaving 7,340 learners without funding. Further, eight (8) schools did not receive the capitation.

**k) The Secondary Education Quality Improvement Project**

1.43 The Government of Kenya partnered with the World Bank in the implementation of the Secondary Education Quality Improvement Project (SEQIP). The objective of the project was to improve student learning and transition from primary to secondary education in the targeted areas. The State Department for Early Learning and Basic Education was allocated an additional funding of Kshs.4,121,665,433 under Article 223 of the Constitution to cater for the implementation of SEQIP.

1.44 The audit special audit sampled forty (40) schools that were funded under the project for improving school infrastructure. The sampled schools had been funded for the construction of new classrooms and laboratories in secondary schools, and pit latrines in primary schools, among other activities.

1.45 Physical inspection revealed that classes under the project had not been completed and were therefore not in use. In addition, some classes had been completed but had not yet been handed over, while some had stalled. Laboratories were also incomplete. The project has therefore not translated to improved student learning in the targeted areas.

**l) Equipping of Technical and Vocational Education and Training Institutions**

1.46 On 25 May, 2016, the Government of Kenya, through the then Ministry of Education, Science and Technology, collaborated with the Chinese Government to equip TVET institutions. The project was to supply the institutions with equipment and training facilities for a contract sum of USD158,785,183. The financing agreement included an advance payment of

USD23,817,771, equivalent to Kshs.2,453,230,413 which was funded through Article 223 of the Constitution in the financial year 2017/2018.

- 1.47 Under the project, Kenya's TVETs were to receive modern equipment, after-sale service, as well as centralized training to trainers and institutions that benefited under the project. The audit special audit sampled forty (40) TVET institutions that were supplied with equipment through the project.
- 1.48 The following observations were made; Eight (8) TVETs were not utilizing the equipment because of lack of the required 3 phase power voltage. Further, broken-down machines were idle due to lack of maintenance and service agreements. In addition, the equipment was delivered in lots with no value attached to each equipment, hence it was not possible to establish the value of the equipment from the fixed assets registers provided.

**m) Cold Storage Facilities Not in Operation**

- 1.49 During the financial year 2019/2020, the Micro and Small Enterprises Authority (MSEA) commenced construction of cold storage and processing facilities in Nyandarua, Meru and Kisii Counties. The objective of the cold storage facilities was to end post-harvest losses of potatoes. The audit sampled two (2) cold storage facilities.
- 1.50 The OI Kalou Cold Storage Facility, with a capacity of 240 tonnes of potatoes, was procured at a cost of Kshs.92,470,487. The Timau Cold Storage Facility, with a capacity of 240 tonnes of potatoes, was procured at a cost of Kshs.92,564,230. However, at the time of physical inspection in September, 2023, the cold storage facilities were not in operation. There was therefore no value for money for the expenditure incurred on the cold storage facilities.

**n) The Financial Inclusion Fund**

- 1.51 The Financial Inclusion Fund was established through a Legal Notice No.213 of 23 November, 2022 under the Public Finance Management (Financial Inclusion Fund) Regulations, 2022. The objective and purpose of the Fund was to innovate, develop and deploy bottom of the pyramid financial services

and products that are affordable, accessible and appropriate for the unserved and underserved persons, including credit, saving, insurance and investment products.

1.52 The State Department for Co-operatives received an amount of Kshs.12billion from The National Treasury for the Financial Inclusion Fund's seed capital, during the financial year 2022/2023. Subsequently, the State Department for Co-operatives disbursed an amount of Kshs.9.46billion and Kshs.2.54billion to the Kenya Commercial Bank and Family Bank, respectively, for onward transmission to three (3) telecommunication companies (Safaricom, Airtel and Telkom) for onward lending to eligible persons.

1.53 Records provided by KCB indicated that an additional amount of Kshs.1,000,000,000 was received from Family Bank, bringing the total funds at KCB Bank to Kshs.10,460,000,000. Out of the total amount received by KCB, the amounts of Kshs.9,042,979,000, Kshs.540,349,661 and Kshs.51,692,891 were transmitted to Safaricom, Airtel and Telkom, respectively, all totalling to Kshs.9,635,021,552, leaving a balance of Kshs.824,978,448 in the KCB account. The balance at KCB remains unutilized thereby undermining the urgency with which the amount was sought under Article 223 of the Constitution.

**o) Stabilization of Refined Petroleum Pump Prices**

1.54 Section 4 of the Petroleum Development Levy Order No. 24, which came into effect on 15 July, 2020, provides that the levy shall also be used for matters relating to the development of the oil industry, including to stabilize local petroleum pump prices in instances of spikes occasioned by high landed costs above a threshold determined by the Energy and Petroleum Regulatory Authority. In April, 2021, the Government of Kenya (GoK) introduced petroleum pump price stabilization mechanism to cushion its citizens from the high pump prices following escalation of global prices post COVID-19 recovery. Price stabilization was implemented in the petroleum pump pricing cycle starting on 15 April, 2021.

- 1.55 Review of financial records for the State Department of Petroleum for the financial years 2020/2021, 2021/2022 and 2022/2023 revealed that an amount of Kshs.139,149,629,785 was incurred in the fuel subsidy programme.
- 1.56 Further, a Special Report of the Auditor-General on Stabilization of Refined Petroleum Pump Prices for the period between 01 April, 2021 to 30 June, 2022 tabled in the National Assembly on 09 December, 2022 revealed that an amount of Kshs.5,324,796,940 was paid as stabilization for advance sales of local volumes. However, there was no legal framework for advance payment and there was no evidence of recovery of this advance in subsequent payments to the oil marketing companies. Further, an amount of Kshs.2,205,915,489 was paid as administration costs for the period ended 30 June, 2023. However, there was no justification for including the stabilization administration costs in the pump price build up.
- 1.57 In addition, the audit established that approved demurrage charges were to be passed to the consumer through pump price adjustment. The main causes of demurrage charges included scheduling inefficiencies, ullage constraints at the Kenya Pipeline Company Limited receiving facilities and change of vessel arrival dates by importers.
- 1.58 Review of records confirmed that the vessels that docked at the port attracted demurrage charges amounting to Kshs.3,182,427,410, which were passed on to the customers through pump prices. The stabilization programme may have been hampered by avoidable additional cost which were passed on to the consumers and may not have cushioned the citizens from the high pump prices.

**p) National Optic Fibre Backbone Infrastructure Project**

- 1.59 The National Optic Fibre Backbone Infrastructure Project (NOFBI) project was initiated in 2007 with an objective of building a terrestrial fibre network, whose purpose was to connect government institutions countrywide to enable digitization of government services and improvement of service delivery. The

Project covered approximately 5,000kms in the first phase, at estimated cost of USD80,000,000, representing, Kshs.5,822,400,000, which was to be funded through supplier credits, grants, concessions and loans. The project was financed by the Government of Kenya and Government of the People's Republic of China through the Export - Import (EXIM) Bank of China.

1.60 Review of the National Treasury, Controller of Budget and State Department of ICT and Digital Economy financial records confirmed that an amount of Kshs.2,500,000,000 and Kshs.551,000,000 was withdrawn under Article 223 of the Constitution in the financial years 2018/2019 and 2019/2020, respectively, to settle pending bills in respect of the Project. However, the withdrawals were not supported with details of the expenditure incurred and therefore the regularity of the expenditure could not be confirmed.

1.61 Further, a Special Audit Report of the Auditor-General on the National Optic Fibre Backbone Infrastructure and IP Based Hipath 4000 Networks Projects by the State Department for Information Communication Technology and Innovation tabled in the National Assembly on 17 October, 2022 revealed other implementation, operations and management challenges which among others included; absence of a framework for implementing the project, absence of an assets register for project equipment, absence of collocation agreements with Telkom (K) Limited, absence of network security controls, lack of involvement of other National Government Ministries, Departments and Agencies, and County Governments, unsupported expenditure by the Government of Kenya and lack of information on how the Government of the People's Republic of China, and EXIM Bank of China were identified.

## **V. Risks and Policy Gaps in the Supplementary Budget Process**

### **a) Lack of Guidelines for Additional Funding Under Article 223(1)(a) of the Constitution**

1.62 The audit revealed that besides provisions in Article 223 of the Constitution of Kenya, there were no guidelines in place to guide Ministries, Departments and State Agencies on the additional expenditure that qualifies to be funded under Article 223(1)(a), where the amount appropriated is insufficient or where a

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

need has arisen and no amount has been appropriated. Due to lack of guidelines, MDAs have been requesting for additional funding for items that could have been factored during the normal budget process. This is attributed to poor budget planning by MDAs.

1.63 This has created room for MDAs to source for funding for programs that have not gone through public participation, and are not necessarily qualified to be funded under Article 223 (1) (a) of the Constitution. As a result, the amount of withdrawals under Article 223 of the Constitution has increased from Kshs.1.10billion in the financial year 2014/2015 to Kshs.147.39billion in the financial year 2022/2023, representing a percentage increase of 13,299%.

**b) Increase in Requests for Additional Funding Under Article 223(1)(a) of the Constitution as Compared to the Contingencies Fund**

1.64 The Contingencies Fund is authorised to hold up to Kshs.10billion for urgent and unforeseen needs. However, MDAs avoid making funding requests from the Contingencies Fund due to the stringent conditions under Section 21 of the Public Finance Management Act, 2012. They therefore prefer to make funding requests under Article 223 (1) (a) of the Constitution and not Article 223 (1) (b) of the Constitution.

1.65 The Contingencies Fund had a balance of Kshs.7billion as at 30 June, 2023. There were no withdrawals from the Contingencies Fund for the financial years 2015/2016, 2018/2019, 2019/2020 and 2020/2021. Further, requests from the Contingencies Fund has remained low over the years; ranging from zero requests to a maximum of Kshs.3.1billion per financial year, despite the fact that the Fund is authorized to hold up to Kshs.10billion for urgent and unforeseen needs.

1.66 Section 23 of the Public Finance Management Act, 2012 provides guidelines on preparation of financial statements in respect of the Contingencies Fund. In contrast, there are no guidelines on the operation of Article 223 of the Constitution. For instance, there are no parameters on what should be considered to determine if the appropriated amount is insufficient or what type of needs that arise should be funded under the Article.

**c) The National Treasury did not have Guidelines Detailing the Criteria for Approval of Requests for Additional Funding**

1.67 There were no guidelines or regulations detailing the criteria to be used by The National Treasury for approval of requests for additional funding under Article 223(1)(a) of the Constitution. The National Treasury was therefore using the provisions in the Constitution which are broad, resulting in ambiguity as to what expenditure qualifies to be funded under Article 223(1)(a) of the Constitution. Approvals were therefore based on the justification provided by MDAs while requesting for funding. This leaves room for discretion for approval of additional expenditure that could have been factored in during the annual budget cycle.

1.68 Further, the 6th Edition of the National Assembly Standing Order 243 (2) (d) states that the supplementary budget shall include separate schedules for expenditure made under Article 223 of the Constitution and any re-allocations made to any vote. Prior to the Standing Order dated 07 June, 2022, there were no guidelines requiring The National Treasury to have separate schedules for expenditure made under Article 223 of the Constitution and any ordinary re-allocations made to any vote. Consequently, the approval of withdrawals under Article 223 of the Constitution was done together with ordinary reallocations during the Supplementary Appropriation Bill.

**d) Lack of Guidelines on How to Use the Information Provided by Ministries, Departments and State Agencies in the Template for Reporting Actual Expenditure Under Article 223 of the Constitution**

1.69 For requests that are approved to receive additional funding under Article 223 of the Constitution, The National Treasury writes to the requesting MDA informing them of the amount approved. Further, MDAs are informed of the requirement to submit to The National Treasury details of the actual expenditure within two months after the payment in order to facilitate the Cabinet Secretary, National Treasury and Planning to submit the report to Parliament for approval, according to Article 223 of the Constitution.

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

1.70 Review of documents from The National Treasury revealed that MDAs submitted the template as required. However, there were no guidelines on how the information in the submitted reports was to be utilised. Therefore, the reports were not analysed or used to track additional expenditure funded under Article 223 of the Constitution.

**e) Lack of Guidelines on Withdrawals Under Article 223 of the Constitution not Approved by the National Assembly**

1.71 Once requests for additional funding under Article 223 of the Constitution are approved by The National Treasury and the Controller of Budget, the requesting MDA is granted the authority to access and spend the approved amount. The expenditure therefore occurs before approval by the National Assembly. Article 223 (2) of the Constitution provides that approval of the monies should be sought either within two months of the first disbursement or at least two weeks after the resumption of the House from a recess as contemplated under Article 223 (3) of the Constitution. Further, Article 223(4) of the Constitution requires an Appropriation Bill to be introduced for the appropriation of the money spent after the National Assembly has approved the spending.

1.72 Instances where the National Assembly does not approve the expenditure incurred under Article 223 of the Constitution, yet the withdrawal has already been made by the requesting MDA, imply that the expenditure is not appropriated as required under the law. There is no guideline in place on how unapproved withdrawals from the Consolidated Fund should be dealt with. For the period under review, there were two (2) withdrawals from the Consolidated Fund that had not been approved by the National Assembly; an amount of Kshs.6,091,140,702, for buyback of Telkom Kenya Limited shares and an amount of Kshs.4billion for the Sifted Maize Flour Subsidy Programme.

**f) Lack of Public Participation in the Supplementary Budget Process**

1.73 The National budget process is subject to involvement of the public by giving citizens an opportunity to participate in decisions affecting their lives, being a fundamental right as enshrined under Article 201 of the Constitution. Further,

Article 118 of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its committees. Regulation 32(7) of the Public Finance (National Government) Regulations, 2015, states that on receipt of sector reports from the sectors, the Cabinet Secretary for Finance shall convene public sector forums to receive inputs from the public.

1.74 However, Regulation 40(1) of the Public Finance (National Government) Regulations, 2015 on the supplementary budget process states that each Accounting Officer shall, within the guidelines of the supplementary budget circular and in conformity with budget guidelines issued by the Cabinet Secretary, prepare revised budget estimates in the format to be issued by the Cabinet Secretary. Prior to incurring any expenditure, only the Accounting Officers shall seek the approval of The National Treasury. This gives the public no room to participate in the supplementary budget process.

**g) Lack of Specific Details on Requests for Additional Funding Under Article 223 of the Constitution**

1.75 Article 223(1)(a) of the Constitution provides that the National Government may spend money that has not been appropriated if the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act. However, requests for additional funding of projects are not commensurate with the total project costs. This subjects projects to annual or perennial inadequate funding.

1.76 Further, requests from MDAs do not provide specific information on the project or program items that require funding under Article 223 of the Constitution. This results in expenditure for items that cannot be traced in the funded projects. In addition, funds released under Article 223 of the Constitution are comingled with other funds under the normal budget, the risk of lack of accountability is high.

#### **h) Conflict in the Law on the Interpretation of the Ten Percent (10%) Limit for Supplementary Appropriation**

- 1.77 Article 223 (5) of the Constitution of Kenya provides that the National Government may not spend more than ten percent (10%) of the sum appropriated by Parliament for any financial year, unless in special circumstances Parliament has approved a higher percentage. Whereas, Regulation 40(9) of the Public Finance Management (National Government) Regulations, 2015 provides that the National Assembly's approval of any withdrawals under Article 223 of the Constitution shall not exceed ten (10) percent of the approved budget estimates of a program or sub-vote, unless it is for an unforeseen and unavoidable need as defined in Section 21 of the Public Finance Management Act, 2012.
- 1.78 There is therefore a conflict between the provision of Article 223(5) of the Constitution and Regulation 40(9) of the Public Finance Management (National Government) Regulations, 2015 on the interpretation of the ten percent (10%) limit for supplementary appropriation.
- 1.79 The National Treasury sought a legal opinion from the Attorney General on the interpretation and application of Article 223 of the Constitution. One of the questions raised was on whether the 10% applies to a vote or to the entire approved budget. The Attorney General advised that under Article 223 (5) of the Constitution, the ten percent (10%) limit for supplementary appropriation is of the entire approved budget.

#### **Recommendations**

- 1.80 The special audit established that there were variances between additional funding approved by The National Treasury and the Controller of Budget. Variances were also noted between additional funding approved by The National Treasury and actual expenditure incurred by Ministries, Departments and Agencies. The National Treasury should ensure that there is proper and complete record keeping on additional funding approved under Article 223 of the Constitution. Accounting Officers of the respective MDAs should ensure

adherence with the approved budgetary provisions and record separately any expenditure sought under supplementary budgets.

1.81 The audit revealed Expenditure Vote Heads with additional funding that exceeded the 10% threshold in supplementary budgets contrary to Regulation 40(9) of the Public Finance Management (National Government) Regulations, 2015. The National Treasury should consider all macro-economic assumptions during budget preparation to ensure that accurate budgets are presented to Parliament. Any expenditure that was envisaged during the processing of the original budgets should not be considered as unforeseen during the preparation of the supplementary budgets.

1.82 There are no guidelines on expenditures that qualify for additional funding under Article 223(1)(a) of the Constitution. The National Treasury does not have guidelines detailing the criteria for approval of requests made for additional funding. It is recommended that The National Treasury should develop a framework and criteria for approval of expenditure granted under the Article.

1.83 The special audit observed an increase in requests for additional funding under Article 223(1)(a) of the Constitution as compared to the Contingencies Fund. The National Treasury should ensure that all requests for urgent and unforeseen needs are first sought from the Contingencies Fund prior to evoking the provisions under Article 223 of the Constitution.

1.84 The special audit noted that MDAs are notified of the requirement to submit to The National Treasury details of the actual expenditure within two months after accessing the additional funds granted under Article 223 of the Constitution. However, there were no guidelines on how the returns from the MDAs were to be applied. It is recommended that The National Treasury should develop guidelines for additional reporting in respect of amounts granted under Article 223(1)(a) of the Constitution. The report can be made as a disclosure note and/or annexed to the financial statements in each year by of the MDAs.

- 1.85 The special audit noted that there are no guidelines on how to deal with withdrawals under Article 223 of the Constitution that are not approved by the National Assembly. The Attorney General's legal opinion to The National Treasury, Ref: AG/CONF/21/8/1 VOL 1 dated 12 March, 2019 advised that the power of the National Assembly to annul approvals that have been granted by the Cabinet Secretary/The National Treasury under Article 223 of the Constitution is constrained. The Public Finance Management Act, 2012 should be amended to provide guidelines on the cause of action to be taken where expenditure incurred under Article 223 is not approved post facto.
- 1.86 There is no public participation in the supplementary budget process since the revised budget estimates are prepared by the Accounting Officer and approved by the National Treasury. It is recommended that the National Treasury should develop modalities to ensure public participation in the supplementary budget process.
- 1.87 The special audit established that there is a conflict between the provision of Article 223(5) of the Constitution and the provisions of Regulation 40(9) of the Public Finance Management (National Government) Regulations, 2015 on the interpretation of the 10% limit for supplementary appropriation. The National Assembly and The National Treasury should provide a policy direction on this matter in order to ensure that there is no conflict in the law.
- 1.88 The audit revealed that there is escalation of pending bills by National Government entities giving rise to interests and penalties especially where MDAs receive inadequate funding. Sanctions should be introduced against Accounting Officers who fail to pay suppliers or contractors within the stipulated timelines. The National Treasury should ensure adequate funding is provided to MDAs.
- 1.89 The special audit noted that the funds granted under Article 223 of the Constitution were not applied lawfully and in an effective manner. There were instances of stalled projects, idle equipment, faulty and non-functional equipment, poor implementation of subsidy programmes and mismanagement of relief food distribution, among others. Accounting officers of the respective

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

MDAs should ensure appropriated funds are used in a prudent and responsible way.

## 2.0 INTRODUCTION AND BACKGROUND INFORMATION

### Introduction

- 2.1 The Auditor-General is mandated under Article 229 of the Constitution of Kenya, to audit and report on the use of public resources by all entities funded from public funds. The mandate of the Auditor-General is further expounded under Section 34 of the Public Audit Act, 2015 which provides that the Auditor-General may, upon request or at his or her own initiative conduct periodic audits which shall be proactive, preventive and deterrent to fraud and corrupt practices, systemic and shall be determined with a view to evaluating the effectiveness of risk management, control and governance processes in State Organs and public entities.
- 2.2 The special audit is part of the implementation of structural benchmarks for the Kenya International Monetary Fund (IMF) extended credit facility program. Under the Kenya/IMF structural benchmarks, the Office of the Auditor General was to conduct and publish a special audit on the mechanism, efficiency and effectiveness of the supplementary budgeting, including under Article 223 of the Constitution, with a view to provide proper accountability and transparency on the supplementary budget spending by the various Ministries, Departments and Agencies and to establish potential risks.
- 2.3 The Public Accounts Committee of the National Assembly also requested the Auditor-General to undertake a special audit on all expenditure incurred under Article 223 of the Constitution for the financial year 2022/2023 through their letter Ref: NA/DAASC/PAC/2023/106 dated 26 April, 2023. The letter indicated that the National Government spent a total of Kshs.130 billion in the financial year 2022/2023 on account of expenditure relating to fuel stabilization, flour and fertilizer subsidies, provision for relief food, and enhanced security operations.

