REPUBLIC OF KENYA



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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FOURTH SESSION

THE PUBLIC ACCOUNTS COMMITTEE

THE REPORT ON THE EXAMINATION OF THE REPORT OF THE AUDITOR-GENERAL ON THE FINANCIAL STATEMENTS FOR THE NATIONAL GOVERNMENT MINISTRIES, DEPARTMENTS AND AGENCIES

FOR THE FINANCIAL YEAR 2021/2022

***

VOLUME I - MAIN REPORT

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 14 MAR 2025
DAY. Friday
TABLED BY: Hon. Tindi Mwale (Chairperson, Public Accounts Committee)
CLERK-AT THE-TABLE: Irene Nduku

DIRECTORATE OF AUDIT, APPROPRIATIONS
& GENERAL PURPOSE COMMITTEES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

MARCH, 2025

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LIST OF ABBREVIATIONS/ACRONYMS

AG.	-	Acting
CEO	-	Chief Executive Officer
CS	-	Cabinet Secretary
DCI	-	Directorate of Criminal Investigations
EACC	-	Ethics and Anti-Corruption Commission
FY	-	Financial Year
GoK	-	Government of Kenya
IAS	-	International Accounting Standards
IPSAS	-	International Public Sector Accounting Standards
KES/ KSHS.	-	Kenya Shillings
PFMA	-	Public Finance Management Act, No. 18 of 2012
PPAD	-	Public Procurement and Asset Disposal Act, No. 33 of 2015
PS	-	Principal Secretary
PSASB	-	Public Sector Accounting Standards Board

CHAIRPERSON'S FOREWORD

The Public Accounts Committee hereinafter referred to as "the Committee" is one of the six 'Watchdog Committees' in the thirteenth Parliament that examines reports of the Auditor-General laid before the National Assembly to ensure probity, efficiency, and effectiveness in the use of public funds. The Committee is established pursuant to National Assembly Standing Order 205 to examine accounts showing appropriations of sums voted by the House to meet public expenditure and of such other accounts laid before the House as the Committee may think fit. This ensures implementation of *Article 229(8)* of the Constitution of Kenya, 2010 on reports submitted to the House by the Auditor- General.

This is the second report of the Public Accounts Committee of the 13th Parliament. In examining the accounts of the Auditor General, the Committee invited accounting officers for the various Ministries, State Departments, Commissions and Agencies to adduce evidence before it.

This report contains observations, findings and recommendations arising from examination of reports of the Auditor-General for National Government for the financial year 2020/21. The report is structured as follows:

i) general observations arising from recurring and cross-cutting audit queries;

ii) recommendations to each of the above;

iii) audit queries identified by the Auditor General in the audit reports of each Ministry, State Department, Commission or Agency;

iv) Submission by the Accounting Officers to each of the queries;

v) Committee observations/ findings on each query; and

vi) recommendations of the Committee to each query raised.

In this report, the Committee goes beyond financial recommendations and makes policy recommendations that it deems will cure financial and audit challenges and at the same time recommends specific actions against specific officers who may have acted contrary to the law. It further recommends further investigations of certain matters by the relevant investigative agencies such as the EACC and the DCI. All this is geared towards ensuring prudent use of public resources and holding all persons that have misappropriated public funds accountable, in accordance with Article 226 (5) of the Constitution.

The Committee appreciates the Offices of the Speaker and the Clerk of the National Assembly for the support accorded to it to enable it to perform its mandate. The Committee further extends its appreciation to the Office of the Auditor-General and the National Treasury for the services it offered to the Committee during the entire period, as well as those Accounting Officers who complied with audit timelines, and provided satisfactory responses to queries raised. I also extend my appreciation to my fellow Members of the Committee, including the predecessor Committee, and the secretariat whose immense contributions and dedication to duty has enabled the Committee to examine the audit queries and produce this report.

On behalf of the Public Accounts Committee, and pursuant to National Assembly Standing Order 199(6), it is my pleasant duty and honour to present the Report of the Public Accounts Committee on Audited Financial Statements for National Government for the financial year 2020/21.

HON. NICHOLAS S. TINDI MWALE, MP
CHAIRPERSON, PUBLIC ACCOUNTS COMMITTEE

EXECUTIVE SUMMARY

This report of the Public Accounts Committee contains the Committee's examination of audited financial statements of National Government for the financial year 2021/22.

In its examination and scrutiny of the audited financial statements of the various Ministries, State Departments, Commissions and Agencies, the Committee's primary approach was to get submission from Accounting Officers as regards errors of omission or commission that gave rise to the audit queries cited by the Auditor General. This was done guided by the relevant public financial management principles in the Constitution of Kenya, 2010, the Public Audit Act, 2015, the Public Finance Management Act, 2012 and the attendant Regulations, the Public Procurement and Asset Disposal Act, 2015 and the attendant Regulations and the International Public Sector Accounting Standards (IPSAS). The Committee has elaborated on these various provisions and the remedies that are prescribed for their breaches elsewhere in this report.

The preface of the report contains preliminaries on the establishment of the Committee; its membership and secretariat; mandate; and the guiding principles governing the Committee in the discharge of its mandate and its recommendations.

The report then examines reports of each specific Ministry, State Department, Independent Commission or Agency; the specific audit reservations raised by the Auditor-General; Submission by the Accounting Officer to each audit query by the Accounting Officer; Committee observations/ findings after consideration of the respective audit reservation; and finally, Committee recommendations on each audit query.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Public Accounts Committee is established under the National Assembly Standing Order (S.O.) 205 and is mandated to examine accounts showing appropriations of sums voted by the House to meet public expenditure and of such other accounts laid before the House as the Committee may think fit.

1.2 Committee Membership

2. The Committee comprises of the following fifteen (15) Members;

i.	**The Hon. Nicholas Tindi S. Mwale, MP**	-	**Chairperson**
ii.	**The Hon. Amina Udgoon Siyad, MP**	-	**Vice-chairperson**
iii.	The Hon. Junet Sheikh Nuh, EGH, MP		
iv.	The Hon. Lesuuda Josephine Naisula, OGW, MP		
v.	The Hon. (Dr.) Otiende Amollo, SC, EBS, MP		
vi.	The Hon. (Dr.) Wilberforce Ojiambo Oundo, MP		
vii.	The Hon. (Dr.) Edwin Mugo Gichuki, MP		
viii.	The Hon. Emathe Joseph Namuar, MP		
ix.	The Hon. Gabriel Gathuka Kagombe, MP		
x.	The Hon. Kitany Marianne Jebet, MP		
xi.	The Hon. Mohamed Aden Adow, MP		
xii.	The Hon. Nabwera Daraja Nabii, MP		
xiii.	The Hon. Ruku Geoffrey Kariuki Kiringa, MP		
xiv.	The Hon. Victor Kipng'etich Koech, MP		
xv.	The Hon. Yakub Adow Kuno, MP		

3. The Committee expresses its gratitude to its predecessor Committee which superintended over examination of these accounts. The current membership, majority of whom were in the previous Committee, confirms review of this report, and owns the observations and recommendations herein.

1.2 Committee Secretariat

4. The secretariat facilitating the Committee comprises the following technical staff;

i.Mr. Victor Weke	-	Senior Clerk Assistant/Lead Clerk
ii.Mr. Josphat Bundotich	-	Principal Sergeant-at-Arms I
iii.Mr. Lenny Muchangi	-	Legal Counsel II
iv.Ms. Lilian Mwikali Mutiso	-	Clerk Assistant III
v.Mr. Mohamed Jelle Abdi	-	Clerk Assistant III
vi.CPA Cyrille Mutali	-	Fiscal Analyst III
vii.Ms. Lydia Shalom	-	Research Officer III
viii.Ms. Yvonne Kendi	-	Hansard Officer III
ix.Ms. Lilian Aluga	-	Public Communication Officer
x.Mr. Mark Mbuthia	-	Audio Recording Officer
xi.Mr. Hillary Mageka	-	Media Relations Officer

5. The Committee benefitted from technical support from liaison officers from the Office of the Auditor General, Mr. Paul Kagwanja & Mr. Ezekiel Omore, and from the National Treasury, Rev. CPA Kimathi Kwiriga.

1.3 Committee proceedings

6. To produce this report, the Committee held one hundred and eleven (111) sittings in which it examined the audited financial statements of all ministries, state departments and agencies for the financial year 2021/22.

7. In response to all the audit queries, the Committee heard and received both oral and written evidence from Principal Secretaries and Commission Secretaries (Accounting Officers) of the various votes and other relevant witnesses.

8. Despite limited time and resources, the Committee made a select few field visits to ascertain status of projects and get first-hand information. The Committee intends to pursue more of this in its succeeding financial year report examinations.

9. These observations and recommendations, if considered and implemented, will enhance accountability, effectiveness, transparency, efficiency, prudent management, and value for money in state organs.

2.0 GUIDING PRINCIPLES

10. The Committee in considering the Audited accounts of National Government is guided by the Constitution of Kenya and the following statutes and codes/regulations in undertaking its mandate: -

11. Chapter Twelve of the Constitution on Public Finance

Part I-Principles of Public Finance

Article 201 sets out the principles of public finance which includes: -

- openness and accountability, including public participation in financial matters (Article 201(a)); use of public money in a prudent and responsible way (Article 201(d)); and
- responsible financial management and clear fiscal reporting (Article 201(e)).

Part 6-Control of Public Money

Article 226 deals with the accounts and audit of public entities and provides that.

- the accounting officer of a national public entity is accountable to the National Assembly for its financial management (Article 226(2));

Article 227 deals with the procurement of public good and services. Article 227 (1) in particular, provides that "when a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive, and cost-effective".

12. The Public Finance Management Act, No. 18 of 2012

Section 68 sets out the responsibilities of accounting officers for national government entities, Parliament and the Judiciary This includes accountability to the National Assembly for ensuring that the resources of the respective entity for which he or she is the accounting officer are used a lawful, authorized, effective, efficient, economical and transparent manner (section 68(1)).

Section 72 focuses on the accounting officers' responsibility to manage the assets and liabilities of national government entities.

13. Apart from the above-named laws, the Committee was further guided by the following. -

(i) the Parliamentary Powers and Privileges Act, No. 29 of 2017;
(ii) the Public Finance Management (National Government) Regulations, 2015;
(iii) the Public Procurement and Asset Disposal Act, No. 33 of 2015;
(iv) the Public Procurement and Asset Disposal Regulations, 2020;
(v) the Public Audit Act, No. 34 of 2015;
(vi) The Fair Administrative Action Act, No. 4 of 2015;
(vii) the Accountants Act, No. 15 of 2008; and
(viii) the National Assembly Standing Orders

3.0 GENERAL OBSERVATIONS AND RECOMMENDATIONS

14. In consideration of reports of various ministries, state departments and agencies, the Committee encountered cross-cutting and at times persistent matters that that informed the general observations and recommendations. Specific observations and recommendations are however made respective agencies and queries.

15. Poor accounting standards and general incapacity of some accounting units

The Committee found that despite all accounting units being staffed by qualified accountants and procurement officers, non-compliance with the various provisions of the various laws elaborated above pointed to incompetence or resistance. The various breaches included inaccuracies in financial statements, failure to reconcile accounts and failure to address prior year matters. The situation was most prevalent in donor funded projects.

The Committee recommends that the National Treasury conducts periodic sensitization and capacity building for all accounting officers, finance staff and procurement officers across government on their responsibilities during the audit cycle and adherence to IPSAS.

The Committee also recommends that ICPAK enforces compliance to standards and met out sanctions to those officers found to be willfully failing to discharge their functions.

16. Late submission of supporting documentation

Further to the above, the Committee observed that some accounting officers failed to submit supportive documentation to the Auditor-General on time (during the audit cycle) as required under section 68 of the PFM Act and the various provisions of the Public Audit Act. This invariably led to the Committee discussing matters that should ordinarily not feature in the final report, some as mundane as accounts not balancing. The Committee observed that accounts and finance staff in the various state agencies did not maintain financial statements real time and waited for the end of the financial year to commence reconciliations. This therefore leads to the many 'resolved' queries once they land on the Committee's desk.

The Committee recommends that Accounting Officers henceforth comply with Section 68(2)(k) of the PFM Act 2012, by providing supportive documentation on time. The Committee in subsequent audits will prescribe punitive measures to those accounting officers that fail to adhere to requirements of the law in this regard.

The Committee has currently stopped the bad culture of continuous engagement between officers of the Auditor General and Accounting Officers, beyond the time period prescribed by law. Audit is time-bound and all queries carried to the report of the Auditor General will be considered as such and attract requisite recommendations as is.

17. Long outstanding construction works/ stalled projects

The Committee encountered cases where some construction projects took inordinately long to complete for various reasons including contractor non-performance, late exchequer issuance, budget cuts and general poor foresight and project management. This led to sunk costs and a general lack of value for money, and in most cases, escalation costs and interest charged by contractors.

The Committee recommends that the National Treasury should only approve projects that it can guarantee funding and completion within the medium-term expenditure framework. No new project should be commenced by an agency before all existing ones are completed or fully funded. Accounting Officers are further warned of personal responsibility should contractors fail to perform, considering evaluation of technical and financial capacity of bidders is mandated under the law. The failure to enforce and/or recall performance guarantees will also be personally remedied by the Accounting Officers.

18. Non-existence or weak internal audit functions

The Committee noted numerous instances where internal audit committees were non-existent or did not meet regularly as prescribed by law. The Committee observed that the current practice where the Accounting Officer appointed and facilitated the audit committees may be a hindrance to the effectiveness of these committees as they are required to report to the same Accounting Officer on breaches by the same.

The Committee reiterates its previous recommendation that Treasury submits proposals to the National Assembly within three (3) months of adoption of this report, delinking internal audit functions in terms of appointment, facilitation and reporting from Accounting Officers to an independent office.

19. Budgetary control and performance

All ministries, state departments and agencies faced budgetary underperformance predominantly attributed to late exchequer release, supplementary budgets or incapacity to collect AIA. This invariably led to underperformance of programme objectives and lack of service provision to the public.

The Committee recommends that Treasury and the National Assembly through the Budget & Appropriation Committee, and the departmental Committee on Finance and National Planning make realistic revenue projections and attainable expenditure estimates.

20. Pending bills

Related to the above, state agencies have seen accrual of huge sums of pending bills largely blamed on inadequate exchequer release and budget rationalization, after commitments have been made and goods/ services have been procured. The Pending Bills Verification Committee, which is in itself a remedial after-the-fact measure, has taken inordinately long to conclude on the so-called 'verification'.

The Committee recommends that Treasury only rationalizes budgets that have not been committed. Further, borrowing by the National Treasury to plug budget deficit should be done uniformly across the financial year to avoid the end year rush of disbursements and procurement in an effort to beat the deadline.

21. Accrual vs cash basis accounting

The National Government has continued to operate under the cash basis of accounting that poses various challenges in maintaining of financial records. Accrual accounting provides a more accurate view of an agency's financial health by especially factoring in accounts receivables and payables. This will clear the long persistent matter of pending bills, and allow agencies to complete programmes beyond the end of the financial year where as is the current

practice, sees a rush to expend funds at the end of the financial year. The National Treasury itself admitted to disbursing funds beyond the 31st of June.

The Committee recommends that National Treasury expedites the full roll-out of accrual basis of accounting, as per its released plan.

22. Interest and commitment fees charged on undrawn loans

The Committee observed certain instances where loans have been negotiated, signed and committed but the implementing agency was yet to drawdown. In these instances, interest accrued pronto while the Kenyan people did not obtain utility of the programmes. This amounts to wasteful expenditure. Related to these were various donor funded projects with undrawn balances that implementing agencies had no capacity to absorb, hence forgone development funds.

The Committee recommends that National Treasury only enters into loan agreements whose programme/project implementation plans are ready for immediate execution. Accounting Officers that fail to absorb such funds promptly and within schedule will be held personally liable and will make good the lost interest, subject to Article 226(5) of the Constitution.

23. Dual implementation of projects between National and County Governments

The Committee continued to encounter instances under the State Department for Housing & Urban Development where certain donor projects financed by the World Bank to be implemented by county governments posed an accountability challenge. The Accounting Officer is expected to accounts for the funds while total responsibility lay with the counties, the former basically acting as a conduit and had no control whatsoever.

The Committee reiterates its recommendation that such funds be wholly issued to the implementing agency as conditional grants, rather than the mongrel arrangement that currently subsists.

24. Failure/ Delay to Compensate Land Owners

The Committee noted several instances, especially under State Departments for Energy and Roads, where projects have been undertaken without due compensation to persons affected by compulsory acquisition of their land. The lack of enthusiasm to settle these dues sees the affected persons suffer for long periods, despite the projects being long been completed, handed over and are in use.

The Committee recommends that implementating agencies prioritize compensation of land acquired for projects promptly and before acquisition is undertaken, as provided for under sections 111, 115 and 117 of the Land Act.

25. Audit Opinions

During the 2021/22 financial year, the Auditor General examined and issued audit opinion for a total of three hundred and twenty-six (326) National Government financial statements in respect of Ministries, Department and Agencies (MDAs), Revenue Statements, Donor Funded Projects, and Other clients such as Public Debt, National Exchequer Account, Public Trustee, Business Registration Service and Subscriptions to International Organizations.

Table: Audit Opinions on National Government Entities

No.	Details	Type of Opinion Issued				
		Unqualified	Qualified	Adverse	Disclaimer	Total
1	MDAs	31	40	-	-	71
2	Revenue Statements	8	5	-	-	13
3	Donor Funded Projects	120	94	2	1	217
4	Others	18	5	1	1	25
	Total	177	144	3	2	326

Data Source: Office of the Auditor General

The Committee commends those agencies that have dutifully kept proper accounting records.

26. Revenue

During the 2021/2022 financial year, total revenue recorded under various revenue statements as received by the National Government amounted to Kshs. 2,028,236,839,950 representing an increase of Kshs. 314,593,858,437 or about 18% when compared to actual collections of Kshs. 1,713,642,981,513 realized in the year 2020/2021 as tabulated below.

Table: Comparison of Actual Receipts with the Previous Year's Receipts

DETAILS	2021/22 Actual Receipts	2020/21 Actual Receipts	Increase/Decrease (Kshs)	Increase/Decrease (%)
Recurrent Revenue	1,967,190,835,775	1,626,801,249,470	340,389,586,305.00	20.92%
o/w Sharable Revenue	1,920,434,085,078	1,570,562,945,014	349,871,140,064.00	22.28%
GIPE	46,756,750,697	56,238,304,456	-9,481,553,759.00	-16.86%
Development Revenue	61,046,004,175	86,841,732,043	-25,795,727,868.00	-29.70%
Total	2,028,236,839,950	1,713,642,981,513	314,593,858,437.00	18.36%

Data Source: Office of the Auditor General

The total revenue of Kshs. 2,028,236,839,950 for the year 2021/2022 comprised of Kshs. 1,920,434,085,078 as sharable revenue, Kshs. 46,756,750,697 as receipts from Government Invest & Public Enterprises and Kshs. 61,046,004,175 relating to Development revenue. In the 2021/22 financial year, the total sharable revenue of Kshs. 1,920,434,085,078 increased by 22% when compared to the sharable revenue of Kshs. 1,570,562,945,014 in the 2020/21 financial year.

The Committee recommends that the total nationally collected revenue amount of ***Kshs. 1,920,434,085,078*** *forms the basis of sharing of revenue between the national and county governments as contemplated in Article 203 (3) of the Constitution.*

4.0 CONSIDERATION OF THE REPORTS OF THE AUDITOR GENERAL ON THE AUDITED FINANCIAL STATEMENTS

4.1 VOTE 1071: THE NATIONAL TREASURY

Dr. Chris Kiptoo, CBS, the Principal Secretary and Accounting Officer for the National Treasury, appeared before the Committee on 18th September, 30th October & 5th November 2024, accompanied by the following officers:

i.	Mr. Rispah Simiyu	_	Commissioner Domestic Taxes, KRA
ii.	Mr. Bernard Ndung'u	_	Director General, Accounting Services
iii.	Mr. George Gichuru	_	Head of Accounting
iv.	Mr. Ambrose R.M. Ogango	_	Senior Chief Finance Officer
v.	Ms Damaris Onsumo	_	SPFO
vi.	Mr. Michael A Kagika	_	Director Pensions
vii.	Mr. Samwel Onyango	_	HFA - PPPD
viii.	Mr. Francis Amuyunzi	_	Snr. Dep. Acct. General
ix.	Ms. Lilian W. Dishon	_	Deputy Accountant General
x.	Mr. Daniel Mwangi	_	Deputy Accountant General
xi.	Mr. Saman Wangusi	_	Principal Admin. Secretary
xii.	Mr. Daniel Kagira	_	Director Corporate Services - KRA
xiii.	Mr. James Letaro	_	Ag. Director Finance - KRA
xiv.	Mr. Fredrick Kiamba	_	Parliamentary Liaison, KRA

And submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1. Unconfirmed Expenditure Balances

The statement of receipts and payments reflects an expenditure of Kshs. 1,606,952,339 in respect of acquisition of assets which, as disclosed in Note 15.12 to the financial statements, includes an amount of Kshs.9,847,738 relating to purchase of office furniture and general equipment. However, the latter amount was at a variance with the amount of Kshs. 89,234,988 reflected in the Integrated Financial Management Information System (IFMIS) system payments report by an unexplained variance of Kshs.79,387,250. Similarly, the statement of receipts and payments reflects an amount of Kshs.25,026,311,607 in respect of use of goods and services which, as disclosed in Note 15.06 to the financial statements, includes an amount of Kshs.13,063,400 in respect of fuel, oil and lubricants. However, the amount of Kshs.13,063,400 was at variance with the amount of Kshs.50,091,990 computed from the fuel statements by an unexplained variance of Kshs.37,028,590.

In the circumstances, the accuracy of the expenditure of Kshs. 9,847,738 incurred on purchase of office furniture and general equipment and the expenditure of Kshs. 13,063,400 incurred on fuel, oil and lubricants could not be confirmed.

Submission by the Accounting Officer

It is true that statement of receipts and payment reflects an amount of Kshs1,606,952,339/-in respect of acquisition of assets as disclosed in note 15.12 to the financial statements includes an amount of Kshs 9,847,738/- in respect of office furniture and general equipment.

This amount of Kshs. 9,847,738/- was at variance with the computed amount of office furniture and general equipment of Kshs. 89,234,988 /- by Kshs. 79,387,250/-. The variance of Kshs. 79,387,250/- were payments of purchase of office equipment and general equipment met from other related and relevant economic items falling under the acquisition of assets to avoid carrying forward pending bills to FY 2022/2023.

It is also true that the statement of receipts and payment reflects an amount of Kshs. 25,026,311,607/- in respect of use of goods and services which as disclosed in Note 15.06 to the financial statements includes an amount of Kshs. 13,063,400/- in respect of fuel, oil and lubricants.

This amount of Kshs. 13,063,400/- was at variance with the computed amount of fuel of Kshs. 50,091,990/- by Kshs. 37,028,590/-. The variance of Kshs. 37,028,590/- were fuel payments that were charged to security operations item 0-0001-11-2211313 which is also a relevant item to pay fuel.

This figure was reflected under other operating expenses of note 15.06.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

2. Long Outstanding Bank Reconciling Items

The statement of assets and liabilities reflects an amount of Kshs. 3,657,492,025 in respect of bank balances. However, review of the bank reconciliation statement for the development bank account for the month of June, 2022, revealed that a number of reconciling items had been outstanding for a long period. The bank reconciliation statement reflected receipts of Kshs. 4,839,939,398 recorded in the bank statement on 26 May, 2022 but not in the cash book. Further, the bank reconciliation statement reflected receipts in the cash book not yet recorded in the bank statement totaling Kshs. 2,716,155,626 out of which receipts totaling Kshs. 623,593,984 were dated between 13 May, 2020 and 02 December, 2021. No explanation was provided for failure to clear the long outstanding reconciling items.

In the circumstances, the accuracy of the cash and cash equivalents balance of Kshs.3,657,492,025 as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

It is true that the statement of Assets and Liabilities reflected Kshs. 3,657,492,025 in respect of Bank Balances as at 30th June, 2022. This Amount was composed of cash book balances for;

		Account No	Amount (Kshs)
	Recurrent Bank	1000181467	8,905,068.00
	Development Bank	1000181664	670,219.00
	Deposit Bank	1000182137	97,664,524.00
	Petroleum Development Levy Fund Bank	1000182137	3,550,252,214.00
		Total	**3,657,492,025.00**

Copies of the Cash Books extracts have been availed.