- 2.4 It is against this backdrop that the Auditor-General has undertaken a special audit on supplementary budget expenditure, including withdrawals under Article 223 of the Constitution of Kenya.

### **Background Information**

- 2.5 Article 223(1) of the Constitution of Kenya, 2010, allows the National Government to spend money that has not been appropriated if the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act or if money has been withdrawn from the Contingencies Fund.
- 2.6 Article 223 (2) of the Constitution provides that approval for such withdrawals is sought from Parliament within two months after the first withdrawal of the funds. Further, Article 223 (3) provides that if Parliament is not sitting during the time contemplated in clause (2), or is sitting but adjourns before the approval has been sought, the approval shall be sought within two (2) weeks after it next sits.
- 2.7 Article 223 (4) of the Constitution requires that after the National Assembly has approved spending under clause (2) an Appropriation Bill shall be introduced for the appropriation of the money spent.
- 2.8 Article 223 (5) of the Constitution provides that in any particular financial year, the National Government may not spend under this Article more than 10% of the sum appropriated by Parliament for that financial year unless, in special circumstances, Parliament has approved a higher percentage.
- 2.9 Further, Section 21 of the Public Finance Management Act, 2012 states that an unforeseen event is one which threatens serious damage to human life or welfare, threatens serious damage to the environment and is meant to alleviate the damage, loss, hardship or suffering caused directly by the event. Regulation 40(9) of the Public Finance Management (National Government) Regulations, 2015 provides that the National Assembly's approval of any withdrawals under Article 223 of the Constitution shall not exceed ten (10) percent of the approved budget estimates of a program or sub-vote unless it

is for unforeseen and unavoidable need as defined in Section 21 of the Public Finance Management Act, 2012.

### The Annual Budget Process

- 2.10 The annual budget process is guided by Chapter 12, Part 5 of the Constitution of Kenya, as operationalized by the Public Finance Management Act, 2012 and the Public Finance (National Government) Regulations, 2015.
- 2.11 Article 201(a) of the Constitution on Principles of Public Finance provides that there shall be openness and accountability, including public participation in financial matters. Public participation is well anchored in the annual budget process. The Annual budget is both the process and tool used by the Government to raise and spend money to deliver services to Kenyan Citizens.
- 2.12 The formulation and preparation of the Budget involves development and submission of key documents for approval by Cabinet and Parliament. The process is guided by the budget calendar which stipulates timelines for a number of key activities to be undertaken in order to finalize the budget and submit it for approval by 30 April of each financial year. The budget calendar is usually contained in the Treasury Circular issued in accordance to Section 36 of the Public Finance Management Act, 2012, providing guidelines on the processes and procedures for preparing the subsequent financial year and the Medium-Term Budget. The key budget process activities are as shown below:  
-
- 2.13 **Develop and Issue Medium Term Expenditure Framework Guidelines -**  
The Cabinet Secretary, The National Treasury, is required to initiate the budget preparation process by issuing an annual budget circular which gives guidelines to Ministries, Departments and State Agencies on the format of the budgets, as well as the content. The Medium-Term Expenditure Framework (MTEF) is a three-year rolling budget framework that outlines the government's fiscal priorities and resource allocation over the medium term.

- 2.14 **Launch of Sector Working Groups** - Sector Working Groups are formed using Classification of Government Functions (COFOG). They provide an ideal framework for Ministries, Departments and State Agencies (MDAs) to identify, prioritize and allocate resources to areas that will have the greatest economic impact.
- 2.15 **Development of Medium-Term Budget Framework** - The development of the Medium-Term Expenditure Framework (MTEF) in Kenya is a collaborative process that involves various stakeholders, including The National Treasury, Ministries, Departments, and Agencies (MDAs), county governments, Civil Society Organizations (CSOs) and the private sector. Specifically, this stage of the budget making process consists of estimation of resource envelope, determination of policy priorities, preliminary resource allocation to sectors, Parliament, Judiciary and counties, preparation of the Budget Review and Outlook Paper (BROP) by The National Treasury and its approval by the Cabinet and Parliament. BROP sets sector ceilings which involves determining the maximum funds that each sector can spend in the upcoming financial year.
- 2.16 **Preparation and Presentation of Final Medium-Term Expenditure Framework Sector Budget Proposals** - This stage of the budget process involves preparation of draft sector budget proposals, holding public sector hearings, review and incorporation of stakeholder inputs in the sector budget proposals and their submission to The National Treasury. This culminates with a consultative meeting with Cabinet Secretaries and Principal Secretaries on the proposals.
- 2.17 **Preparation and Presentation of the Budget Policy Statement** - This stage involves the preparation of the Budget Policy Statement (BPS) by The National Treasury. This is an annual policy document that sets out the broad strategic priorities and policy goals to guide the National Government and County Governments in preparing their budgets, both for the following financial year, and over the medium term. This stage also entails the submission and discussion of the Division of Revenue Bill (DORB), County Allocation of

Revenue Bill (CARB) and County Governments' Additional Allocation Bill (CGAAB).

- 2.18 **Develop and Issue Guidelines on the Preparation of the Medium-Term Expenditure Framework Budget** - This step entails development and issuance of final guidelines on preparation of the Medium-Term Budget, as well as submission of the final budget proposals by MDAs to The National Treasury. This is required to consolidate the final draft estimates and submit the same to first Cabinet, and then to Parliament for review and approval.
- 2.19 **Submission of the Draft Budget Estimates and Finance Bill to Parliament for Approval** - This entails the submission of the Finance Bill to Parliament which also receives the final estimates for further review.
- 2.20 **Submission of the Appropriation Bill to Parliament on the Final Budget Estimates** - The approval of the final budget estimates give way to the submission of the Appropriation Bill which is an annual Bill introduced in the National Assembly of Kenya that authorizes the withdrawal of funds from the Consolidated Fund and the appropriation of those funds for the purposes specified in the Bill.
- 2.21 **Budget Statement** - The budget process concludes with the budget speech, which is an annual address delivered by the Cabinet Secretary for the National Treasury to the National Assembly. It further outlines the government's fiscal policy for the upcoming financial year, and provides an overview of the government's economic and financial performance. It gives way to the debating, passing and enactment of the Appropriation and Finance Bills.
- 2.22 **Budget Implementation Issued and In-Year Reviews Through Supplementary Budgets** - After the enactment of the Appropriation and Finance Acts, the budget is implemented and is constantly monitored by MDAs and counties through their Budget Implementation Committees (BICs).

## The Supplementary Budget Process

2.23 Article 223 of the Constitution, 2010 provides for Supplementary Appropriation as follows: -

(1) Subject to clauses (2) to (4), the national government may spend money that has not been appropriated if—

(a) the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act; or

(b) money has been withdrawn from the Contingencies Fund.

(2) The approval of Parliament for any spending under this Article shall be sought within two months after the first withdrawal of the money, subject to clause (3).

(3) If Parliament is not sitting during the time contemplated in clause (2), or is sitting but adjourns before the approval has been sought, the approval shall be sought within two weeks after it next sits.

(4) When the National Assembly has approved spending under clause (2), an appropriation Bill shall be introduced for the appropriation of the money spent.

(5) In any particular financial year, the national government may not spend under this Article more than ten per cent of the sum appropriated by Parliament for that financial year unless, in special circumstances, Parliament has approved a higher percentage.

2.24 Section 44 of the Public Finance Management Act, 2015 provides for supplementary budget and states: -

(1) The National Government shall submit to Parliament for approval, a supplementary budget in support of money spent under Article 223 of the Constitution.

(2) After Parliament has approved spending under subsection (1), an Appropriation Bill shall be introduced for the appropriation of the money spent.

(3) The supplementary budget shall include a statement showing how the additional expenditure relates to the fiscal responsibility principles and financial objectives.

### **Institutions and Stakeholders in the Budget Process**

- 2.25 The National Assembly is at the centre of budget approval and oversight during the annual budget process. The National Assembly works with a host of institutions and the public to expedite its mandate of budget making, oversight of expenditure, and representation with varied obligations as highlighted below: -
- 2.26 **The National Treasury** - Prepares and submits the annual estimates of revenue and expenditure of the national government, draft Division of Revenue Bill and County Allocation of Revenue Bill and the Budget Policy Statement and Medium Term Debt Strategy; Implements the resolutions of the House on various reports on budgetary matters; coordinates implementation of the budget across government departments after approval and assenting of the appropriation bills; manages Exchequer releases or release of funds to agencies for expenditure, public debt and its repayments, and economic growth including overseeing the financial markets; provides the National Assembly with regular reports on revenue performance among other financial reports required under the PFM Act or attendant regulations.
- 2.27 **Government Departments, Ministries, and State Agencies** - Prepare budgets for approval by Parliament, implement the budgets and report to the National Assembly.
- 2.28 **The Commission on Revenue Allocation** - Submits recommendations on the division and sharing of revenue between the level of government and among county governments to Parliament. The Commission also makes recommendations on the basis for sharing revenue among counties and on the identification of marginalized areas with regard to the Equalisation Fund.
- 2.29 **The Office of the Controller of Budget** – In addition to authorization of withdrawals from the Consolidated Funds, the Office, reports on the implementation of the budgets for consideration by the House every four months.

### Audit Objective

- 2.30 The objective of the special audit was to determine the mechanism, efficiency and effectiveness of supplementary budgeting process, including funds issued under Article 223 of the Constitution, with a view to provide proper accountability and transparency on the supplementary budget spending by the various Ministries, Departments and State Agencies and to establish potential risks.

### Terms of Reference

- 2.31 The special audit was guided by the following Terms of Reference (TORs): -
- i) To analyze the budgeting and procurement process in relation to supplementary expenditure incurred under Article 223 of the Constitution;
  - ii) To ascertain the authenticity, effectiveness, and nature of supplementary expenditure incurred;
  - iii) To establish whether approval of the monies used was sought either within two months of the first disbursement or at least two weeks after the resumption of the House from a recess as contemplated under Article 223 (3) of the Constitution;
  - iv) To establish whether the supplementary expenditure incurred was subject to a maximum of ten percent (10%) of the approved estimates of that particular financial year on each vote;
  - v) To establish whether the process of approval was lawful, transparent, accountable, and without collusion, conflict of interest, or abuse of power;
  - vi) To ascertain the value for money in all the supplementary expenditure incurred; and
  - vii) Any other matter that may interest the Auditor-General in the supplementary expenditure.

## Thematic Areas Covered in the Audit Report

- 2.32 The Terms of Reference (TORs) for the audit were further classified under in five (5) key thematic areas, namely: -
- i) Supplementary budget analysis;
  - ii) Variance analysis on supplementary budgets;
  - iii) Compliance with laws, regulations and policies in the supplementary budget process;
  - iv) Value for money; and
  - v) Risks and policy gaps.

### Mapping the Terms of Reference to the Key Thematic Areas Covered in the Audit

	Terms of Reference	Thematic Area
1.	Analyze the budgeting and procurement process in relation to expenditure incurred under Article 223 of the Constitution	<ul style="list-style-type: none"> <li>• Compliance with laws, regulations and policies in the supplementary budget process</li> </ul>
2.	Ascertain the authenticity, effectiveness, and nature of expenditure incurred	<ul style="list-style-type: none"> <li>• Variance analysis on supplementary budget</li> <li>• Supplementary budget analysis</li> </ul>
3.	Establish whether approval of the monies used was sought either within two months of the first disbursement or at least two weeks after the resumption of the House from a recess as contemplated under Article 223(3) of the Constitution	<ul style="list-style-type: none"> <li>• Compliance with laws, regulations and policies in the supplementary budget process</li> </ul>
4.	Establish whether the expenditure incurred were subject to a maximum of 10 percent of the approved estimates of that particular financial year on each vote	<ul style="list-style-type: none"> <li>• Compliance with laws, regulations and policies in the supplementary budget process</li> <li>• Supplementary budget analysis</li> </ul>
5.	Establish whether the process of approval was lawful, transparent, accountable, and without collusion, conflict of interest, or abuse of power	<ul style="list-style-type: none"> <li>• Compliance with laws, regulations and policies in the supplementary budget process</li> </ul>
6.	Ascertain the value for money for all the expenditure incurred	<ul style="list-style-type: none"> <li>• Value for money</li> </ul>
7.	Any other matter that may interest the Auditor-General in these expenditure	<ul style="list-style-type: none"> <li>• Risks and policy gaps</li> </ul>

## Scope of the Audit

2.33 The audit reviewed supplementary budgets, including withdrawals under Article 223 of the Constitution, for the financial years 2014/2015 to 2022/2023. The team examined the activities of The National Treasury, the Controller of Budget, the National Assembly, and Ministries, Departments and State Agencies (MDAs) that incurred expenditure under supplementary budgets, including withdrawals under Article 223 of the Constitution.

## Limitation of Scope

2.34 The special audit team was not able to obtain credible information for the financial year 2013/2014 in order to review and report on the expanded scope of the special audit of ten (10) years from 2013/2014 to 2022/2023 financial years.

2.35 The National Treasury spent an amount of Kshs.12,506,539,749 under Article 223 of the Constitution to purchase shares, as detailed below: -

	Date of Purchase	Organization	No. of Shares Bought	Amount Incurred (Kshs.)
1	30/12/2022	Eastern and Southern African Trade and Development Bank	491 Class A shares	752,621,101
2	28/12/2022	Africa Export-Import Bank (AFREXIMBANK)	2161	5,013,200,450
3	12/06/2023	Eastern and Southern African Trade and Development Bank	328 Class A shares	544,133,567
4	28/07/2022	Jamhuri Holdings Limited	71,229,696	6,196,584,631
	<b>Total</b>			<b>12,506,539,749</b>

2.36 Requests to the financial institutions to allow access to information related to the expenditure were not successful. Consequently, the audit team relied on desktop analysis and interviews carried out with relevant officials at The National Treasury to draw conclusions on these withdrawals.

### Audit Sample

- 2.37 In order to ascertain whether expenditure incurred through supplementary budgeting was applied for the intended purpose and achieved the intended objective, projects implemented by Ministries, Departments and State Agencies in twenty-seven (27) counties were sampled.

### Methods Used to Gather Audit Evidence

- 2.38 The audit was conducted in accordance with International Standards of Supreme Audit Institutions (ISSAI) 100 on Fundamental Principles of Public Sector Auditing.
- 2.39 The methods used to gather audit evidence are outlined below: -
- i. **Document Review** - In order to address the Terms of Reference, the audit team reviewed documents on supplementary budgets, documents requesting for additional funding from Ministries, Departments and State Agencies (MDAs), documents on approval of the requests by The National Treasury, the Controller of Budget and the National Assembly. In addition, reports of the Auditor- General for MDAs who received funding under supplementary budgeting for the audit period were reviewed.
  - ii. **Interviews** – To understand the supplementary budget process, including withdrawals under Article 223 of the Constitution, the audit team conducted interviews with relevant officers from various institutions. The institutions include The National Treasury and implementing MDAs.
  - iii. **Analytical Review** - The audit team analyzed supplementary budgets and information on additional funding granted under Article 223 of the Constitution.
  - iv. **Physical Verification** - The audit team carried out physical verification on sampled projects implemented using additional funds granted under Article 223 of the Constitution of Kenya.

## Reporting Structure

2.40 This report is presented in the following format: -

- i) Executive Summary
- ii) Introduction and Background
- iii) Audit Findings
- iv) Irregularities and Recommendations

2.41 The report should be read in its entirety in order to comprehend fully the approach to and findings of our work. The report has covered analysis and facts as understood with the aim of informing the Public Accounts Committee and the International Monetary Fund (IMF) on the mechanism, efficiency and effectiveness of supplementary budgeting, including under Article 223 of the Constitution.

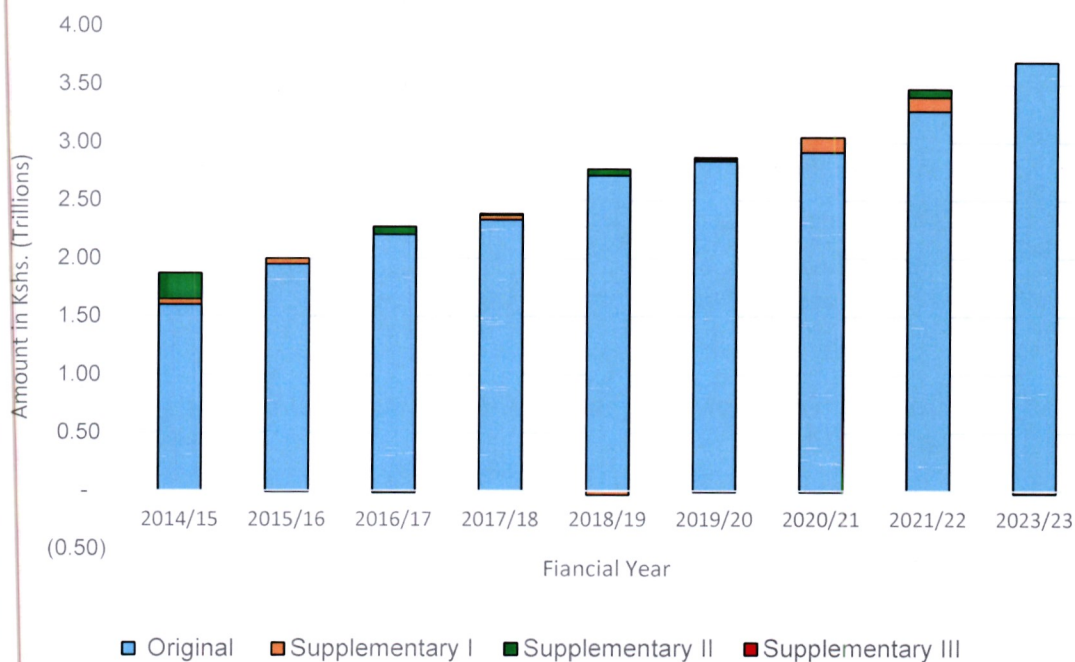
## 3.0 AUDIT FINDINGS

### I. Supplementary Budget Analysis

#### a) Analysis of the Approved Budget Estimates and Supplementary Budgets

- 3.1 Supplementary budgets are the in-year budgetary adjustments made to different government programmes under the various Ministries, Departments and State Agencies (MDAs). Article 223 of the Constitution stipulates the conditions under which additional money can be appropriated through supplementary budgets. These include if the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act or money has been withdrawn from the Contingencies Fund.
- 3.2 These appropriations or adjustments can have a significant impact on the funding of key priorities. Every financial year, The National Treasury prepares supplementary budgets and the National Assembly approves the expenditure without public participation. The National Budget goes through changes in the course of each year and in processing several supplementary budgets in a year, the principle of public participation is not factored in. Further, expenditure that would have otherwise received scrutiny by the National Assembly is approved post facto. Based on these changes, one would not be sure of the budget until the last supplementary is approved. This undermines the budgeting process as envisaged in the Constitution.
- 3.3 The Government has passed two (2) supplementary budgets in each of the last nine (9) financial years, except in the financial year 2019/2020 where a third supplementary budget was passed, as indicated in **Figure 1**.