It is also true that IFMIS auto bank reconciliation statement for Development Bank Account had receipts of Kshs. 4,839,939,398 recorded in the bank statement but not in the cash book, receipts in the cash book not yet recorded in the bank statement totaled Kshs. 2,716,155,626 out of which receipts totaling Kshs. 623,593,984 were dated between 13th May, 2020 and 2nd December, 2021.

The outstanding items were being analyzed at the time of audit. After analysis was concluded, all the items were cleared. Copies of the Cash Book extracts, Bank Certificate and auto bank reconciliation statement were availed for audit review.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

3. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects a final receipts budget and actual on comparable basis of Kshs.167,894,349,737 and Kshs.126,414,837,692 respectively resulting to an underfunding of Kshs.42,782,675,278 or 25% of the budget.

Similarly, The National Treasury spent a total of Kshs.125,778,027,665 against an approved budget of Kshs.167,894,349,737 resulting to an under expenditure of Kshs.42,116,322,072 or 26% of the budget.

The underfunding and underperformance affected the planned activities of The National Treasury and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

It is true that the statement of comparison of budget and actual amounts reflects a final receipts budget and actual on comparable basis of Kshs.167,894,349,737 and Kshs.126,414,837,692 respectively resulting to an underfunding of Kshs.42,782,675,278 or 25% of the budget.

It is also true that The National Treasury spent a total of Kshs.125,778,027,665 against an approved budget of Kshs.167,894,349,737 resulting to an under-expenditure of Kshs.42,116,322,072 or 26% of the budget.

The under-utilization of the budget and under collection of revenue was due to;

(i) Some activities including procurement were suspended due to the Covid-19 pandemic;

(ii) Exchequer under issue during the financial year; and

(iii) Low business activities during the year due to covid-19 led to under collection of revenue.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

4. Lack of Fixed Assets Register

As previously reported, Annex 4 to the financial statements reflects a summary of fixed assets register with a historical cost of Kshs.6,570,539,354 (2021: Kshs.5,614,749,522) and which included assets valued at Kshs.955,789,832 as additions during the year under review. However, The National Treasury did not provide an assets' register to support the assets valued at Kshs.6,570,539,354 as required by Regulation 143(1) of the Public Finance Management (National Government) Regulations, 2015 which states that the Accounting Officer shall be responsible for maintaining a register of assets under his or her control or possession as prescribed by the relevant laws.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The under listed measures have been taken to address the issue of fixed assets register:

i. An Asset and Liability Management Standing Committee has been appointed to oversee implementation of National Treasury Asset Register. The committee was appointed on 29th November, 2023 with specific terms of reference, amongst them being to ensure compliance with the provisions of the Policy on Asset and Liability Management in the Public Sector.

ii. An Asset and Liability Management Unit was also appointed by the Accounting Officer on 29th November, 2023 as provided under Part 4.8 of the Asset and Liability Management policy guidelines. The functions of the Unit as specified in the appointment letter include maintaining an updated register of assets and liabilities, serving as the secretariat to the

Asset and Liability Management Standing committee and advising the Accounting Officer on matters relating to optimal use of assets;

iii. A capacity building program was conducted for Asset Management Committee and Unit members in the month of May, 2024 to enable them discharge their respective responsibilities effectively

iv. The National Treasury has completed collection of information on headquarters assets across all directorates/departments/units using the template prescribed under the assets policy guidelines and is currently in the process of consolidating and onboarding the same on the IFMIS inventory and assets module

v. Assets entry IFMIS rights have been assigned to the relevant users.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that within three (3) months upon adoption of this report, the Accounting Officer should avail a fixed assets register to the National Assembly

5. Over-Commitment of Salary

The statement of receipts and payments reflects an expenditure of Kshs.3,192,672,341 on compensation of employees, which, as disclosed in Note 15.05 to the financial statements, includes an amount of Kshs.1,652,229,155 paid as basic salaries to permanent employees. However, review of the payroll data revealed that, during the year under review, one hundred and twenty-five (125) employees earned a net salary less than one-third (⅓) of their basic salary. This was against Section C.1(3) of the Human Resource Policies and Procedures Manual for the Public Service, 2016 which states that public officers shall not over-commit their salaries beyond two thirds (⅔) of their basic salaries and Heads of Human Resource Units should ensure compliance.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The IPPD system has in built artificial intelligence to detect any violation of this rule save for scenarios when a government liability is being recovered. Recovery of GOK liabilities take precedence to be recovered in full irrespective of this rule.

Over-commitment of salary for the year under review was occasioned by the following reasons which take precedence of the one third rule.

i. Salary Overpayments:

These were as a result of overpayment recoveries that run for over twelve months.

Other officers were in areas where they were earning a higher house allowance and on transfer there were deduction of house allowance rate.

ii. Interdictions/ suspensions:

Officers placed under interdiction earn half salary and because of statutory deductions and loan commitments the officer had taken the one third rule is infringed.

Further, officers placed under suspension from duty earn half salary and as a result of statutory deductions and salary commitments the officer had made, the one third rule is equally infringed.

iii. Government Liabilities
- Officers who had rent arrears from housing that were supposed to have been recovered at a given earlier date and recoveries start much later.
- Others are as result of un-surrendered imprest recoveries that were recovered from their salaries

iv. Retirements:

Retirement by officers within mid- month i.e officers retiring by 15th and statutory deductions had to be made together with Loan commitments the officer had made. There were one hundred and twenty-five officers who retired in the period of audit.

The Management intends to carry out the following measures to address the issue of over commitment of salary:

- Letters will be issued to the affected financial institutions to adhere with the one third rule;
- Repayment period of all overpayment recoveries will be extended to accommodate the officer's net salary within the rule; and
- The Integrated Payroll and Personnel Database (IPPD) system is configured to observe the one third rule on all third party's loans, shares and insurance covers among others. However, when a statutory deduction is introduced, the deductions are deferred

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures all staff incrementally comply with the one-third of basic salary rule.

6. Non-Operational Vehicle Scanning Machines

During the financial year 2014-2015, The National Treasury awarded a contract to install modern vehicle scanning machines at the Treasury Building and Bima House to a local contractor at a cost of Kshs 164,510,341. The contract entailed the supply of three (3) handheld advanced, explosive, trace, particulate and vapor detectors at a cost of Kshs.16,882,502. However, none of the scanners or detectors were in operation at the time of the audit in the month December, 2022.

In the circumstances, it was not possible to confirm whether The National Treasury obtained value for money from the expenditure of Kshs.16,882,502 incurred on the project.

Submission by the Accounting Officer

It's true that the scanners / detectors were not in operations at the time of audit in the month of December, 2022. This was due to lack of service contract. The State Department of Public Works, Electrical Department has been requested to prepare bills of quantities for maintenance and servicing of the scanners vide letters:

a. Letter Ref: ZZ MOF 307/03/02 Part "B" dated 10th August, 2022;

b. Letter Ref: ZZ MOF 307/03/02 Part "O" dated 2nd February, 2023; and

c. Letter Ref: TNT/ICTU/AD/01 "H" (81) dated 21st July, 2023.

State Department of Public Works was tasked with the responsibility of carrying out a detailed analysis on the scanners and other critical equipment at the National Treasury and prepare a report to the Accounting Officer, National Treasury on way forward. A report has been prepared on the same.

Committee Observations and Findings;

The Committee noted that the submission by the Accounting Officer was unsatisfactory as the machines were too expensive, wasteful and the expenditure a non-priority item. Furthermore, the machines were still not operational. It is expected that the National Treasury would lead from the front in budget efficiency.

Committee Recommendation;

The Committee reprimands the Accounting Officer for wasteful expenditure.

7. Failure to Implement the Public E-Procurement System

Review of procurement processes in government corporations and other public procuring entities revealed that, by the time of their respective audits, the entities' procurement processes had not been linked with the Integrated Financial Management Information System (IFMIS) as per Executive Order No. 2 of 2018. The Order had directed that by 01 January, 2019, The National Treasury was to facilitate seamless integration of all public procurement entities to the Integrated Financial Management Information System (IFMIS) and that by that same date, all Public Procuring entities undertake all their procurement through the e-procurement module. Most of the non-complying procuring entities have blamed The National Treasury for failing to create the integration platform.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Ministry signed a contract with a Service Provider to Design, Develop / customize, supply, install and maintain an Electronic Government Procurement (e-GP) System for the Government of Kenya that shall ensure an end-to-end system that seeks to eliminate all manual procurement processes. These shall ensure that all the procuring entities comply with the executive order.

The Service Provider has designed the system and currently they are customizing it to the requirements of the National Treasury. In this regard, two modules i.e. the supply registration module and the Procuring Entities registration modules have been tested. The procurement and disposal plan module is undergoing testing.

Further it is expected that the e-GP system shall be in full operational as from January, 2025.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that within three (3) months upon adoption of this report, the Accounting Officer, should submit to the House a status report on the implementation of the Public E-procurement System .

8. Unauthorized Staff Establishment

Review of The National Treasury staff establishment revealed that thirty-nine (39) positions with ninety-two (92) members of staff in-post were not authorized. Similarly, forty-five (45) positions with an authorised establishment of four hundred and sixty-six (466) members of staff had one thousand and sixty-one (1,061) staff members in-post, exceeding the approved establishment by five hundred and ninety-five (595) staff members.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

Implementation of the 17-tier grading structure which clustered Job Groups R/Q, M/N, A/B/C created over establishment at the immediate lower positions since the promotions caused by the merged grades did not have a corresponding creation of additional posts. Additional posts have now been created in the Job Groups that were merged vide authority letter No. MPSYG.2/6/4A VOL XI (32) dated 2nd July, 2019.

The over establishment was also occasioned by;

i. Succession Management programme by the Public Service Commission that promoted mass staff against the limited approved establishment;
ii. Recruitment and posting of staff by State Department for Public Service and the Public Service Commission;
iii. Transfer of officers in various cadres from State Department for Public Service and other Scheme administrators. Delayed release of officers due to the handing over process which include; induction of the incoming officers for the smooth running of the office; and
iv. Narrow staff establishment for Support Service cadres. This is mostly occasioned by lack of enough support staff in the technical departments which makes them request for additional support staff hence creating an over establishment to the particular department.

This office has taken the following measures to address the staff establishment;

i. The Human Resource Department liaising with heads of departments to forward the exact number of staff required in various departments;
ii. To stablish a distribution structure for the staff which will help in the deployment process; and
iii. Reviewing and restructuring the staff establishment through the re-organization of National Treasury to include various additional posts proposed for approval by Public Service Commission to address the over establishment gaps as part of the government reforms.

Committee Observations and Findings;

The Committee noted that the Public Service Commission made promotions and postings beyond their own approved staff establishment under the pretext of succession planning.

Committee Recommendation;

The Committee recommends that the PSC ensures compliance with approved staff establishment and the Accounting Officer National Treasury submits a status report of the same within six (6) months of adoption of this report.

NATIONAL EXCHEQUER ACCOUNT

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

11. Non-Compliance with Article 260 of the Constitution - Late Exchequer Releases

As disclosed in Note 13.6 to the financial statements, an amount of Kshs.39,964,834,094 was indicated as payments in the cash book not yet recorded in the bank statement (uncleared items). However, examination of records indicated that the amount relates to Exchequer releases to Ministries, Departments and Agencies, Public Debt and County Governments that were disbursed after the end of the financial year. This was contrary to Regulation 97(4) of the Public Finance Management (National Government) Regulations, 2015 which states, inter alia, "that an actual cash transaction taking place after the 30 June, shall not be treated as pertaining to the previous financial year." This was also in breach of Article 260 of the Constitution which states that "financial year means the period of twelve months ending on the thirtieth day of June or other day prescribed by national legislation."

Further, the practice of backdating transactions to 30 June, is against the concept of IPSAS cash accounting. Management has explained that the late Exchequer releases were occasioned by late receipt of revenues and that approval was given by the Controller of Budget.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

It is true that a total of Kshs.39,964,834,093.50 transferred to MDA's and Consolidated Fund Services (Public Dept) was cleared in the Central Bank Account after 30th June 2022. It should be noted that substantial revenues for funding these Exchequer requests were received on 30th June, 2022.

We wish to state further as follows:

a) As per the fiscal framework and Budget Estimates for Financial Year 2021/2022, all the revenue and loans received as at 30th June, 2022 were budgeted to fund expenditures relating to that financial year and it was therefore imperative that these funds are released to the MDAs and Public Debt.
   Otherwise, the unfunded Exchequer requests would have translated to pending bills;
b) The National Treasury did not encroach on the revenue for the consequent year;
c) The above receipts and issues were properly recorded and accounted for in our books of accounts for the year 2021/2022; and
d) The National Treasury sort the authority of Controller of Budget to release the funds and the same was granted in compliance with Article 206 (2) of the Constitution and Section 17 (5) of the PFM Act 2012.

Committee Observations and Findings;

The Committee noted that the matter would be dealt with finality when The National Treasury eventually implements accrual method of accounting.

Committee Recommendation;

The Committee recommends that The National Treasury hastens the full operationalization of accrual method of accounting and submits implementation reports every six (6) months of adoption of this report.

CONSOLIDATED FUND SERVICES - PUBLIC DEBT

REPORT ON THE FINANCIAL STATEMENTS

14. Payment of Commitment Fees on Undrawn Amounts

As reported in the previous year, the statement of receipts and payments for the year ended 30 June, 2022 reflects finance costs including loan interest amounting toKshs.510,090,079,877 which, as disclosed in Note 13.3 to the financial statements, includes interest payments on foreign borrowing of Kshs.121,494,973,255. The latter balance includes commitment fees on undrawn amounts paid during the period under review amounting to Kshs.1,486,813,083. The commitment fees relates to undrawn loans signed between the Government of Kenya and foreign lenders.

Further, review of the summary statement of debt stock as at 30 June, 2022 revealed that twenty (20) loans agreements with cumulative loans of Kshs.379,943,389,070 were signed between 1 July, 2019 and 31 December, 2020. However, no drawdowns on these loans had been made by the various implementing Agencies for the funded projects and programmes as at 30 June, 2022. Had the implementing Agencies put proper mechanisms in place to enable absorption of the committed credit within the agreed timeframe, payment of commitment fees would have been minimized. The National Treasury, being the overall supervisor of Government Ministries, Departments and Implementing Agencies needs to ensure that programmes and projects are ready for execution before committing the Government to bear the loans.

Submission by the Accounting Officer

The commitment fees are paid on the loan that become effective and to become effective the conditions precedent should be met by both the borrower and the lender. Further, not all loans that become effective have commitment fee charges.

Currently, five (5) of the Twenty loans which had no draw down as at 30th June 2022 have fully been disbursed and Fifteen (15) are at various stages of disbursement

The National Treasury has put several mitigating measures to ensure that programmes and projects are ready for execution before committing the government to bear the loans. These are;

i. Provision of Public Investment Management Regulations, 2022 whose purpose is to provide a legal framework for efficient and effective public investment management. This includes;
    - Project identification and Planning;
    - Pre-feasibility and Feasibility,
    - Selection for Budgeting;

- Implementation, Monitoring, Evaluation and Reporting; and
- Closure and impact assessment to ensure value for money and optimal use of public resources.

ii. Development of a project information Management system which will provide a dash-board view of project implementation status;

iii. Ensuring counter funding is available to MDAs during the project implementation period; and

iv. Ensuring that Ministries and MDAs absorb funds during the implementation period by providing the exchequer requested on timely basis.

Committee Observations and Findings;

The Committee noted that the National Treasury committed the government to loans whose drawdowns are not ready due to unprepared implementing agencies, leading to incurring of unnecessary and wasteful costs.

Committee Recommendation;

The Committee recommends that;

i. **The National Treasury submits to Parliament Debt Management Strategy that includes as a pre-condition of signing of borrowings, written commitment from implementing agencies of readiness to immediately drawdown and absorb borrowings;**

ii. **Accounting Officers who fail to drawdown loans within three (3) months of government commitment be reprimanded and held personally liable for any commitment fees and interest accrued.**

15. Guaranteed Debts

The summary statement of public debt reflects total outstanding debt stock balance of Kshs.8,478,949,965,757 as at 30 June, 2022. Review of the debt stock records provided revealed that the balance includes guaranteed loans amounting to Kshs.145,356,697,726 as at 30 June, 2022. As reported in the previous year, these are loans advanced to State Agencies for which The National Treasury is the guarantor. Although the guaranteed loans are serviced by the recipient entities and would only be charged to the Consolidated Fund in cases of default, the guaranteed loans constitute contingent liabilities and form part of public debt as guaranteed debts. However, the balance does not include loans and overdrafts, if any, held by other National and County Governments entities. Management has however indicated that there were no borrowings by the County Governments and The National Treasury did not guarantee any loan by State Agencies during the year. Management has also indicated that where a State Agency secures a loan, it is the responsibility of the Board of Directors to ensure that the amount is repaid and is not chargeable to the Consolidated Fund.

However, the National Government is obliged to bail out any amount that could be defaulted by the County Governments and State Agencies using public resources.

Submission by the Accounting Officer

It's true the summary statement of public debt as at 30 June, 2022 reflected total outstanding debt stock balance of Kshs. 8,478,949,965,757. This amount included guaranteed Loans totaling Ksh 145,356,697,726.

Further, we wish to state that:

a) Guaranteed loans constitute contingent Liabilities and form part of the public debt as guaranteed debts;
b) The balance does not include loans and overdraft held by other National and County Government entities since there were no borrowings by the county government;
c) Where a state agency secures a loan it is the responsibility of the Board of Directors to ensure that the amount is repaid and it is not charged to the consolidated fund;
d) Article 214(2) of the constitution of Kenya defines public debt as all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the National Government;
e) The bank overdraft is neither a security nor a loan but a short-term financing option used for short term cash management by respective entity hence not included in the total outstanding debt stock; and
f) All guaranteed debts are reported separately in the summary statement of public debt.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

16. Default on Debt Repayment

As reported in the previous year, review of records held by The National Treasury's Commonwealth Secretariat Debt Recording and Management System as at 30 June, 2022 revealed that the Government had defaulted on servicing an amount of Kshs. 11,039,138,761 in respect of three (3) loans advanced by an International Commercial Bank towards the construction of three (3) dams as detailed below;

Project	Disbursed Amount Euro	Principal Defaulted Euro	Interest Defaulted Euro	Total Arrears Euro	Equivalent (Kshs.)
Arror Dam	91,852,267	3,196,591	9,874,612	23,071,203	2,861,297,485
Itare Dam Project	141,552,608	36,388,094	6,735,832	43,123,926	5,348,242,211
Kimwarer Dam	71,878,751	15,380,277	7,435,335	22,815,612	2,829,599,065
Total	**305,283,626**	**64,964,961**	**24,045,779**	**89,010,741**	**11,039,138,761**

The credit agreements for these loans were not provided for audit review to confirm the terms of the loans and if the termination of the credit was conducted in accordance with the provisions in the respective agreements. Management indicated that the lender has cancelled the remaining

balance and the credit agreements for the three (3) dams are in the custody of the Directorate of Criminal Investigation (DCI) as the matter was in court. The default on debt repayment exposes the Government to risks of legal suits that may lead to punitive penalties and subsequent loss of public resources.

Submission by the Accounting Officer

Following ongoing investigations by the Directorate of Criminal Investigations (DCI), the transaction files containing credit agreements for the Arror, Kimwarer, and Itare dam projects were taken by the DCI and to date remain in their custody. The National Treasury suspended debt service payment obligations under the Itare, Arror, and Kimwarer facilities Agreements in January 2020.

However, copies of the credit agreements of the three loans were provided to the auditors on 31st October, 2023

To confirm the termination of the credit, letters communicating that the creditor Intesa San Paolo cancelled the remaining amount have been provided.

Further, we wish to state as follows:

i. In March, 2023, the Cabinet approved the restructuring of the Government of Kenya's outstanding debt service payment obligations under the Facilities Agreements for the Itare, Arror, and Kimwarer Dam Projects;
ii. The Government of Kenya and the commercial lender negotiated and agreed on a financial settlement. In April 2024, the Cabinet approved the resumption of debt service obligations with commercial lenders and SACE under the negotiated financing agreements (Amendment and Restatement Agreements) for the Itare, Arror, and Kimwarer Dam Projects; and
iii. In June 2024, the Government of Kenya, through the National Treasury, signed the Amendment and Restatement Agreements for the Arror, Kimwarer, and Itare Dam Projects. As a result, the National Treasury resumed debt service payments under the revised agreements.

Committee Observations and Findings;

(i) The Committee noted the submission by the Accounting Officer; and

(ii) The Committee found that the matter was resolved.

17. Increase in Domestic Borrowings

Review of Summary statement of public debt for the year ended 30 June, 2022 revealed that external debt rose from Kshs.3,761,235,298,615 to Kshs.4,076,028,476,708 or 8.37% against that of internal debt which increased from Kshs.3,635,319,130,686 to Kshs.4,257,564,791,323 or 14.62%. Interest on internal debt for the financial year ended 30 June, 2022 stood at 76% to that of external debt which stood at 24% of the total finance costs, including loan interest. The cost of domestic debt is three times the cost of external borrowings. Management has not indicated the measures being put in place to guard against the excessive internal borrowings with a view to reducing the crowding out effect of local borrowers in the economy.

In the circumstances, the high domestic borrowings may have a negative impact on the country's interest rates, inflation rates and may lead to crowding out of private investors due to reduced loanable funds in the market.

Submission by the Accounting Officer

Borrowing is as a result of a budget deficit as approved by parliament. The Government borrows from domestic and external debt sources. The main objective of debt management is to raise government resources at minimal cost with some prudent degree risk to finance the budget.

The borrowings during the year are subject to the market conditions and thus the Government tries as much as possible to diversify its funding sources and optimize the best options available through External concessional and semi concessional sources. External commercial borrowing is a last resort.

Domestic debt is costly due to undeveloped nature of the domestic securities market but the Government working with Central Bank of Kenya, has taken Medium term measures to reduce cost through various reforms aimed at deepening and developing the domestic debt market namely:

i. Facilitation of an electronic bond auction

Introduction of Dhow Central Security Depository System (DCSD) has enhanced efficiency in Government securities market both primary and secondary, reduced auction cycle (from auction to settlement) and also is expected to improve pricing transparency in trading of government securities and secured a way that enables the public and diaspora community to invest in government securities;

ii. Separation of the Retail and Wholesale Market for Government Securities

In a bid to facilitate separation of the retail and wholesale market, the government introduced the system aimed at enhancing access to Government securities market by retail investors including buying and selling Treasury Bills and Bonds online, without the need for intermediaries or physical documents. The DCSD system has addressed a significant obstacle in repurchase agreement (repo) market development related to title transfer;

iii. Establishment of the Over-the-Counter (OTC) Market for Government Securities

The development of the OTC trading for Government securities is being undertaken separately for Treasury bills and bonds. Treasury bills have been trading on OTC. The Capital Market Authority has been coordinating development of the OTC trading guidelines which will inform CBK support in the implementation of the OTC for Treasury bonds trading in Dhow-CSD. The CMA has approved NSE trading rules for its proposed OTC platform, i.e., Unquoted Securities Platform (USP). The establishment of OTC platform is envisaged to boost liquidity in the bond market;

iv. Establishment of an Efficient Horizontal Repo Market and Securities Lending and Borrowing (SLB)

The CBK Dhow-CSD system will allow full transfer of securities ownership for Repo transactions through a collateral management module. The launch of Repo market and securities lending and borrowing through Dhow-CSD system will provide a critical anchor to the financial sector in Kenya. It will promote the distribution of liquidity among the capital markets stakeholders and enhance uptake of Government securities in financial market;

v. The Framework of the Primary Domestic Debt Market

The National Treasury intends to undertake reforms in restructuring of the primary market activities to reduce borrowing costs and promote market development. This will involve:

- Implementing a detailed issuance calendar to stabilize demand and ensure that auctions meet the targeted issuance size;
- Creating an adequate benchmark bond program;
- Addressing fragmentation in the domestic debt portfolio;
- To manage competition between tax-free infrastructure bonds and Treasury bonds: It may be beneficial to restrict "infrastructure bonds" to retail investors; and
- Increasing the issuance size of benchmark bonds and implementing proactive cash and liability management operations will further support these efforts.

vi. The Structure of the Secondary Market;

To reduce costs of domestic borrowing the government has initiated strategies to develop the secondary market for government securities which will ensure liquidity and lower costs. These strategies are:

- Improving Price transparency.
  The National Treasury will implement strategies aimed at giving investors' confidence for them to price instruments appropriately;
- Addressing inefficiency in the repo market.
  The government intends to improve efficiency and increase liquidity in repo market;
- Establishing a daily yield curve.
  The government will encourage day to day exchanges or trading in the secondary market across all tenors;
- Implementing a Primary Dealer (PD) system.
  The primary dealer will strengthen the primary market for government securities by building a stable, dependable source of demand for securities and providing liquidity in the secondary market; and
- Moving towards a hybrid exchange/Over-the-Counter mode
  The exchange will lead to improved transparency and price discoveries and aid with risk based supervision.

  However, it should be noted that although external debt is cheaper, it is also riskier given that it is denominated in foreign currency. Any depreciation of Kenya shilling has an adverse effect on the cost of servicing debt. External debt despite its low costs has exchange rate volatility risks than domestic debt.

To reduce cost and risks of public debt, there is need to balance the borrowing allocation to both external and domestic sources.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the National Treasury ensures prudent local borrowing to shield the public from rising interest rates.

RECEIVER OF REVENUE (RECURRENT)

REPORT ON THE REVENUE STATEMENTS

21. Budgetary Control and Performance

As disclosed in Note 5 to the revenue statements, fees on licenses under the Traffic Act and Petroleum Development Levy realized during the year under review was Kshs.4,424,032,458 and Kshs.26,132,322,347 respectively, against estimated revenues of Kshs.5,106,206,554 and Kshs.37,132,000,000 resulting in under-collections of Kshs.682,174,096 or 13% and Kshs.10,999,677,653 or 30%, respectively. Further, as disclosed in Note 8 to the revenue statements, sundry revenue realized during the year under review was Kshs.275,548,422 against estimated revenue of Kshs.902,639,669 resulting to under-collection of Kshs.627,091,247 or 69%.

The under-collection may have impacted negatively on funding the budgets of the various public entities and therefore affecting development and service delivery to the public.

Submission by the Accounting Officer

The under collection of revenue was due to;

- Fees and Licenses under the Traffic Act recorded an underperformance due to decline in imports.
- Petroleum Development Levy under performance is attributed to high international oil prices.

The Government is developing a Medium-Term Revenue strategy that will undertake a comprehensive tax review with aim of improving revenue performance.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

The Committee found that the matter was resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

23. Long Outstanding Arrears of Revenue

As reported in the previous year, the statement of arrears of revenue reflects total tax arrears amounting to Kshs.1,558,258,572,271 as analyzed in the Kenya Revenue Authority debt portfolio. The balance includes an amount of Kshs.177,788,000,000 categorized as long outstanding legacy debts. The debts date back to 1992 and relate to penalties, interest, prior years debt, estimated assessment debt and other debts that are subject to other factors such as data corrections, objections and appeal processes.

Further, the statement of arrears of revenue as at 30 June, 2022 reflects non-tax revenues arrears of Kshs.79,955,123,344 comprising of loan redemption amounting to Kshs.38,078,376,052 and

loan interest amounting to Kshs.41,876,747,292. Included in the balance is an amount of Kshs.54,100,388,350 which has been outstanding for more than two years.

Although Management provided various reasons for the non-receipt of the revenues and explained measures in place to improve the outstanding debt arrears position, it is not clear why some unrecovered long outstanding balances continue to be retained in the revenue statements.

In the circumstances, the existence of an effective mechanism to ensure full realization of the outstanding arrears of revenue could not be established.

Submission by the Accounting Officer

The total tax arrears as at 30th June 2022 amounted to Kshs. 1,558,258,572. The status of the debt arrears as at 31st July 2024 is outlined below;

Debt Category	**Balances as at July 2022**	**Balances as at July 2024**	**Explanations/Remarks**
Collectible Debts Including:			KRA has enhanced debt recovery using using available legal tools including demand notices, payment plans, agency notices and distress actions.
a) Domestic Taxes Debt	77,659,676,047	35,288,852,794	
b) Customs Debt	8,186,606,421	5,702,725,836	
Sub Total	**85,846,282,468**	**40,991,578,630**	
Doubtful Debts Including:			
a) Penalties	194,679,003,171	49,667,000,809	These debts are difficult to recover and continue accumulating due to challenges relating to validation, estimated assessment and disputes arising in the recovery process. These debts were significantly reduced through the implementation of the tax amnesty on penalties and interest granted via Finance Act 2023.
b) Interest	303,771,877,959	199,748,919,750	
c) Old Legacy System Debt Under Ledger Reconciliation/ Correction Process	177,787,778,906	0	• KRA validated the Legacy System balances using available information and migrated the balances to iTax System in June 2024. The migrated balances include debit balances of Kshs. 765,311,932,975 and credit balance of Kshs. 315,115,857,096. • KRA has formed a full time dedicated team to revalidate the debit and credit balances together with taxpayers within six months from July 2024.

Debt Category	Balances as at July 2022	Balances as at July 2024	Explanations/Remarks
			• After six months, the revalidated balances will be confirmed and demanded from the taxpayers. For revalidated credit balances, taxpayers will be allowed to utilize them against revalidated ledger debit balances, any existing debt in tax or current taxes. • **Note:** The migrated debit and credit balances can only be confirmed after joint revalidation process with taxpayers.
d) Tax Waiver Applications	24,658,599,680	0	The penalties and interests taxpayers had applied for waiver were cleared through the tax amnesty granted via Finance Act 2023.
e) Debt Under Tax Appeal Processes (Court, TAT, ADR, Objections)	339,745,724,596	14,737,988,053	• These were tax assessment that were in dispute and being handled at various appeal processes including independent review of objections (IRO), Tax Appeals Tribunal (TAT), Court and Alternative Dispute Resolution (ADR). • These debts take time to conclude due to lengthy litigation processes that delay debt recovery and when decisions and rulings are finally made, some taxpayers have already covered their tracks by closing down their companies, changing ownership of property and closure of bank accounts making it difficult for recovery. • KRA has been engaging taxpayers to fast track resolution of the taxes in dispute by encouraging them to opt for the ADR Framework.
f) Public Institutions Debts Under Reconciliation	309,002,762,609	121,453,906,693	• These were PAYE debts owed by public institutions and were largely ledger reconciliation cases.

Debt Category	Balances as at July 2022	Balances as at July 2024	Explanations/Remarks
			• The debt arise from the fact that public institutions pay their taxes directly to Central Bank of Kenya (CBK) thereby bypassing iTax system. • The missing tax payments are reconciled and captured manually in iTax on continuous basis to clear the erroneous debts. KRA has formed a dedicated team to reconcile the missing payments and update the taxpayers' ledgers by 31st December 2024. • KRA in conjunction with Treasury, Ministry of Public Service, CBK and other government ministries and agencies have been working on systems integration between the payroll systems (IPPPD/G-pay), IFMIS, CBK system and iTax to provide a permanent solution to this challenge by June 2025.
g) Uncollectible (Erroneous, Estimated Assessments etc.) debts	67,415,716,479	67,415,716,479	• These debts remain uncollectible due to challenges related to data validation (correctness) caused by data capturing errors, taxpayers' ledgers having not been updated with payments due to system challenges and erroneous tax returns declarations. • A dedicated team has been formed to validate the top 2,000 debt cases to clean up the taxpayer ledgers. • Due to the complex nature of the debt validation of this category of taxpayers and huge number of taxpayers involved, KRA has concentrated in validating the debt of top debt cases.

Debt Category	Balances as at July 2022	Balances as at July 2024	Explanations/Remarks
h) Debts Under Validation Process	55,350,826,854	55,350,826,854	• These are debts under review to determine their validity and collectability at station level. • Debt validation process is a complex and time-consuming exercise.
Sub Total	**1,472,412,290,254**	**508,374,358,639**	
Total	**1,558,258,572,721**	**549,365,937,269**	

As at 30th June 2022, Legacy System debt reported amounted to Kshs. 177,787,778,906. This constituted of old debts prior to the rollout of the iTax System.

During the FY 2023/2024, KRA undertook an exercise to clean it up and migrate the Legacy System balances to iTax system. Debit balances amounting Kshs. 765,311,932,975 were validated using available information to KRA and migrated to iTax in June 2024. The migrated debit balances are being revalidated jointly with the taxpayers from July 2024;

Debt Reductions Effort (July 2021 to June 2024 in Kshs. Million)

Debt Reduction Initiatives	FY 2021/22	FY 2022/23	FY 2023/24	Total
Debt Recovery	103,763,923,065	103,390,339,908	148,125,342,919	355,279,605,89
Taxpayers Ledgers Reconciliations/Corrections	202,366,795,167	98,072,529,921	174,540,820,167	474,980,145,25
Reversal of Erroneous Debt (Penalties & Interest)	3,169,376,651	2,231,271,044	5,228,230,905	10,628,878,60
Tax Disputes Resolved and Vacated	5,248,453,550	60,658,990,634	128,369,185,724	194,276,629,908
Tax Returns Amendments (Erroneous Declarations)	10,543,743,481	-	-	10,543,743,481
Tax Waivers Granted	209,122,748	3,442,870,688	-	3,651,993,43
Tax Amnesty Vacations (Penalties & Interest)			507,782,808,185	507,782,808,18
Total Debt Reduction	**325,301,414,662**	**267,796,002,195**	**964,046,387,900**	**1,557,143,804,757**

Measures in Place to Improve Outstanding Customs and Tax Arrears

The key measures in place to reduce outstanding Tax and Customs arrears include;

a) Enhanced recovery through the use of available legal tools including demand notice, payment plans, agency notices, offsetting against refund claims and distress actions. During the financial year 2024/2025, KRA targets to collect Kshs.114,396,424,988 from the outstanding debt;
b) Formation of dedicated teams to undertake re-validation of migrated Legacy System ledger balances (debit balances Kshs.765,311,932,975 and credit balances of Kshs.315,115,857,096) with taxpayers;
c) Enhanced i-Tax ledger reconciliations and corrections to remove invalid debts. On this, KRA has formed dedicated teams to validate debt of the top 2000 debtors and public sector institutions, which constitute 54% of the KRA Customs/tax debt portfolio;
d) Reversal of erroneous debts (penalties and interest) in KRA systems as per the approved policy;
e) Strengthening of the tax appeal processes including objections, ADR and TAT to enhance timely resolution of the many cases tying up huge debts (Kshs. 389,817,953,642 as at June 2024). In addition, KRA is proactively updating taxpayers' ledgers with decisions made in the various tax appeal levels (Kshs 588,152,964,489 as at June 2024); and
f) Undertaking system integration for key government institutions (e.g. IFMIS/IPPD/CBK/i-Tax Systems) to eliminate build-up of invalid PAYE debts for public institutions that pay taxes directly to CBK.

Further, the statements of arrears of revenue Submitted for Audit as at 30th June 2022, reflects none tax revenue arrears amounting to Kshs 95,486,058,571 comprising of Loan redemption of Kshs 53,610,477,130 and loan interest of Kshs 41,875,581,442. An amount of Kshs 54,100,388,350 has been outstanding for more than two years.

From this, four (4) entities with loan arrears amounting to Kshs 354,902,440 and arrears of Interest amounting to Kshs 467,531,335 relates to Government owned Sugar Companies which following the approval from Cabinet and National Assembly, have been written off.

Other main component of arrears relates to water sector. These loans are concessional loans procured by the National Government and on-lent to Water Works Development Agencies (formally Water Services Boards). Since water is a devolved function, Water Service Providers are currently responsible for the management and operations of the water and sewerage infrastructure. Water Service Providers are under the County Governments. The Water Service Providers are currently not honoring their on-lent loan obligations and yet in the water tariff approved by the Water Services Regulatory Board (WASREB) there is a component earmarked for loan repayment.

To address this, an Inter-Ministerial Taskforce comprising, Ministry of Water, National Treasury and Devolution, was formed to analyze and propose sustainable modalities on restructuring debts for development of water infrastructure among other terms of references. An interim report has been submitted which is being considered and once finalized a policy direction will be issued to address water sector loans.

The Taskforce dealing with Dormant Loans which are also the source of arrears has recommended a write off of the dormant loans. The National Treasury is in the process of seeking approvals from the Cabinet and Parliament for restructuring the dormant loans. Once the approvals are received, the records will be updated accordingly.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer in liaison with the Kenya Revenue Authority integrates the IPPD, IFMIS and i-Tax systems for efficient tax administration, within one (1) year of adoption of this report.

DEVELOPMENT REVENUE STATEMENTS

REPORT ON THE REVENUE STATEMENTS

25. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final revenue budget and actual on comparable basis of Kshs.96,570,519,961 and Kshs.61,046,004,175 respectively resulting to under performance of Kshs.35,524,515,786 or 37% of the budget. Management attributed the underperformance to underutilization of budgets by the respective Projects in the Ministries, Department and Agencies.

The underperformance resulted to underfunding of planned development activities which may have adversely impacted on service delivery to the public.

Submission by the Accounting Officer

Projects are funded by Development Partners under respective Ministries, Departments and Agencies (MDA's) who request for funds (Exchequer Requisitions) based on approved work plans.

The difference of Kshs.35,524,515,786 is comprised of funds due to County Government under Conditional Grants of Kshs.19,830,759,346 and Kshs.15,419,287,931 under MDAs The funding under Conditional Grants was approved on 29th April 2022 thereby leaving only 2 months for activities to be undertaken as per Special Issue Gazette No.17 and Acts no.17.

Further, the un-utilised balance of Kshs.15,419,287,931 relates to thirty-six (36) MDAs implementing projects with development partner funding, which was affected also by the approval of Supplementary 2 budget in June 2022

Strict budgetary control provisions shall be observed and measures put in place to improve the budget absorption.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

GOVERNMENT INVESTMENTS AND PUBLIC ENTERPRISES - REVENUE STATEMENTS

REPORT ON THE REVENUE STATEMENTS

28. Unreconciled Outstanding Loans Balances

The summary schedule of outstanding loans reflects total outstanding loans of Kshs.920,690,539,503. However, eighteen (18) entities with a total loan balance amounting to Kshs.268,875,962,951 reflected in the summary schedule differed with the loan balance of Kshs.268,241,119,147 independently confirmed from the entities resulting to an unexplained variances as summarized below;

No.	Company/Institution	Balance as per the Revenue Statements (Kshs.)	Balance Confirmed After Circularization (Kshs.)	Variance (Kshs.)
1.	Athi Water Services Board	47,181,677,443	44,780,310,172	2,401,367,271
2.	Coast Water Service Board	15,839,546,804	12,865,923,145	2,973,623,659
3.	Equity Bank Limited	136,672,275	14,913,236	121,759,039
4.	Kenya Airports Authority	1,708,012,739	1,709,808,167	(1,795,428)
5.	Kenya Electricity Generating Company Limited	81,533,589,265	88,136,215,941	(6,602,626,676)
6.	Kenya Electricity Transmission Company Limited	2,306,257,099	2,563,713,710	(257,456,611)
7.	Kenya Meat Commission	940,241,100	300,000,000	640,241,100
8.	Kenya Power and Lighting Company Limited	56,147,469,037	56,340,742,324	(193,273,287)
9.	Kilifi Mariakani Water and Sewerage Company Limited	283,998,236	379,210,338	(95,212,102)
10.	Lake Victoria North Water Services Board	11,594,143,705	12,618,417,315	(1,024,273,610)
11.	Lake Victoria South Water Services Board	12,991,985,210	9,471,336,598	3,520,648,612
12.	Malindi Water, Sewerage and Sanitation Company Limited	284,748,410	354,033,526	(69,285,116)
13.	Northern Water Services Board	5,389,000,000	3,267,383,722	2,121,616,278
14.	Nzoia Sugar Company Limited	458,510,100	11,454,385,173	(10,995,875,073)
15.	Rural Electrification Authority	13,426,088,636	13,385,625,937	40,462,699
16.	Tana Water Services Board	7,543,116,143	4,545,195,118	2,997,921,025
17.	Tanathi Water Services Board	9,713,565,506	5,691,292,426	4,022,273,080

18.	Water Resource Management Authority	1,397,341,243	362,612,300	1,034,728,943
Total		**268,875,962,951**	**268,241,119,147**	

Submission by the Accounting Officer

To confirm the accuracy of the outstanding loan balances, the National Treasury circularized and requested Entities with outstanding Loan balances to confirm directly to the Auditor General, the Principal Loan amounts owed to the National Government as at 30th June, 2022. Some of those loan balances confirmed did not agree with the balances in the National Treasury records.

The reconciliation of the variances between the National Treasury and the Eighteen (18) Entities reported by Audit on various loans amounting to Kshs 268,87,962,951 has been done and variances explained.

Further, the National Treasury rolled out Government Investment Management Information System (GIMIS) which has a module for Loan Portfolio Management. The module is currently operational and entities with Government loans have uploaded and updated various loan information that are required from them.

Unconfirmed Loan Balances

Circularization of debtors is an annual exercise, where the National Treasury request the entities with loan balances to confirm directly to the Office of the Auditor General. Follow up is made for entities who did not confirm on time through reminder letters. Of the Twelve (12) entities that had not confirmed their loan balances, six (6) Entities have confirmed while the other six are defunct/not operating hence could not be reached for confirmation purposes.

The Management has written reminder letters for confirmation of loan balances and a sample of reminder Letters was availed for audit review.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

29. Dormant Loans

As previously reported, the summary schedule of outstanding loans reflects total loans outstanding of Kshs.920,690,539,503. Included in the balance are twelve (12) loans amounting to Kshs.13,151,255,401 which had no movement during the year and have remained unpaid over a significant period. Further, the Management did not provide the aging analysis of the dormant loans tabulated below;

No.	Institution	Amount Outstanding as at 30 June, 2022 (Kshs.)
(i)	Agro-chemical and Food Company Limited	2,941,884,000

(ii)	East African Sugar Industries Limited, Muhoroni	177,123,100
(iii)	Halal Meat Products	27,701,420
(iv)	Kenya Meat Commission	940,241,100
(v)	Kenya Urban Transport Various Towns	40,706,140
(vi)	Miwani Outgrowers Mills Limited	6,600,000
(vii)	Miwani Sugar Company (1989) Limited	16,000,020
(viii)	Miwani Sugar Mills Limited	78,088,180
(ix)	Mumias Sugar Company Limited	3,000,000,000
(x)	National Irrigation Board	2,262,036,544
(xi)	National Water Conservation and Pipeline Corporation	2,460,874,897
(xii)	Uchumi Supermarkets Limited	1,200,000,000
	Total	**13,151,255,401**

Management has not disclosed measures put in place to ensure all loans are being repaid and in case of default, sanctions imposed on the defaulters.

Submission by the Accounting Officer

It's true that there are entities that were advanced loans several years ago, but currently they are not servicing their loans leading to arrears of revenue and loans being categorized as dormant.

As reported by the Auditor, there are Twelve (12) entities with outstanding loans amounting to Kshs 13,151,255,401/- who have not been honoring their loan obligations over years.

From this, four (4) entities with loan balance of Kshs 204,930,435 relates to some of the Government owned Sugar Companies which following the approval from Cabinet and National Assembly, have been written off.

The main reasons for non-repayment by entities is mainly attributed to:

Historical Loans. The National Government has over time advanced loans to several public and other entities to finance various projects within the Country. The mechanism applied for the Government lending was in the past through budgetary provision under the respective Ministries without putting in place contracts or agreements with specified terms of loan repayment thus making follow up of the loan repayments, a challenge.

In 1994/95 FY, the National Treasury took over the loans held by the Ministries. Most of the loans taken over from the Ministries lacked proper records and supporting documentations which posed a big challenge on the loan repayment follow up, thereby leading to non-repayment of the loans. The loans have remained outstanding in the Government books for a long time, some dating in the 1970s.

The Taskforce dealing with Dormant Loans recommended a write off of the dormant loans, especially for the defunct entities. The National Treasury is in the process of seeking approvals

from both the Cabinet and Parliament for the write off of dormant loans that were recommended by the task force. Once the approvals are received, they will be effected in the 2024/25 FY statements.

The Ageing analysis has been tabulated and most of the loan have been outstanding for more than there (3) years.

The Management have written letters for confirmation of loan balances and a sample was availed for audit review.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer hastens the process of write-offs by submitting the proposal to Parliament within six (6) months of adoption of this report.

EAST AFRICA TOURIST VISA FEE COLLECTION ACCOUNT

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

34. Lack of Annual Audit Services

The statement of receipts and payments reflects total receipts of Kshs.205,071,201 collected during the year under review. However, there was no evidence of establishment of a Joint Verification Committee to subject the collection account to annual audit. This was contrary to Article 9(4) of the Memorandum of Understanding between the Government of the Republic of Kenya, the Government of the Republic of Rwanda and the Government of the Republic of Uganda which stipulates that a Joint Verification Committee from the parties shall be put in place to carry out annual audit, although the process of sharing the East Africa Tourist Visa revenues shall be done through mutual trust and respect.

In the circumstances, the effectiveness of the collection account internal controls system and risk management processes were not tested during the year.

Submission by the Accounting Officer

The receipt of Kshs. 205,071,201 comprised of;

• Receipts from sale of EATV stickers	Kshs. 164,518,600.00
• Receipts of EATV Revenue from Rwanda & Uganda	Kshs. 37,681,882.00
• Foreign Exchange gain/loss	Kshs. 2,870,719.00
Total Receipts for the year	Kshs. 205,071,201.00

Article 9 of Memorandum of Understanding (MOU) section 9.4 stipulates that the sharing of collections shall be done on mutual trust and respect. However, an annual joint verification exercise shall be carried out by a select committee from key implementing institutions after consultations through diplomatic channels of the partner states.

Diplomatic consultations between the Ministry of Foreign Affairs and Ministry in charge of Northern Corridor Integration project and partner states were ongoing at the time of audit.

However, in August,2023 the National verification committee carried out a national audit covering financial years 2019/2020 to 2022/2023.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

STATEMENT OF OUTSTANDING OBLIGATIONS GUARANTEED BY GOVERNMENT OF KENYA

REPORT ON THE FINANCIAL STATEMENTS

35. Unsupported Balance

As reported in the previous years, the statement of outstanding obligations guaranteed by the Government of Kenya continue to reflect an outstanding balance of Kshs.152,317,825; (2021-Kshs.152,317,825) being capital and interest owed by the Cereals and Sugar Finance Corporation. However, the balance has not been supported by any verifiable records or documents and this constitutes a limitation of scope.

Although Management has indicated that the Corporation is dormant and has embarked on the process of winding up of the Corporation, it is not clear how the guaranteed debt will be cleared without supporting documentation on the same.

Submission by the Accounting Officer

The account balances of Ksh 152,317,825 is historical relating to a defunct Cereals and Sugar Finance Corporation. Documents to support this amount are not available. This prompted the National Treasury to form a taskforce to address all issues arising from the defunct corporation. The winding up process is ongoing.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer expedites and concludes the winding up process, and submits a confirmation of the same within six (6) months of adoption of this report.

36. Undisclosed Balances

The Consolidated National Government Investment Report for the year 2021/2022, prepared by The National Treasury in accordance with Section 89 of the Public Finance Management Act, 2012 and the Summary Statement of Public Debt for the year 2021/2022 reflects guaranteed debts/undischarged guarantee from four (4) entities totaling Kshs.145,357,000,000 which have been omitted from the statement of obligations guaranteed by Government of Kenya as indicated below;

Entity	Lender	Guaranteed Debt (Kshs.)
Kenya Electricity Generating Company PLC	Government of Japan and Federal Republic of Germany-GTZ	24,513,000,000
Kenya Ports Authority	Government of Japan	33,077,000,000
Kenya Airways	Exim Bank USA	77,824,000,000
Kenya Power and Lighting Company	Government of Japan	9,943,000,000
Total		**145,357,000,000**

In the circumstances, the completeness, accuracy and the status of the outstanding obligations guaranteed by the Government of Kenya as at 30 June, 2022 could not be ascertained.

Submission by the Accounting Officer

The guaranteed debt for the four (4) entities namely Kenya Electricity Generating Company PLC, Ports Authority, Kenya Airways and Kenya Power and Lighting Company were disclosed in the statement of debt stock. The statement of debt stock is an annex of the public debt financial statement.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

CONSOLIDATED FUND SERVICES- SUBSCRIPTIONS TO INTERNATIONAL ORGANIZATIONS

REPORT ON THE FINANCIAL STATEMENTS

40. Multiple Laws Guiding Operations of the Fund

As previously reported, prior to 2017, the Government through The National Treasury had been paying subscriptions to international organizations through Vote R53 – Consolidated Fund Services - Subscriptions to International Organizations under various pieces of legislation namely: International Finance Corporation Act, Cap 466, International Development Association Act, Cap 465, Bretton Woods Agreements Act, Cap 464, the African Development Bank Act, Cap 492 and the Multilateral Investment Guarantee Agency Convention,1988 (Revised 2010). Other Ministries, Departments and Agencies, MDAs have been remitting such subscriptions through their voted provisions within their budgets.