**Figure 1: Analysis of Supplementary Budget Changes**



Source: Analysis of information from The National Treasury

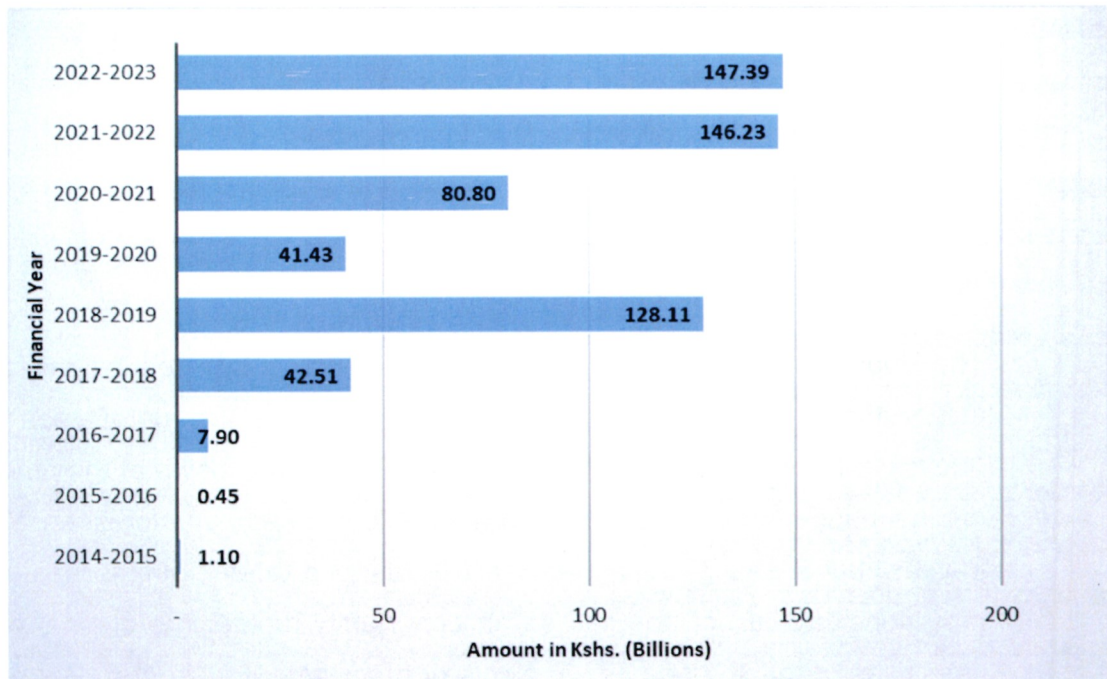
3.4 The Public Finance Management (National Government) Regulations, 2015 states that supplementary budgets are exclusively for unforeseen and unavoidable circumstances. Any expenditure that was known at the time the original budget was finalized should not be considered as unforeseen. While in-year budget changes are necessary to respond to emerging issues, such provisions should not be used as an opportunity to alter the original policy objectives or to introduce new projects or programmes without robust public participation and the National Assembly approval.

3.5 Citizens' efforts are also often nullified without meaningful public participation in the preparation and approval of the supplementary budgets. After ten (10) months of involvement throughout the budget formulation process, the original budget incorporates public priorities, but these are then revised contrary to what had been approved, without further public engagement.

### b) Analysis of Withdrawals Under Article 223 of the Constitution

3.6 Document review and analysis of information from The National Treasury on additional expenditure funded through Article 223 of the Constitution of Kenya, revealed that there has been a gradual increase, from an amount of Kshs. 1.1billion requested in the financial year 2014/2015 to Kshs. 147.39billion in the financial year 2022/2023, representing a percentage increase of 13,299% over the past nine years, as shown in **Figure 2**.

**Figure 2: Trend of Request for Additional Funding Under Article 223 of the Constitution**



Source: Audit team analysis of information from The National Treasury

3.7 **Table I** details additional funding requested under Article 223 of the Constitution of Kenya, categorized by sector, for the period under audit.

**Table 1: Trend of Request for Additional Funding Under Article 223 of the Constitution by Sector**

Sector/ Financial Year	2014-2015 Kshs.	2015-2016 Kshs.	2016-2017 Kshs.	2017-2018 Kshs.	2018-2019 Kshs.	2019-2020 Kshs.	2020-2021 Kshs.	2021-2022 Kshs.	2022-2023 Kshs.	Total Kshs.
Energy, Infrastructure and ICT		100,000,000		4,636,720,388	79,492,330,652	12,981,000,000	33,260,000,000	24,616,000,000	15,662,000,000	170,748,051,040
Environment Protection, Water and Natural Resources				84,000,000	9,404,408,209	240,000,000	2,785,766,100	76,765,016,597	50,333,328,650	139,612,519,556
Public Administration and International Relations	100,000,000		1,023,600,000	1,397,133,200	8,027,305,770	9,486,669,485	13,508,233,164	10,418,340,651	22,871,761,523	66,833,043,793
Agriculture, Rural and Urban Development				9,857,658,758	13,280,501,322	3,644,370,000	4,134,638,117	4,535,000,000	24,573,923,200	60,026,091,397
Education			783,762,500	3,953,230,413	2,283,114,724		1,237,706,533	4,094,752,892	26,602,855,888	38,955,422,950
Health		350,000,000	1,178,860,412	5,723,603,322	17,044,043	3,960,000,000	10,280,522,591	11,938,279,810	1,246,632,750	34,694,942,928
National Security				13,786,157,312		5,500,000,000	5,467,601,546	6,210,000,000		30,963,758,858
Social Protection, Culture and Recreation	1,000,000,000		3,909,234, 226	1,490,000,000	10,175,241,762		3,414,700,000	4,946,468,013	46,972,322	24,982,616,323
Governance, Justice, Law and Order			1,000,000,000	1,579,547,760	1,741,523,103	4,657,000,000	3,819,125,750	1,618,923,723	5,991,368,879	20,407,489,215
General Economics and Commercial Affairs					3,689,566,763	960,000,000	2,895,684,658	1,086,800,000	65,000,000	8,697,051,421
	<b>1,100,000,000</b>	<b>450,000,000</b>	<b>7,895,457,138</b>	<b>42,508,051,153</b>	<b>128,111,036,348</b>	<b>41,429,039,485</b>	<b>80,803,978,459</b>	<b>146,229,581,686</b>	<b>147,393,843,211</b>	<b>595,920,987,480</b>

**c) Comparison of Funds Withdrawn Under Article 223 of the Constitution to Additional Funds Granted Through Supplementary Estimates**

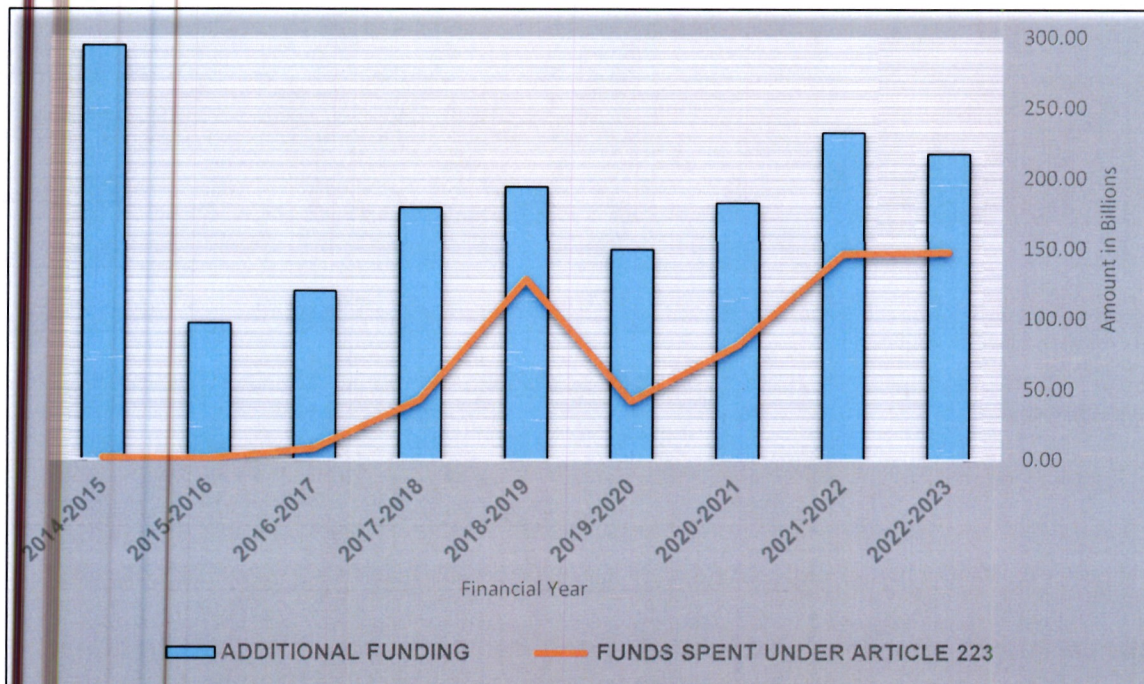
3.8 Analysis of additional funding approved in the Supplementary Estimates against the funds withdrawn under Article 223 of the Constitution indicate that between 2014/2015 to 2022/2023 financial year, the National Government had already spent between 0.4% and 67.8% of the funds requested under Article 223 before seeking for the approval of the National Assembly. This is illustrated in the **Table 2**.

**Table 2: Comparison of Funds Withdrawn Under Article 223 of the Constitution to Additional Funds Granted Through Supplementary Estimates**

Financial Year	Additional Funding (Kshs.)	Funds Granted Under Article 223	% Utilization
2014-2015	293,906,765,546	1,100,000,000	0.4%
2015-2016	96,852,095,879	450,000,000	0.5%
2016-2017	119,866,652,766	7,895,457,138	6.6%
2017-2018	179,064,449,262	42,508,051,153	23.7%
2018-2019	193,631,089,314	128,111,036,348	66.2%
2019-2020	149,523,607,245	41,429,039,485	27.7%
2020-2021	182,303,415,914	80,803,978,459	44.3%
2021-2022	232,299,519,529	146,229,581,686	62.9%
2022-2023	217,371,983,475	147,393,843,211	67.8%

*Source: Analysis of Information from The National Treasury*

**Figure 3: Comparison of Funds Withdrawn Under Article 223 of the Constitution to Additional Funds Granted Through Supplementary Estimates**



Source: Audit team analysis of information from The National Treasury

## II. Variance Analysis on Supplementary Budgets

### a) Variances Between Additional Funding Approved by The National Treasury and the Controller of Budget

3.9 Information received from The National Treasury indicates that the total amount of approvals granted under Article 223 of the Constitution over the audit period, 2014/2015 to 2022/2023, was Kshs.595,920,987,480. Analysis of information on additional funding granted under Article 223 of the Constitution revealed that there were requests by MDAs totalling Kshs.5,127,000,000 for recurrent expenditure and Kshs.2,814,259,781 for development expenditure that were approved by the Controller of Budget but were not disclosed in the information submitted by The National Treasury. Consequently, the accuracy and completeness of the additional expenditure granted under Article 223 of the Constitution of

Kshs.595,920,987,480 could not be confirmed. The variances are summarized in **Table 3**.

**Table 3: Variances Between Additional Funding Approved by The National Treasury and the Controller of Budget**

	Department	Details	Approvals in the Controller of Budget and Not in The National Treasury		
			Financial Year	Recurrent Amount (Kshs.)	Development Amount (Kshs.)
1	State Law and Department of Justice	To cater for legal dues/fees arbitration and compensation payments in the financial year 2020/2021	2021-2022	150,000,000	-
2	Ministry of Devolution and Special Programmes	Drought mitigation	2017-2018	3,977,000,000	
3	State Department for Early Learning and Basic Education	Introduction of corned beef in school Meals Program	2021-2022	1,000,000,000	-
4	The National Treasury	Kenya Mortgage Refinancing Company	2020-2021	-	2,500,000,000
5	Ministry of Devolution and Special Programmes	Relief food supply and transportation	2019-2020	-	314,259,781
<b>Total</b>				<b>5,127,000,000</b>	<b>2,814,259,781</b>

Source: Audit team analysis of information from The National Treasury and Controller of Budget

**b) Variances Between Additional Funding Approved by The National Treasury and Actual Expenditure Incurred by Ministries, Departments and State Agencies**

3.10 The approved additional funding under Article 223 of the Constitution as per the records maintained at The National Treasury differed with the actual expenditure incurred by MDAs. This implies that MDAs incurred expenditure over and above the amount approved by The National Treasury as additional funding granted under Article 223 of the Constitution. The analysis is detailed in **Table 4**.

**Table 4: Variances Between Additional Funding Approved by The National Treasury and Actual Expenditure Incurred by Ministries, Departments and State Agencies**

Department	Details	Financial Year	Amount Approved by The National Treasury		Expenditure Incurred by MDAs		Variance Kshs.
			Recurrent Amount Kshs.	Development Amount Kshs.	Recurrent Amount Kshs.	Development Amount Kshs.	
1 Ministry of Water & Irrigation	Water to informal settlements -Nrb	2019-2020	-	240,000,000	-	420,000,000	180,000,000
2 State Department of Housing and Urban Development	Urban and metropolitan development	2020-2021	-	10,000,000,000	-	11,500,000,000	1,500,000,000
3 State Department for Early Learning & Basic Education	PRIEDE Project & COVID 19 Learning continuity in Basic Education Project (foreign financed)	2021-2022	-	1,972,922,991	-	2,004,107,991	31,185,000
4 Petroleum	Fuel Subsidy	2021-2022	49,309,440,886	-	75,053,880,559	-	25,744,439,673
5 Teachers Service Commission	Implementation of KPEEL programme	2022-2023	-	120,000,000	-	140,000,000	20,000,000
6 Petroleum	Fuel Subsidy	2022-2023	42,736,088,490	-	62,495,749,225	-	19,759,660,735
<b>Total</b>							<b>47,235,285,408</b>

Source: Audit team analysis of information from The National Treasury and MDAs

### III. Compliance with Laws, Regulations and Policies in Supplementary Budget

#### a) The 10% Threshold was not Exceeded on the Overall National Budget

3.11 Article 223 (5) of the Constitution provides that in any particular financial year, the National Government may not spend more than ten percent (10%) of the sum appropriated by Parliament for any financial year unless, in special circumstances, Parliament has approved a higher percentage. The audit revealed that the expenditure under Article 223 of the Constitution was within the ten percent (10%) threshold set in the Constitution for eight (8) years. This was with the exception of the financial year 2014/2015 where the percentage change was 17.03%. This is as shown in **Table 5**.

**Table 5: Percentage Deviation on the Overall National Budget**

	Financial Year	Original Budget (Kshs.)	Supplementary Budget (Kshs. )	Overall Percentage Change
1	2014-2015	1,598,011,736,699.00	272,094,799,692.00	17.03%
2	2015-2016	1,947,029,760,508.00	42,245,355,961.89	2.17%
3	2016-2017	2,204,994,260,090.00	51,851,636,180.00	2.35%
4	2017-2018	2,332,609,308,988.00	52,576,609,189.00	2.25%
5	2018-2019	2,712,769,796,491.00	17,751,829,002.00	0.65%
6	2019-2020	2,836,804,124,826.00	22,647,798,282.00	0.80%
7	2020-2021	2,892,277,046,425.00	117,864,019,561.00	4.08%
8	2021-2022	3,269,228,883,103.00	192,881,351,614.00	5.90%
9	2022-2023	3,691,069,563,548.00	(21,906,252,510.00)	(0.59%)

Source: Analysis of Information from The National Treasury

**b) Expenditure Vote Heads Exceeded the 10% Threshold in Supplementary Budgets**

3.12 Regulation 40(9) of the Public Finance Management (National Government) Regulations, 2015 states that in approving any estimates under Section 43<sup>1</sup> and Section 44<sup>2</sup> of the Act, the National Assembly approval shall not exceed ten (10) percent of the approved budget estimates of a program or Sub-Vote unless it is for an unforeseen and unavoidable need as defined in Section 21 of the Act. Analysis of Ministries, Departments and State Agencies expenditure at Vote Head level revealed that there were instances when the original budgets varied by more than 10% for the nine (9) year period under review, as shown in **Table 6** and detailed in **Appendix 1**.

<sup>1</sup> Section 43 of the Public Finance Management (National Government) Regulations, 2015 - Limited powers of accounting officer of national government entity to reallocate appropriate funds.

<sup>2</sup> Section 44 of the Public Finance Management (National Government) Regulations, 2015 - National government to submit supplementary budget to Parliament.

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

**Table 6: Ministries, Departments and State Agencies with Expenditure Exceeding the 10% Threshold**

	Financial Year	No. of MDAs	Percentage Range
1	2014-2015	24	10.11 to 312.08%
2	2015-2016	10	10.18 to 348.69%
3	2016-2017	16	10.65 to 142.30%
4	2017-2018	19	10.17 to 90.71%
5	2018-2019	22	10.61 to 419.06%
6	2019-2020	14	10.85 to 154.72%
7	2020-2021	12	10.44 to 65.54%
8	2021-2022	19	10.09 to 2069.07%
9	2022-2023	16	10.29 to 914.96%

Source: Audit team analysis of information from The National Treasury

#### IV. Value for Money on Expenditure Incurred Under Article 223 of the Constitution

3.13 The audit sampled projects implemented using funds withdrawn under Article 223 of the Constitution in order to determine whether the funds withdrawn were applied for the intended purpose and that the objective of making the withdrawals was achieved. The findings of the audit are as detailed below: -

##### a) The National Treasury

##### Purchase of Shares by The National Treasury

3.14 During the financial year 2022/2023, the Government of Kenya, through The National Treasury acquired shares valued at Kshs.12,506,539,749, being Kshs.1,296,754,668, Kshs.5,013,200,450 and Kshs.6,196,584,631 from the Eastern and Southern African Trade Development Bank, Africa-Export Import Bank (AFREXIMBANK) and Jamhuri Holdings Limited, respectively. This is summarized in **Table 7**.

**Table 7: Details on Purchase of Shares from Financial Institutions**

	<b>Date of Purchase</b>	<b>Financial Institution</b>	<b>No. of Shares Acquired</b>	<b>Amount (Kshs.)</b>
1	30/12/2022	Eastern and Southern African Trade and Development Bank	491 Class A shares	752,621,101
2	12/06/2023	Eastern and Southern African Trade and Development Bank	328 Class A shares	544,133,567
3	28/12/2022	Africa Export-Import Bank (AFREXIMBANK)	2161	5,013,200,450
4	28/07/2022	Jamhuri Holdings Limited	71,229,696	6,196,584,631
		<b>Total</b>		<b>12,506,539,749</b>

*Source: Analysis of information from The National Treasury*

- 3.15 The total amount of Kshs.12,506,539,749 was withdrawn under Article 223 of the Constitution. However, review of documents on the purchase of shares, revealed that the Government of Kenya bought shares in Eastern and Southern African Trade and Development Bank and Africa Export-Import Bank (AFREXIMBANK), in order to increase its influence and relevance in the bank's activities. This was especially on investment decisions, with the intention of having the banks channel more investments to Kenya.
- 3.16 Further, document review revealed that the Government of Kenya bought back from Jamhuri Holdings Limited, the 60% shareholding earlier relinquished in Telkom Kenya Limited. Requests to visit the two banks' headquarters in Burundi and Egypt, respectively, as well as the registered offices of the company that sold off the Telkom Kenya Limited shares in Mauritius and United Kingdom were either declined or not responded to.
- 3.17 It was therefore not possible to confirm the ownership of the shares acquired and to determine whether there were any benefits that may have accrued to the Government of Kenya for the purchase of the shares. Further, The National Treasury did not provide proper justification for the purchase of the shares under Article 223 of the Constitution.

- 3.18 The National Assembly's Report on the Supplementary Estimates 1 for financial year 2022/2023 indicated that there was no justification for Telkom Kenya Limited shares buy back under Article 223 of the Constitution. Further, there was no reason why the payment could not have been budgeted for in the normal budget process. As a result, the amount of Kshs.6,196,584,631 paid to Jamhuri Holdings Limited was not approved by the National Assembly.

### **Disbursement of Loan to Kenya Airways PLC Without a Valid Loan Agreement**

- 3.19 During the financial years 2021/2022 and 2022/2023, the Government of Kenya, through The National Treasury, disbursed a shareholder loan amounting to Kshs.16,270,000,000 to Kenya Airways PLC in two (2) tranches of Kshs.6,270,000,000 received on 16 March, 2022 granted under Article 223 of the Constitution and Kshs.10,000,000,000 received on 20 September, 2022.
- 3.20 However, the amount disbursed by The National Treasury was received in Kenya Airways Operations Account on 16 March, 2022 (Kshs.6,270,000,000) and on 20 September, 2022 (Kshs.10,000,000,000), an indication that the company did not open a GOK loan designated account and which led to commingling of funds by Kenya Airways PLC. Further, the shareholder loan agreement had not been signed by the Government and Kenya Airways PLC as at the time of disbursing the funds. It was therefore difficult to confirm whether the amount received from The National Treasury was actually utilized for the intended purpose since the funds were commingled and were being utilized from a common operations account. In addition, The National Treasury failed in its fiduciary role by releasing public funds without an effective mechanism of recovery, while the Management of Kenya Airways PLC failed to act in good faith by not complying with the agreed covenant clauses thereto.