However, the Public Finance Management (African Union and Other International Organizations Subscription Fund) Regulations, 2017 established the African Union and Other International Organizations Subscription Fund through which Kenya's contributions to African Union and Other International Organizations across all Government agencies were to be paid. This in effect

rendered all other individual voted provisions to be consolidated and budgeted under one umbrella body, the African Union and Other International Organizations Subscription Fund.

Management has not caused the revocation or repealing of the earlier laws to be in tandem with the current legislation and avert the risk of making multiple payments to the international organizations.

Submission by the Accounting Officer

The Management has started a process of repealing the earlier laws by seeking legal opinion of the Attorney General on the necessary amendments. This will be done once the process is completed.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that within six (6) months upon adoption of this report, the Accounting Officer should conclude the integration process and submit a report to the National Assembly. .

41. Budgetary Control and Performance

Review of the statement of comparison of budget and actual amounts revealed that the Fund had a budget of Kshs. 500,000 but did not incur any expenditure during the period under review resulting in under absorption of funds by the same amount or 100% under- utilization. The under-utilization of funds was attributed to the fact that the Fund did not receive any invoices during the period under review.

Submission by the Accounting Officer

There was no payment made through this vote during the year under review because there was no invoice presented for payment. However, this led to the under absorption. The National Treasury has since stopped providing budgetary allocation under this item.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

CONSOLIDATED FUND SERVICES - SALARIES, ALLOWANCES AND MISCELLANEOUS SERVICES

REPORT ON THE FINANCIAL STATEMENTS

45. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects budgeted receipts and actual receipts on comparable basis of Kshs.4,542,867,150 and Kshs.3,195,244,429, respectively resulting in a receipts shortfall of Kshs.1,347,622,721 or 30% of the budget. Similarly, the statement reflects expenditure budget and actual payments on comparable basis of Kshs.4,542,867,150 and Kshs.3,200,966,015, respectively resulting in under absorption of Kshs.1,341,901,135 or 30%.

The under collection and under expenditure imply that some of the budgeted programs and activities may not have been executed during the year.

Submission by the Accounting Officer

The allocation under this budget is used to process for the salaries of constitutional office holders, service gratuities for those retiring from the service, transfer allowances for the Judges and other allowances like commutation of leave for cash.

The salaries are usually covered on monthly payrolls while other relevant allowances are paid upon requests from the constitutional office holders during the budget implementation.

The budget underutilization was caused by;

i. Delay in the appointment of Judges.; and
ii. The non-occurrence of the anticipated activities like commutation of leave for cash and salary review for judicial officers.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

CONSOLIDATED FUND SERVICES – PENSION AND GRATUITIES

REPORT ON THE FINANCIAL STATEMENTS

48. Long Outstanding Bank Reconciliation Items

The statement of financial assets and liabilities reflects a bank balance of Kshs.1,991,824,419 which, as disclosed in Note 9 to the financial statements, includes an amount of Kshs.1,324,694,712 in respect of funds held in the recurrent bank account at the Central Bank of Kenya. However, an examination of the bank reconciliation statement for the month of June, 2022 revealed payments in cash book not in bank amounting to Kshs.145,813,004 with some transactions dating back September, 2019.

Further, the reconciliation statement reflects payments in bank not in cash book of Kshs.17,545,255 with some transactions having remained outstanding since 2008. In addition, the bank reconciliation statement reflects receipts in bank not in cash book amounting to Kshs.30,858,908 while receipts in cash book not in bank amounted to Kshs.15,499,065 with some transactions having remained outstanding since 2010. No explanation was provided for failure to clear the long outstanding reconciling items.

In the circumstances, the accuracy of the recurrent bank balance of Kshs.1,324,694,712 could not be confirmed.

Submission by the Accounting Officer

At the time of the audit,

i. Payments in the cashbook but not reflected in the bank statement amounted to Kshs.145,813,004. Most of th items were for June 2022 and a few for earlier years that

were being analyzed then. They were paid by the bank in July 2022. All outstanding items have since been cleared from the bank reconciliation statement;

ii. Receipts in bank statements but not in cash book totaled Kshs.30,858,908. These were credits in the bank account whose credit notes had not been received at the end of the financial year. Credit notes were later received and official receipts issued, FO 17 prepared and the same posted in the cash book. All outstanding items have since been cleared;

iii. Receipts in cash book but not in bank statement amounted to Kshs. 15,499,065. These are receipts that had been erroneously posted in cash book. The same have since been reversed in the cash book and cleared from the bank reconciliation; and

iv. Payment in bank statement and not in cash book totaled Kshs. 17,545,255. of this amount;

- Kshs. 1,905,147.60 relates to dishonored cheques out of which cheques amounting to Kshs. 818,121.00 were replaced. The balance amounting to kshs. 1,087,026.60 is yet to be honored but have since been posted in the cash book and cleared from the bank reconciliation. The Ministry has written to the Sacco requesting them to replace the cheques.
- Kshs. 748,902.80 relates to dishonored cheques of 2008 still outstanding in books. The RD cheques are not traceable and department has assigned a team to locate them; and
- Kshs. 14,891,204.65 relates to fraudulent payments that were paid through our CFS Pensions and Gratuity bank account in 2008. Banking fraud investigation unit was engaged to conduct investigation into the circumstances surrounding the fraudulent payments. Following the investigation, some individuals were arraigned in court. However, after court proceedings, the accused were acquitted.

After the acquittal of the accused, the amount involved of Kshs. 14,891,204.65, has been categorized as a loss. A loss report was prepared and we are in the process of writing it off.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures full reconciliation within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

50. Incomplete Pension Records

Note 7 to the financial statements discloses an amount of Kshs.67,582,563,409 paid as ordinary pensions during the year under review. However, in making the payments, Management did not confirm that the payees were alive as there was no mechanism put in place to remove pensioners from the payroll upon their demise.

Further, an amount of Kshs.350,736,433 included in the pension payments relates to pensioners with dummy and unconventional identification numbers. In addition, an amount of Kshs.242,936,971 relates to pension payments to pensioners who are below the age of 18 years.

In the circumstances, the integrity of the pensioners' data used for processing pension payments could not be confirmed.

Submission by the Accounting Officer

The Management wish to address the highlighted concerns regarding the pensioner's data and the mechanisms employed for pension processing. It is imperative to clarify that several comprehensive strategies have been implemented to ensure the accuracy and credibility of pensioner records and payments:

i. Confirmation of Pensioner lifeness: The Pensions Department has adopted multifaceted strategies to verify the status of pensioners. This includes cross-referencing the pension's database with the 2019 population census, conducting nationwide headcounts of pensioners, and initiating plans for biometric registration to establish a robust authentication framework.
Additionally, the collaboration with pension disbursing banks and FOSAS ensures the immediate cessation of payments upon the demise of a pensioner;

ii. Data Integrity Enhancement: Acknowledging the challenge posed by legacy systems, the department introduced the Pension Management Information System (PMIS) in 2009. However, data migration led to the inclusion, into the PMIS, of dummy records due to disparities in data fields between systems. While partial data cleansing was conducted during migration, it is important to note that active efforts are now underway to rectify this situation. The ongoing process of addressing the incomplete records has already resolved 1,634 files with dummy and unconventional identification numbers; and

iii. Age Verification: The inclusion of pensioners apparently, below the legal retirement age was inadvertently due to data migration complexities, where the migration date was erroneously captured as the date of birth. This anomaly has since been recognized, and we are committed to resolving this issue through the ongoing data cleansing.

For the Ksh.350,736,433.00 paid to pensioners with dummy and unconventional identification numbers we wish to state as follows:

a) The dummy numbers were in the fields of ID numbers, first appointment date and date of birth. The process of updating these details into the PMIS is done manually and cumbersome. This would have taken a lot of time leading to delayed monthly pension payment. The management then decided to use dummy numbers in those fields for purpose of processing the pension;
b) The pension was paid using pension numbers allocated in the pensioners files and not the dummy numbers; and
c) Currently the Pensions Department is doing pension payroll cleansing which involves updating the fields with dummy, unconventional identification numbers and removing deceased pensioners from the system.

The amount of Kshs.242,936,971/- that relates to pension payments of pensioners perceived to be below the age of 18 years are pensioners whose files migration date in PMIS of 2009 was erroneously captured in the field as date of birth.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

REVENUE STATEMENTS OF THE PENSIONS DEPARTMENT

REPORT ON THE REVENUE STATEMENTS

52. Budgetary Control and Performance

The statement of receipts and disbursements reflects an amount of Kshs.588,577,979 in respect of total contributions which, as disclosed in Note 12 to the financial statements, exceeded the budget of Kshs.369,993,817 by Kshs.218,584,162 or 159% of the budget. Budgets should be realistic in order to ensure commensurate efforts and resources are geared towards achievement of the set targets.

The over-realisation of contribution from Government employees to social and welfare schemes within Government is an indication of poor budgeting processes.

Submission by the Accounting Officer

The Management acknowledge the observations regarding the over-collection compared to the budgeted amount, and would wish to state that over- collection was due to;

i. Revised TSC Claims: The significant over-collection was a direct consequence of several revised Teachers Service Commission (TSC) claims that were processed and disbursed during the financial year. It's worth noting that the Widows & Children Pension Scheme (WCPS) contribution was recovered from the pensioners since they had not contributed within the revised period for them to qualify WCPS pension.
ii. Delayed Funding Impact: Revenue collection totaling Kshs.78,308,891.70,comprising Abatement Kshs.14,194,896.10, Government Liability Deduction through the Chief Accountant Pension Kshs.10,136,117.50, and WCPS deductions Kshs.53,977,878.05, was intended for the previous Financial Year 2020/2021. Due to a delay in exchequer funding, these funds were received in the financial year 2021/2022.

These outlined factors collectively contributed to the over-collection noted, which was not foreseen in the initial budget projection.

Committee Observations and Findings;

i) **The Committee noted that the submission by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

DONOR FUNDED PROJECTS

FINANCIAL SECTOR SUPPORT PROJECT (IDA CREDIT NO.5627-KE)

REPORT ON THE FINANCIAL STATEMENTS

56. Uncertainty in Sustainability of Services

The statement of comparison of budget and actual amounts reflects an expenditure on compensation of employees amounting to Kshs.23,001,570 against a budget provision of Kshs.27,537,084 resulting to underexpenditure of Kshs.4,535,515 or 16% of the approved budget. Although Management has explained the underexpenditure was due to delayed project

restructuring, available information indicates that the Project Implementation Unit contracted employees' terms lapsed in April, 2022 and they continued to offer services to the Project without compensation. Further, the Project disbursing period lapses in October, 2022 and lack of valid contracts of the Project Implementation Unit staff, exposes the project operations to the risk of external interference and casts doubt on the finalization of the project activities and subsequent closure.

Submission by the Accounting Officer

Contracts of staff of Project Implementation Unit (PIU) were ratified by the National Treasury for the period beginning 1st May 2022 to 28th February 2023. Compensation for the staff for the period was subsequently made by the project during the financial year 2022/2023. The project has since been closed and the Financial Statements prepared as at 30th June, 2023.

Extension of staff contracts will in future be considered prior to the lapse of the contract to enable continuity of services and project activities.

Committee Observations and Findings;

i) **The Committee noted that the project had since been closed.**

ii) **The Committee found that the matter was resolved.**

57. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.1,816,346,218 and Kshs.267,192,000 respectively resulting to an underfunding of Kshs.1,549,154,218 or 85% of the budget. Similarly, the statement reflects final expenditure budget and actual on comparable basis of Kshs.1,816,346,220 and Kshs.271,002,735 respectively resulting to an under expenditure of Kshs.1,545,343,486 or 85% of the budget.

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

Submission by the Accounting Officer

The invoice for goods delivered was received late and there was no time to pay the same hence the expenditure that was below the budget. Strict budgetary control provisions shall be observed and measures put in place to improve budget absorption.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

58. Pending Bills

Note 9 and Annex 2 to the financial statements indicates that the Project had pending bill of Kshs.3,930,401 as at 30 June, 2022. Management has not explained why the bill was not settled during the year when it occurred. The Project risks incurring significant interest costs and penalties with continued delay in payment.

Failure to settle bills during the year in which they relate to distorts the financial statements and adversely affects the budgetary provisions for the subsequent year as they form a first charge.

Submission by the Accounting Officer

The pending bill of Kshs. 3,930,401 was due to the late submission of vendor's invoice for goods delivered towards the end of the financial year and there was inadequate time to process the payments.

The IFMIS procurement module mandate had been closed by the time the invoice was presented for payment and could therefore not be received in the IFMIS system. However, the pending bill was settled as the first charge in F/Y 2022/2023 as per bank statement extracts.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

GLOBAL FUND - TO ACCELERATE THE REDUCTION OF TB, LEPROSY AND LUNG DISEASE BURDEN THROUGH PROVISION OF PEOPLE- CENTERED, UNIVERSALLY ACCESSIBLE, ACCEPTABLE AND AFFORDABLE QUALITY SERVICES IN KENYA PROGRA - KEN-T-TNT, GA 1548

REPORT ON THE FINANCIAL STATEMENTS

62. Failure to Analyze Counterpart Funding

As previously reported, the statement of receipts and payments reflects Nil balance under transfers from Government (counterpart funding) and a comparative balance of Kshs.387,459,444 for the financial year ended 30 June, 2021 bringing the cumulative to-date balance from inception to Kshs.637,459,444. Management has however, not provided an analysis to indicate how the balance was built up since the inception of the Program. Further, the amount had previously been omitted from the audited financial statements for previous years and the balances were not marked as restated on the face of the financial statements.

In the circumstances, the accuracy and completeness of the reported cumulative transfers from Government of Kshs.637,459,444 could not be confirmed.

Submission by the Accounting Officer

It is true that the statement of receipts and payments reflected a Nil balance under Transfers from Government (counterpart funding) and a comparative balance of Kshs. 387,459,444/- for the financial year ended 30 June, 2021 bringing the cumulative to date balance from inception to Kshs. 637,459,444/-

During the financial year 2020/2021 and prior years, the counter funding was not being included in the project's financial statements. This was an oversight. The same was being incorporated in the main National Treasury's financial statements.

Further, we wish to state that at the time of audit, the Management did not provide an analysis to indicate how the balance of Kshs. 637,459, 444/- was built up since the inception of the Program.

The amount was being analyzed and the analysis had not been concluded. However, the same was completed and forwarded for audit review.

The expenditure since inception of the program is composed of;

a) F/Y 2019/2020 Kshs. 250,000,000.00
b) F/Y 2020/2021 Kshs. 387,459,444.00

Totals Kshs. 637,459,444.00

Committee Observations and Findings;

i) **The Committee noted that the submission by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

INFRASTRUCTURE FINANCE AND PUBLIC PRIVATE PARTNERSHIPS PROJECT - IDA CREDIT NO.5157-KE

REPORT ON THE FINANCIAL STATEMENTS

67. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.495,638,120 and Kshs.126,024,642 respectively resulting to an underfunding of Kshs.369,613,478 or 75% of the budget. Similarly, the statement reflects final expenditure budget and actual on comparable basis of Kshs.495,638,120 and Kshs.65,165,272 respectively resulting to an underexpenditure of Kshs.430,472,848 or 87% of the budget.

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

Submission by the Accounting Officer

It is true that the statement of comparison of budget and actual amounts reflect final receipts budget and actual on comparable basis of Kshs.495,638,120 and Kshs.126,024,642 respectively that resulted to an underfunding of Kshs.369,613,478 or 75% of the budget. Similarly, the statement reflects final expenditure budget and actual on comparable basis of Kshs.495,638,120 and Kshs.65,165,272 respectively resulting to an under expenditure of Kshs.430,472,848 or 87% of the budget.

The under-expenditure was majorly caused by;

i. The delays in procurement processes which took longer than expected due to their unique nature and lengthy consultative requirements amongst the key stakeholders including Contracting Authorities, World Bank and The Government;
ii. Some operations required some specialized kind of expertise that are rare to find thus leading to delays in execution of the project; and
iii. A substantial amount in the budget was to be expended in engagement of PPP Transaction Advisors (TAs).

In order to avoid such under expenditures in future;

i. The Directorate has embarked on the re-evaluation of the PPP pipeline to ensure there is bankable and viable projects, before engaging the transaction advisors;
ii. The re-screening process has now been conducted and concluded which has led improvement in the engagement of transaction advisors;
iii. Restructuring process with the aim of improving in its capacity to deliver on its mandate; and
iv. Staff capacity to be addressed by engaging a number of key staff and is still working on further improvement of the same to strengthen its capacity.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures that the unit is fully capacitated within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

68. Advance to Infrastructure Finance and Public Private Partnerships Project- Additional Financing Cr.6121-KE

The statement of receipts and payments reflects advance to Infrastructure Finance and Public Private Partnerships Project-Additional Financing Cr.6121-KE of Kshs.20,682,665. Although Management has explained in Note 9 to the financial statements that the amount relates to salary payments for November, 2021, May, 2022 and June, 2022 and was reimbursed from Cr.6121-KE in July, 2022, it was not in the annual program of activities furnished to the Association and proposed for implementation as required under Section E I of schedule 2 of the Project financing agreement between the Republic of Kenya and the International Development Association dated 5 December, 2012.

Management was in breach of the financing agreement.

Submission by the Accounting Officer

It is true that the inter project funds transfers were done by the Directorate during the mentioned months.

The Directorate has a number of contracted staff with clear employment terms and conditions to be met by both parties. One of the conditions include timely payment of their monthly salaries to enable them meet their obligations.

In order to mitigate on the likelihood of breach of the employees' contracts by the management, it was only reasonable, considering the circumstances then, to pay the salaries from the other sister Project Account as it awaited refunds from IFPPP project additional financing Cr.6121-KE.

The delay in reimbursement of funds was occasioned by the closure of the financial year ending 30th June, 2022 before refund was made. The reimbursement was eventually effected and reflected in the bank statement for July 2022.

Utilization of project funds has been strictly in accordance with the Financing Agreement despite the above conditional slight deviation.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

69. Lack of Internal Audit Services

During the year under review, there was no evidence of the Project having been reviewed by The National Treasury's internal audit function contrary to Section 73(1) of the Public Finance Management Act, 2012 requires all government entities to make appropriate arrangements for internal audit function. Further, paragraph 3.2.8 of Infrastructure Finance and Public Private Partnerships Project Implementation Manual provides for Internal Audit and the Audit Committee of The National Treasury to provide internal audit services and oversee the adequacy of internal control mechanisms over the Project.

In the circumstances, it has not been possible to confirm whether the Project has an effective and efficient internal control mechanism to safeguard against loss of public resources.

Submission by the Accounting Officer

It is true that internal auditors did not audit the project during the period under review. This was due to other official assignments they had. However, an internal auditor has been posted to the project.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer.

PUBLIC FINANCIAL MANAGEMENT REFORMS PROGRAM (CREDIT NOS. DANIDA FY06, SIDA 51110081, IDA GESDEK-6133-KE, AFD/CKE 1130 & PASEDE CRISNO:041-658)

REPORT ON THE FINANCIAL STATEMENTS

72. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects a receipts budget and actual receipts on comparable basis of Kshs.757,639,703 and Kshs.339,166,280 respectively, resulting in a receipts shortfall of Kshs.418,473,423 or 56% of the budget. Similarly, the statement reflects expenditure budget and actual payments on a comparable basis of Kshs.757,639,703 and Kshs 556,803,181 respectively, resulting in under-absorption of Kshs.200,836,522 or 27% of the approved budget.

The underfunding and underperformance affected the planned activities and impacted adversely on service delivery to the public.

Submission by the Accounting Officer

The Project did not receive full Exchequer as per the approved budget and hence the under-absorption of budget. The Project keenly followed up with the exchequer department for timely & full exchequer releases but did not receive all exchequer issues due to cash flow constraints.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

74. Lack of a Risk Management Policy and Internal Audits

During the year under review, it was revealed that the Program's audit services were to be offered by the internal audit of The National Treasury. However, no reports by the Internal Auditor-General on the Program were provided for audit review. As a result, the Program lacks appropriate arrangements for conducting internal audit services as provided in the guidelines by the Accounting Standards Board. Further, review of the internal control processes revealed that Management had not developed risk management strategies to fraud prevention mechanism and a system of risk management and internal control that builds robust business operations.

In the circumstances, the existence of an effective internal control mechanism could not be ascertained.

Submission by the Accounting Officer

There was no risk management policy at the time of audit, however, the Management has since developed a risk management policy which was validated by the stakeholders and ready for finalization to ensure the Secretariat's risk management, control and Governance processes are adequate and functional.

Management engaged an Internal Auditor and a report was done and submitted for audit review.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer.

75. Failure to Fill Vacant Positions

Review of the staff establishment revealed that the Program had in place twenty-eight (28) members of staff against the authorized establishment of forty-eight (48), resulting in a deficit of twenty (20). The staff shortage, if not addressed, could adversely affect the operations of the Program and service delivery to the public.

In the circumstances, the Program may not achieve its goals due to inadequate human capacity and capabilities.

Submission by the Accounting Officer

This was occasioned by expiry of Contracts for most of the staff who had been on secondment. However, management wishes to confirm that since then a communication specialist position has been filled with support from European Union. Also, management forwarded a request for review and approval of a new organizational structure to Public service commission. Therefore, owing to the proposed organizational structure, management decided to put on hold the recruitment process based on the existing structure. Upon approval of new structure, management will ensure the Secretariat operates in full capacity.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that within three (3) months of adoption of this report, the Accounting Officer should ensure that the organizational structure and placements are implemented and submit a report to the Committee.

STUDY AND CAPACITY BUILDING FUND PROJECT (GRANT NUMBERS CKE 6015 01K, CKE 1043 01F AND CKE 1047 01K)

REPORT ON THE FINANCIAL STATEMENTS

78. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.18,700,000 and Kshs.15,827,126 respectively, resulting to an underfunding of Kshs.2,872,874 or 18% of the budget. Similarly, the Project expended Kshs.15,827,126 against an approved budget of Kshs.18,700,000 resulting to an underexpenditure of Kshs.2,872,874 or 18% of the budget. Management had attributed the underperformance on delay in procurement of process for computers and office furniture.

The underfunding and underperformance affected the planned activities and impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The underfunding/underperformance of the Project is as a result of planned activities to procure equipment during the year which was not concluded. As a result, the Project's budget for equipment was not utilized resulting to under expenditure of Kshs.2,872,874 or 18%.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

79. Irregular Termination of Technical Assistant's Contract

As previously reported, contrary to the provisions of Section 153(1) of the Public Procurement and Asset Disposal Act, 2015, the contract for a Technical Assistant (consultant) was terminated

without the approval of the Accounting Officer. Further, no prior written notice was served to the consultant contrary to Clause 13 of the signed contract. The project may incur undetermined cost in form of damages and interests thereof in case of any litigation on the above.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Technical Assistant (Consultant) contract was single sourced based on his previous assignment and experience under Aids Effectiveness Program that was under AFD. This contract was subsequently cancelled in January 2020 as recommended in the Audit Report of F/Y 2018/2019 and the post re-advertised according to the Development Partners procurement guidelines. The termination and the re-advertisement of the post was with the concurrence of the Accounting Officer. Interviews were held between 29th April and 4th May, 2020 as per the attached copy of the National Treasury letter MOF/ERD/20/148/78/01 'B' of 29th May, 2020 and other supporting documents.

Committee Observations and Findings;

i) **The Committee noted that the matter was resolved in the previous audit report.**

ii) **The Committee found that the matter was resolved.**

TECHNICAL SUPPORT PROGRAMME (FINANCING AGREEMENTS NO. KE/FED/2009/021421; NO. KE/FED/023-733 AND NO. KE/FED/037-941)

REPORT ON THE FINANCIAL STATEMENTS

82. Dormant Project Bank Account

As reported in the previous year, the Project continues to maintain a local currency account in a local commercial bank which had a balances of Kshs.22,823,152 as at 30 June, 2022. The account did not have any transaction during the year under review. Although Management had stated that it was awaiting the finalization of project verification exercise by the European Union (EU) and subsequent issue of recovery order to transfer unspent funds to the EU, the continued maintenance of the dormant account exposes the Programme to risk of loss of funds.

Submission by the Accounting Officer

At the time of Audit, the account had not been closed since project verification by European Union (EU) had not been concluded. However European Union (EU) has since completed the Expenditure Verification exercise and issued a recovery order vide their letter dated 20/06/2023. As a result, the bank balance of Kshs. 22,823,151.50/- held in the Project Bank Account at Equity bank was transferred to the EU on 4th September, 2023 vide PA No. 131776 and the Project Bank Account closed.

The following are documents availed to confirm closure of account:

i. Certificate of Bank Balance as at 30 June, 2023.
ii. A letter requesting Equity Bank to deposit the Bank Balance to the National Treasury Deposit Bank Account for on-ward transfer to the EU.
iii. A Certified Zero Balance Bank Statement for Equity Bank Account No. 0240263824199.
iv. Payment Advice for refund of Kshs. 22,823,151.50 to the European Union

v. Central Bank of Kenya Swift Message making the refund.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

MICRO FINANCE SECTOR SUPPORT CREDIT PROJECT (CREDIT NO. CKE 3004 01E AND CKE 6010 01E)

REPORT ON THE FINANCIAL STATEMENTS

87. Amount Withdrawn but Unclaimed

As reported in the previous year, Part B of the statement of special (designated) account reconciliation for the project reflects Euro 1,152,653.73 (Kshs.142,952,115.59) at the then exchange rate of 1 Euro at Kshs.124.02 as withdrawn but unclaimed as at 30 June, 2022. The amount represents cumulative funds transfers to the local project bank account but whose expenditure returns had not been submitted to The National Treasury by close of the financial year ended 30 June, 2022. Further, an additional Euro 30,000 (Kshs.3,720,600) cash advance to the project reflected in the list of advances which ought to have been justified by 31 December, 2015 was yet to be justified as at 30 June, 2022 under the Grant Facility CKE 6010.

Submission by the Accounting Officer

The Government made available through subsidiary agreements a loan facility to three wholesalers for on-lending to 2nd Tier SACCOs and MFIs.The 2nd Tier Institutions (SACCOs and MFIs) were expected to extend credit to final beneficiaries who were the non-banking population, thus enhancing credit delivery and access in Kenya. The loans have since been repaid and the project closed.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

88. Failure to Close the Project

According to Clause 10 of the Financing Agreement, the Project was to end on 31th October, 2010 but the closing date was later extended to 31 December, 2014. However, as reported in the previous year, the Project Management is yet to formally prepare and submit the Project closure report. In the circumstances, the existence of the project is therefore not hinged on any formal agreement with Agence Francaise Development (AFD) and the outstanding balance risk being diverted to other purposes.

Submission by the Accounting Officer

The project closure is progressing well as the consultant has prepared the Final Audit Report that has been approved by Agence Francaise De Developpement (AFD) and other stakeholders.

Subsequently, the National Treasury wrote to AFD for No objection to transfer the surplus project funds to Rural Kenya Financial Inclusion Facility (RK-FINFA).

AFD has granted a No objection and forwarded to the National Treasury a draft Amendment Letter to the Credit Facility Agreement dated 25th May 2005 for purposes of reallocating funds from the Microfinance Sector Support Credit Project to the RK-FINFA.

The National Treasury reviewed the contents of the draft Amendment letter and found them to be in order. Subsequently, the National Treasury forwarded the draft Amendment letter to the Office of the Attorney General to review and issue clearance on the letter.

The Office of the Attorney General vide a letter Ref: AG/CONF/21/8/115 Vol. I dated January 22, 2024 confirmed that the draft Amendment letter was in order and granted the parties to proceed and execute the same.

Agence Francaise De Developpement (AFD) submitted a signed Amendment letter to the Management and which was executed.

A budget allocation will be made this Financial Year 2024/2025 through Supplementary Budget two to enable transfer of funds from Microfinance Sector Support Credit Project to Rural Financial Inclusion Facility Project.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

GLOBAL FUND - TO REDUCE MORBIDITY AND MORTALITY CAUSED BY MALARIA IN THE VARIOUS EPIDEMIOLOGICAL ZONES BY TWO-THIRDS OF THE 2015 LEVEL BY 2020 PROGRAM - KEN-M-TNT, GA 1546

REPORT ON THE FINANCIAL STATEMENTS

95. Unsupported Expenditure - Counterpart Funding

As previously reported, the statement of receipts and payments reflects comparative receipts from the Government of Kenya (Counterpart funding) of Kshs.383,971,795 for the financial year ended 30 June, 2021 and cumulative to-date from inception balance of Kshs.633,971,795. However, Management had not analyzed the expenditure to indicate how the balance had been built up since the inception of the Program. Further, although the amount had previously been omitted in the audited financial statements for previous years, the balances had not been indicated as restated on the face of the financial statements.

In the circumstances, the accuracy and completeness of the reported cumulative receipts from Government of Kenya of Kshs.633,971,795 could not be confirmed.

Submission by the Accounting Officer

It is true that the statement of receipts and payments reflects comparative receipts from the Government of Kenya (Counterpart funding) of Kshs. 383,971,795/- for the financial year ended 30 June, 2021 and cumulative to-date from inception balance of Kshs. 633,971,795/-

During the financial year 2020/2021 and prior years, the counter funding was not being included in the project's financial statements. This was an oversight. The same was being incorporated in the main National Treasury's financial statements.

Further, we wish to state that at the time of audit the Management did not provide an analysis of the expenditure to indicate how the balance of Kshs. 633,971,795/- had been built up since the inception of the Program.

The amount was being analyzed and the exercise had not been concluded. However, the same was completed and forwarded for audit review.

The expenditure since inception of the program is composed of;

a)	F/Y 2019/2020	Kshs. 250,000,000.00
b)	F/Y 2020/2021	Kshs. 383,971,795.00
	Totals	Kshs. 633,971,795.00

Committee Observations and Findings;

The Committee noted that the Accounting Officer failed to keep proper accounting records.

Committee Recommendation;

The Committee reprimands the Accounting Officer.

GLOBAL FUND - TO CONTRIBUTE TO ACHIEVING VISION 2030 THROUGH UNIVERSAL ACCESS TO COMPREHENSIVE HIV PREVENTION, TREATMENT AND CARE (NFM 2) PROGRAM - KEN-H- TNT, GA 1547

REPORT ON THE FINANCIAL STATEMENTS

99. Unsupported Expenditure - Counterpart Funding

As previously reported, the statement of receipts and payments reflects comparative balance for transfer from Government entities (Counterpart funding) of Kshs.1,840,254,274 for the year ended 30 June, 2021 and cumulative to-date from inception balance of Kshs.3,454,700,355. However, Management had not analyzed the expenditure to indicate how the balance was built up since the inception of the Program. Further, although the amount had previously been omitted from the audited financial statements for previous years, the balances were not marked as restated on the face of the financial statements.

In the circumstances, the accuracy and completeness of the reported cumulative transfer from Government entities of Kshs.3,454,700,355 could not be confirmed.

Submission by the Accounting Officer

It is true that the statement of receipts and payments reflects comparative balance for transfer from Government entities (Counterpart funding) of Kshs. 1,840,254,274/- for the year ended 30 June, 2021 and cumulative to-date from inception balance of Kshs. 3,454,700,355/-

During the financial year 2020/2021 and prior years, the counter funding was not being included in the project's financial statements. This was an oversight. The same was being incorporated in the main National Treasury's financial statements.

Further, we wish to state that at the time of audit, the Management did not provide an analysis of expenditure to indicate how the balance of Kshs. 3,454,700,355/- was built up since the inception of the Program.

The amount was being analysed and the analysis had not been concluded. However, the same was completed and forwarded for audit review Appendix 61

The expenditure since inception of the program is composed of;

a)	F/Y 2019/2020	Kshs. 1,614,446,081.00
b)	F/Y 2020/2021	Kshs. 1,840,254,274.00
	Totals	Kshs. 3,454,700,355.00

Committee Observations and Findings;

The Committee noted that the Accounting Officer failed to keep proper accounting records.

Committee Recommendation;

The Committee reprimands the Accounting Officer.

INFRASTRUCTURE FINANCE AND PUBLIC PRIVATE PARTNERSHIPS PROJECT - ADDITIONAL FINANCING (IDA CREDIT NO. 6121-KE)

REPORT ON THE FINANCIAL STATEMENTS

103. Irregular Recruitment of an Advisor

The statement of receipts and payments reflects expenditure on purchase of goods and services of Kshs.121,590,772 which, as disclosed in Note 4 to the financial statements includes expenditure on consultancy services of Kshs.28,836,511. As reported in the previous year, The National Treasury, through the Project, procured the services of an advisor to the Cabinet Secretary – The National Treasury and Planning vide a contract dated 30 July, 2020 for a period of two (2) years effective 1 August, 2020 to 31 July, 2022 at a salary of Kshs.1,813,029 per month all amounting to Kshs.34,447,551 in addition to other undetermined allowances. It was however noted that the position was not provided for in the approved Project organization structure as outlined in the IFPPP Project Implementation Manual.

Although Management indicated that the advisor was recruited using direct selection method and based on "No objection" communication from the World Bank, the recruitment was contrary to Section 5(2) of the Employment Act, 2007 which state that an employer shall promote equal opportunity in employment and strive to eliminate discrimination in any employment policy or practice.

Further, the advisor's salary was negotiated with a negotiation committee appointed by the Cabinet Secretary and was not subjected to the advisory by the Salaries and Remuneration Commission for salary grading of the officer nor was it pegged on the Public Service or other existing criteria.

The advisor subsequently resigned in February, 2022 before the lapse of the contract period. The circumstances under which the advisor resigned and when the terms of the contract were changed from employment to consultancy was not explained and the supporting documents for the consultancy services rendered to the project were not provided for audit.

In addition, examination of the terms of reference of the employment contract of the advisor revealed that the scope of service goes beyond the mandate of the project and workplans and progress reports detailing the deliverables of the advisor were not provided for audit verification.

In the circumstances, the Management was in breach of the law and may jeopardize the continued funding by the development partner.

Submission by the Accounting Officer

It is true that the advisor to the Cabinet Secretary (CS) was contracted by the Project on 30th July 2020 for a period of two years effective 1st August 2020, to 31st July 2022 to inter alia advise the CS, National Treasury on the PPP agenda and with an expanded scope to improve on project implementation across Government, with a focus on the Development Partner Portfolio.

The position was approved by the CS, National Treasury as the Authorized Officer. The World Bank gave a 'No Objection' to recruit the advisor through direct procurement on 30 April 2020, in line with the World Bank legal framework that permits direct procurement for urgent situations and when an individual consultant has the relevant experience and qualifications of exceptional worth to the assignment.

The World Bank issued a 'No Objection' to the terms of Reference for the advisor on 5th June, 2020.The Negotiation Committee for the recruitment of the advisor, comprising of six members, was appointed by the CS on 20th May 2020.

The salary of the advisor was negotiated with the negotiation committee and was based on his previous engagement with the United Nations Development Programme.

As an advisor to the National Treasury, the very wide scope of work for the advisor included providing advisory across more than 30 IDA projects, funds flow to County Governments associated with programs for devolution and support for revamping the moribund PPP framework in Kenya. The CS approved the negotiated terms on 30th July 2020.

The CS, National Treasury, and the World Bank, as signatories to the financing agreement of the Project, engaged and agreed on the recruitment of the advisor. Management undertook the exercise after obtaining the requisite authorization from the two authorities.

The recruitment was therefore within the legal framework as captured by the bilateral agreements in The Financing Agreement.

The deliverables were provided and the WB cleared the issue during their audit. The management wish to reaffirm its commitment to ensure compliance to Employment Act,2007 and with the guidelines of Salaries and Remuneration Commission in its future recruitment processes.

Committee Observations and Findings;

i) **The Committee noted that the matter was resolved in its previous audit report.**

ii) **The Committee found that the matter was resolved.**

104. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects approved revenue budget of Kshs.529,053,924 and actual amounts realized of Kshs.831,635,238 resulting to an over-funding of Kshs.302,581,314 or 57% of the budget. Similarly, the Project spent Kshs.205, 539,545 out of the approved budget of Kshs.529,053,924 resulting to an under expenditure of Kshs.323,514,379 or 61% of the approved budget. Management has attributed the under expenditure to various delayed project activities.

In the circumstances, under-expenditure affected the planned activities and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

It is true that the statement of comparison of budget and actual amounts reflected approved revenue budget of Kshs.529,053,924 and actual amounts realized of Kshs.831,635,238 which resulted to an over-funding of Kshs.302,581,314 or 57% of the budget. Similarly, the Project spent Kshs.205, 539,545 out of the approved budget of Kshs.529,053,924 resulting to an under expenditure of Kshs.323,514,379 or 61% of the approved budget.

The reasons for the overfunding were due to:

1. IFPPP-AF receives its funding in Euros, then translated to equivalent Kshs at the CBK prevailing rate. At the time of planning, (May 2021) the exchange rate was lower comparing to the time of receiving the funds (May 2022). The Kenya shilling had really depreciated/weakened against the said currency leading to an increase in the actual amount received against the budgeted amount; and
2. Timing of budget - At the time the project received Kshs. 831,635,238 in May 2022, Supplementary Budget II was already in Parliament for approval making it impractical to revise the budget.

The Project original budget was Kshs. 2,372,070,000 against final budget of Kshs. 529,053,924.

Due to policy push to reduce the fiscal space to manage the under absorption of donor funded programs, The Ministry revised the budget downward during supplementary budget II approval.

The under-expenditure was majorly caused by:

a) The delay in procurement processes which took longer than expected due to their unique nature and lengthy consultative requirements amongst the key stakeholders including Contracting Authorities, World Bank and The Government;
b) Procurement challenges faced by the Directorate, this is due to PPP's nature of operations that require some specialized kind of expertise that are rare to find thus leading to delays in execution of the project; and
c) A substantial amount in the budget was to be expended in engagement of PPP Transaction Advisors (TAs).

In order to avoid such under expenditures in future, the Directorate embarked on:

- the re-evaluation of the PPP pipeline to ensure there is bankable and viable projects, before engaging the transaction advisors;

- The re-screening process has now been conducted and concluded which has led to improvement in the engagement of transaction advisors; and
- The Directorate has been undergoing a restructuring process with the aim of improving in its capacity to deliver on its mandate. Staff capacity has been one of the issues to be addressed. The Directorate has since engaged a number of key staff and is still working on further improvement of the same to strengthen its capacity.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

106. Lack of Internal Audit Services

During the year under review, the Project was not subjected to review by The National Treasury internal audit unit. This was contrary to Section 73(1) of the Public Finance Management Act, 2012 which requires all government entities to make appropriate arrangements for internal audit function. Further, paragraph 3.2.8 of IFPPP Project Implementation Manual provides for Internal Audit and the Audit Committee of The National Treasury to provide internal audit services and oversee the adequacy of internal control mechanisms over the Project.

In the circumstances, the effectiveness of the Project's internal control system and risk management processes were not tested during the year under review.

Submission by the Accounting Officer

It is true that internal auditors did not audit the project during the period under review. This was due to other official assignments they had. However, a Principal Internal Auditor has been posted to the project.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer.

FINANCING LOCALLY-LED CLIMATE ACTION PROGRAM CREDIT NO. IDA 6980; TF B6810 - KE (P173065)

REPORT ON THE FINANCIAL STATEMENTS

109. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget of Kshs.341,150,000 against actual receipts on comparable basis of Kshs.174,123,195 resulting in a shortfall of Kshs.167,026,805 or 49% of total budget.

Similarly, the Program spent a total of Kshs.184,186,961 against an approved budget of Kshs.341,150,000 resulting to an underexpenditure of Kshs.156,963,039 or 46% of the budget.

Management has attributed the under expenditure to delayed conclusion of procurement activities and the Project Coordinator and Project Manager Finance and Strategy having been sent on compulsory leave during the year under review.

The shortfall of receipts and the underexpenditure affected the planned activities of the Program and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The under expenditure was attributed to:

i. Delayed conclusion of procurement activities for the Programme consultancies and motor vehicles; and
ii. The Project experienced low implementation as the Coordinator and Project Manager Finance and Strategy had been sent on compulsory leave during the year under review.

Strict budgetary control provisions shall be observed and adherence to the procurement plan and work plans. Follow up meetings with the program beneficiaries will frequently be done.

Committee Observations and Findings;

The Committee noted that the submission by the Accounting Officer was unsatisfactory.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to ensure effective project management.

PUBLIC DEBT MANAGEMENT SUPPORT PROJECT - ADB GRANT AGREEMENT NO.5500155013708

REPORT ON THE FINANCIAL STATEMENTS

114. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects budgeted total receipts of Kshs.104,000,000 against the actual receipts of Kshs.72,727,976 resulting to an under-collection of Kshs.31,272,024 or 30% of the budget. Similarly, the statement reflects budgeted expenditure of Kshs.104,000,000 against the actual expenditure of Kshs.72,727,976 resulting to an under expenditure of Kshs.31,272,024 or 30% of the budget.

In the circumstances, the under-collection and the under expenditure imply that some of the budgeted programs and activities may not have been executed during the year.

Submission by the Accounting Officer

The project had planned to procure computers and other ICT equipment during the year. The procurement process was not concluded during the year under review. As a result, the project budget for computers and ICT equipment was not utilized resulting to under expenditure of Kshs.31,272,024 or 30% of the budget.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

GLOBAL FUND - TO REDUCE MALARIA INCIDENCE AND DEATHS BY AT LEAST 75 PERCENT OF THE 2016 LEVELS BY 2023, WORKING TOWARDS A MALARIA-FREE KENYA PROGRAM - KEN-M-TNT, GA 2064

REPORT ON THE FINANCIAL STATEMENTS

118. Unsupported Counterpart Funding Balances

The statement of receipts and payments reflects an amount of Kshs.407,869,725 with respect to transfer from Government entities (Counterpart funding) and a similar amount with respect to other grants and transfers/payments. The amount relates to the Government Counterpart funds drawn from the ledger as expenditure incurred by The National Treasury on behalf of the Program. However, supporting expenditure returns and schedule for expenditure amounting to Kshs.112,952,484 were not provided for audit.

In the circumstances, the eligibility and accuracy of the counterpart funding and other grants and transfers/payments of Kshs.112,952,484 could not be confirmed.

Submission by the Accounting Officer

It is true that the statement of receipts and payments reflected an amount of Kshs.407,869,725 with respect to transfer from Government entities (Counterpart funding) and a similar amount with respect to other grants and transfers/payments. The amount also relates to the Government Counterpart funds drawn from the ledger as expenditure incurred by The National Treasury on behalf of the Program.

At the time of audit, the Management did not provide an analysis supporting expenditure amounting to Kshs.112,952,484

The amount was being analyzed and the analysis had not been concluded. However, the same was completed and forwarded for audit review.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

119. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final total receipts budget of Kshs.671,212,074 against the actual receipts of Kshs.559,372,521 resulting into an underfunding of Kshs.111,839,553 or 17% of the budget. Similarly, the statement reflects budgeted expenditure of Kshs.671,212,074 against the actual expenditure of Kshs.557,199,867 resulting to an underexpenditure of Kshs.114,012,207 or 17% of the budget.

The underfunding and underperformance affected the planned activities and impacted adversely on service delivery to the public.

Submission by the Accounting Officer

It is true as observed by the auditor there was under absorption of the program's budget during the year under review.

The under-utilization was caused by:

i. The revising of the delivery schedules of the Artemether lumefantrine (ALs) in the country, whereby it was discovered that the stock in the country was enough and therefore need to push forward the delivery date. The medicines which were therefore to be delivered in April 2022, the dates were pushed forward to Financial Year 2022/2023 thus leading to low absorption of funds.
ii. Low activities including procurement were suspended due to the Covid-19 pandemic; and
iii. Decision to send KEMSA staff on leave/home in November 2021 due to KEMSA restructuring. This negatively affected procurement process for Global Fund funded commodities that was at various stages then.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

GLOBAL FUND TO CONTRIBUTE TO ACHIEVING VISION 2030 THROUGH UNIVERSAL ACCESS TO COMPREHENSIVE HIV PREVENTION, TREATMENT AND CARE PROGRAM - KEN-H-TNT, GA 2065

REPORT ON THE FINANCIAL STATEMENTS

123. Unsupported Counterpart Funding Balances

The statement of receipts and payments reflects an amount of Kshs.1,245,777,523 with respect to transfer from Government (Counterpart funding) and a similar amount with respect to other capital grants and transfer payments. The amount relates to the Government Counterpart funds which was drawn from the ledger as expenditure incurred by The National Treasury on behalf of the Program. However, expenditure returns and supporting schedule amounting to Kshs.678,541,713 were provided for audit while supporting expenditure returns and schedule for expenditure amounting to Kshs.567,235,810 were not provided for audit.

In the circumstances, the eligibility and the accuracy of the counterpart funding and other grants and transfers/payments of Kshs.1,245,777,523 could not be confirmed.

Submission by the Accounting Officer

It is true that the statement of receipts and payments reflected an amount of Kshs.1,245,777,523 with respect to transfer from Government (Counterpart funding) and a similar amount with respect to other capital grants and transfer payments. The amount relates to the Government Counterpart funds which was drawn from the ledger as expenditure incurred by The National Treasury on behalf of the Program.

At the time of audit, the Management availed only analysis totaling Kshs. 678,541,713/-, but did not provide an analysis supporting expenditure amounting to Kshs.567,235,810/-.

The amount was being analyzed and the analysis had not been concluded. However, the same was completed and forwarded for audit review.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

124. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final total receipts budget of Kshs.6,495,340,220 against the actual receipts of Kshs.5,469,261,414 resulting into an underfunding of Kshs.1,026,078,806 or 16% of the budget. Similarly, the statement reflects budgeted expenditure of Kshs.6,495,340,220 against the actual expenditure of Kshs.5,464,880,474 resulting to an underexpenditure of Kshs.1,030,459,746 or 16% of the budget.

The underfunding and underperformance affected the planned activities and impacted adversely on service delivery to the public.

Submission by the Accounting Officer

It is true there was low absorption of funds as observed by the auditor in the above subject. The major part of the budget was for procurement of ARVs and laboratory commodities. The deliveries delayed due to the following challenges cited by suppliers:

i. Delay in receiving shipping documents for procurement of ARVs which were to be in the country by April 2022, but due to delays in receiving shipping documents the ARVs were received at the close of the FY. A budget of Kes.800M had already been factored for this;
ii. Awaiting of the Narcotics permits approval for Opioids' Substitution Therapy Medicines. This is a requirement for such kind of medicines and the suppliers cited that there was a delay in getting the permit;
iii. Delay of National Quality Control Laboratory (NQCL) for male condoms test results to ship the consignment. These tests are requirements for all imported male condoms after the Office of the Inspector General (OIG) team raised the issue of quality testing of condoms during their audit last year;
iv. Decision to send KEMSA staff on leave/home in November 2021 due to KEMSA restructuring. This negatively affected procurement process for Global Fund funded commodities that was at various stages then;
v. Awaiting the test results led to under-expenditure as the expenditure was to be incurred in FY 2021/2022 but it had to be pushed forward to FY 2022/2023; and
vi. The figure of Kshs.4,295,100/- under acquisition of non-financial assets was for procurement of Laptops and Servers for the National Treasury. The deliveries were not made that financial year as the procurement process took long. This resulted to zero (0) expenditure thus contributing to the low absorption at the closure of the financial year.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

AFFORDABLE HOUSING FINANCE PROJECT (IDA CREDIT NO.8958-KE)

REPORT ON THE FINANCIAL STATEMENTS

129. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.200,000,000 and Kshs.25,364,260 respectively resulting to an underfunding of Kshs.174,635,740 or 87% of the budget. Similarly, the Project spent a total of Kshs.20,512,676 against an approved budget of Kshs.200,000,000 resulting to an under expenditure of Kshs.179,487,324 or 90% of the budget.

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

Submission by the Accounting Officer

The underutilization of Kshs.179,487,324 or 90% of the budget was occasioned by the inability of the Project to procure four Consultancies (Technical Assistance) to assist the Ministry of Lands and Physical Planning address land matters to assist in provision of relevant land documents to facilitate affordable housing agenda. The Technical Assistance was meant to be utilized by the National Treasury/Kenya Mortgage Refinance Company and the Ministry of Lands and Physical Planning. As per the work plan, these consultancies were to cost approximately Kshs. 200 million.