## **b) The Agriculture Sector**

### **The Sifted Maize Flour Subsidy Programme**

- 3.21 The Sifted Maize Flour Subsidy Programme was implemented by the Government in the Month of August, 2022. It was informed by a Food and Nutrition Report of June, 2022 which indicated a steady decline in production of maize due to drought and failed rain seasons, leading to food shortages. Maize is a staple food consumed by majority of Kenyans; the price of maize flour was between Kshs.190 to Kshs.215 per 2kg packet, which was beyond the reach of many Kenyans. To mitigate incidences of hunger, the National Security Council in its fourth special meeting held on 25 July, 2022 approved the sifted maize flour subsidy programme for immediate implementation.
- 3.22 The State Department for Crop Development and Agricultural Research vide letter Ref.No.RES/1169/22/01A (7) requested for a total of Kshs.9.12billion from The National Treasury for the maize flour subsidy programme. However, The National Treasury approved Kshs.4billion; Kshs.100,000,000 for monitoring and evaluation, Kshs.3,367,000,000 for subsidy to non-financial private enterprises and Kshs.533,000,000 for pending bills under the maize subsidy programme for the financial year 2017/2018.
- 3.23 One hundred and twenty-nine (129) millers signed contracts for the sifted maize flour subsidy programme between 20 July, 2022 and 22 July, 2022 for a period of four (4) weeks from the date of signing the contract. However, one hundred and sixteen (116) millers participated in the programme. As at the time of the audit, the millers had supplied sifted maize flour valued at Kshs.6,390,033,525 and were paid an amount of Kshs.3,366,999,499 leaving a balance of Kshs.3,023,034,026 as pending bills.
- 3.24 In addition, the National Assembly has not approved the total amount of Kshs. 4billion withdrawal under Article 223 of the Constitution for the Sifted Maize Flour Subsidy Programme. No provision has been made in the financial year 2023/2024 budget to settle the pending bills for the Programme.

- 3.25 The audit sampled sixty-seven (67) millers in seventeen (17) counties as detailed in **Appendix 2**. Document review revealed that the sampled millers supplied subsidized maize flour valued at Kshs.5,124,869,649, out of which an amount of Kshs.2,498,828,880 had been paid, leaving a balance of Kshs.2,626,040,769 as pending bills. The contract signed between the millers and the Government had provided that millers would be paid on the 5th calendar day after submitting the required documents.
- 3.26 An amount of Kshs. 173,472,057 for four (4) millers who had been sampled from the audit population could not be verified, as detailed in **Table 8**.

**Table 8: Unverified Miller Transactions**

County	Name of Miller	Total Invoiced Amount (Kshs.)	Remarks
Migori	Jahazi Millers	87,273,109	The miller discontinued operations
Nairobi	Vine Foods	10,422,515	The miller discontinued operations
Nairobi	Festive Flour	3,998,868	The miller could not be traced
Nairobi	Roy Millers	71,777,565	The miller could not be traced
<b>Total</b>		<b>173,472,057</b>	

*Source: Audit team analysis of information on the Sifted Maize Flour Subsidy Programme*

- 3.27 Further, the contract stated that failure by the government to remit the monies on time shall result in the miller having to raise an invoice for interest on the monies outstanding at the government rate of interest, accruing from the first day of default. Analysis of the pending bills owed to the sampled millers indicates that the unpaid amount of Kshs.2,626,040,768 had accumulated a probable interest of Kshs.355,055,101 as at 31 October, 2023.
- 3.28 Interviews with the sampled millers revealed that the objective of the sifted maize flour subsidy programme of mitigating the high cost of maize flour was not met. This can be attributed to the fact that there was no mechanism of ensuring that the subsidized maize flour was sold to the final consumers at the subsidized price of Kshs.100 for a two (2) kilogram packet. This was because the subsidized maize flour was not branded to differentiate it from the non-

subsidized flour, except for one miller, Trident Miller in Nandi County. Consequently, there was alleged hoarding and selling of the subsidized flour at the normal retail price. Further, document review revealed that millers had unpaid invoices, one year since the programme was implemented. This has negatively affected their maize flour milling operations, especially for small and medium enterprises, leading to closure of business for some millers.

### The Fertilizer Subsidy Programme

- 3.29 The Government, through the Ministry of Agriculture and Livestock Development (MALD), launched the fertilizer e-subsidy programme in September 2022. The programme was aimed at cushioning farmers from the high cost of fertilizers by providing affordable fertilizer. In the financial year 2022/2023, The National Treasury approved an amount of Kshs.7,493,923,200 for the fertilizer subsidy programme under Article 223 of the Constitution.
- 3.30 As at 30 June, 2023, a total of 3,228,491 farmers were registered in MALD's database across forty-one (41) counties and 3,628,530 electronic vouchers had been issued to registered farmers. MALD's records indicated that in total, 3,426,884 bags of fertilizer had been distributed through 142 depots and selling centers throughout the Country. The audit team sampled 55 (fifty-five) fertilizer depots in seventeen (17) counties as detailed in **Appendix 3**. Document review revealed that through the programme, a total of 2,348,831 bags of subsidized fertilizer valued at Kshs.10,804,509,000 had been distributed to farmers across the sampled counties. The distribution of the fertilizer was undertaken through a digital platform (E-Wallet), in order to facilitate a broader reach to farmers.
- 3.31 However, the audit revealed that there were challenges hindering the successful implementation of the Programme. These include: -
- i. Fertilizer distribution points were not easily accessible by farmers, with some farmers having to travel long distances to the nearest depot. For instance, the Mosoriot National Cereals and Produce Board (NCPB)

depot in Uasin Gishu County serves farmers from five (5) Sub-counties; Chesumei, Emgwen, Mosop, Kapseret and Tinderet. Due to the long distance covered by farmers to collect fertilizer from the depot, it was costly for them, resulting in low uptake of the subsidized fertilizer.

- ii. The audit team observed that NCPB staff had challenges in using the ERP-Mezzanine system that is used for distribution of fertilizer. The data captured in various depots was therefore not uniform due to varied understanding on the operation of the ERP- Mezzanine system;
- iii. Farmers interviewed at the sampled depots complained of not getting the right type of fertilizer for the planting season;
- iv. There were variances in the registered acreage vis a vis the quantity of fertilizer allocated in the ERP-Mezzanine system;
- v. Some farmers did not receive e- vouchers, despite having registered on the ERP-Mezzanine system, hence could not benefit from the programme; and
- vi. There was no monitoring and evaluation mechanism in place for the programme making it difficult to ascertain whether the programme achieved its objective.

### **c) The Public Service, Labour and Social Protection Sector**

#### **Distribution of Relief Food**

3.32 The National Drought Management Authority (NDMA) is charged with the responsibility of categorizing counties under either alarm drought stage or alert phase. During the financial years 2016/2017, 2017/2018 and 2021/2022 relief food distribution was a function of the then State Department for Special Programmes, which was under the Ministry of Social Protection and Labor. At the time of the audit, relief food distribution was under the Ministry of East African Community, the ASALs and Regional Development.

3.33 Drought affected persons are mainly from twenty-nine (29) ASAL counties. The target number of the affected people in the counties is determined by short and long rains assessment. The State Department for the ASALs and Regional Development delivers food to National Cereals and Produce Board (NCPB)

depots for onward distribution to the County Commissioners of the affected counties. The County Commissioners are supposed to create steering committees at the county level to oversee the distribution of the relief food. County Commissioners then distribute food to Deputy County Commissioners (DCC) for onward distribution to vulnerable members of the community.

- 3.34 During the 2016/2017, 2017/2018, 2021/2022 and 2022/2023 financial years, a total of Kshs.21,359,088,000 was withdrawn under Article 223 of the Constitution for relief assistance to emergency, disaster and drought affected persons in the Country. **Table 9** details the amounts allocated for relief food.

**Table 9: Amounts Allocated for Relief Food**

Year/Dept	State Department for Social Protection and Labour	State Department for Devolution	State Department for ASALs	Total Amount (Kshs.)
2016/2017		7,400,000,000		7,400,000,000
2017/2018		4,877,000,000		4,877,000,000
2021/2022	4,682,088,000	1,200,000,000		5,882,088,000
2022/2023			3,200,000,000	3,200,000,000
<b>Total</b>				<b>21,359,088,000</b>

Source: Analysis of information from MDAs

- 3.35 The audit team sampled thirty-four (34) sub-counties in thirteen (13) counties out of the twenty-nine (29) ASAL counties. The following observations were made: -
- 3.36 **Lack of Guidelines on Distribution of Relief Food** -There were no guidelines for distribution of relief food detailing the criteria to be used in identification of persons to receive relief food. The State Department for Special Programmes had general instructions stating that food should be distributed to the vulnerable in the community, leaving each county at its discretion to determine who is a vulnerable person. Consequently, the sampled counties used different criteria in identifying vulnerable persons, that was subject to change based on the prevailing circumstances. There was

therefore a risk of the relief food being distributed to persons who are not vulnerable.

3.37 **Incomplete Distribution Lists** - The audit revealed that distribution lists maintained by Deputy County Commissioners on food distribution were not complete as they did not have full details of the persons who received relief food. Review of relief food distribution files revealed that important details on recipients were left out. The missing fields were; the names of recipients, telephone numbers, identification numbers, the quantity received and recipient's signatures. As a result, it was not possible to establish the beneficiaries of the distributed relief food.

3.38 **Failure to Prepare and Submit Returns on Food Distribution** - Deputy County Commissioners (DCCs) were required to submit returns of the distributed relief food to the State Department for Special Programmes, through their respective County Commissioners. Review of files on relief food distribution revealed that thirty-three (33) out of thirty-four (34) sampled counties were not preparing and submitting returns on the distributed relief food. Documents on relief food distribution were maintained at the sub-county level. The Ministry did not therefore have information on the distributed relief food for accountability purposes.

3.39 **Failure to Fund Authority to Incur Expenditure at the County Level** - Document review of the budget allocated for distribution of relief food revealed that counties were allocated a total of Kshs.100,000 or Kshs.150,000 as Authority to Incur Expenditure (AIE). The funds were to be used for relief food distribution logistics. However, the audit revealed that the sampled counties did not receive funds for distribution of relief food. Counties were therefore relying on well-wishers to assist in distribution. Further, due to non-allocation of funds to transport food from the distribution point at the sub-county level, citizens were travelling for long distances to pick the relief food. In addition, interviews with Deputy County Commissioners revealed that relief food was being used as payment in kind to transporters for the food distribution service, hence reducing the portion available for distribution to vulnerable persons.

- 3.40 **Lack of Proper Storage Facilities for Relief Food** - Interviews with staff in charge of relief food in the sampled counties revealed that counties did not have proper storage facilities for relief food. Relief food was therefore prone to weather elements, and in some instances, stored relief food was prone to contamination. This was observed in Narok East Sub-County where there was no storage facility. Relief food was stored in containers that leaked during the rainy season, resulting in spoilage of food. There was an instance of five (5) bags of beans which were rained on and had started germinating, and therefore could not be distributed. Further, in Mbeere South Sub-County, relief food was stored together with fertilizer, exposing it to the risk of contamination. For instance, during the financial year 2018/2019, seven hundred (700) bags of maize were contaminated with aflatoxin and had to be destroyed as they were not fit for human consumption.
- 3.41 **Conversion of Relief Food to School Fees** - The audit revealed that Buuri East, Tigania West, Chiakariga and Makueni Sub- Counties were converting relief food into school fees for needy students at the rate of Kshs.4,000 per bag of rice or beans. This rate was below the market price which was Kshs.9,600 for a bag of rice and Kshs.11,200 for a bag of beans.

### **Delay in the Completion of the Africities Conference Centre in Kisumu County**

- 3.42 Africities is the United Cities and Local Governments of Africa's (UCLG- Africa) flagship Pan-African event that is held every three years in one of the five regions of Africa. It focuses on the need for Local Africa to learn, promote and present a new approach to sustainable development.
- 3.43 The Ministry of Devolution was allocated an amount of Kshs.250,000,000 under Article 223 of the Constitution for the construction of the Africities Convention Centre in Kisumu County in the financial year 2021/2022. The contract was awarded at a sum of Kshs.890,829,345 for a duration of thirty-eight (38) weeks commencing on 16 July, 2021. An extension period was granted where the contract period was revised to seventy-three (73) weeks with a new completion date of 16 December, 2022. Physical inspection carried

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

out in the month of September, 2023 revealed that the works on the exhibition centre is ongoing while works on the Amphitheatre had stalled, as shown in **Picture 1**. The project was behind schedule and the Management attributed the delay to lack of funding. Therefore, despite the project being funded under Article 223 of the Constitution, it was not complete, nine (9) months after the expiry of the extension period, delaying service delivery.

**Picture 1: Stalled Construction of the Africities Convention Centre in Kisumu County**



*Source: Photo taken by the audit team during field inspection in September 2023*

**d) The Health Sector**

**Supply of Medical Equipment and Associated Services to Public Health Institutions**

3 44 The Governments of Kenya and France signed a Financial Protocol of Euro32,167,787, equivalent to Kshs.3,988,805,588 on 27 August, 2020 for supply of medical equipment and associated services to public health institutions in the Country. The funding was to cater for emergency response to fight COVID-19 (Euro15,510,493, equivalent to Kshs.1,923,301,132) and to fight maternal and infant mortality (Euro16,657,294, equivalent to Kshs.2,065,504,456). This was done through a Commercial Contract No. 2091-1905-Health-French loan signed between the Ministry of Health and FSE Sarl, France (project contractor) on 08 December, 2020. The Ministry of Health requested an amount of Kshs.900million under Article 223 of the Constitution

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

in the financial year 2022/2023, to make an advance payment under the contract. However, The National Treasury approved Kshs.247,082,750.

3.45 The contract was in two parts: -

- i. Part A was for emergency response to fight the COVID-19 pandemic and was valued at Euro15,510,493. The project aimed at strengthening the capacity of the counties to fight the COVID-19 pandemic through effective critical care management to patients. The project involved pre-installation works, supply and installation of medical and non-medical equipment including oxygen plants, waste sterilizers and associated equipment meant to combat COVID-19. There was also a component of user and maintenance training and a three-year (3) service warranty. Twenty (20) COVID-19 isolation centers in nineteen (19) Counties were identified to benefit from the project. However, there was rationalization of equipment distribution resulting in the equipping of thirty-one (31) facilities.
- ii. Part B was to reduce maternal and infant mortalities in the North Rift Region. The strategy was to equip maternities for satellite hospitals around Moi Teaching and Referral Hospital (MTRH) in order to improve their maternal service delivery and subsequently decongest MTRH and allow it to concentrate on referral services. MTRH was also to be equipped in order to build its capacity to provide specialized services. The project also involved pre-installation works at maternities and delivery theatres of the beneficiary hospitals, supply and installation of medical equipment, user and technical training for staff.

3.46 The audit team sampled seventeen (17) health facilities in eleven (11) counties. Physical inspection carried out in the month of September 2023 revealed that the equipment had been delivered to the respective hospitals. However, as detailed in **Table 10**, equipment valued at Euro4,477,664.37, equivalent to Kshs.555,230,382 were not in use due to various reasons such as hospitals lacking buildings and the required infrastructure to install the equipment while some of the equipment had broken down. This indicates that

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

the project had implementation challenges and was not fully enhancing service delivery to citizens.

**Table 10: Medical Equipment Not in Use**

	Hospital Name	Value of Equipment Not in use Euro	Value of Equipment Not in use Kshs.
1	Cherangany Level 4 Hospital	236,254.95	29,295,614
2	Gatundu South Level 4 Hospital	588,416.86	72,963,691
3	Kapkatet Sub-County Hospital	166,015.38	20,585,907
4	Kericho County Referral Hospital	161,525.26	20,029,132
5	Kilifi County Referral Hospital	256,266.10	31,776,996
6	Magutuni District Hospital	34,259.17	4,248,137
7	Meru County Referral Hospital	98,813.62	12,252,889
8	Moi Teaching and Referral Hospital (MTRH)	93,893.84	11,642,836
9	Mukuruweini Level 4 Hospital	744,726.99	92,346,147
10	Murang'a Level 5 Hospital	835,783.17	103,637,113
11	Nyeri County Referral Hospital	7,682.02	952,571
12	West Hospital	1,254,027.01	155,499,349
	<b>Total</b>	<b>4,477,664.37</b>	<b>555,230,382</b>

Source: Audit team analysis of information from the sampled hospitals

3.47 The audit observations on the medical equipment are detailed below: -

**Equipment Not in Working Condition** - Eight (8) out of the seventeen (17) sampled hospitals had faulty equipment valued at Euro1,496,378.20, equivalent to Kshs.185,550,896, as detailed in **Table 11 and Appendix 4**. Some equipment had broken down immediately after installation. For instance, the incinerator supplied to the Kericho County Referral Hospital on 19 November, 2021 worked for only six (6) months and broke down. The hospital had reverted to using an old incinerator supplied in 2012. Further, the incinerator has never been serviced since installation. As a result, the objective of the equipment was not achieved.

**Table 11: Summary of Equipment Not in Working Condition**

Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010

	Name of Hospital	Value of Equipment in Euro	Value of Equipment in Kshs.
1	Kapkatet Sub-County Hospital	166,015.38	20,585,907
2	Kericho County Referral Hospital	161,525.26	20,029,132
3	Kilifi County Referral Hospital	128,133.05	15,888,498
4	Magutuni District Hospital	34,259.17	4,248,137
5	Meru County Referral Hospital	98,813.62	12,252,889
6	Moi Teaching and Referral Hospital (MTRH)	93,893.84	11,642,836
7	Mukurweini Level 4 Hospital	365,509.05	45,323,122
8	Murang'a Level 5 Hospital	448,228.83	55,580,375
	<b>Total</b>	<b>1,496,378.20</b>	<b>185,550,896</b>

Source: Audit team analysis of information from the sampled hospitals

- 3.48 **Case Study I** details three (3) hospitals that had been supplied with oxygen plants that were yet to be put to use since installation.

**Case Study I: Oxygen Plants Installed but Not in Use**

At Kapkatet Sub-County Hospital, an oxygen plant valued at Euro166,075.38, equivalent to Kshs.20,585,907 was delivered on 15 December, 2021. The equipment had been installed but had not been put to use since it required a 1,000 KVA transformer and the existing transformer was 315 KVA. The hospital had made progress with the transformer having been installed in July 2023, awaiting connecting to the oxygen plant. As at the time of the audit, power had not been connected to the oxygen plant, and the plant was not in use.

At Ishiara Level 4 Hospital, an oxygen plant delivered in February, 2022 at a cost of Euro230,924.18, equivalent to Kshs.28,634,598 had not been put to use. The oxygen plant requires a 1,000 KVA transformer and the available transformer is 200 KVA. As a result, Ishiara Level 4 Hospital gets its oxygen from the Embu Level 5 Hospital which is 38 kilometres away.

At Gatundu Level 4 Hospital, an oxygen generation plant valued at Euro166,075.38, equivalent to Kshs.20, 593, 347 had not been commissioned and was therefore not in use.

- 3.49 **Picture 2** illustrates a fully installed oxygen plant that had not been put to use for twenty (20) months, as at the time of the audit.

**Picture 2: Fully Installed Oxygen Plants Not in Use**

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*



Source: Picture taken by the audit team at Kapkatet Sub-County Hospital, Ishiara Level 4 Hospital and Mukurweini Sub-County Hospital

3.50 **Lack of User Training and Technical Assistance** - One of the components of the contract for the supply of the equipment was user training and technical assistance. However, interviews with staff in the sampled hospitals revealed that user training and technical assistance was not provided. As a result, some equipment had not been put to use since delivery as detailed in **Table 12**.

**Table 12: Equipment Not in Use Due to Lack of User Training**

Name of Hospital	Name of Equipment	Value in Euro	Value in Kshs.
Moi Teaching and Referral Hospital (MTRH)	Two (2) ICU transport ventilators	4,844.77 (Each)	600,751 (Each)
	Four (4) air-area cooling units/conditioners	49,102.42 (Each)	6,088,700 (Each)
Embu Level 5 Hospital	Digital mobile X-ray machine	61,031.49	7,567,904

3.51 **Equipment Delivered but Not Yet Installed** - The audit revealed that there was equipment that had not yet been installed, more than one year since they were delivered. For instance, in Mosoriot Sub-County Hospital, some equipment was still in the hospital's store, awaiting completion of renovation of buildings where they were to be installed. In Cherengany Sub-County Hospital, construction of a theatre and radiology unit was ongoing. As a result, the supplied equipment was yet to be installed.

3.52 **Picture 3** illustrates equipment in Mosoriot Sub-County Hospital that was in storage as at the time of the audit.



**Picture 3: Medical Equipment in Storage**

*Source: Picture taken by the audit team in September 2023 at Mosoriot Sub-County Hospital  
Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

3.53 Equipment worth Euro1,279,212.97, equivalent to Kshs.158,622,408 were yet to be installed as at the time of the audit, as shown in **Table 13**.