However, the project implementation was delayed by one year, and by the time the adverts for consultancies were done, the Ministry indicated that the activities had been achieved using other resources. The project initiated the process of cancelling the advert.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

NATIONAL TREASURY CAPACITY STRENGTHENING PROJECT (GRANT NO.5500155013902 ID NO. P-KE-KOO-011)

REPORT ON THE FINANCIAL STATEMENTS

133. Omitted and Unsupported Expenditure - Extraneous Allowances

During the year under review, a total of Kshs.1,140,000 was paid as extraneous allowances to the Co-ordinating Team for African Development Bank Appraisal Mission between 28 February, 2022 to 24 March, 2022. However, the expenditure was not included in the Project's financial statements and no documentary evidence was provided to justify payment of the extraneous allowances to officers who were performing their normal duties. Management has indicated that the amount was incurred on Public Debt Management Office (PDMO) activities but was erroneously captured under the Projectaccount. Further, the Project's Management has requested The National Treasury to raise a journal entry to reverse the erroneous expenditure. However, a copy of the Journal entry was not provided for audit review.

In the circumstances, the accuracy and completeness of the Project's financial statements could not be confirmed.

Submission by the Accounting Officer

It is true that an expenditure amounting to Kshs.1,140,000.00 was not included in the Project's Financial Statements 2021-2022 and no documentary evidence was provided to justify payment of the extraneous allowances to officers who were performing their normal duties. The amount was incurred on Public Debt Management Office (PDMO) activity which was not part of the project activities but was erroneously captured under the Project account. A journal entry (JE) to reverse the erroneous expenditure was raised and the expenditure appropriately captured.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to keep proper accounting records.

134. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs 13,000,000 and Kshs.8,684,571 respectively, resulting to an underfunding of Kshs.4,315,429 or 33% of the budget. Similarly, the project spent a total of Kshs.6,432,328 against an approved budget of Kshs.13,000,000 resulting to an under expenditure of Kshs.6,567,672 or 51% of the approved budget.

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

Submission by the Accounting Officer

It is true that the Project spent a total of Kshs.6,432,328 against an approved budget of Kshs.13,000,000 resulting to an under expenditure of Kshs.6,567,672 or 51% of the budget. The budgetary underperformance was occasioned by procurement process for planned purchases for the financial year which were not concluded.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer henceforth ensures prompt implementation of work-plans.

GLOBAL FUND - TO ENSURE PROVISION OF QUALITY CARE AND PREVENTION SERVICES FOR ALL PEOPLE IN KENYA WITH TB, LEPROSY AND LUNG DISEASES PROGRAM - KEN-T-TNT, GA 2067

REPORT ON THE FINANCIAL STATEMENTS

138. Unsupported Counterpart Funding Balances

The statement of receipts and payments reflects an amount of Kshs.351,984,277 with respect to counterpart funding and a similar amount of other grants and transfers/payments. The amount

relates to the Government counterpart funds which was drawn from the ledger as expenditure incurred by The National Treasury on behalf of the Program. However, expenditure returns and supporting schedule amounting to Kshs.25,025,377 was provided for audit review while supporting expenditure returns and schedule for expenditure amounting to Kshs.326,958,900 were not provided.

In the circumstances, the eligibility and the accuracy of the counterpart funding and other grants and transfers/payments of Kshs.351,984,277 could not be confirmed.

Submission by the Accounting Officer

It is true that the statement of receipts and payments reflected an amount of Kshs.351,984,277 with respect to counterpart funding and a similar amount of other grants and transfers/payments. The amount relates to the Government counterpart funds which was drawn from the ledger as expenditure incurred by The National Treasury on behalf of the Program.

At the time of audit, the Management availed only analysis totaling Kshs. 25,025,377/-, but did not provide an analysis supporting expenditure amounting to Kshs.326,958,900/-.

The amount was being analyzed and the analysis had not been concluded at the time of Audit. However, the same was completed and forwarded for audit review.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

139. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final total receipts budget of Kshs.446,913,742 against the actual receipts of Kshs.370,996,060 resulting into an underfunding of Kshs.75,917,682 or 17% of the budget. Similarly, the statement reflects budgeted expenditure of Kshs.446,913,742 against the actual expenditure of Kshs.365,055,188 resulting to an under expenditure of Kshs.81,858,554 or 18% of the budget.

The underfunding and underperformance affected the planned activities and impacted adversely on service delivery to the public.

Submission by the Accounting Officer

It is true as observed by the auditor there was under absorption of the program's budget during the year under review.

The under-utilization was caused by:

i. Commencement of the new funding model 3, whereby there were delays in KEMSA procurement process for medical commodities that delayed signing of contracts. KEMSA procurement process normally takes six (6) to nine (9) months. By the time the process was being finalized, it was already end of the financial year and therefore most contracts spilled over to Financial Year 2022/2023;
ii. Non-responsive tenders/bids at KEMSA: and

iii. Decision to send KEMSA staff on leave/home in November 2021 due to KEMSA restructuring. This negatively affected procurement process for Global Fund funded commodities that was at various stages then.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

OTHER DONOR FUNDED PROJECTS IMPLEMENTED BY AGENCIES UNDER THE NATIONAL TREASURY

EASTERN AFRICA REGIONAL TRANSPORT, TRADE AND DEVELOPMENT FACILITATION PROJECT (IDA CREDIT NO.5638-KE) – KENYA REVENUE AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

144. Slow Absorption of Project Funds

As disclosed under Note 1.7 on the Project information and overall performance, the Project was earmarked to close in December, 2021 but was restructured through an amended Finance Agreement extending the completion to 31 December, 2023. Further, the Projects' funding summary indicates that the Donor had made commitment amounting to Kshs.1,284,347,000 equivalent of USD10,900,000 as at 30 June, 2022. However, actual drawdowns during the Project life amounted to Kshs.316,707,000 equivalent to USD3,072,000 leaving out an amount totalling Kshs.922,374,000 or USD 7,828,000 undrawn. Management has indicated that planned initiatives will be fully implemented and allocated funds fully utilized before closure of the Project.

However, and considering the credit lapse period, the Project's planned deliverables earmarked for completion may not be realized.

Submission by the Accounting Officer

The EARTTDFP project was scheduled to be completed by 29th December 2023. However, the project was extended for another year on 3rd January 2024 and is expected to come to an end by 31st December 2024 as per World Bank letter due to the following;

i. As at 30th June 2024, KRA had drawn down a total of Kshs 915,536,000 (USD 7,316,000) out of the donor commitments amounting to Kshs 1,411,844,000 (USD 10,900,000) leaving an undrawn balance of Kshs 496,308,000 (USD 3,584,000);
ii. The remaining activities under implemented for FY 2024/25 work plan is Construction of RRU offices and Memorandum of Association (MOU) between Kenya Customs and South Sudan Customs;
iii. These are scheduled to be completed by 31st Dec 2024 as per the Work plan;
iv. The undrawn funding balance of Kshs 496,308,000 (USD 3,584,000) will be drawn down as we pay the construction of Rapid Response Units (RRU) in the completion milestones through Direct payment by World Bank; and
v. As at 31st Aug 2024 KRA paid a total of Kshs 234 Million (Advance payment and Certificate 1-5).

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

145. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on a comparable basis of Kshs.416,696,000 and Kshs.146,488,000 respectively, resulting to an underfunding of Kshs.270,208,000 or 65% of the budget. Similarly, the Project spent a total of Kshs.142,413,000 against an approved budget of Kshs.416,696,000 resulting to an underexpenditure of Kshs.274,283,000 or 66% of the budget. Management has indicated that construction of Rapid Response Unit (RRU) offices will account for 60% of the proposed budget while the remaining funds will be utilized in procurement of enforcement equipment, annual training and payment to consultants.

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

Submission by the Accounting Officer

i. Underfunding

The cumulative project payments and commitments from inception as at 30th June 2024 is Kshs. 1,294,859,074 (equivalent to USD 9,996,827) which is 92% of the total Donor commitment of Kshs 1,411,844,000 (USD 10,900,000)

As at 30th June 2024, there were 2 remaining activities to completion of the project. These are the conclusion of Construction of Rapid Response Units and Signing of Memorandum of Association between Kenya Customs and South Sudan Customs, which are in progress and expected to be completed by 31st Dec 2024.

ii. Underperformance

The EARTTDFP project was scheduled to be completed by 29th December 2023. However due to the reasons below, the project was extended for another year and is expected to come to an end by 31st December 2024.

Reasons for Under-Utilisation

i. Construction of the Rapid Response Units (RRU) Offices (Kshs 590Million)

The Construction of RRU was scheduled to come at the end of the EARTTDFP Project after the construction of the road by KENHA. This activity accounts for 60% of the proposed budget. There were delays in the implementation of this component because of the following:

- Delay in land allocation by the County Government of Turkana for Construction of RRU's:- Construction was dependent on successful land acquisition. However, there was delay in beginning of this activity due to delay in land allocation by the Country Government of Turkana. The land allocation process was concluded followed by procurement of Contractor then construction commenced in August 2023;

- Security threats: - There was a delay in commencement of construction at Kainuk site due to insecurity. The site is bordering West Pokot and Turkana counties an area frequently faced with banditry;
- Challenges in material acquisition: - The project has experienced challenges in acquisition of construction materials which are scarce and have to be hauled from long distances;
- Introduction of dusk to dawn curfew: -. Locally security situation escalated and this forced the Cabinet Secretary for Interior and National Administration to impose a dusk to dawn curfew in Kainuk through Legal Notice no. 9 dated 15th February 2023. This affected the delivery of materials;
- Disruption of the works due to political interference: - The works have been disrupted on two separate occasions due to local county political interference; and
- Labour apathy due to insecurity: - Works on site were disrupted, as they were two incidences of gunshots exchanges in close proximity to the site. This led to loss of man-hours as the staff could not work optimally. Additionally, the fear of retaliatory attacks also led to labour apathy as staff were reluctant to work on site.

ii. Delays in the signing of the Memorandum of Understanding between KRA Customs and South Sudan Customs (Kshs. 10Million)

The MoU was approved by the National Treasury, The Office of the Attorney General and the Ministry of Foreign Affairs and subsequently submitted to South Sudan Customs for review and signing. Upon review, South Sudan Customs requested for inclusion of additional clauses. These comments were reviewed and resubmitted to South Sudan Customs for final concurrence. South Sudan Customs once again requested additional clauses, which were reviewed by the Technical Teams and submitted to South Sudan through the Ministry of Foreign Affairs in July 2024.

Following this submission, the NRA concurred with the draft MoU, and plans are underway for the official signing of the MoU in September 2024.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

HORN OF AFRICA GATEWAY DEVELOPMENT PROJECT (IDA CREDIT NO. 6768) – KENYA REVENUE AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

150. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on a comparable basis of Kshs.142,241,000 and Kshs.70,066,000 respectively resulting to an underfunding of Kshs.72,175,000 or 51% of the budget. Similarly, the

Project spent a total of Kshs.297,000 against an approved budget of Kshs.142,241,000 resulting to an underexpenditure of Kshs.141,944,000 or 99% of the budget. Management has attributed the underfunding and underperformance to delayed implementation of the Project due to COVID-19 pandemic and delayed approval of the 'letter of no objection' from the World Bank.

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

Submission by the Accounting Officer

As at 30th June 2024, Kenya Revenue Authority utilized Kshs 131,379,000 out of Budget FY 2023/24 of Kshs 441,310,000. Activities of total budget Kshs 147M were under procurement process most activity's procurement process was concluded in Qrt 4 of FY 2023/24 as detailed below and are currently under implementation to be paid by Qrt 2 FY 2024/ 25.

During the year under review, the Authority undertook the following activities and implementation status is as per appendix below. World Bank approved KRA Work plan for the activities scheduled for FY 2023/24 Total of Kshs 489Million on 20th July 2023.

The initial KRA's budget FY 2023/24 as at 1st July 2023 was 65 Million which was insufficient as per the approved Work Plan. KRA requested for additional budget, which was increased to Kshs 441Million in the Supplementary II Budget in September 2023. The budget was further again reduced to Kshs 84Million in June 2024.

Activities Under Review			
	Implementation Activity	**Costs (KES-M)**	**Reasons for Under Expenditure**
1	KRA Trainings Budget	Kshs. 84M	Delay in getting No objection a1212roval from World Bank
	- Kshs 36 Million:		A "No Objection" Approval for the activity was not obtained in time hence the under expenditure for FY 2022/23 of Kshs. 23M. - No objection approval from World Bank on KRA annual training plan FY 2023/24 of Kshs 36Million was received on 20th July 2023 with a condition that KRA seeks approval a month prior to the scheduled training
			KRA had sought approval from World Bank for the trainings scheduled for October to December but were stopped via a circular from the Head of Public Service dated 29th June 2023. **Current Status** The Authority completed the trainings scheduled for FY 2022/23, 2023/24 and is currently rolling out training for FY 2024/25 (Kshs. 25M) following the approval by the World Bank, expected to by completed by Q3 of this Financial year.

2	Study of Trade Flows	Budget- USD 626,400 **(87 Million}:**	The long process of procuring a Consultant led to the delay in under expenditure for the period under review. **Current Status** No objection approval from World Bank for Tender process received on 5th April 2024, contract signed on 7th June 2024. Implementation is in progress and the 1st milestone (inception report) was received in July 2024 and was approved, payment is currently in process.
3	Enforcement Equipment	Budget-USD 441,000 (61 Million}: User requirements revised to include all the enforcement equipment amounting to Kshs. 120M	No objection approval from World Bank was received on 21st October 2022. KRA advertised for the equipment on 14th Feb 2023, tender closed in April 2023 and was non responsive, Bidders did not submit favourable bids. KRA to begin the procurement process again in Qrt 2 FY 2024/25. **Current Status** To be Re-advertised. The user has revised the entire enforcement equipment requirements/needs which amounts to Kshs. 120M as per allocation. Procurement process to commence end of Q1 as per current workplan
	Other Activities Completed Under KRA		
	Procurement of seven(7) Motor Vehicles	Kshs. 94M l	No objection approval from World Bank was received on 21st October 2022. -Approval from Head of Public Service to procure through open tender was received in February 2023. -Tender evaluation completed in June 2023 -Contract signed on 29th December 2023. -Exemption Letter from National Treasury received on 21st March 2024. -Delivery and payment made in June 2024

	<u>Implementation of PPRAActivities:- KRA</u> Received WB No objection approval for transfer of implementation of PPRA activities from K.ENHA to KRA received on 13th March 2023.		
	PPRA Training and Per diem Budget – Kshs 8 Million		The final No objection approval from World Bank to progress with Training was received on 28th March 2024. 8 Million Implementation began in Qrt 4 FY 2023/24, trainings and per diem of Kshs 5 Million already completed and paid. The remaining trainings completed in Qrt 1 FY 2024/25.
	Procurement of 4 PPRA Motor Vehicles Budget-Kshs 39Million	Kshs.47M	No objection approval from World Bank received on 13th March 2024. Approval from Head of Public Service to procure through open tender received on 9th June 2023. Contract for Supply of 4 PPRA Motor Vehicles signed on 19th April 2024, 3 Vehicles delivered, a bus awaiting modification then delivery and payment to be done by Qrt 1 FY 2024/25.
	Assessment of Public Procurement and Disposal System in Kenya using the Methodology for Assessment of Procurement Systems (MAPS II) approach	(Kshs 49M)	Contract between KRA and Lead consultant and KRA and other Consultants (Assessors, Data Analysts & Legal consultants Budget) was signed on 21st March 2024 and 1st July, 2024 respectively. Implementation in progress, and the inception report has been received and is in review. Payments to be made as milestones are completed, with **1st** payment expected in Qrt 1 FY 2024/25

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

4.2 VOTE 1072: STATE DEPARTMENT FOR PLANNING

Mr. James Muhati, the Principal Secretary and Accounting Officer for the State Department for Economic Planning appeared before the Committee on 15th August & 12th September 2023 accompanied by the following officers:

i.	Mr. Joel Makori	-	Director, Administration
ii.	Mr. Macdonald G. Obudho-		Director General, KNBS
iii.	Ms. Julia Wanjiru Ng'ang'a-		Chief Finance Officer
iv.	Mr. Elijah Gathuthi	-	Senior Deputy Accountant General
v.	Dr.Lukalo Diana	-	Personal Assistant to the Principal Secretary
vi.	Mr. James Gatungu	-	Project Manager Kenya National Bureau of Statistics
vii.	Mr. Patrick Rotich	-	Head of Supply Chain
viii.	Mr. Musalia Eric	-	Senior Accountant

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

155: Pending Bills

As disclosed in Note 17.2 and Annex 1 to the financial statements, the State Department had pending bills amounting to KSh.2,789,002 that were not settled during the year under review but were instead carried forward to the 2022/2023 financial year. However, the pending bills lacked the relevant supporting documentation including requisitions, local purchase/service orders, invoices and delivery notes.

No plausible explanation was provided for non-payment of the pending bills before the end of the financial year. This was contrary to Regulation 42(1) (a) of the Public Finance Management (National Government) Regulations, 2015 which states that debt service payments shall be a first charge in 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.

Further, failure to settle bills during the year in which they relate to adversely affects the budgetary provisions for the subsequent year to which they have to be charged.

Submission by the Accounting Officer

We concur that the State Department for Economic Planning had pending bills amounting to KSh. 2,789,002 during the Financial Year under review. However, these were historical pending bills dating back from 2013 to 2021 amounting to KSh 5,377,937. The procedure of settling pending bills is to set up a pending bill taskforce to review the bills then the taskforce report is given to the internal audit for verification. Bills which qualify to be paid are forwarded to accounts for payment.

A task force on pending bills was established by the Principal Secretary State Department for Economic Planning on 13th September 2021 to review and verify the pending bills.

The verification methodology adopted by the taskforce included: holding meetings to review and evaluate the pending bills, holding wide consultations with the suppliers, the User Directorates, Supply Chain Management Unit, Internal Audit Unit and Accounts Unit. The verification process also employed comprehensive document review from various sources including, payment vouchers, invoices, quotations, evaluation reports, inspections reports, purchase orders, contract agreements, supplier statements, cash books, bank statements and minutes. Other ways of generating information were through emails, one-on-one interviews and follow-up through phone calls.

The taskforce came up with the following criteria that was used in reviewing and verification of the pending bills which is consistent with the Public Finance Management Regulation 104 which require that payment vouchers shall be properly supported by appropriate authority and documentation.

Verification Criteria

	Pending bill	Documents Verified
1	Air Tickets	Ensure that the Requisition Form, Local Service Order (LSO), E-Ticket, Boarding pass and the Invoice are genuine, approved, and the journey took place.
2	Hospitality	Ensure that the Requisition Form, Local Service Order (LSO), Meeting Attendance Register (the Hotel's register and the State Department's meeting attendance register) and the Invoice are genuine, approved and that the meeting took place.
3	Motor Vehicle Repairs	Ensure that the Requisition Form, Local Service Order (LSO), Mechanical Inspection Report and the Invoice are genuine, approved and the repairs were done.

It is worth noting that on 30th November 2021, the State Department for Economic Planning requested the suppliers to provide the necessary support documents on their outstanding claims. Further, the state department invited the suppliers for a meeting on 2nd December 2021 to present their case before the taskforce. Some suppliers attended the meeting while others were not available.

The task force findings indicated the following; inadequate appropriate supporting documents and in some cases, discrepancies were noted.

Some of the recommendations made by the task force were as follows;
1. Pending bills with adequate supporting documents should be paid;
2. Pending bills with inadequate support documents should be forwarded to the Pending Bills Closure Committee for retirement at the National Treasury;
3. Proper record keeping be embraced by all departments/units concerned.

Upon the taskforce recommendation, the State Department for Economic Planning reduced its pending bills from the initial amount of KSh 5,377,937 to KSh 5,139,002 as at 6th January 2022.

A further KSh 2,350,000 was paid upon the suppliers providing the required appropriate documentation leaving a balance of KSh 2,789,002 as at 30th June, 2022.

On 15th March 2022, the Principal Secretary for Economic Planning through a letter Ref No. TNTP/SDP/12/7/68 requested the Principal Secretary of the National Treasury to submit historical pending bills amounting to KSh.2,789,002 to the Pending Bills Closure Committee. The National Treasury in their response via letter Ref No:AG3/87/1/VOL.XII(2) indicated that the Pending Bills Closure Committee was mandated to deal with pending bills that existed as at 14th January 2005 and consequently advised the State Department for Economic Planning to deal with the pending bills internally.

Whereas the request to the principal secretary to the National Treasury to retire the historical pending bills was of KSh.2,789,002, it was actually KSh 2,691,597 because two bills (Facts Travel Agencies KSh. 47,675 and Ride on Agencies Ltd KSh. 49,730) totaling to KSh. 97,405 had been paid.
Following our appearance before the Committee on 15th August 2023, and on the committee's advice, the State Department for Economic Planning once more invited the Suppliers with pending bills for a meeting vide emails. Two emails were sent, one on 25th August 2023 for a meeting on 28th August 2023 and the second email was sent on 28th August 2023 for another meeting on 30th August 2023. Only one supplier (m/s Vercelli tour & travels agency) attended the first meeting and did not present any additional documents other than the ones which had earlier been presented to the task force. None of the five suppliers attended the second meeting.

There has not been any further justification or feedback from the suppliers to warrant any payment of the claims.

The State Department for Economic planning has exhausted the internal mechanism to pay the claims and is therefore requesting the Parliamentary Accounts Committee, Office of the Auditor General, and The National Treasury for concurrence in removing the claims listed below from the financial statements of the department.

Committee Observation

The Committee observed that;

i) **Despite efforts demonstrated by the state department to locate the suppliers, no supporting documentation was forthcoming;**
ii) **Invoices were lodged and accepted without supportive documentation.**

Committee Recommendation

The Committee recommends that within three (3) months of adoption of this report, the Accounting Officer writes to Treasury and obtains authority to write off the total sum of KSh.2,789,002 from the books of the State Department.

156: Unresolved Prior Year Matters

In the audit report of the previous year, several issues were raised under the Report on Financial Statements and Report on Effectiveness of Internal Controls, Risk Management and Governance. Management had indicated that the issues were responded to. However, the issues remained unresolved as Parliament had not met to deliberate on the same.

Submission by the Accounting Officer

The previous year issues raised were affecting paragraph 122. Management of Grounded Motor Vehicles.
The Committee is yet to table its report on the same.

Committee Observation

The Committee observed that its report for the FY 2020/21 had since been adopted by the House.

Committee Recommendation

The Committee recommends that the Accounting Officer avails a status report of implementation of its recommendations within three (3) months of adoption of this report.

163: Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of KSh.140,000,000 and KSh.138,432,660 respectively resulting to underfunding of KSh.1,567,340 or 1% of the budget. Similarly, the Project spent an amount of KSh.82,296,910 against an approved budget of KSh.140,000,000 resulting to an under expenditure of KSh.57,703,090 or 41% of the budget. The under expenditure affected the Project's planned activities and impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The National Information Platform for Food Security and Nutrition (NIPFN) is a country-owned and a country-led initiative funded by the European Union (EU). The initiative aims to promote stakeholders in food security and nutrition to dialogue and strengthen national capacity to manage and analyze the existing information and data at national and county levels to better inform decision making in improving the outcomes of food security and nutrition.

The project is currently being implemented by Kenya National Bureau of Statistics (KNBS) as the lead applicant to the grant in partnership with the Kenya Institute of Public Policy and Research Analysis (KIPPRA) as a co - applicant, and in collaboration with sectors that have a role in improving food security and nutrition in Kenya.

It is true that the project was allocated Kshs. 140,000,000 by the National Treasury in the approved estimates for the financial year 2021/2022.

It is also correct that as at 30th June 2022, the project had utilized an amount of Kshs 82,296,310 out of the approved budget of Kshs 140,000,000 resulting to an under expenditure of Kshs 57,703,090 or 41% of the budget.

The Bureau wrote to EU on 15th July 2021 requesting for disbursement of 1,459,209 Euros as per the pre-financing option budget. EU however reduced the amount to 1,409,864 Euros, the difference being the contingency amounting to 49,345 Euros. The same was communicated to its desk Officer at Treasury in February 2022. On 17th February 2022 EU disbursed a total amount of 1,409,807.50 Euros to The National Treasury, CBK account. This amount was equivalent to Kshs. 177,388,424.55, and was to cover activities for the period July 2021 to December 2022 as per Appendix 10.