**Table 13: Equipment Delivered but Not Yet Installed**

Name of Hospital	Name of Equipment	Reason/ Condition	Value in Euro	Value in Kshs.
Gatundu Level 4 Hospital	Waste Management Model for Level 4 Sites	Awaiting connection to 3-phase power supply	128,133.05	15,888,498
Moi Teaching and Referral Hospital (MTRH)	One (1) florescence microscope	The equipment was delivered when incomplete	2,807.89	348,178
	Blood gas analyzer	Unpacked	10,444.84	1,295,160
	Caryotype	Unpacked	58,972.28	7,312,562
	Two (2) deionizers	Awaiting installation, testing and training	6,052.85	750,553
	Vertical Uniclave 99 AJC 160 litres (Autoclave)	Partially installed	6,019.99	746,478
Embu Level 5 Hospital	Washing Machine	Requires electrical cabling	7,132.28	884,402
	Dryer (35-50 Kg)	Requires electrical cabling	6,265.32	776,899
Mosoriot Sub-County Hospital	One (1) Manual Anaesthetic Machine	Missing parts	7,682.02	952,570
	Theatre equipment	Not installed, theatre not operational	184,655.02	22,897,222
Nyeri County Referral Hospital	Covid-19 Test Machine (PCR-Real time)	Not installed	71,537.02	8,870,590
Turbo Health Centre	Various equipment	Awaiting Commissioning. The equipment had been stored in a theatre, which had been converted into a store.	789,510.41	97,899,290
<b>Total</b>			<b>1,279,212.97</b>	<b>158,622,408</b>

### Supply of Computed Tomography (CT) Scan Machines to Health Facilities

3.54 The National Government, through the Ministry of Health, equipped thirty-seven (37) health facilities with Computed Tomography (CT) scan machines, as listed on **Appendix 5**. The project was implemented by Neusoft Medical Systems Co. Ltd and Megascope Healthcare (K) Ltd. In the financial year 2017/2018, The National Treasury granted an additional funding of Kshs.1,740,000,000 under Article 223 of the Constitution to the Ministry of Health, as advance payment for the project. The CT scan machines were

delivered to the health facilities in 2019. However, the contract document was not provided for audit review.

3.55 Physical inspection in twenty-one (21) hospitals revealed that the Computed Tomography (CT) scans have greatly improved the accessibility of health services to the public. The following observations were made: -

3.56 **Expired Maintenance and Service Contract** - The contract included a five (5) year service agreement with Megascop Healthcare (K) Ltd. However, the audit revealed that service contracts for CT scan machines in six (6) of the sampled hospitals had expired, and the Ministry of Health had not given a way forward on their servicing. Further, in four (4) hospitals, CT scan machines had Uninterrupted Power Supply (UPS) batteries which drained out frequently, thus requiring replacement. As a result, in the event of power outage, the CT scan machines could not be powered, resulting in interruption of services.

3.57 **Lack of Internet Connectivity** - Four (4) hospitals experienced internet connectivity challenges that interrupted service delivery. As a result, radiographers could not upload the scanned images for interpretation by a medical specialist.

3.58 **Lack of Trained Personnel** - Mathari Referral and Teaching Hospital and Moi County Referral Hospital-Voi did not have trained personnel to operate CT scan machines.

3.59 **Faulty Computed Topography Scan Machines** - In addition, six (6) CT scan machines had broken down or other supporting equipment were not working. These include; JM Kariuki Memorial Hospital, Murang'a Level 5 Hospital, Kericho County Referral Hospital, Moi Teaching and Referral Hospital, Embu Level 5 Hospital and Makueni County Referral Hospital. Thus, patients in need of CT scan services had to access the service from other health facilities.

## e) The Education Sector

### The Competency Based Curriculum Classrooms Construction Project

- 3.60 The Competency Based Curriculum (CBC) Classrooms Construction Project was as a result of recommendations of the CBC Taskforce, 2020. The focus was to transition learners from the Primary Level to the Junior Secondary Level. The aim was to ensure provision of classrooms for Grade Six (6) students transitioning to Grade Seven (7), which was to be domiciled in the existing secondary schools.
- 3.61 On 22 October, 2021, the Head of Public Service directed The National Treasury to appropriate to the Ministry of Education a total of Kshs.8billion in the financial year 2021/2022, out of which an amount of Kshs.2billion was funded through Article 223 of the Constitution. The funds were for the construction of over ten thousand (10,000) classrooms in secondary schools across all counties in the Country. Classrooms in Phase I of the Project were constructed between 21 November, 2021 and 30 June, 2022.
- 3.62 The State Department for Early Learning and Basic Education engaged the State Department for Public Works to develop the budget for building one (1) classroom, which was approximated at a standard amount of Kshs.788,220. The amount was arrived at without taking into consideration the terrain and topographical layout across the Country. In addition, material costs were not standard across the Country. The amount was therefore not sufficient for construction of a standard classroom.
- 3.63 The audit team sampled two hundred and fifteen (215) secondary schools in twenty-seven (27) counties that had been funded for construction of CBC classrooms. Interviews with schools' management revealed that the classrooms were constructed within a short duration of time, two (2) weeks, which was not sufficient to allow concrete curing<sup>3</sup>. Therefore, the potential

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<sup>3</sup> Curing is the process of maintaining satisfactory temperature and moisture conditions in concrete long enough for hydration to develop the desired concrete properties. The potential strength and durability of concrete will be fully developed only if concrete is properly cured.  
*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

strength and durability of concrete was not fully developed. The short construction duration and insufficient funding resulted in poor quality of the constructed classrooms.

3.64 The following observations were made: -

**Poor Workmanship in Classrooms** - As at the time of the audit, the sampled schools had poorly constructed classrooms, with floor cracks and deep holes. The floor in some of the classrooms had completely come off, exposing the soil beneath. As a result, students had to learn in classes that had a lot of dust, exposing them to health hazards. Therefore, there was no value for the money used in construction of the classes, as the floor will require to be redone or repaired with additional funding. **Picture 4** illustrates classrooms that had floors that had completely come off or had deep holes.

**Picture 4: Classrooms with Poorly Constructed Floors**



*Source: Pictures taken by the audit team during fieldwork in September 2023*

3.65 **Incomplete Classrooms** - Physical inspection revealed that nine (9) classrooms were incomplete at the time of the audit, as shown in **Picture 5**. The classrooms could therefore not be put into use.

**Picture 5 : Incomplete Classrooms**



*Source: Photos taken by the audit team in St. Mary's Girls High School- Nakuru and Waitaluk Secondary School in Trans Nzoia in September, 2023*

3.66 **Classrooms not in Use** - The audit also revealed that thirty (30) out of the two hundred and fifteen (215) sampled classrooms were not in use as at the time of the audit. Interviews with schools' Management indicated that the schools had adequate classes for their student population. In some instances, the classrooms had been converted into stores as shown in **Picture 6**.

**Picture 6: Classrooms Used for Storage**



*Source: Pictures taken by the audit team while on fieldwork in September 2023*

**3.67 Additional Funding by Schools' Management** - The standard amount of Kshs.788,220 allocated was not sufficient for construction of a classroom of the required standard. Document review revealed that some critical scopes like ceiling and tiling or terrazzo on the floor were not included in the original Bill of Quantities (BOQ). The existing classrooms in most of the sampled schools had a ceiling and tiles or terrazzo on the floor. Physical verification revealed that in some sampled schools, the management utilized their own funding to ensure that they constructed classrooms that matched the standard of the existing classrooms.

### Capitation of Grade Seven (7) Learners in Junior Secondary Schools

3.68 The Government has been implementing a Competency Based Curriculum (CBC) since 2016, after the 8-4-4 curriculum was discontinued. The State Department for Early Learning and Basic Education was allocated an amount of Kshs. 13,512,377,184 for capitation of Grade Seven (7) learners who were expected to transit to Junior Secondary Schools (JSS) with effect from 30 January, 2023.

3.69 The capitation for Grade 7 learners was disbursed in March 2022 for the first term and May 2022 for the second term. Junior Secondary Schools were required to open bank accounts for capitation of tuition and operation funds. The funds allocated to schools was based on the number of Grade Seven (7) learners in each JSS, as captured in the National Education Management Information system (NEMIS).

3.70 In order to assess whether all JSS learners were granted capitation by the Ministry of Education, the audit team sampled three hundred and twelve (312) Junior Secondary Schools in twenty-seven (27) counties. To establish whether the capitation allocated to each school was sufficient for its JSS population, the audit team compared data on the actual student population with NEMIS data that was used by the Ministry of Education to allocate the capitation. The following matrix was used to determine the capitation for each pupil.

Term	Amount of Operation Capitation Per Learner (Kshs)	Amount of Tuition Capitation Per Learner (Kshs)
1	2,425	1,643
2	1,680	909
3	1,084	478

3.71 Capitation of Grade 7 learners in JSS was successful in many of the sampled schools. However, the audit established that 187 out of the sampled 312 Junior Secondary Schools had students that did not receive capitation. The actual enrolment of the 187 JSSs was 29,653 learners, however, they received

capitation for 22,313 learners, leaving 7,340 learners without funding. For instance, Arap Moi Primary School in Kajiado North Sub-County had an actual enrolment of 520 Grade Seven (7) learners, however, the school received capitation for 276 learners. The school had therefore not received capitation for almost half of the learners. Further, eight (8) schools did not receive capitation for any of their JSS learners. This was the case in Kauti Junior Secondary School in Kathiani Sub-County which had fifty-one (51) learners, however, the school did not receive capitation for Term 1 and Term 2.

- 3.72 For schools receiving less or no capitation, it was challenging for them to provide teaching, learning, and administration services required by JSS learners. The State Department for Early Learning and Basic Education should have ensured that the data used for JSS capitation was verified by the respective sub-county offices before disbursement of funds. This would have ensure that all students are captured on NEMIS for funding of all JSS learners.

#### **Other Findings Observed in the Implementation of the Competency Based Curriculum Programme**

- 3.73 The audit established that there was congestion in Grade Seven (7) classes, with some classes having between eighty (80) to a hundred (100) learners, way above the required class of forty-five (45) learners. As a result, there was a high pupil to teacher ratio, negatively affecting the teacher student engagement. Further, the schools did not have science laboratories.

#### **The Secondary Education Quality Improvement Project**

- 3.74 The Government of Kenya partnered with the World Bank in the implementation of the Secondary Education Quality Improvement Project (SEQIP). The objective of the project was to improve student learning and transition from primary to secondary education in targeted areas. The schools targeted by the project were located in 110 sub-counties, from 30 counties that have education and economic challenges, including those in Arid and Semi-Arid Lands (ASALs), urban slums and regions with pockets of poverty.

- 3.75 SEQIP has four components; improve quality of teaching and learning in targeted areas, improving retention in upper primary and transition to secondary school in targeted areas, system reform support and project management, coordination and communication. The components were implemented by the Ministry of Education (MoE), Teachers Service Commission (TSC) and other agencies. The project commenced on 21 November, 2022.
- 3.76 The State Department for Early Learning and Basic Education was allocated an additional funding of Kshs.4,121,665,433 under Article 223 of the Constitution to cater for implementation of SEQIP. The funds were for construction of 962 classrooms and 859 laboratories in secondary schools in order to accommodate Junior Secondary School learners who were expected to join JSS in January, 2023.
- 3.77 The audit team sampled forty (40) schools that were funded under the project for improving school infrastructure. The sampled schools had been funded for construction of new classrooms and laboratories in secondary schools, and pit latrines in primary schools, among other activities. Physical inspection revealed that classes under the project had not been completed and were therefore not in use. In addition, some classes had been completed but had not yet been handed over, while some had stalled. Laboratories were also incomplete. The project has therefore not translated to improved student learning in the targeted areas.

### **Equipping of Technical and Vocational Education and Training Institutions**

- 3.78 Technical and Vocational Education and Training (TVET) Institutions have been undergoing reforms which are guided by a number of policy documents including; Jubilee Manifesto, Vision 2030; the Policy Framework on Reforming Education and Training in Kenya; National Education Sector Program (NESP) 2014-2018; and the TVET Act No. 29 of 2013 among others. The current endeavor is towards the improvement of TVET enrolment per 100,000 population, from 446 to 780 by the year 2025 and provide adequate

opportunities for accessible Competency Based Education and Training. Kenya has experienced moderate growth over the last 50 years in Tertiary Education and Training. However, the Country is yet to produce adequate and skilled middle level human resource required to meet the demands for national development.

- 3.79 The Ministry of Education, through the State Department for Technical, Vocational Education and Training has been undertaking construction of new TVET institutions in constituencies. The construction was in five (5) phases namely: Nine (9) TTIs in counties; construction of two (2) TVCs; Phase I of sixty (60) TVCs in constituencies; Phase II of seventy (70) TVCs in constituencies and Phase III of thirty (30) TVCs in constituencies.
- 3.80 Equipping of TVCs has been ongoing through the GoK/ AfDB initiative and the GoK/China initiative. Under the GoK/China initiative, the Ministry of Education engaged AVIC International Holding Corporation to supply equipment in phase One and Two. The equipment in Phase One were supplied to ten (10) institutions while in Phase Two, the equipment was supplied to one hundred and forty-four (144) TVET institutions. Equipping of Technical and Vocational Colleges is aimed at improving access, quality and relevance in the TVET sector.
- 3.81 On 25 May, 2016, the Government of Kenya, through the then Ministry of Education, Science and Technology, collaborated with the Chinese Government to equip TVET institutions. The project was to supply the institutions with equipment and training facilities for a contract sum of USD158,785,183. The equipment was to be delivered to one hundred and forty-four (144) National Polytechnics and Technical Training Institutes (TTI's) from the year 2018.
- 3.82 The Ministry of Education, Science and Technology made an advance payment of USD47,635,554.90, representing 30% of the total contract price of USD158,735,183. The financing agreement included an advance payment of USD23,817,771.90, equivalent to Kshs.2,453,230,413 which was funded through Article 223 of the Constitution in the financial year 2017/2018. The

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

project entailed provision of equipment for ten (10) disciplines in TVETs; mechanical engineering, electrical engineering, automotive maintenance, mechatronics technology, welding, refrigeration, agricultural value addition, hospitality management, civil engineering and agricultural machinery.

3.83 Under the project, Kenya's TVETs were to receive modern equipment, after-sale service, as well as centralized training to trainers and institutions that benefited under the project. The audit team sampled forty (40) TVET institutions that were supplied with equipment through the project. The following observations were made: -

- i. Physical verification and document review of delivery notes revealed that the equipment had been supplied to all the institutions. Thirty-two (32) out of the forty (40) TVETs were utilizing the equipment, eight (8) were not utilizing the equipment because of lack of the required 3 phase power voltage.
- ii. The State Department for Technical, Vocational Education and Training did not avail the value of the equipment to TVET institutions for accounting purposes. Equipment were delivered in lots with no value attached to each equipment, hence, it was not possible to establish the value of the equipment from the fixed assets register provided;
- iii. Two (2) TVETs had equipment programmed in Mandarin<sup>4</sup> language and therefore the equipment had not been put to use since installation. The two institutions were the Masai Technical Training Institute which had a computerized industrial embroidery machine programmed in Mandarin and the Murang'a Technical Training Institute whose printer for the multifunction material testing device was programmed in Mandarin;
- iv. Supply of equipment to institutions with few students for disciplines like mechatronics and electrical engineering, hence the equipment was not fully utilized; and
- v. Broken-down machines were idle due to lack of maintenance and service agreements.

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<sup>4</sup> The dialect of Chinese adopted as the official language for all of China.

3.84 **Case Study 2** shows equipment that had not been utilized since being delivered in 2019, indicating lack of value for money for the expenditure incurred on purchase of the equipment.

### **Case Study 2: Equipment not in Use in Technical and Vocational Education and Training Institutions**

The Kericho Township Technical Training College had received all the equipment for beauty and hairdressing, baking, cooking and restaurant service on 19 August, 2019. However, four (4) years later, some equipment had not been put to use as the institution was not connected to a 3 - phase power transformer. The equipment included; a scalp cleansing station, far infrared body light, E light beauty instrument and oven. There was equipment that could not be used when the oven was not functional; the refrigerated proofing boxes, vertical pastry machine, cake cabinet, bread cabinet and oblique bread slicer, they were therefore also not in use. Some salon and beauty equipment were observed to have been set aside as the TVET did not have sufficient space. The rest of the equipment was in use.

The Turbo Technical and Vocational College received all the equipment for Civil Construction Technology. However, other than the brick-making machine that was installed, most of the other equipment had not been put into use since the institution was not connected to a 3-phase power transformer.

The Kajiado North Technical Training Institute received all the equipment for Agricultural Value Addition. However, the institution had not put the equipment into use as the institution was not connected to a 3 -phase power transformer. The institution had applied for 3-phase power, which had taken long to be connected. The equipment was therefore lying idle, despite having been installed.

#### **f) The General Economic and Commercial Affairs Sector**

##### **The State Department for Industries**

##### **Cold Storage Facilities Not in Operation**

3.85 During the financial year 2019-2020, the Micro and Small Enterprises Authority (MSEA) commenced construction of cold storage and processing facilities in

Nyandarua, Meru and Kisii Counties. The objective of the cold storage facilities was to end post-harvest losses of potatoes. The audit sampled two (2) cold storage facilities, the findings of the audit are as detailed below: -

### The Ol Kalou Cold Storage Facility

- 3.86 The Ol Kalou Cold Storage Facility, with a capacity of 240 tonnes of potatoes, was procured at a cost of Kshs.92,470,487. The completion date was scheduled for December, 2021, however, it was completed in December 2022, one year behind the scheduled time. Further, a stand by generator valued at Kshs.7,388,700 was not yet installed.
- 3.87 The facility was officially opened by the President on 06 April, 2023. However, at the time of audit inspection in September, 2023, the facility had not started operations as the project had not been handed over from the National Government to the County Government. As at 30 September, 2023 the contractor had been paid a total of Kshs.50,627,602. **Picture 7** shows the Ol Kalou Cold Storage Facility that was not yet in use at the time of the audit.

**Picture 7: The Ol Kalou Cold Storage Facility Not in Use**



*Source: Pictures taken by the audit team while on field inspection in September, 2023*

### **The Timau Cold Storage Facility**

- 3.88 The Timau Cold Storage Facility, with a capacity of 240 tonnes of potatoes, was procured at a cost of Kshs.92,564,230. The completion date for the project was scheduled for December, 2021. However, at the time of physical inspection in September, 2023, the refrigeration section had not been completed, freezers had not been installed and the generator had been delivered but was yet to be installed. As at the time of the audit, the completion and commissioning of the facility was behind schedule by two (2) years. The audit established that Kshs.49,576,032 had been paid as at 30 September, 2023.
- 3.89 The objective of the project had therefore not been achieved. Under the circumstances, the State Department for Industries did not obtain value for money for the expenditure incurred on the cold storage facilities.

### **The State Department for Co-operatives**

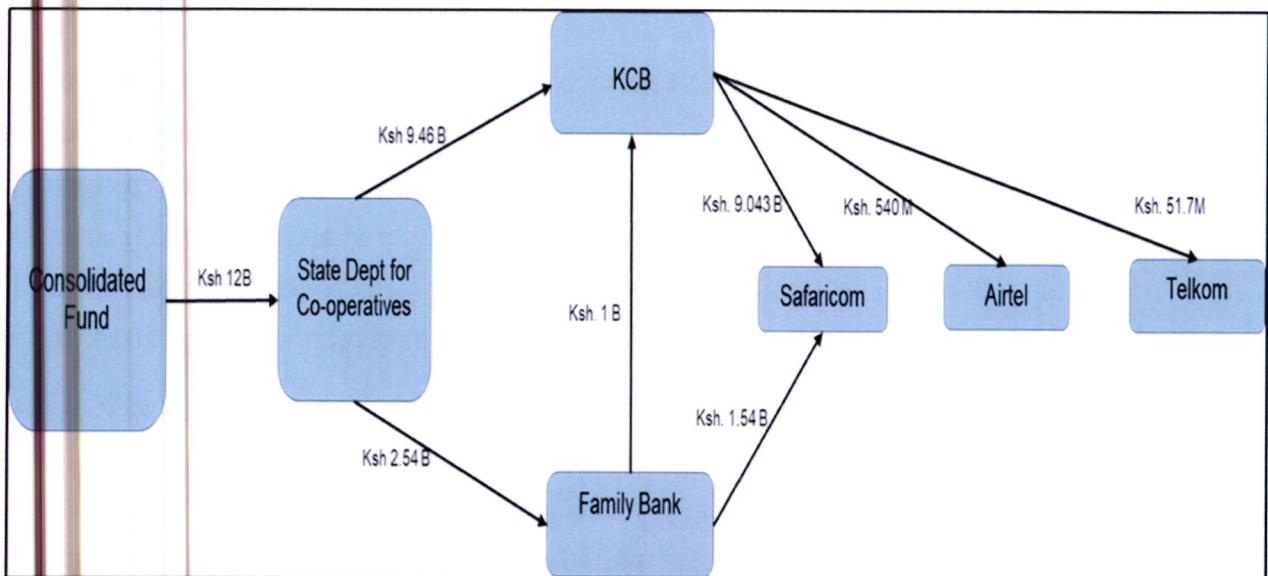
#### **The Financial Inclusion Fund**

- 3.90 The Financial Inclusion Fund was established through Legal Notice No.213 of 23 November, 2022 under the Public Finance Management (Financial Inclusion Fund) Regulations, 2022. The objective and purpose of the Fund was to innovate, develop and deploy bottom of the pyramid financial services and products that are affordable, accessible and appropriate for the unserved and underserved persons, including credit, saving, insurance and investment products.
- 3.91 The State Department for Co-operatives received an amount of Kshs.12billion from The National Treasury for the Financial Inclusion Fund's seed capital, during the financial year 2022/2023. Subsequently, the State Department for Co-operatives disbursed an amount of Kshs.9.46billion and Kshs.2.54billion to the Kenya Commercial Bank and Family Bank, respectively, for onward transmission to the three (3) telecommunication companies (Safaricom, Airtel and Telkom), for onward lending to eligible persons.

3.92 Records provided by KCB indicate that an additional amount of Kshs.1,000,000,000 was received from Family Bank, bringing the total funds received by the Bank to Kshs.10,460,000,000. Out of the total amount received by KCB, the amounts of Kshs.9,042,979,000, Kshs.540,349,661 and Kshs.51,692,891 were transmitted to Safaricom, Airtel and Telkom, respectively, all totaling to Kshs.9,635,021,552, leaving a balance of Kshs.824,978,448 in the KCB account. The balance at KCB remains unutilized thereby undermining the urgency with which the amount was sought under Article 223 of the Constitution.

3.93 Family Bank confirmed having received an amount of Kshs. 2,540,000,000 out of which an amount of Kshs. 1,540,000,000 was transmitted to Safaricom while amount of Kshs.1,000,000,000 was transmitted to KCB. **Figure 4** illustrates the flow of the funds.

**Figure 4: The Flow of Financial Inclusion Funds**



Source: Audit team analysis of information on flow of Financial Inclusion Funds

### Setting up of the State Department for Micro, Small and Medium Enterprises

3.94 In addition, the State Department for Co-operatives received Kshs.200million from The National Treasury in the financial year 2022/2023 to set up the State

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

Department for Micro, Small and Medium Enterprises. The expenditure incurred was requested for under Article 223 of the Constitution since the department was new and no budget had been provided for it in the budget for the 2022/2023 financial year. The audit revealed that the State Department was established and was fully operational at the time of the audit.

**g) The Energy, Infrastructure and Information and Communication Technology Sector**

**Stabilization of Refined Petroleum Pump Prices**

- 3.95 Section 4 of the Petroleum Development Levy Order No. 24, which came into effect on 15 July, 2020, provides that the levy shall also be used for matters relating to the development of the oil industry, including to stabilize local petroleum pump prices in instances of spikes occasioned by high landed costs above a threshold determined by the Energy and Petroleum Regulatory Authority (EPRA).
- 3.96 In April 2021, the Government of Kenya (GoK) introduced petroleum pump price stabilization mechanism to cushion its citizens from the high pump prices following escalation of global prices post COVID-19 recovery. This was aggravated by adverse geo-political situation at the time brought about by the Russia – Ukraine war which affected the local market in as far as supply and cost of petroleum products was concerned. Price stabilization was implemented in the petroleum pump pricing cycle starting on 15 April, 2021.
- 3.97 In the financial years 2020/2021, 2021/2022 and 2022/2023, The National Treasury approved Kshs.1,600,000,000, Kshs.42,736,088,490 and Kshs.49,309,440,886, respectively, for the Fuel Subsidy Programme under Article 223 of the Constitution. Review of financial records for the State Department of Petroleum for the financial years 2020/2021, 2021/2022 and 2022/2023 revealed that an amount of Kshs.139,149,629,785 was incurred in the Fuel Subsidy Programme as indicated in **Table 14**.

**Table 14: Details of Expenditure Incurred on Fuel Subsidy**

	Financial Year	Month	Amount of Fuel Subsidy (Kshs.)
1	2020/2021	June 2021	1,600,000,000
<b>Sub-Total</b>			<b>1,600,000,000</b>
1	2021/2022	September 2021	1,876,899,616
2		October 2021	2,030,414,284
3		November 2021	2,682,215,560
4		December 2021	1,753,542,783
5		January 2022	2,199,367,361
6		February 2022	9,098,253,680
7		March 2022	2,265,909,722
8		April 2022	16,797,301,593
9		May 2022	822,408,891
10		June 2022	35,527,567,071
<b>Sub-Total</b>			<b>75,053,880,559</b>
1	2022/2023	August 2022	4,971,373,018
2		September 2022	19,261,801,047
3		December 2022	7,001,862,889
4		January 2023	2,975,472,576
5		February 2023	5,832,496,459
6		April 2023	4,302,850,121
7		June 2023	18,149,893,116
<b>Sub-Total</b>			<b>62,495,749,226</b>
<b>Grand Total</b>			<b>139,149,629,785</b>

3.98 Further, the Special Report of the Auditor-General on Stabilization of Refined Petroleum Pump Prices for the period between 01 April, 2021 to 30 June, 2022 tabled in the National Assembly on 09 December, 2022 revealed the following:

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3.99 **Advance Sales Price Stabilization Compensation** - An amount of Kshs.5,324,796,940 was paid as stabilization for advance sales of local volumes. However, there was no legal framework for advance payment and there was no evidence of recovery of this advance amount in subsequent payments to the oil marketing companies. Management explained the advance sales were compensated at the price differential between effective pump prices for the period and that of the preceding period for volumes sold between the 10th day of previous pricing cycle and the 10th day of the next

pricing cycle. The move was to cushion the oil marketers who had already sold the volumes since the increase in prices in the next cycle, running from 15th day of the current month to the 14th day of the preceding month.

- 3.100 **Administrative Costs in the Pump Prices** - According to the minutes of the meeting held on 15 April, 2021 between the Ministry of Petroleum and Mining, Energy and Petroleum Regulatory Authority and Oil Marketing Companies, it was confirmed that there was a general agreement that cargo importers would charge administrative fee of Kshs.0.50/litre to cater for disbursement, documentation and processing of stabilization funds received from the Ministry. The amount was to be factored in the petroleum pump prices from July, 2021. Subsequently, an amount of Kshs.2,205,915,489 was paid as administration costs for the period ended 30 June, 2023. However, there was no justification for including the stabilization administration costs in the pump price build up.
- 3.101 **Demurrage Charges Passed to Customers Through Fuel Pump Prices** - The Transport and Storage Agreement (TSA) provided for compensation to importers of petroleum products for demurrage charges paid to the ship owners for delays in vessel berthing exceeding three (3) days. The delays were mainly attributed to vessels being unable to berth on arrival as they had to wait for other vessels to complete discharge of petroleum products.
- 3.102 Further, there was an established Demurrage Committee comprising of representatives from the Ministry of Energy, Oil Marketing Companies, Supply Coordinator and Kenya Pipeline Company Limited (KPC) to deliberate, approve and recommend amounts to be charged as either Local or Transit demurrage costs. Approved demurrage charges were to be passed to the consumer through pump price adjustment. According to the minutes of the Committee, the main causes of demurrage charges included scheduling inefficiencies, ullage constraints at KPC receiving facilities and change of vessel arrival dates by importers.

- 1.90 Review of records confirmed that the vessels that docked at the port attracted demurrage charges amounting to Kshs.3,182,427,410, which were passed on to the customers through pump prices. The stabilization programme may have been hampered by avoidable additional costs which were passed on to the consumers may not have cushioned the citizens from the high pump prices.

### **National Optic Fibre Backbone Infrastructure Project**

- 3.103 The National Optic Fibre Backbone Infrastructure Project (NOFBI) project was initiated in 2007 and the objective was to build a terrestrial fibre network whose purpose was to connect government institutions country wide to enable digitization of government services and improvement of service delivery.
- 3.104 The National Optic Fibre Backbone Infrastructure Project was deliberated in a cabinet Memorandum dated 24 August, 2006 which discussed the implementation of the project covering approximately 5,000kms in the first phase at estimated cost of USD80,000,000 (Kshs.5,822,400,000) which was to be funded through supplier credits, grants, concessions and loans.
- 3.105 The National Optic Fibre Backbone Infrastructure Project was implemented in three (3) phases, namely NOFBI phase I, NOFBI Phase II and NOFBI Phase II Expansion. The project was financed by the Government of Kenya and Government of the People's Republic of China through the Export -Import (EXIM) Bank of China.
- 3.106 Review of financial records confirmed that the Government of Kenya and the Government of the Peoples Republic of China signed framework agreements amounting to Kshs.6,083,546,000 (¥460,000,000) on 28 June, 2012 for the funding of NOFBI Phase II Project. Subsequently, The National Treasury signed a concessional loan agreement with EXIM Bank of China amounting to ¥ 460,000,000 on 8 October, 2012. The scope of the project entailed laying of sub-backbone and sub-metro covering a total of 2,100 kilometers in the forty-six counties excluding Nairobi, installation of IP equipment and creation of NOFBI I redundancy links. It was to be implemented in two hundred and sixty-

five (265) sites in the National Government Ministries, Department and Agencies and selected County Government (Governor's) Offices.

- 3.107 Review of The National Treasury, Controller of Budget and State Department of ICT and Digital Economy financial records confirmed that an amount of Kshs.2,500,000,000 and Kshs.551,000,000 was withdrawn under Article 223 of the Constitution in the financial years 2018/2019 and 2019/2020, respectively, to settle pending bills in respect of the Project. However, the withdrawals were not supported with details of the expenditure incurred and therefore the regularity of the expenditure could not be confirmed.
- 3.108 Further, a Special Audit Report of the Auditor-General on the National Optic Fibre Backbone Infrastructure and IP Based Hipath 4000 Networks Projects by the State Department for Information Communications, Technology and Innovation tabled in the National Assembly on 17 October, 2022 revealed other implementation, operations and management challenges which among others included:
- i. Absence of policy/framework for implementing the project;
  - ii. Absence of an assets register for project equipment;
  - iii. Absence of collocation agreements with Telkom (K) Ltd;
  - iv. Absence of network security controls;
  - v. Lack of involvement of other National Government Ministries, Departments and Agencies, and County Governments;
  - vi. Unsupported expenditure by the Government of Kenya; and
  - vii. Lack of information on how the Government of the People's Republic of China, and EXIM Bank of China were identified.

#### V. Risks and Policy Gaps in the Supplementary Budget Process

- 3.109 There were gaps that were observed in the process of request for additional funding as detailed below: -

**a) Lack of Guidelines for Additional Funding Under Article 223(1)(a) of the Constitution**

- 3.110 The audit revealed that besides provisions in Article 223 of the Constitution of Kenya, there were no guidelines in place to guide Ministries, Departments and

State Agencies on the additional expenditure that qualifies to be funded under Article 223(1)(a), where the amount appropriated is insufficient or where a need has arisen and no amount has been appropriated.

3.111 Due to lack of guidelines, MDAs have been requesting for additional funding for items that could have been factored during the normal budget process. This is attributed to poor budget planning by MDAs. This has created room for MDAs to source for funding for programs that have not gone through public participation, and are not necessarily qualified to be funded under Article 223 (1) (a) of the Constitution. As a result, the amount of additional funding has increased from Kshs.1.10billion in the financial year 2014/2015 to Kshs.147.39billion in the financial year 2022/2023, representing a percentage increase of 13,299%.

**b) Increase in Requests for Additional Funding Under Article 223(1)(a) of the Constitution as Compared to the Contingencies Fund**

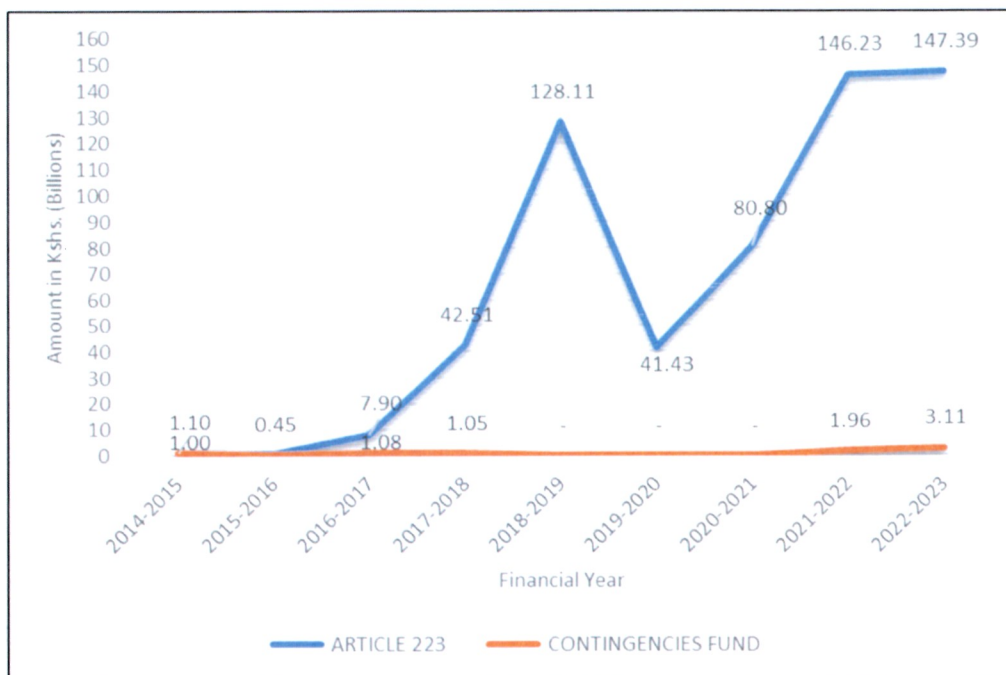
3.112 Article 208 of the Constitution of Kenya, 2010 states that an Act of Parliament shall provide for advances from the Contingencies Fund if the Cabinet Secretary responsible for finance is satisfied that there is an urgent and unforeseen need for expenditure for which there is no other authority. The Contingencies Fund is authorised to hold up to Kshs.10billion for urgent and unforeseen needs. However, MDAs avoid making funding requests from the Contingencies Fund due to the stringent conditions under Section 21 of the Public Finance Management Act, 2012. They therefore prefer to make funding requests under Article 223 (1) (a) of the Constitution and not Article 223 (1) (b) of the Constitution.

3.113 The Contingencies Fund had a balance of Kshs.7billion as at 30 June, 2023. As shown in **Figure 5**, there were no withdrawals from the Contingencies Fund for the financial years 2015/2016, 2018/2019, 2019/2020 and 2020/2021. An analysis of the detailed expenditure from the Contingencies Fund is shown in **Appendix 6**.

3.114 **Figure 5** shows a comparison of funds withdrawn under Article 223(1)(a) of the Constitution and the Contingencies Fund, over the audit period. The

comparison indicates that requests from the Contingencies Fund have remained low over the years; ranging from no request to a maximum of Kshs.3.1billion per financial year, despite the fact that the Fund is authorized to hold up to Kshs.10billion for urgent and unforeseen needs.

**Figure 5: Comparison of Funds Withdrawn Under Article 223(1)(a) of the Constitution and the Contingencies Fund**



Source: Audit team analysis of information from The National Treasury

3.115 Review of data on additional expenditure granted to MDAs over the audit period revealed that requests for additional expenditure from the Contingencies Fund was for relief food supplies, drought mitigation and response to wild fires. The audit revealed that MDAs requested for additional funding under Article 223(1)(a) of the Constitution for items related to the ones funded under the Contingencies Fund (Article 223(1)(b) of the Constitution). These include; emergency relief, drought emergency and funds for wild fires in Aberdare and Mt. Kenya.

3.116 Section 23 of the Public Finance Management Act, 2012 provides guidelines on preparation of financial statements in respect of the Contingencies Fund. Specifically, Section 23 requires that: -

- i. Not later than three months after the end of each financial year, The National Treasury shall prepare and submit to the Auditor-General financial statements for that year in respect of the Contingencies Fund.
- ii. The National Treasury shall include the following information in the financial statements submitted: -
  - The date and amount of each payment made from that Contingencies Fund;
  - The person to whom the payment was made;
  - The purpose for which the payment was made;
  - If the person to whom the payment was made has spent the money for that purpose, a statement to that effect;
  - If the person to whom the payment was made has not yet spent the money for that purpose, a statement specifying the reasons for not having done so; and
  - A statement indicating how the payment conforms to Section 21 of the Public Finance Management Act, 2012.

3.117 Due to the well-defined criteria there is clarity on the operation of the Contingencies Fund. In contrast, there are no guidelines on the operation of Article 223(1)(a) of the Constitution. For instance, there are no parameters on what should be considered to determine if the appropriated amount is insufficient or what type of needs that arise should be funded under the Article.

**c) The National Treasury did not have Guidelines Detailing the Criteria for Approval of Requests for Additional Funding**

3.118 There were no guidelines or regulations detailing the criteria to be used by The National Treasury for approval of requests for additional funding under Article 223(1)(a) of the Constitution. The National Treasury was therefore using the provisions in the Constitution which are broad, resulting in ambiguity as to what expenditure qualifies to be funded under Article

223(1)(a) of the Constitution. Approvals were therefore based on the justification provided by MDAs while requesting for funding. This leaves room for discretion for approval of additional expenditure that could have been factored in during the annual budget cycle.

3.119 Section 21 of the Public Finance Management Act, 2012 states that an unforeseen event is one which threatens serious damage to human life or welfare, threatens serious damage to the environment and is meant to alleviate the damage, loss, hardship or suffering caused directly by the event. MDAs have been requesting for funding under Article 223(1)(a) of the Constitution of Kenya. However, Article 223 (1)(a) of the Constitution does not exclusively require for the request for funding to be of an emergency nature. The Article provides that funding can be requested for if the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act.

3.120 Due to the lack of guidelines to operationalize Article 223 (1)(a) of the Constitution, The National Treasury does not apply the criteria of unforeseen and unavoidable when approving requests for funding under the Article.

3.121 The 6th Edition of the National Assembly Standing Order 243 (2) (d) states that the supplementary budget shall include separate schedules for expenditure made under Article 223 of the Constitution and any ordinary re-allocations made to any vote. Prior to the Standing Order dated 07 June, 2022, there were no guidelines requiring The National Treasury to have separate schedules for expenditure made under Article 223 of the Constitution and any re-allocations made to any vote. Consequently, the approval of withdrawals under Article 223 of the Constitution was done together with ordinary reallocations in the Supplementary Appropriation Bill.

**d) Lack of Guidelines on How to Use the Information Provided by Ministries, Departments and State Agencies in the Template for Reporting Actual Expenditure Under Article 223 of the Constitution**

3.122 For requests that are approved to receive additional funding under Article 223 of the Constitution, The National Treasury writes to the requesting MDA  
*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

informing them of the approved amount. Further, MDAs are informed of the requirement to submit to The National Treasury details of the actual expenditure within two months after the payment in order to facilitate the Cabinet Secretary, National Treasury and Planning to submit the report to Parliament for approval, according to Article 223 of the Constitution.

3.123 Review of documents from The National Treasury revealed that MDAs submitted the template as required. However, there were no guidelines on how the information in the submitted reports was to be utilised. Therefore, the reports were not analysed or used to track additional expenditure funded under Article 223 of the Constitution.

3.124 The template requests for information on analysis of the implications for the planned outputs and outcomes of the affected programme. If there were clearly stipulated guidelines on use of the reports, the information on planned outputs and outcomes could be used for monitoring and evaluation of the funded programmes. The template for detailing the actual expenditure is as shown in **Figure 6**.

**Figure 6 : Illustration of the Template for Reporting Actual Expenditure Under Article 223 of the Constitution**

Table 1: Template For Reporting Actual Expenditure under Article 223 of the Constitution (Kshs.)

Description		Approved Additional Expenditure	Actual Expenditure as at .....	Justification/Supporting Documentation
Vote Code & Vote Title	Total			
	Programme			
	Sub-programme			
	Activity/Project			

*NB: Provide analysis of the implications for the planned outputs and outcomes of the affected programmes*

Source: The National Treasury

**e) Lack of Guidelines on Withdrawals Under Article 223 of the Constitution not Approved by the National Assembly**

3.125 Once requests for additional funding under Article 223 of the Constitution are approved by The National Treasury and the Controller of Budget, the

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

requesting MDA is granted the authority to access and spend the approved amount. The expenditure therefore occurs before approval by the National Assembly. Article 223 (2) of the Constitution provides that approval of any spending under this Article should be sought either within two months of the first disbursement or at least two weeks after the resumption of the House from a recess, as contemplated under Article 223 (3) of the Constitution. Further, Article 223(4) of the Constitution requires that an Appropriation Bill shall be introduced for the appropriation of the money spent after the National Assembly has approved the spending.