Out of the KShs. 177,388,424.55, Kshs. 138,402,660 (equivalent to 1,100,000 Euros) was remitted on 12th April, 2022 to the NIPFN Project by The National Treasury while the balance of 309,807.50 Euros equivalent to KShs. 39,090,302 retained at The National Treasury was finally released to the Bureau on 29th November 2022.

The breakdown of the under-expenditure can be summarized as follows;

Budget Items	**Printed estimate figures**	**Budget utilization**	**Budget Utilization Difference**	**% of Utilization**
	Kshs.	Kshs.	Kshs.	%
Compensation of Employees	44,614,630	36,413,220	8,201,410	82%
Purchase of Goods and Services	50,534,369	5,082,889	45,451,480	10%
Social Security Benefits	24,000	22,000	1,400	92%
Transfers to KIPPRA	39,827,001	39,827,001	0	100%
Acquisition of Non-financial assets	5,000,000	951,200	4,048,800	19%
Total	**140,000,000**	**82,296,310**	**57,703,090**	**59%**

The under-expenditure was occasioned by delays in pre-financing and disbursement of the available funds to undertake various project activities during the financial year. The Ksh 50,534,369 was earmarked for purchase of goods and implementation of project activities such as trainings for the various sectors, identification and hire of services of data cleaners and research institutions, extending and supporting the adoption of multisector information platform and repository and rolling out NIPFN activities to counties among others. These activities required proper logistics in terms of sourcing and verification of the available data, identification of the required consultants for various services and proper venues for these activities and could not have been undertaken fully within this limited time. The Bureau had also factored in this budget Kshs 5,000,000 for acquisition of laptops and various software to aid in both qualitative and quantitative data analysis and this was acquired in the subsequent period.

Further budget underutilization on compensation of employees amounting Kshs 8,201,410 was as a result of exit of one of the Project staff member (statistician) in September 2021 and replacement was effected in May 2022. In addition, the Project Compensation of Employees/Social Security benefits for the month of June had not been paid as at 30th June 2022, but was effected in the subsequent month.

From the above challenges, EU wrote to the Bureau in August 2022 after reviewing its various performance reports submitted earlier and suggested an option for a no cost extension to facilitate utilization of the under expenditures. The Bureau through State Department for Planning wrote to The National Treasury in October 2022 requesting for a no cost extension. Through correspondence from The National Treasury, EU on 29th December 2022, positively responded to this request and extension was granted through revised grant agreement to 78 months which is expected to come to an end in June 2024. This will ensure full utilization of the funds as per the revised signed agreement.

Committee Observations and Findings;

i) **The Committee observed that with the Treasury and EU approval and consent, the matter was satisfactorily addressed.**
ii) **The Committee found that the matter was resolved.**

4.3 VOTE 1011: EXECUTIVE OFFICE OF THE PRESIDENT

Hon. Katoo Ole Metito, EGH, the State House Comptroller and Accounting Officer for the Executive Office of the President appeared before the Committee on 3rd October 2023 and 12th October 2023 accompanied by the following officers:

i.	Ms. Rachel Maina	Secretary Infrastructure
ii.	Mr. Arthur Osiya	Principal Administrative Secretary
iii.	Mr. Patrick Mbogo	Principal Administrative Secretary
iv.	Mr. Mwikamba Mghenyi	Deputy Accountant General
v.	Mr. Michael Kamau	Principal Accountant
vi.	Mr. Diana Kiondo	Principal Accountant
vii.	Mr. Susan Nyambura	Director of Park and National Resources
viii.	Mr. Joel Langatt	Senior Deputy Accountant General
ix.	Mr. Waiganjo Waweru	Senior Chief Finance Officer
x.	Mr. Michael Ochieng	Chief Engineer

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

167: Pending Bills

As disclosed in Note 20.1 to the financial statements, the Executive Office of the President had pending bills totalling Kshs. 15,950,133,545 as at 30 June, 2022 out of which, bills amounting to Kshs. 14,814,008.078 were related to Nairobi Metropolitan Services while the balance of Kshs. 1,136,125,467 was related to State House and other departments within the Executive Office of the President.

The Nairobi Metropolitan Services pending bills totaling Kshs. 14,814,008,078 consisted of amounts of Kshs.553,291,857.78, Kshs.267,696,314.2, Kshs.1,361,463,344.40 and Kshs.12,631,556,561.98 for the financial years 2018/2019, 2019/2020, 2020/2021 and 2021/2022, respectively.

The bills were not paid during the year under review but were instead carried forward to 2022/2023 financial year. Failure to settle bills during the year to which they relate distorts the budget implementation of the subsequent year as the outstanding bills form a first charge on resources available.

Submission by the Accounting Officer

It is true that the financial statements reflect pending accounts payable of Kshs. 15,950,133,545 as at 30th June 2022 which remained unpaid during the year under review.

The NMS pending bills as at 30th June 2022 amounting to Kshs. 14,814,008,078 consisted of, historical bills inherited from NCCG, bills for strategic interventions by The National Government and those for the transferred functions during the tenure of NMS.

The non-payment of the NMS bills was majorly due to inadequate exchequer disbursement from the Nairobi County Revenue fund (CRF) and The National Treasury (Consolidated Fund) among other reasons as described below;

a. Pursuant to the provisions as stipulated under the deed of transfer, the budgetary allocation for the transferred functions were to be appropriated in full by Parliament. Against the appropriated amount, the funds were to be provided for by NCCG (CRF).
However, the first disbursement to NMS was done on 28th April 2021 after the establishment and operationalization of the Funding Framework. Therefore, all other commitments from the beginning of the FY2020/21 until April 2021 that were done against the available budgetary provision an amount of Kshs 1,776,789,986 remained unfunded. This resulted to accumulation of pending bills.

b. The Nairobi City County Government transferred pending bills totaling to Kshs. 1,390,895,176 to NMS through a Post-Covid Recovery Strategy. The National Treasury then allocated the budget to clear these historical bills.
However, the exchequer provision against the provided budget was Kshs.885,425,858.10, leaving an amount Kshs. 505,469,317.95 unfunded.

c. NMS also inherited historical pending bills from health facilities of Kshs. 571,023,256.6 that had been incurred before the establishment of NMS and which remained outstanding as of 30th June 2022 due to inadequate exchequer provisions.

d. Additional bills were due to National Government, strategic interventions amounting to Kshs. 1,587,083,147.57 in FY 2021/2022 where by Ksh1,054,675,288.87 has remained unfunded due to Exchequer underfunding from the National Treasury thus leading to accrued pending bills. As per attached Strategic Intervention Analysis.

e. The major sources of revenue for NCCG were equitable share of revenue and own source revenue. The effects of Covid-19 led to the underperformance of own source revenue at NCCG thereby reducing the capacity of NCCG to fund the exchequer requests from the Nairobi County Revenue Fund as per attached Controller of budget Reports.

f. Budget rationalization during supplementary budgets II in the FY2020/2021 through the county appropriation act by Kshs12,747,424,340 which resulted to accumulation of bills since commitments had been incurred against the initial budgetary allocation as per the printed budget estimates.

The other bills of Kshs, 1,136,125,467 relating to State House and other departments within the Executive Office of the President were not paid due to inadequate exchequer provision.

Committee Observations and Findings;

The Committee observed that

i. **The pending bills kept compounding in the last four financial years, indicating inability to settle bills as first charge;**

ii. **The bulk of the bills were attributable to NMS county functions and had reverted to the County Government of Nairobi;**
iii. **Of the Kshs. 1,136,125,467 owed by the accounting unit as at end of financial year, Kshs. 220,971,363 had been settled;**
iv. **Kshs. 888,844,325 under Office of the Deputy President had undergone verification and were due for payment under the newly established independent vote head 1012 of the office.**

Committee Recommendation

The Committee recommends that the respective Accounting Officers in the Offices of the President and Deputy President settle outstanding bills within the financial year, as first charge as per Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

168: Inadequecies in Projects under Nairobi Metropolitan Services

Review of the projects implemented under the Nairobi Metropolitan Services revealed the following anomalies;

168.1 Construction and Equipping of Health Facilities

During the year under review, the Ministry of Health entered into a contract with AMREF Health Africa for construction and equipping of Nineteen (19) level 2 and level three health facilities in Nairobi County at a contract sum of Kshs.869,400,000. The contract was to be implemented within a period of ninety (90) days.

AMREF Health Africa having obtained a license as a procurement agent of the Ministry of health, appointed Mega Scope Healthcare Africa to construct and equip construction and equipping Nineteen (19) level 2 and level 3 health facilities at a cost of Kshs. 900,000,000 00

Subsequently Nairobi Metropolitan Services (NMS) entered into a Deed of Assignment with the Ministry of Health for the construction of equipping Nineteen (19) level 2 and level 3 health facilities in Nairobi County.

Although the procuring agent (AMREF) had been paid the full cost of Kshs. 869,400,000 for constructing the 19 facilities, Sinai, Pumwani Majengo, Lucky Summer and Gumba/Mabatini were at 85%,15%,10% and 5% completion levels respectively at the time of audit. Further, no contract extension or reasons for the slow progress of work was provided despite the fact that full payment for the contract sum had been made.

From the foregoing, it is not possible to confirm that the contractor has the capacity to complete the projects given the long delay despite full payment in advance.

Submission by the Accounting Officer

The ten (10 No.) Level 2 health facilities and nine (9 No.) Level 3 health facilities were to be constructed and equipped as a turn-key project. In concurrence with the audit review, NMS's mandate in the deed of assignment was to transfer funds for the 19 level 2 and 3 health facilities to AMREF, the procuring agent. Payments to the contractor were therefore being handled by the agent as per presented certificates for works done.

Incomplete Health Centres

As at 15th August 2023, eight (8 No.) Level 3 health facilities and eight (8 No) Level 2 health facilities have been completed and operational. Therefore, only three (3) out of the Nineteen (19) facilities have not been completed and a summary of their status report is as below:

1	Lucky Summer Facility	Level 2	95% complete	Work in progress
2	Pumwani Majengo	Level 3	40% complete	Work in progress
3	Gumba Mathare	Level 2	10% complete	Groundslab - Stalled

The delay in the completion of Gumba Mathare Level 2 was related to land acquisition and site preparation issues including a long-year court case between traders and NMS in which the court ruled in favour of NMS as per attached AMREF status report and court ruling.

Variation of Contract

The contract for the construction and equipping of nineteen level 2 and 3 health facilities in Nairobi was entered between the Ministry of Health and AMREF. In this contract, the Nairobi Metropolitan Services was required to facilitate the payment while the State Department for Public Works was the implementing agency. As the project implementation progressed, the Ministry of Public Works undertook a detailed evaluation, which resulted in a variation in project cost of Kshs. 76,342,409.45.

The contractor submitted a variation request of Kshs. 76,342,409.45 based on the valuation report of the Ministry of Public Works. NMS then submitted the request to the National Treasury to consider providing an additional budget for the increased project cost.
It would be key to note that;

1. For the contract to be completed, an additional Kshs.76,342,409.45 is required. The new contract price is therefore Kshs. 945,742,409.45
2. the contractor is on-site working to complete the construction pending the additional funding of Kshs. 76,342,409.45.
3. That AMREF still holds 5% retention of the project costs as defect liability in addition to a performance bond.

Amref has a balance of Kshs. 27M payable to the contractor as indicated in AMREF Status report.

Committee Observations and Findings;

The Commtitee observed that equipping and construction of health facilities was one of the projects under the then Nairobi Metropolitan Service (NMS) that it has cited under the chapter of general observations and recommendations of this report.

Committee Recommendation;

The Committee recommends that the Auditor General conducts a special audit on accounts of the then Nairobi Metropolitan Service (NMS) and submits a report to the Committee within three (3) months of adoption of this report.

168.2 Irregular Procurement of Street Lights

Audit examination of the payment voucher No.436 and the supporting documents amounting to Kshs. 66,576,000 paid on 8 November 2021 to Match Electrical Ltd for supply and installation along the Nairobi-Thika Super Highway (A2) road revealed that NMS used a contract between KeNHA and Match Electricals in the procurement 150/180W lights. On 8 Ju.ne 2020 a requisition was done for 2000 pcs of 150/180W LED at a cost of Kshs. 29,200 each as indicated in the contract obtained from KeNHA. However, NMS procured 2000 pcs at a unit cost of Kshs.33,288 resulting in a difference of Kshs. 4,088 each leading to an overpayment of Kshs.8,176,000.

Further, the contract used for the procurement was a three-year performance-based contract signed on 31 December 2018 at a contract sum of Kshs. 528,599,196 for the maintenance of street lighting on the Nairobi-Thika Super Highway(A2) road for a period of thirty-six (36) months. However, at the time NMS was procuring the lights for installation at the Nairobi -Thika Highway, the contract between KeNHA and Match Electricals was still active and no evidence was provided for audit review, to prove that KeNHA had transferred the contracted services to NMS.

From the foregoing, it is not possible to confirm with certainty the validity of the expenditure of Kshs. 66,576,000.

Submission by the Accounting Officer

From the Summary of Bills of Quantities for Performance Based Contracts for Thika Road Street Lighting Maintenance it is clear that the quoted unit costs are exclusive of VAT.

BILLS OF QUANTITIES-THIKA ROAD STREET LIGHTING MAINTENANCE		
BILL NO	Description	Amount KES
1	Preliminaries and General Items	11,115,600.00
20	**Instructed Works (exclusive of VAT)**	**256,842,800.00**
	Sub Total (1+20)	267,958,400.00
	Add 2.5% Contingency	6,698,960.00
Sub Total for Improvement Works		274,657,360.00

26	Performance Maintenance over the Contract period of 36 Months	179,997,120.00
	Provisional Sum for Emergency Works	1,000,000.00
SUB TOTAL for PBC Works		180,997,120.00
SUB TOTAL(Improvement +PBC Works)		455,654,480.00
Add 16% VAT		72,904,716.80
GRAND TOTAL		528,559,196.80

Contract Unit Price
Unit Cost of 150w/180w LED light Kshs. 28,000
Unit cost for retrofitting Kshs. 1,200 per light
Total Unit Cost (Exclusive VAT) Kshs.29,200
ADD; 14% VAT (29,200 x 14%)=4,088
Total Cost per Unit Kshs. 33,288
Payable Amount
Kshs. 33,288 X 2000+ Kshs. 66,576,000

Further, Nairobi Metropolitan Services through one of the transferred functions; The Directorate of Energy Reticulation and Public Lighting was mandated to improve public lighting in a bid to Brighten Nairobi City County. At that time, NMS did not have its own established contracts to be able to deliver services.

At the inception of NMS operations in March 2020, NMS had been tasked to work with other government agencies to adopt related contracts to be able to deliver urgent assignments within the shortest period of time. Therefore, NMS wrote to KeNHA requesting contracts for public lighting. The letter of request to KeNHA from NMS is attached.

It is important to note that public lighting improvement was necessitated by the need to replace the old High-Pressure Sodium (HPS) along the Thika Superhighway (Nairobi area) because they were yellow, dim, and some non-functional, due to age, with energy-efficient, brighter and efficient LED 150/180W Lights.

KeNHA had an active contractor instructed to carry out maintenance and retrofitting of faulty lights along the Thika road section on the basis of instructed work, however, due to budgetary limitations, KeNHA could not engage the contractor to renew/replace the Thika super-highway with modern, energy-efficient LED lighting to brighten the Nairobi City as per NMS's need. Since the said contract had a provision for LED Lights and retrofitting, NMS sort to use the contract for retrofitting the HPS lights to LEDs. There was therefore no double instruction to the contractor by KeHNA and NMS for providing this service. A copy of the KeHNA contract with the contractor has been attached, alongside other supporting documents.

Committee Observation

i) **The Committee observed that the amount queried was exclusive of VAT and the Submission by the Accounting Officer was thus satisfactory.**

ii) The Committee found that the matter was resolved.

168.3 Construction of Kamitha Road

Review of procurement documents revealed that Nairobi City County entered into a contract with the contractor for the construction of Kamitha Road, Gatina at a contract price of Kshs.52,786,597 in 2020/21 financial year. On 27 January 2021, a deed of novation was entered into transferring the contract to NMS. The project start date was 27 March 2020 with a completion date of 27 March 2021. However audit verification of the project on 9 February 2022 revealed the following unsatisfactory issues,

i. The headwalls did not have a plaster finish as provided for in the bill of quantities
ii. Although the contractor laid the inverted block drainage, the drains were silted which caused the culverts to block completely.
iii. The road section between World Hope Stadium and the Lavington Estate had fresh asphaltic concrete an indication that the contractor may have not compacted the base as per the bills of quantities hence the development of potholes.
iv. The contractor had not done the road markings and road signs.

Submission by the Accounting Officer

It is true that Nairobi City County entered into a contract with the contractor for the construction of Kamitha Road, Gatina. The issues observed and highlighted by the auditor on the impaired status of the road had been raised by the Resident Engineer to the contractor during the inspection of the works. From the correspondence letters attached herewith between the resident engineer and the contractor, the contractor indicates an undertaking of works upon payment of certificate no.1.

The certificate's value was submitted for review and approval for payment to NMS but no payment was made to the contractor by the time of this report, therefore it is important to note that no public funds have been wasted to this effect. Additionally, the certificate presented to NMS for payment were interim certificates and not final/completion certificates. Usually, the final/completion certificate is prepared and presented for payment by the resident engineer upon satisfactory evidence of no defects to the works.

Committee Observations and Findings;

The Committee observed that the Accounting Officer had failed to pay the contractor despite execution of 90% of the contract works. The contractor was thus unable to remedy defects noted.

Committee Recommendation

The Committee recommends that the contractor's dues be settled as part of the pending bills, as first charge as per Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

168.4 Water Sewer Extensions and Street Lighting

Nairobi Metropolitan Services entered into a contract in 2021 with China Roads Corporations for the proposed water sewer extensions and street lighting in Dandora, Kangemi, Kawangware, Dagoretti Corner Waithaka Riruta, Kibera, Korogocho, Mathare, Zimmerman, Thome, Githurai

45 Mwihoko, Kasarani and Mwiki at a contract sum of Kshs. 4,475,766,419. The contract period was for twelve months starting 25 March 2021.

Review of records revealed that a total amount of Kshs. 1,640,073,278 had been paid out of which Kshs. 1,192,496,636 was paid during the 2021/2022 financial year and an advance of Kshs. 447,576,642 in the 2020/2021 financial year. However, the average combined progress of work was at 30% as per the Contract Implementation Team (CIT) site meeting held on 27 May 2022. No contract extension approval was provided for audit review.

In the circumstances, the delayed completion of the Project casts doubt on the realization of value for money incurred in the project.

Submission by the Accounting Officer

It is true that Nairobi Metropolitan Services entered into a contract with China Roads Corporation for the water sewer extension and lighting in Dandora, Kangemi, Kawangware, Dagoretti Corner, Waithaka, Riruta, Kibera, Korogocho, Mathare, Zimmerman, Thome, Githurai 45 Mwihoko, Kasarani and Mwiki at a contract sum of Kshs.4,475,766,419 (Contract No. NMS/SPP/0012020/2021) with a completion date of 25th March 2022. The total amount paid to the contractor so far is Kshs.1,640,073,278.25 and this amount is equivalent to the certified works already done.

The slow pace of the project has been as a result of delays in payments of supplier certificates attributed to insufficient exchequer releases.

As at the time of compiling this report, the contractor was owed Kshs. 665,265,352 as per the attached certificate summaries. Pending payments are reported in the 2021/2022 NMS Pending Bill report. The contractor has confirmed that he is willing to continue with work as long as his long-outstanding payments are made.

Based on the slow progress of this project, NMS sought an extension of the contract. The contractor was granted a six (6) months extension as per the attached approval by the Accounting Officer.

Committee Observations and Findings;

The Commtitee observed that these were one of the projects under the then Nairobi Metropolitan Service (NMS) that it has cited under the chapter of general observations and recommendations of this report.

Committee Recommendation;

The Committee recommends that the Auditor General conducts a special audit on accounts of the then Nairobi Metropolitan Service (NMS) and submits a report to the Committee within three (3) months of adoption of this report.

168.5 Incomplete Rehabilitation of Jevanjee Park

The Nairobi Metropolitan Services initiated the upgrading and maintenance of Jeevanjee Park at an estimated cost of Kshs.15 Million. The works were to be done in-house by NMS and materials

were procured for the project. The project was to run for four (4) months commencing on 25 February 2020. However, Physical Inspection of the project revealed that the project was still incomplete despite NMS having procured materials some of which were still on site and exposed to theft.

The project was behind schedule and value for money for the expenditure incurred on the project may not be realized.

Submission by the Accounting Officer

As observed in the audit review, it is true that NMS undertook to upgrade and maintain the Jevanjee park at an estimated cost of Kshs.15M. These works were to be implemented using the internal capacity at NMS and the materials drawn from the central stores. One of the parks earmarked for retrofication was Jeevanjee Gardens under the Kazi Mtaani legacy project. The status of works done is as follows:

i. Erection of a porous steel fence with a concrete base-80%
ii. Excavation of the walkways for paving with cabro-70%
iii. Construction of an office block-20%
iv. Replacement of underproductive grass species with suitable species-80%
v. Establishment of a botanical garden-30%

The remaining works were not to be implemented in isolation but required other support materials for completion. The acquisition of additional materials was not possible due to budgetary constraints.

The project has since reverted to the Nairobi City County and necessary measures undertaken to secure the materials on sight, further the county has undertaken to complete the remaining works.

Committee Observations and Findings;

The Commtitee observed that these were one of the projects under the then Nairobi Metropolitan Service (NMS) that it has cited under the chapter of general observations and recommendations of this report.

Committee Recommendation;

The Committee recommends that the Auditor General conducts a special audit on accounts of the then Nairobi Metropolitan Service (NMS) and submits a report to the Committee within three (3) months of adoption of this report.

4.4 VOTE 1021: STATE DEPARTMENT FOR INTERIOR AND CITIZEN SERVICES

Dr. Raymond Omollo, PhD., CBS, the Principal Secretary and Accounting Officer for the State Department for Internal Security and National Administration and **Amb. Julius Bitok, CBS**, the Principal Secretary and Accounting Officer for State Department for Immigration and Citizen Services appeared before the Committee on 3rd August 2023 accompanied by the following officers:

i.	Mr. John Nyabwari	–	Senior Chief Finance Officer
ii.	Mr. Fred Muhul	–	Deputy Accountant General
iii.	Mr. Nixon Nganga	–	Director, Communications
iv.	Ms. Phyllis Ouko	–	Director, Administration
v.	Ms. Rosemary Kamau	–	Director Human Capital Management
vi.	Mr. Joseph Kimani	–	Senior Principal Finance Officer
vii.	Mr. Paul Mwangemi	–	Secretary, Civil Register
viii.	Mr. Christopher Wanjau	–	Secretary, National Registration Bureau
ix.	Mr. Samuel Maina	–	Senior Deputy Accountant
x.	Mr. Peter Muita	–	Chief Finance Officer
xi.	Ms. Elizabeth Wangari	–	Deputy Internal Auditor
xii.	Mr. Stephen Riungo	–	Deputy Internal Auditor
xiii.	Ms. Emily Obimo	–	Ag. Head, Human Resource Management
xiv.	Mr. Jack Okula	–	Legal Advisor
xv.	Mr. Saul Abwao	–	Personal Secretary to the PS Interior
xvi.	Mr. Collins Okedi	–	Personal Assistant to the PS Interior

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

176. Long outstanding and unreconciled balances

The statement of assets and liabilities reflects bank balances of Kshs.397,763,378 as disclosed in Note 20A to the financial statements. The balances include recurrent bank balance of Kshs.1,647,036. Review of recurrent bank reconciliation statement for June, 2022 revealed various unreconciled items that had been outstanding for more than one (1) year as indicated below;

Description of Item	**Amount (Kshs.)**
Unpresented cheques	678,479,199
Receipts in bank not in cash book	162,608,851

Payments in bank not in cash book	121,433,488
Receipts in cash book not in bank	576,458,443

In the circumstances, the accuracy and completeness of the bank balances of Kshs. 397,763,378 could not be confirmed.

Submission by the Accounting Officer

It is true that the bank reconciliation statement for June 2022 revealed various unreconciled items that had been outstanding for more than one (1) year. I wish to state that all unpresented cheques totaling to Kshs 678,479,199.00 have been cleared as per the bank reconciliation for the period ending 31st March, 2023. Receipt in bank not in cashbook amounting to Kshs 162,608,851 has been adjusted in the cash book on 31st March, 2023. Additionally, the payment in bank not in cash book amounting to Kshs 121,433,488.00 and receipt in cash book not in bank of Kshs 576,458,443 have been adjusted in cash book under folio 89 dated 31st March 2023.