3.126 Instances where the National Assembly does not approve the expenditure incurred under Article 223 of the Constitution, yet the withdrawal has already been made by the requesting MDA, imply that the expenditure is not appropriated as required under the law. There is no guideline in place on how unapproved withdrawals from the Consolidated Fund should be dealt with. For the period under review, there were two (2) withdrawals from the Consolidated Fund that had not been approved by the National Assembly as at the time of the audit in September, 2023; an amount of Kshs.6,091,140,702 for Telkom Kenya Limited shares buyback and an amount of Kshs.4billion for the Sifted Maize Flour Subsidy Programme.

**f) Lack of Public Participation in the Supplementary Budget Process**

3.127 The National budget process is subject to involvement of the public by giving citizens an opportunity to participate in decisions affecting their lives, being a fundamental right as enshrined under Article 201 of the Constitution. Further, Article 118 of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its committees. Regulation 32(7) of the Public Finance (National Government) Regulations, 2015, states that on receipt of sector reports from the sectors, the Cabinet Secretary for Finance shall convene public sector forums to receive inputs from the public.

3.128 However, Regulation 40(1) of the Public Finance (National Government) Regulations, 2015 on the supplementary budget process states that each

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

Accounting Officer shall, within the guidelines of the supplementary budget circular and in conformity with budget guidelines issued by the Cabinet Secretary, prepare revised budget estimates in the format to be issued by the Cabinet Secretary. Prior to incurring any expenditure, only the Accounting Officers shall seek the approval of The National Treasury. This gives the public no room to participate in the supplementary budget process.

**g) Lack of Specific Details on Requests for Additional Funding Under Article 223 of the Constitution**

3.129 Article 223(1)(a) of the Constitution provides that the National Government may spend money that has not been appropriated if the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act. However, requests for additional funding of projects are not commensurate with the total project costs. This subjects projects to annual or perennial inadequate funding.

3.130 Further, requests from MDAs do not provide specific information on the project or program items that require funding under Article 223 of the Constitution. This results in expenditure for items that cannot be traced in the funded projects. In addition, where funding under Article 223 of the Constitution are comingled with other funds under the normal budget, the risk of lack of accountability is high. **Table 15** illustrates ongoing projects that were funded under Article 223 of the Constitution without specific information on the items the funding was to be utilized on.

**Table 15: General Request for Funding Under Article 223 of the Constitution**

	Financial Year	Name of Project	Total Project Cost (Kshs.)	Amount Financed Under Article 223 (Kshs.)
1.	2022/2023	Thwake Multi-Purpose Water Development Program	36,971,346,445	4,989,000,000
2.	2022/2023	Mwache Dam	13,752,164,239	720,941,233
3.	2021/2022	Afri-cities Centre	890,829,345	250,000,000
4.	2020/2021	SEZ Dongo-Kundu Industrial Park-Mombasa	57,270,000,000	1,465,700,000
5.	2021/2021 2022/2023	Dualing of Eastern Bypass	12,494,837,028	6,800,000,000
6.	2021/2022	Stage construction of Garissa –Isiolo Road	9,453,650,604	1,900,000,000
7.	2022/2023	Rehabilitation of Thika Town Roads	1,606,446,942	400,000,000
8.	2021-2022	Stage Improvement of Posta-Kisima -Maralal Road	3,248,437,796	400,000,000
9.	2021/2022 2022/2023	Construction of Makupa Bridge and Approach Roads	4,590,211,334	2,850,000,000
10.	2020/2021 2022/2023	Stage construction of Lamu,Ijara Garissa Road and associated spur roads to all weather standard roads	17,960,846,926	5,400,000,000
		<b>Total</b>	<b>158,238,770,659</b>	<b>25,175,641,233</b>

Source: Audit team analysis of information from The National Treasury

#### **h) Conflict in the Law on the Interpretation of the 10% Limit for Supplementary Appropriation**

3.131 Article 223 (5) of the Constitution of Kenya provides that the National Government may not spend more than ten per cent (10%) of the sum appropriated by Parliament for any financial year, unless in special circumstances Parliament has approved a higher percentage. Whereas, Regulation 40(9) of the Public Finance Management (National Government) Regulations, 2015 provides that the National Assembly's approval of any withdrawals under Article 223 of the Constitution shall not exceed ten (10) percent of the approved budget estimates of a program or sub-vote, unless it is for an unforeseen and unavoidable need as defined in Section 21 of the Public Finance Management Act, 2012.

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

- 3.132 There is therefore a conflict between the provision of Article 223(5) of the Constitution and the provisions of Regulation 40(9) of the Public Finance Management (National Government) Regulations, 2015 on the interpretation of the 10% limit for supplementary appropriation.
- 3.133 The National Treasury sought a legal opinion from the Attorney General on the interpretation and application of Article 223 of the Constitution. One of the questions raised was on whether the 10% applies to a vote or to the entire approved budget. The Attorney General advised that under Article 223 (5) of the Constitution, the ten percent (10%) limit for supplementary appropriation is of the entire approved budget.

## 4.0 IRREGULARITIES AND RECOMMENDATIONS

4.1 The following were irregularities and weaknesses observed during the audit, and the corresponding recommendations.

**Table 16: Irregularities, Weaknesses and Recommendations**

	Irregularity or Weakness	Amount Involved (Kshs.)	Responsibility	Recommendations
<b>Variance Analysis on Supplementary Budgets</b>				
1	Variances between additional funding approved by The National Treasury and the Controller of Budget	Recurrent amount- Kshs.5,127,000,000 Development amount- Kshs.2,814,259,781	Principal Secretary -The National Treasury	The National Treasury should ensure that there is proper and complete record-keeping on additional funding approved under Article 223 of the Constitution
2.	Variances between additional funding approved by The National Treasury and actual expenditure incurred by Ministries, Departments and State Agencies	Kshs.47,235,285,408	Principal Secretary -The National Treasury  Principal Secretary - Respective MDAs	Accounting Officers of the respective MDAs to ensure adherence with the approved budgetary provisions and also record separately any expenditure sought under Article 223 of the Constitution supplementary budgets as an annexure/note to the financial statements of each year.
<b>Compliance with Laws, Regulations and Policies in the Supplementary Budget Process</b>				
3.	Expenditure Vote Heads exceeded the 10% threshold in supplementary budgets contrary to Regulation 40(9) of the Public Finance Management (National Government) Regulations, 2015.	Not Applicable	Principal Secretary -The National Treasury	The National Treasury should consider all macro-economic assumptions during budget preparation to ensure that accurate budgets are presented to Parliament. Any expenditure that was known at the time the original budget was finalized should not be considered unforeseen
<b>Risks and Policy Gaps in the Supplementary Budget Process</b>				
4.	Lack of guidelines on items that qualify for additional funding under Article 223(1)(a)	Not Applicable	Principal Secretary -The National Treasury	Develop a framework for the approval of expenditure granted under Article 223(1)(a) of the Constitution
5.	Increase in requests for additional funding under Article 223(1)(a) of the	Not Applicable	Principal Secretary -The	The National Treasury should ensure that all requests for urgent and

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

	Irregularity or Weakness	Amount Involved (Kshs.)	Responsibility	Recommendations
	Constitution as compared to the Contingencies Fund		National Treasury	unforeseen needs are advanced from the Contingencies Fund
6.	The National Treasury did not have guidelines detailing the criteria for approval of requests for additional funding	Not Applicable	Principal Secretary -The National Treasury	The National Treasury should develop criteria to guide on requests that qualify to be funded under Article 223(1)(a) of the Constitution  The National Treasury should prepare separate schedules for expenditure granted under Article 223 of the Constitution and any ordinary re-allocations made to any vote
7.	Lack of guidelines on how to use returns by MDAs on actual expenditure incurred Under Article 223	Not Applicable	Principal Secretary -The National Treasury	The National Treasury should develop guidelines for additional reporting in respect of amounts granted under Article 223(1)(a). The report can be annexed to the financial statements of respective MDAs
8.	Lack of guidelines on withdrawals under Article 223 of the Constitution not Approved by the National Assembly	Not Applicable	Cabinet Secretary -The National Treasury	The Attorney General's legal opinion to The National Treasury, Ref: AG/CONF/21/8/1 VOL 1 dated 12 March, 2019 advised that the power of the National Assembly to annul approvals that have been granted by the Cabinet Secretary/The National Treasury under Article 223 of the Constitution is constrained.  The Public Finance Management Act, 2012 should be amended to provide guidelines on the cause of action to be taken where expenditure incurred under Article 223 is not approved post facto
9.	Lack of public participation in the supplementary budget process	Not Applicable	Principal Secretary -The National Treasury	The National Treasury should develop modalities to ensure public participation in the

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

	Irregularity or Weakness	Amount Involved (Kshs.)	Responsibility	Recommendations
				supplementary budget process
10.	Lack of specific details on requests for additional funding under Article 223 of the Constitution	Not Applicable	Principal Secretary -The National Treasury	The National Treasury should require that MDAs provide specific information on the project or program items that require funding under Article 223 of the Constitution
11.	Conflict in the law on the interpretation of the 10% limit for supplementary appropriation	Not Applicable	The National Assembly Principal Secretary -The National Treasury	The National Assembly and The National Treasury to provide a policy direction on this matter in order to ensure that there is no conflict in the law.
12.	Escalation of pending bills by National Government entities giving rise to interests and penalties especially where MDAs receive inadequate funding	Not Applicable	Principal Secretary - The National Treasury Principal Secretaries - Respective MDAs	Sanctions should be introduced against Accounting Officers who fail to pay suppliers or contractors within the stipulated timelines. The PS, The National Treasury to ensure adequate funding is provided to MDAs
<b>Value for Money on Expenditure Incurred Under Article 223 of the Constitution</b>				
<b>The National Treasury</b>				
13.	Purchase of shares by The National Treasury	Kshs.12,506,539,749	Principal Secretary -The National Treasury	For the amount of Kshs.6,196,584,631 paid to Jamhuri Holdings Limited;  The Attorney General's legal opinion to The National Treasury, Ref: AG/CONF/21/8/1 VOL 1 dated 12 March, 2019 advised that the power of the National Assembly to annul approvals that have been granted by the Cabinet Secretary/The National Treasury under Article 223 of the Constitution is constrained. There is need for The National Treasury and the National Assembly to provide a

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

	Irregularity or Weakness	Amount Involved (Kshs.)	Responsibility	Recommendations
				<p>policy direction on this matter and on any other matter where the National Assembly fails to give post facto approval on additional funding</p> <p>For purchase of shares from African Export and Import Bank and the Eastern and Southern African Trade and Development Bank: The PS National Treasury should ensure there are tangible benefits gained from increasing shares in these banks. Instances of increased funding from the banks, if any at all, should be recorded and appraisal done against the cost of the shares</p>
<b>The Sifted Maize Flour Subsidy Programme</b>				
14.	Lack of mechanism to ensure that the subsidized maize flour was sold to the final consumers at the subsidized price of Kshs.100 (one hundred shillings) for a two (2) kilogram packet		Principal Secretary - State Department for Crop Development and Agriculture Research	The Management should put in place proper monitoring mechanisms to ensure the objective of future programs subsidy programmes are achieved
15.	Delay in settlement of pending bills resulting in accrued interest	Pending bill of Kshs. 3,023,034,026 with probable interest	Principal Secretary - State Department for Crop Development and Agriculture Research	The Management should ensure there is adequate budget provision to implement subsidy programs
16.	The expenditure on sifted maize flour subsidy programme under the supplementary budget was not approved by the National Assembly contrary to Section 44(1) of the Public Finance Management Act, 2012 which states that the national government shall submit to parliament for	4,000,000,000	Cabinet Secretary to The National Treasury	The Public Finance Management Act, 2012 should be amended to provide guidelines on the cause of action to be taken where expenditure incurred under Article 223 is not approved post facto

	Irregularity or Weakness	Amount Involved (Kshs.)	Responsibility	Recommendations
	approval, a supplementary budget in support of money spent under Article 223 of the Constitution			
<b>The Fertilizer Subsidy Programme</b>				
17.	Lack of user training on the ERP Mezzanine System used for fertilizer distribution		Principal Secretary-State Department for Crop Development and Agriculture Research	The Management should train the NCPB and KNTC staff on the use of the ERP- Mezzanine System used for fertilizer distribution
18.	Absence of the right type of fertilizer during the planting season		Principal Secretary-State Department for Crop Development and Agriculture Research	The Management should continuously carry out research to establish the right type of fertilizer for the right season
19.	Lack of monitoring and evaluation mechanism on the programme		Principal Secretary-State Department for Crop Development and Agriculture Research	The Management should develop guidelines on close monitoring and evaluation of the programme to alleviate abuse and loss of fertilizer
20.	Inaccessibility of fertilizer by farmers due to long distances to the nearest depots		Principal Secretary-State Department for Crop Development and Agriculture Research	The Management should explore alternative ways of ensuring accessibility through improving roads and other infrastructure so that the fertilizer is easily accessible to the farmers as needed and at the right time
<b>The Ministry of Health</b>				
21.	Absence of service and maintenance agreement between the Ministry of Health and FSE Sarl (Project Contractor)	32,167,787€ (Kshs 3,988,804,844)	Principal Secretary - Ministry of Health	Management should formulate and implement service and maintenance agreement with the project contractor
22.	Delivered but uninstalled and idle equipment at health facilities		Governors, County Governments  CECM-Health, County Governments	County Governments should provide the right infrastructure to install the equipment.  They should also train hospital staff on how to use the equipment

	Irregularity or Weakness	Amount Involved (Kshs.)	Responsibility	Recommendations
23.	Expiry of maintenance and service contract for Computed Tomography (CT) scan machines		Principal Secretary - Ministry of Health Governors, County Governments	The Ministry of Health and County Governments should renew the service contracts or else procure the services from other contractors
<b>The State Department for Early Learning and Basic Education</b>				
24.	Procurement of contractors for construction of CBC classrooms through direct method that involved local contractors at sub county level which resulted to individuals and not companies being awarded tenders to construct classrooms		Principal Secretary - State Department for Early Learning and Basic Education	The County Directors of Education and the State Department should develop a list of pre-qualified contractors who meet the minimum criteria for the award of construction tenders for future infrastructure projects
25.	The School Management were not involved in supervision, completion certification and handover of classrooms that resulted to poor workmanship		Principal Secretary - State Department for Early Learning and Basic Education	The School Management, County Public Works Officers and County Directors of Education should be involved in formulating, planning, budgeting for construction of classes to develop the same standard of classes based on location and material specifications
26.	Classrooms not in use		Principal Secretary - State Department for Early Learning and Basic Education	The Implementation Team should carry out a needs assessment based on student population to establish schools that require additional classes
27.	Junior Secondary Schools (JSS) received no capitation, less capitation and over capitation due to inaccurate information held in the National Education Management Information System (NEMIS)		Principal Secretary - State Department for Early Learning and Basic Education	Reconciliation and update of student information in NEMIS to ensure the correct amount of capitation is disbursed to schools
28.	Congestion of students in JSS classrooms as opposed to the recommended teacher to student ratio especially in urban areas		Principal Secretary - State Department for Early Learning	Increase Maintenance and Infrastructure funding to schools

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

	Irregularity or Weakness	Amount Involved (Kshs.)	Responsibility	Recommendations
			and Basic Education	
29.	Shortage of trained teachers for JSS and CBC curriculum		CEO Teachers Service Commission (TSC)	The Government should ensure adequate staffing in schools and that teachers posted to schools are balanced to teach a wide combination of subjects in the CBC Curriculum.
30.	TVETs with Uninstalled Equipment due to lack of 3 phase power voltage to support equipment with motors which requiring more power		Principal Secretary - State Department for Vocational and Technical Training	Liaise with the Kenya Power and Lighting Co. Ltd and NGCDF Management to fast track the installation of the required electrical infrastructure
31.	Non-functioning and faulty equipment in TVETS		Principal Secretary - State Department for Vocational and Technical Training	The State Department for Vocational and Technical Training and the affected TVETs to enter into service agreements with suppliers for maintenance of equipment for continued service delivery
32.	Idle Equipment in TVETs due to configuration in Mandarin language		Principal Secretary - State Department for Vocational and Technical Training	The supplier should configure the equipment in English
33.	Implementation of SEQIP project on construction of classes and laboratories in targeted regions was not well coordinated resulting in non-completion of classes and abandoned sites		Principal Secretary - State Department for Early learning and basic Education	The project to be restructured to have inputs from the users School Management to have ownership stake and hence supervise to completion
<b>The State Department for Petroleum</b>				
34.	Advance Sales Price Stabilization Compensation	5,324,796,940	Principal Secretary - State Department for Petroleum	There is need to have a legal framework that governs advance payments to oil marketing companies  Management needs to provide evidence of recovery of the advance payments in subsequent

	Irregularity or Weakness	Amount Involved (Kshs.)	Responsibility	Recommendations
				payments to the oil marketing companies
35.	Administrative Costs in the Pump Prices	2,205,915,489	Principal Secretary - State Department for Petroleum	The Principal Secretary should provide the basis of determining administration costs
36.	The demurrage charges charged to the Fuel Pump Prices thereby transferring the net effect wholly to the final consumer	3,182,427,410	Principal Secretary- State Department for Petroleum	There is need to have regulations that determine demurrage charges that can be passed to the customers and importers.  A Committee to determine the demurrage charges payable to oil marketing companies should be formed
<b>The National Optic Fibre Backbone Infrastructure Project</b>				
37.	Non-Settlement of Pending Bills	3,051,000,000	Principal Secretary- State Department for ICT and Digital Economy	Management should provide details of the pending bills including the ageing analysis schedules  The Accounting Officer should comply with Regulation 42(1)(a) of the Public Finance Management Regulations which stipulates that debt service payments shall be a first charge on the Consolidated Fund and the Accounting Officer shall ensure this is done to the extent possible that the government does not default on debt obligations
<b>The State Department for Water and Sanitation</b>				
38.	Failure to plan for budget pay for expenditure incurred to avoid pending bills in Thwake Multipurpose dam	36,971,346,445	Principal Secretary-State Department for Water and Sanitation	Adequate budgetary provision to be made in the approved budget to avoid withdrawal from Article 223 of the Constitution
39.	Failure to plan for budget pay for expenditure incurred to avoid pending bills in Mwache dam	13,752,164,239	Principal Secretary-State Department for Water and Sanitation	Adequate budgetary provision to be made in the approved budget to avoid withdrawal from Article 223 of the Constitution

	Irregularity or Weakness	Amount Involved (Kshs.)	Responsibility	Recommendations
	<b>The Distribution of Relief Food</b>			
40.	Poor storage of relief food resulting in spoilage, wastage and health risks		Principal Secretary-State Department for Interior and National Coordination  The Deputy County Commissioner	The Management should provide adequate funding for proper storage of relief food Relief food should be well stored to avoid wastage
41.	Relief food given to the vulnerable in the society used as substitute for payment of school fees Converting relief foods into school fees		Principal Secretary-State Department for Interior and National Coordination  The Steering Committee	The Management should develop guidelines for relief food distribution programme to include trading of relief food for other services. Relief food should be distributed to the vulnerable
42.	Inadequate funding for transportation and distribution of relief food  Lack of AIEs to distribute the relief foods		Principal Secretary-State Department for Interior and National Coordination	The Management should provide adequate funding for transportation and distribution of relief food to need sections of the population. Funded AIEs should be given whenever food is being distributed
	<b>The Financial Inclusion Fund</b>			
43.	Lack of Non-effective agreement between the Ministry of Cooperatives and Micro Small and Medium Enterprise (MSME) Development and the two participating banks namely, Kenya Commercial Bank and Family Bank for the disbursement of the funds	12,000,000,000	Principal Secretary - State Department for Micro, Small and Medium Enterprise (MSME) Development	PS-State Department for MSME Development should cause the agreement with the Bank to be signed for it to become effective
44.	Lack of an effective agreement between the <b>Banks; Safaricom PLC, Airtel Networks Kenya Limited and Telkom Kenya</b> for the disbursement of the funds to the recipients	11,175,022,000	Principal Secretary - State Department for Micro, Small and Medium Enterprise (MSME) Development	PS-State Department for MSME Development should cause the agreement with the service provider to be signed for it to be effective
45.	Records provided from the Kenya Commercial Bank	824,978,448	Principal Secretary -	Management should develop guidelines on

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

	Irregularity or Weakness	Amount Involved (Kshs.)	Responsibility	Recommendations
	indicates that there are idle Funds held by KCB		State Department for Micro, Small and Medium Enterprise (MSME) Development	where the funds not borrowed should be utilised or invested for the benefit of the kitty.PS-State Department of MSME Development should ensure that the funds are not idle

## 5.0 APPENDICES

### Appendix 1: Analysis of Percentage Deviation Per Vote Head for Ministries, Departments and State Agencies

Vote Code	MDA	Financial Year										
		2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023		
1011	Executive Office of the President	96.34%	14.14%	29.93%		16.66%	32.29%	12.13%	22.50%	51.92%		
1021	State Department for Interior and Citizen Services	21.78%				11.32%						
1022	State Department for Coordination of National Government	10.22%										
1023	State Department for Correctional Services						18.64%					
1024	State Department for Immigration and Citizen Services					44.22%						
1031	State Department for Planning	12.34%										
1032	Ministry of Devolution	99.33%			90.71%			62.23%	48.06%			
1033	State Department for Special Programmes			142.30%	34.13%							
1035	State Department for Development of the ASAL											99.68%
1041	Ministry of Defence				10.32%				14.20%			
1051	Ministry of Foreign Affairs and International Trade	20.77%	13.69%									

Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010

Vote Code	MDA	Financial Year												
		2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023				
1063	State Department for Basic Education				41.19%									
1064	State Department for Vocational and Technical Training			29.00%	61.63%	28.49%								
1065	State Department for University Education					11.32%						10.80%		
1066	State Department for Early Learning and Basic Education													21.81%
1068	State Department for Post Training and Skills Development					66.00%								
1072	State Department for Planning											29.57%	12.28%	
1081	Ministry of Health	14.24%			27.05%				15.71%					
1091	State Department for Infrastructure	10.11%		23.49%					27.67%				18.13%	
1092	State Department for Transport	312.08 %						30.98%				56.12%		13.86%
1093	State Department for Shipping and Maritime							14.69%						
1094	State Department for Housing and Urban Development				15.31%							65.54%		
1101	State Department for Environment and Natural Resources	10.33%												
1102	State Department for Water and Regional Authorities	20.52%												
1103	State Department for Water Services			13.10%	13.77%									

Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010

Vote Code	MDA	Financial Year												
		2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023				
1104	State Department for Irrigation				10.17%									
1111	Ministry of Land Housing and Urban Development	37.89%												
1121	Ministry of Information, Communications and Technology		47.59%											
1122	State Department for Information Communications and Technology & Innovation			22.21%										
1123	State Department for Broadcasting & Telecommunications			34.20%	30.92%	61.10%		29.11%	15.67%					
1131	Ministry of Sports Culture and Arts	12.69%												
1132	State Department for Sports				59.54%	419.06%								
1134	State Department for Culture and Heritage					10.70%								
1151	Ministry of Energy and Petroleum	19.00%												
1161	State Department for Agriculture.	33.34%			67.68%									
1162	State Department for Livestock.			12.34%	21.39%	10.67%							21.79%	
1163	State Department for Fisheries.	50.83%												
1165	State Department for Crop Development									36.62%	39.85%			
1167	State Department for Irrigation									13.53%				
1168	State Department for Agricultural Research									21.39%				

Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010

Vote Code	MDA	Financial Year												
		2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023				
1169	1169 State Department for Crop Development & Agricultural Research										19.69%			19.06%
1172	State Department for Investment and Industry				15.33%									
1173	State Department for Cooperatives				43.64%				17.39%				10.09%	914.96 %
1174	State Department for Trade and Enterprise Development			14.46%				30.14%			14.35%		22.65%	
1175	State Department for Industrialization								19.55%					
1181	State Department for Commerce and Tourism	62.85%												
1185	State Department for Social Protection, Senior Citizens Affairs & Special Programs				15.50%			20.67%					10.85%	10.29%
1193	State Department for Petroleum										29.05%			
1194	Ministry of Petroleum and Mining												2069.0 7%	169.73 %
1202	State Department for Tourism								10.85%				44.57%	12.02%
1203	State Department for Wildlife												16.97%	21.87%
1211	State Department for Public Service and Youth Affairs			13.38%										
1214	State Department for Youth Affairs								23.72%				16.02%	
1221	State Department for East African Community								47.58%					

Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010

Vote Code	MDA	Financial Year											
		2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023			
1222	State Department for Regional and Northern Corridor Development											41.85%	40.44%
1252	State Law Office and Department of Justice			10.65%									
1261	The Judiciary					11.34%							15.49%
1271	Ethics and Anti-Corruption Commission		13.22%	24.69%									
1281	National Intelligence Service			14.67%	20.12%	10.61%				16.64%	11.19%		
1291	Office of the Director of Public Prosecutions		10.79%										10.69%
1311	Office of the Registrar of Political Parties					30.38%						68.97%	
1321	Witness Protection Agency	18.23%											
2021	National Land Commission							21.37%				16.39%	
2031	Independent Electoral and Boundaries Commission	125.56%	14.43%	22.17%	54.38%	15.59%				20.36%	61.41%		
2041	Parliamentary Service Commission	14.57%											
2043	Parliamentary Joint Services							154.72%		10.44%			
2051	Judicial Service Commission												51.11%
2071	Public Service Commission	12.76%											
2081	Salaries and Remuneration Commission	90.66%	34.24%		15.12%								

Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010

Vote Code	MDA	Financial Year											
		2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023			
2101	National Police Service Commission	69.18%				10.99%							
2151	Independent Police Oversight Authority	41.68%											
	Guaranteed Debt			19.59%									611.14 %
	Pensions and Gratuities		32.57%										
	Public Debt		10.18%										
	Subscriptions to International Organizations		348.69 %										

## Appendix 2: List of Millers and Amount of Probable Interest

	County	No. of Millers	Total Invoiced Amount (Kshs.)	Total amount Paid (Kshs.)	Pending Bills (Kshs.)	Probable Interest (Kshs.)
1	Embu	3	92,247,644	63,384,710	28,862,934	3,902,427
2	Kajiado	3	130,209,609	83,183,521	47,026,088	6,358,185
3	Kiambu	9	775,939,940	560,205,573	215,734,367	29,168,468
4	Kisumu	1	71,568,753	9,489,256	62,079,497	8,393,488
5	Laikipia	3	37,778,163	30,595,573	7,182,590	971,126
6	Machakos	7	271,853,557	210,891,144	60,962,413	8,242,452
7	Meru	4	124,346,096	95,808,674	28,537,422	3,858,416
8	Mombasa	4	1,876,711,882	147,213,331	1,729,498,551	233,837,681
9	Murang'a	2	13,767,151	12,378,609	1,388,541	187,738
10	Murang'a	2	71,742,999	58,657,997	13,085,002	1,769,164
11	Nairobi	11	1,091,416,105	763,085,386	328,330,719	44,392,112
12	Nakuru	11	156,305,376	114,694,059	41,611,317	5,626,078
13	Nandi	1	77,086,276	67,640,478	9,445,798	1,277,124
14	Narok	1	100,822	100,822	-	
15	Nyeri	1	21,369,565	19,645,712	1,723,853	233,074
16	Trans Nzoia	1	15,696,396	14,041,175	1,655,221	223,795
17	Uasin Gishu	3	296,729,317	247,812,860	48,916,456	6,613,773
	<b>Total</b>	<b>67</b>	<b>5,124,869,650</b>	<b>2,498,828,880</b>	<b>2,626,040,769</b>	<b>355,055,101</b>

### Appendix 3: Quantity of Fertilizer Delivered in the Sampled Counties

County	No. of Depots	Quantity Received	Amount (Kshs.)
1Bomet	3	66,618	306,344,000.00
2Embu	2	46,625	214,475,000.00
3Kakamega	2	67,347	309,796,200.00
4Kericho	3	85,338	392,554,800.00
5Kisumu	2	11,282	51,897,200.00
6Machakos	3	36,453	167,683,800.00
7Makueni	1	2,280	10,488,000.00
8Meru	4	54,017	248,478,200.00
9Migori	3	112,338	516,739,000.00
10Muranga	1	20,485	94,231,000.00
11Nakuru	14	440,998	2,028,590,800.00
12Nandi	3	171,123	787,165,800.00
13Narok	2	80,422	369,941,200.00
14Nyandarua	1	24,787	114,020,200.00
15Nyeri	1	23,585	108,491,000.00
16Trans Nzoia	3	315,370	1,450,703,000.00
17Uasin Gishu	7	789,763	3,632,909,800.00
<b>Total</b>	<b>55</b>	<b>2,348,831</b>	<b>10,804,509,000.00</b>

#### Appendix 4: Medical Equipment Not in Working Condition

Name of Hospital	Name of Equipment	Condition	Value in Euro	Value in Kshs.
Kapkatet Sub-County Hospital	Oxygen Plant	Required a 1,000 KVA transformer and the existing transformer was 315 KVA	€ 166,015.38	20,585,907
Kericho County Referral Hospital	Blood gas analyzer	Out of service and has not been serviced since July 2022	€ 10,493.37	1,301,178
	Dryer	Broken down for two (2) months. The hospital did not have another dryer.	€ 6,265.32	776,900
	Hematology analyzer	Not been in use since October 2022 as re-agents have been out of stock to date	€ 16,633.52	2,062,557
	STERILWAVE SW250 42 KVA incinerator	The incinerator worked for only six (6) months and has since broken down	€ 128,133.05	15,888,498
Magutuni District Hospital	Blood Gas Analyzer	Out of order since 10/10/2022, the required spare parts need to be imported from France	€ 10,493.37	1,301,178
	Haematology analyzer	Broken down	€ 16,633.52	2,062,557
	Washing machine	Not working for two (2) months at the time of the audit. Spare parts have to be imported from France.	€ 7,132.28	884,403
Meru County Referral Hospital	Chemistry Analyzer Open System	Not functional	€ 21,148.61	2,622,428
	Digital Mobile X-Ray Machine	Not functional	€ 61,031.49	7,567,905
	Haematology Analyzer	Has never worked since delivery	€ 16,633.52	2,062,557
Moi Teaching and Referral Hospital	Forty-five (45) Kg Laundry drier	Not working condition. It requires a door glass, blower motor and main switch.	€ 7,411.96	919,083
	One (1) Centrifuge.	Not in working condition; the door mechanism not locking	€ 4,660.27	577,874
	One operating theatre light	Not in working condition	€ 9,089.24	1,127,066
	Two (2) laundry barrier washers	Not in working condition. They require door lock switches, door locks and motherboards	€ 72,732.37	9,018,814
Murang'a Level 5 Hospital	Blood Gas Analyzer	Not in working condition	€ 10,493.37	1,301,178

*Special Audit Report of the Auditor-General on Supplementary Budget Expenditure, Including Withdrawals Under Article 223 of the Constitution of Kenya, 2010*

Name of Hospital	Name of Equipment	Condition	Value in Euro	Value in Kshs.
	Blood warmer	Not working	€ 4,249.14	526,894
	Digital Mobile X-ray Machine	Not in working condition	€ 61,031.49	7,567,905
	Waste Management Model for Level 4 Sites	Not in working condition; door lock has a problem, a plate is broken.	€ 128,133.05	15,888,498
Mukurweini Level 4 Hospital	Blood Warmers	Has technical faults	€ 4,249.14	526,893
	Oxygen Generation Plant for level 4 sites	Had not been in use for four (4) months. The compressor and high-pressure refilling pipe had broken down.	€ 166,075.38	20,593,347
	Digital Mobile X-ray Machine with Accessories	The company that supplied never configured the machine	€ 61,031.49	7,567,905
	Autoclave	Has never worked since it was delivered. The power supply is not stable.	€ 6,019.99	746,479
	Waste Management Model for Level 4 Sites	Door lock has a problem, a plate is broken and supplier is not responsive	€ 128,133.05	15,888,498
Kilifi County Referral Hospital	Waste Management Model for Level 4 Sites	Vandalised	€ 128,133.05	15,888,498
Murang'a Level 5 Hospital	Oxygen Generation Plant for level 5 sites	The Oxygen plant is not working since one pump for refilling station is not working but the other system is in good condition. Some services are locked by the supplier	€ 230,924.18	28,634,598
	Washing Machine	The pump that supplies water to the machine has problem	€ 7,132.28	884,403
	Dryer 35-50 Kgs	the front mirror is broken	€ 6,265.32	776,900
			<b>€ 1,496,378.20</b>	<b>185,550,901</b>

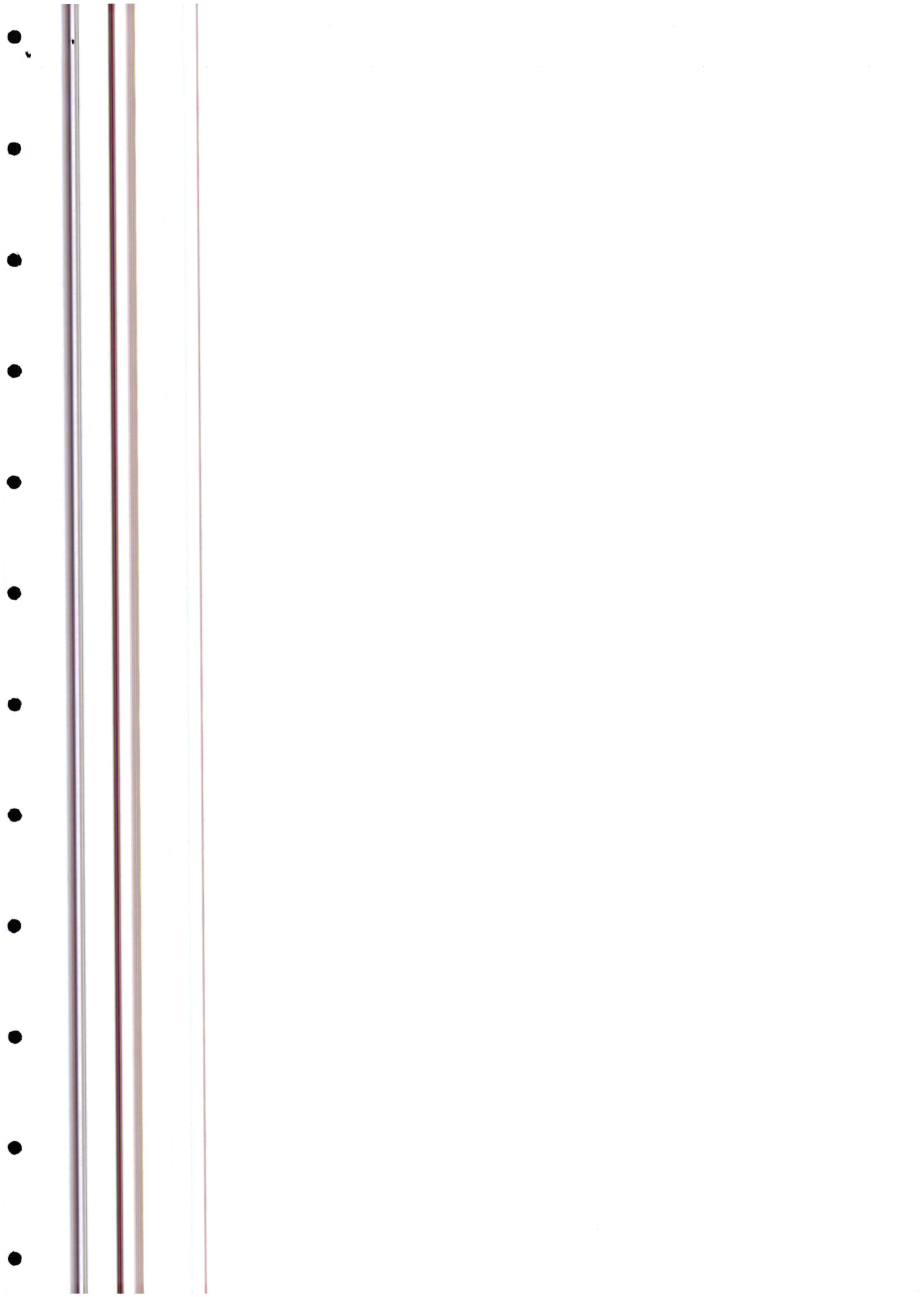
**Appendix 5: List of Health Facilities That Were Supplied with CT Scan Machines**

DISTRIBUTION OF CT SCAN MACHINES					
NO	COUNTY	HOSPITAL	No	County	Hospital
1	Kiambu	Thika level 5 Hospital	21	Wajir	Wajir CRH
2	Nyandarua	JM Kariuki (OI Kalou) CRH	22	Tharaka Nithi	Chuka CRH
3	Isiolo	Isiolo CRH	23	Turkana	Lodwar CRH
4	Nandi	Kapsabet CRH	24	Elgeyo Marakwet	Iten CRH
5	Taita Taveta	Moi (Voi) CRH	25	Mandera	Mandera CRH
6	Lamu	Lamu CRH	26	Busia	Busia CRH
7	Narok	Narok CRH	27	Nyamira	Nyamira CRH
8	Kisii	Kisii TRH	28	Samburu	Mararal CRH
9	Bomet	Longisa CRH	29	Vihiga	Vihiga CRH
10	Marsabit	Marsabit CRH	30	Siaya	Siaya CRH
11	Kakamega	Kakamega GCRH	31	Garissa	Garissa CRH
12	Tana River	Hola CRH	32	Makueni	Makueni CRH
13	Mombasa	Coast GCRH	33	Nyeri	Nyeri CRH
14	Migori	Migori CRH	34	National	Mathari TRH
15	Kirinyaga	Kerugoya CRH	35	National	National Spinal Injury Hospital
16	Kericho	Kericho CRH	36	National	Kenyatta NH
17	Embu	Embu CRH	37	National	Moi TRH
18	Nakuru	Nakuru CRH			
19	Kisumu	JOOTRH			
20	Murang'a	Murang'a CRH			
21	Wajir	Wajir CRH			

## Appendix 6 : Analysis of Expenditure from the Contingencies Fund

MDA	Purpose	Amount Withdrawn (Kshs.)
<b>2022-2023</b>		
State Department for Social Protection	Drought mitigation	153,921,114.25
State Department for Social Protection	Drought mitigation	44,480,000.00
State Department for Social Protection	Drought mitigation	10,600,000.00
State Department for Social Protection	Drought mitigation	394,393,112.00
State Department for Social Protection	Drought mitigation	558,375,892.00
State Department for Social Protection	Drought mitigation	719,610,409.00
State Department for Social Protection	Drought mitigation	431,493,692.00
State Department for Social Protection	Drought mitigation	142,444,790.00
State Department for Social Protection	Drought mitigation	275,600,000.00
State Department for Social Protection	Drought mitigation	137,800,000.00
State Department for Social Protection	Drought mitigation	30,157,169.70
State Department for Social Protection	Drought mitigation	23,540,725.65
State Department for Environment and Forestry	Response to wild fires	65,000,000.00
State Department for Diaspora Affairs	Evacuation of Kenyans living in Sudan during war	118,989,848.00
<b>Total</b>		<b>3,106,406,752.60</b>
<b>2021-2022</b>		
State Department for Social Protection	Drought mitigation	450,000,000.00
State Department for Social Protection	Drought mitigation	120,000,000.00
State Department for Social Protection	Drought mitigation	230,000,000.00
State Department for Social Protection	Drought mitigation	152,000,000.00
State Department for Social Protection	Drought mitigation	62,300,000.00
State Department for Devolution	Drought mitigation	381,211,558.00
State Department for Devolution	Drought mitigation	7,211,094.00
State Department for Devolution	Drought mitigation	10,662,785.00
State Department for Devolution	Drought mitigation	484,200,000.00
State Department for Devolution	Drought mitigation	55,000,000.00
State Department for Devolution	Drought mitigation	8,087,955.90
<b>Total</b>		<b>1,960,673,392.90</b>
<b>2017-2018</b>		
State Department for Interior	Funds issued to Kenya Red Cross for country wide flood response	1,000,000,000.00
State Department for Interior	Financial support to flood victims	18,070,000.00
State Department for Interior	Funds issued to Muranga County Commissioner for Cash Release to Families affected by Landslide	31,930,000.00
<b>Total</b>		<b>1,050,000,000.00</b>
<b>2016-2017</b>		
State Department for Special Programmes	Relief food supplies	981,901,383.15
State Department for Special Programmes	Transport and logistics for relief food supplies	99,084,761.85
<b>Total</b>		<b>1,080,986,145.00</b>
<b>2014-2015</b>		
State Department for Devolution	Famine relief supplies	1,000,000,000.00
<b>Total</b>		<b>1,000,000,000.00</b>





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