Committee Observations and Findings;

The Committee observed that the reconciliations have now been done.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to proper accounting records, as required by sections 81 & 83 of the PFM Act 2012.

177. Unsupported Pending Bills

Note 28 to the financial statements reflects nil balance on pending bills. However, Annex 1 to the financial statements reflects pending bills balance of Kshs.5,508,101,204 resulting to unexplained variance of Kshs.5,508,101,204. Further, Management did not analyze the pending bills contrary to the Public Sector Accounting Standard Board prescribed reporting template for June, 2022.

Failure to settle bills in the year for which they relate to distorts the financial statements and adversely affects the budgetary provisions for the subsequent year as they form a first charge.

Submission by the Accounting Officer

It is true there was a pending bill of Kshs.5,508,101,204 whose detailed analysis was not provided at the time of audit. Subsequently, the same was availed and formed the basis of settlement of the said bills in FY 2022/23.

Pending Bills totaling to Kshs 4,457,709,349.89 for FY 2021/22 had been settled by 30th June, 2023 leaving a balance of Kshs. 1,050,391,854.46. The unpaid balance was attributed to budget cuts.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer prioritizes pending bills as first charge as provided for under Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

178. Unresolved prior year matters

In the previous year's audit report, several issues were raised under the Reports on Financial Statements, Lawfulness and Effectiveness in Use of Public Resources, and Effectiveness of Internal Controls, Risk Management and Governance. Although Management had indicated in the progress on follow-up on prior year's auditor's recommendations that the matters were resolved, the matters remained unresolved as the Public Accounts Committee had not made recommendations and resolutions on the same.

Submission by the Accounting Officer

The previous year's matters were discussed with Public Accounts Committee (PAC) on 10th May 2022. PAC made recommendations and resolutions on the same and the matrix on implementation of PAC recommendations has been availed.

Committee Observations and Findings;

The Committee observed that its report had since been adopted by the House.

Committee Recommendation

The Committee recommends that the Accounting Officer avails a status report on implementation of its recommendations within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

179. Provision of Enhanced Comprehensive Medical Group Cover

The statement of receipts and payments reflects expenditure on use of goods and services of Kshs.33,238,685,883 as disclosed in Note 11 to the financial statements. The expenditure includes insurance costs of Kshs.5,581,452,440. Review of procurement documents revealed that the Ministry of Interior and Coordination of National Government entered into a one-year contract for provision of enhanced comprehensive group life cover for the National Police Service and the Kenya Prisons Service with National Hospital Insurance Fund for the period 1 January, 2021 to 31 December, 2021. The insurance cover was intended to cover principal members and dependents in employment at the commencement of the cover. The total agreed premium was Kshs.2,295,594,440 covering a total population of 131,816 officers. The contract ended on 22 December, 2021 and was extended for a period of three months to cover 1st January, 2022 to 31st March, 2022. However, review of records revealed the following unsatisfactory matters:

179.1 Non-Provision of Quarterly Reports

Comprehensive quarterly reports on claims from the service provider were not provided for audit. This was contrary to Clause 3.1.5 of the contract which provided that NHIF shall provide a comprehensive report to the National Police Service and the Kenya Prisons Service on claims under this scheme every three months. The report shall be submitted by the 15th day of the month following the lapse of the three months. It was therefore not possible to evaluate or analyze performance based on the claims paid, pending claims and any outstanding claim against the premiums paid by the State Department.

Submission by the Accounting Officer

Its true NHIF had not provided the quarterly reports at the time of the audit contrary to Clause 3.1.5 of the contract. However, NHIF has since provided the six (6) quarterly reports for the contract period after follow-ups. The template of the quarterly reports is included in the contract and it shows the required information, the timelines and the status of payment for the period.

Committee Observations and Findings;

i) **The Committee observed that the reports had since been obtained from NHIF.**
ii) **The Committee found that the matter was resolved.**

179.2 Unpaid Claims under Work Injury Benefits Act (WIBA)

Review of payment details and claims made to the service provider revealed that NHIF had not paid seventeen (17) employees who had suffered non-fatal injuries, amounting to **Kshs.4,856,237** contrary to Clause 13 of the contract which provides that death, illness /injury as a result of occupational causes (Employment -WIBA Act 2007) shall be paid at the rate of gross remuneration of the member for eight (8) years. Further, eighty-eight (88) members of staff had not been paid claims on WIBA death that occurred during the year 2021. No explanation was provided for the anomaly.

Submission by the Accounting Officer

Unpaid Injury under WIBA; It is true that at the time of audit 17 non-fatal claims had not been paid. The National Police Service submitted cases to Directorate of Occupational Safety and Health (DOSH) but response had not been received at the time of the audit. Delivery records to NHIF by the National Police Service for the claim documents have been availed. These claims have however been paid by NHIF;

Unpaid WIBA Claims for accidental death; The National Police Service submitted unpaid cases to Directorate of Occupational Safety and Health (DOSH) but the status report on payments had not been received at the time of the audit. However, the report has since then been provided as follows:

Summary	No
Paid Claims	13
Pending Claims at NHIF	37
Pending Claims awaiting documents from Dependants	25

GPA not WIBA	13
Total	**88**

As indicated above, 13 claims had been paid, 11 at the time of Audit and 2 as per latest NHIF update. In addition, 37 claims are pending payment at NHIF that were submitted on various dates as per attached claims transfer register. Further, 25 claims are awaiting documents from the dependants. NHIF declined 13 claims, stating that they fall under GPA and not WIBA. It is important to note that the cover did not have the provision for GPA.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

179.3 Unpaid Sums for Critical Illness-Group Life Benefit

Audit verification of the contract document against the data provided by the Kenya Police Service indicated that NHIF had not paid any sums for Critical Illness-Group life benefit contrary to Clause 2.2.9.2 of the contract which states that where a beneficiary is diagnosed as suffering from critical illness including COVID related illness as certified by a specialist in the field, compensation shall be at a rate of 30% of the group life sum assured subject to a maximum of Kshs.3,000,000. Further, the contract for Group Life Cover, did not specify benefits under group personal accident such as disability benefit as required by the Public Service Superannuation Scheme Act.

Submission by the Accounting Officer

It is true that no sums for Critical Illness- Group Life Benefit had been paid as at the time of the audit. As at the time of the Audit, 20 claims had been notified to the NHIF. The status on settlement of the claims is as detailed below;

Summary	**No**
Paid Claims	4
Rejected Claims	6
Pending Claims awaiting Reimbusment Form	8
Died – G.L Claim Launched	2
Total	**20**

As indicated above;

- Four (4) claims have now been settled.
- Three (6) claims were rejected due to date of diagnosis of the illness falling before the cover period came into force.
- Nine (8) claims awaiting reimbursement form from the claimant (the form is provided directly to the claimant).
- Two (2) claimants have since died and group life claims have been launched.

It is true that in FY 2021/22 group life cover contract did not specify benefits under group personal life accident. With the available budget out of 4 benefits NHIF provided one benefit i.e. permanent

disability benefit as a result of accident under GPA. The same was addressed in subsequent contracts which have been availed.

Committee Observations and Findings;

The Committee noted that the NHIF was slow in settling payments due.

Committee Recommendation;

The Committee recommends that the Accounting Officer liaises with NHIF and ensures settlement of all claims within period specified in contract.

179.4 Under Budgeting for Comprehensive Group Life Cover

Review of records maintained by the State Department revealed that NHIF had quoted for a one-year contract for provision of the aforementioned services at an annual premium of Kshs.8,573,590,531 against an annual budget of Kshs.2,295,594,440. Negotiation meeting took place on 16 February, 2022. The total agreed premium after negotiations was Kshs.1,155,559,931 with a total population of 132,876 members as beneficiaries for a further extended period of three months from 1st April, 2022 to 30th June, 2022.

However, the budget allocation of Kshs.2,295,594,440 was not sufficient to cater for the annual premium as evidenced by the amount quoted for the contract in the year under review supported by the service provider quote of the previous financial years. This may affect the quality of services offered to the members of the scheme.

Submission by the Accounting Officer

It is true that NHIF quoted a total of Kshs.8,573,590,531 against an annual budget of Kshs.2,295,594,440. There was no adjustment made to the rates applicable in each category. The agreed benefits under the negotiated premiums remained the same and included death benefits as a result of illness. The negotiations agreement was in line with the available budget at the time with the comparative benefits between the quoted amount and annual budget.
The request for additional funds and the response by the National Treasury citing limited fiscal space is attached. The negotiations minutes and the contract have been provided.

Committee Observations and Findings;

The Committee noted that the budget was inadequate to cater for all employees.

Committee Recommendation;

The Committee recommends that the Accounting Officer and National Treasury ensures adequate coverage of all officers under the current Social Health Insurance Fund.

179.5 Unsupported Adjustment of Premiums

The National Health Insurance Fund quoted an annual premium of Kshs.8,573,590,531 per annum to provide health insurance cover for both the National Police Service and the Kenya Prisons Service. This translates to Kshs.714,465,878 monthly and therefore for three months the premium for the cover would have been Kshs.2,143,397,633. However, the Department negotiated and the premium agreed was Kshs.1,155,559,931 for a period of three months. However, the negotiated

premiums, which would have reduced the annual premium by Kshs.987,837,702 was not factored in the contract.

Submission by the Accounting Officer

It is true that the negotiating parties agreed to a premium totaling to Kshs. 2,295,594,440 for one (1) year for the period 1st January 2021 to 31st December 2021. The cover was extended from 1st January 2022 to 31st March, 2022. From 1st April to 30th June 2022, a cover was procured to enable officers to continue enjoying benefits that are within the law at Ksh. 1,155,559,931 as per availed minutes.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendation;

The Committee recommends that the National Treasury and the Accounting officer rationalizes the premiums with the contract under the new Social Health Insurance Fund.

179.6 Unpaid Claims on Last Expense

Review of details of claims made for funeral expenses covered in the Comprehensive Group Life cover in the months of April, 2022 to June, 2022 and up to the time of audit in November, 2022 revealed that one hundred and twelve (112) claims of principal members, spouses and children valued at Kshs.19,250,000 had been submitted to NHIF but had not been paid. This was contrary to Clause 5.2 of the contract agreement which provides that NHIF shall upon written notification of death of a member or dependent while the cover is in force pay to the next of kin or such other person may in writing direct the amount specified for funeral expenses within two (2) days subject to provision of a duly completed claim form and copy of burial permit

Submission by the Accounting Officer

It is true that 112 claims had not been paid at the time of audit. However, NHIF has since paid 101 claims as per the attached payment schedule. The remaining eleven (11) claims are attributed to;

- Two (2) claims are pending presentation of documents by the claimants
- Nine (9) claims relate to officers who had passed on before the contract was signed.

The Schedule of paid claims and pending claims is as detailed below;

Summary	
Claims	**No**
Claims Paid	101
Claims Pending Presentation of Documents	2
Claims Pending at NHIF	9
Total	**112**

As per Clause 5.2 of the contract agreement NHIF was required to fully process claims and last expense claims within two (2) days upon notification of death of a member or dependent upon submission of duly completed claim form and copy of burial permit. The delays were occasioned by non-submission of the requisite documents in time by claimants.

Committee Observations and Findings;

The Committee observed that the NHIF was slow in settling payments due.

Committee Recommendation;

The Committee recommends that the Accounting Officer liaises with NHIF/SHIF and ensures settlement of all claims within period specified in contract.

179.7 Lack of Standing Committee Reports

The approved list of standing committee members, monitoring and evaluation reports, sensitization programmes reports, and quarterly reports or minutes to the client were not provided for audit. This was contrary to Clauses 13.1 and 13.2 of the contract agreement which provides that parties to the contract shall establish a standing committee for contract management under terms set out in the contract and shall comprise of representatives drawn from the National Police Service, the Kenya Prisons Service and NHIF. Further, clause 14 provides that the administrative expenses for the scheme shall not exceed 5% of the premium paid by the client. However, report on the administrative expenses was not provided to confirm how much had been spent and whether the expenditure limit was observed.

In the circumstances, the Ministry did not obtain value for money on expenditure for provision of enhanced comprehensive group life cover and expenditure on insurance costs of Kshs.5,581,452,440 could not be confirmed.

Submission by the Accounting Officer

It is true that the list of standing committee members, monitoring and evaluation reports, sensitization program reports and quarterly reports were not presented at the time of the audit. However, the reports have now been provided.

It is true the 5% administration expenses report was not available for audit. The report has been provided by NHIF showing a total expenditure of Ksh. 149,797,235 which translates to 2% of the total premiums. Therefore, value for money was realized.

Committee Observation

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

180. Provision of Comprehensive Medical Cover

The statement of receipts and payments reflects expenditure on use of goods and services of Kshs.33,238,685,883 as disclosed in Note 11 to the financial statements. The expenditure includes insurance costs of Kshs.5,581,452,440. Review of procurement records revealed that, the National Police Service entered into a contract with NHIF for provision of a comprehensive medical cover for one hundred and twenty eight thousands seven hundred and ninety seven (128,797) employees of the National Police Service and the Kenya Prisons Service for the period 1 July, 2021 to 30 June, 2022. The insurance cover was intended to cover principal members in employment at the commencement of the cover and was to be on family-shared basis covering

the principal member and dependents at a contract sum of Kshs.4,785,805,560. However, the following matters were noted:

180.1 Comprehensive Medical Cover Last Expense Claims

Review of records relating to last expense claims made during the year under review revealed that two hundred and twenty-one (221) claims of principal members and dependent valued at Kshs. 34,600,000 were submitted to NHIF for payment but were yet to be paid. This was contrary to Clause 6.2 of the contract which provides that there shall be last expense paid for the principal members and one declared dependent of two hundred thousand (Kshs.200,000) and fifty thousand shillings (Kshs.50,000) respectively. The last expense payment shall be made within seventy-two (72) hours from the time of reporting subject to submission of properly filled claim documents.

Submission by the Accounting Officer

It is true the amount of Kshs 34,600,000 had not been paid to the claimants as at the time of the audit. NHIF has however paid all the 221 claims.

The payment for these claims was done outside the 72 hours as provided for in the contract mainly due to a delay in presentation of documents. It is notable that the last expense was to be paid subject to submission of properly filled claim documents.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

180.2 Ex-gratia/ Excess of Loss Benefits

Review of the contract documents and payment vouchers provided for audit revealed that the standing committee did not provide approval for payment of any ex-gratia claims for the year under review. This was contrary to Clause 6.21 of the agreement which states that there shall be ex-gratia of Kshs. 200,000,000 and the ex-gratia claims shall be approved by the standing committee of the client before any payment is made. Further, NHIF was required to submit detailed quarterly report on all ex-gratia claims including the value, beneficiary, background and status of the claims among others to the standing committee and any unspent amount of ex-gratia at the end of the contract period. However, NHIF did not provide quarterly reports or unspent ex-gratia amount during the year under review. In the circumstances, the State Department did not obtain value for money on expenditure for provision of comprehensive medical cover of Kshs. 4,785,805,560.

Submission by the Accounting Officer

It is true that the contract included ex gratia of Kshs. 200,000,000 and expenditure of such funds were to be approved by the Standing Committee before utilization. There were no requests from NHIF presented for discussion and approval by the Committee and yet the funds were utilized. This was in breach of clause 6.21 of the agreement.

There are correspondences between the Ministry and NHIF on accountability of the funds which NHIF has never responded to date.

Committee Observations and Findings;

i) **The Committee obtained evidence from the NHIF vide its letter ref. SHA/CNF/FIN/001 VOL I/26 dated 22nd September 2024 that they had indeed availed reports to the Inspector General of Police, and that the ex-gratia was depleted.**
ii) **The Committee found that the matter was resolved.**

181. Non-compliance with One-third Rule on Basic Salary

Review of the Human Resources Management Policy and the payroll provided for audit indicated that a total of one thousand three hundred and twenty-eight (1,328) officers were receiving less than a third of their respective basic salaries. This was contrary to Section C.1 (3) of the Human Resource Policies and Procedures Manual for the Public Service of May, 2016.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

It is true there were cases of officers receiving less than a third of their respective basic salaries. This was attributed to the fact that during the height of Covid–19, the Government of Kenya granted a tax relief to all Public Servants. Most of these officers committed the said relief on Sacco and commercial loans. When the tax relief window period was over their salaries went below a third of the basic salary.
In November 2021, Graduate Police Constable designation abolished in the IPPD system as per National Police Service Commission circular no NPSC/1/28/1/VOL. III (75) dated 23rd December 2021.Graduate Constables and non-commissioned officers reverted back to their substantive ranks. Most of these officers had committed their salary on Saccos and commercial loans. With the implementation of the circular, their net pay was affected to below a third.

Committee Observation

i) **The Committee observed that the matter had been litigated and settled.**
ii) **The Committee found that the matter was resolved.**

182. Acquisition of Assets

The statement of receipts and payments reflects expenditure on acquisition of assets of Kshs.5,430,216,381 as disclosed in Note 16 to the financial statements. However, the following observations were noted in relation to the expenditure:

182.1. Delayed Construction of 100 PAX Hostel Block

The Department entered into a contract with a firm, for the construction of one hundred (100) Pax hostel block at the Kenya School of Adventure and Leadership in Meru County at a contract sum of Kshs.198,109,780. The contract was signed on 20 March, 2020 for a period of two (2) years ending 20 March, 2022. As at 30 June, 2022, the contactor had been paid a total of Kshs.87,858,647.

Examination of the project records revealed that, the project had not been completed as at the time of the audit inspection in July, 2022. Further, inspection reports from the Department of Public Works relating to the certificates raised were not provided for audit. It was not possible to confirm whether the building conforms to the specifications. In addition, the delayed completion of the project may have denied the School the benefit derived from the completed project.

Submission by the Accounting Officer

It is true that the project was awarded to Ms. Corban Construction Company at a cost of Kshs. 198,109,780 in FY 2019/20 and the project was scheduled to be completed by 20th March, 2022.

In conformity with the projects estimates the following Certificates were paid;

Certificate No.	Amount Certified	Paid Amount	(%) of Completion	Firm Paid	Dates of Payment
1	21,760,150	21,760,150	10.98	Coban Construction Co.	24/06/2020
2	31,716,180	31,716,180	26.99	Coban Construction Co.	12/08/2020
3	19,770,154	19,770,154	36.97	Coban Construction Co.	22/12/2021
4	16,961,165.56	14,607,074	45	Coban Construction Co.	27/01/2022
5	10,034,002.50	0	50.5		
TOTAL	**100,241,653**	**87,853,557**			

Due to inadequate budgetary provision the project delayed hence need for extensions. Payment Certificates, inspection reports, extension letters and request for budgetary provision have been provided.

Currently the Management has requested for budget provision to facilitate completion of all the stalled projects. The project is at 69% complete to date.

As per the Ministry of Public Works project appraisal report dated 8/8/2023, the project requires a budget of Kshs.107, 902,150.44 to complete. In the FY 2023/24 50 Million was allocated and subsequently it was revised to 27 Million through supplementary budget.

Committee Observation

The Committee noted the submission of the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer avails a progress report within three (3) months of adoption of this report.

182.2 Stalled Construction of Staff Houses

The Department entered into a contract with for the construction of staff houses at the Kenya School of Adventure and Leadership in Meru County at a contract sum of Kshs.24,367,350. The project commenced on 13 February, 2020 with a contract period of thirty-two (32) weeks. As at 30 June, 2022 the contractor had been paid a total amount of Kshs.6,490,978.

However, examination of the project records and audit verification revealed that the project had not been completed as at the time of the audit in July, 2022. Further, the audit verification revealed that construction had stopped at the lintel level and roofing works had not been carried out exposing the walls to damages and deteriorations.

Submission by the Accounting Officer

It is true that the project was awarded to Ms. Sanjemu Investment at a cost of Kshs. 24,367,350 and the project was scheduled to be completed by 13th September, 2020. The project was initiated as part of KESAL's expansion programmes to house KESAL's Staff.

In conformity with the projects estimates the following Certificates were paid;

Certificate No.	Amount	Status (%)	Firm	Dates of Payment
1	6,490,978.45	22.83	Sanjemu Investment	08/06/2020
2	6,110,285.41	44.31		27/01/2021
TOTAL	**12,601,263.86**			

Due to inadequate budgetary provision, the project completion delayed resulting to continued extensions.

As per the Ministry of Public Works project appraisal report dated 11/8/2023, the project requires a budget of Kshs. 11,766,086.14 to complete. In the FY 2023/24 Kshs.12,000,000 has been allocated to complete the project.

Committee Observation

The Committee noted the submission of the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer avails a progress report within three (3) months of adoption of this report.

182.3 Incomplete Climbing & Rescue Tower

The Department entered into a contract with a firm for the construction of a climbing and rescue tower at the Kenya School of Adventure and Leadership in Meru County at a cost of Kshs.6,462,719. However, audit verification of the project carried out in July, 2022, revealed that the contractor had not completed the external timber cladding. Further, review of the project records revealed that the contractor had under quoted the cladding cost, and therefore was unable to proceed with the project to its practical completion. As at 30 June, 2022 the contractor had been paid an amount of Kshs.5,963,340.

Submission by the Accounting Officer

It is true that the project was awarded to Double Link at a cost of Kshs. 6,462,719 and the project was scheduled to be completed by 13th September, 2020. The project was initiated as part of KESAL expansion programmes as a training and rescue element.

In conformity with the project estimates the following Certificate was paid;

Certificate No.	Amount	Status (%)	Firm	Dates of Payment
1	5,963,339.60	92.27	Double Link	21/12/2021
TOTAL	**5,963,339.60**			

The Contractor abandoned the project and did not complete the cladding section of the Tower.

The project management team recommended for termination of the contract and termination has since been made and project appraisal for the remaining works undertaken.

Committee Observation

The Committee noted the submission of the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer invokes contractual provisions against the contractor for breach of contract, and avails a progress report within three (3) months of adoption of this report.

182.4 Stalled Construction of Deputy County Commissioner Office Block at Tigania Central Meru

Review of documents provided for audit indicated that, Construction of the Deputy County Commissioner's Office Block at Tigania Central Meru was allocated Kshs.30,000,000 on 8 May, 2018. The project commencement date was 6 May, 2019, with a contract period of twenty-four (24) weeks ending 21 October, 2019 which was extended to 30 January, 2020. The contractor has been paid Kshs.29,755,000 inclusive of retention money for Certificates No. 1 to 7. However, a certificate of completion had been issued but the project had not been completed. Further, audit verification carried out in November, 2022 revealed that the building was incomplete and had stalled. No explanation was provided on why the project had stalled for over four (4) years.

Submission by the Accounting Officer

It is true that the project is incomplete due to inadequate budget provision. The project required a budget of Kshs 33,478,760 but was allocated Kshs 30,000,000 in FY 2019/20. At the time of audit, the contractor had been paid Kshs 29,755,000 and a certificate of partial completion issued to allow occupation of the ground floor.

The project completion delayed due to inadequate budgetary provision over the years.

The State Department has therefore engaged the State Department for Public Works to undertake a project appraisal to inform the funding requirement for completion of the project.

Committee Observations and Findings;

The Committee noted that the project stalled at 88% completion.

Committee Recommendation

The Committee recommends that the Accounting Officer prioritizes its completion and avails a progress report within three (3) months of adoption of this report.

182.5 Stalled Construction of Tigania East Sub-county Office Block at Muriri

The construction of the Deputy County Commissioner office block commenced in 2011 and was carried out in phases. The project had at least five different contractors for the different phases up to the seventh phase. Management did not provide records of payments made to the different contractors up to the seventh phase. Inquiries from Management revealed that the project stalled in 2019. Audit verification in November, 2022 indicated that the ground floor and first floor were complete and in use. However, the remaining works on the second floor and the roof were incomplete. Further, the roofing works which were part of the Bills of Quantities in the sixth and seventh phase was partially carried out.

Submission by the Accounting Officer

It is true that the project was implemented in a phased out approach in line with the funding schedule. Phase I to III was implemented by the Ministry of Public Works through the Economic Stimulus Programme (ESP) with a budget of Kshs 30 Million during the 2009/10 FY. Phase IV to VII was implemented by the State Department for Interior and Citizen Services. Payment records have been availed to the Auditor for review.

Committee Observations and Findings;

The Committee noted that the project had taken inordinately long to complete.

Committee Recommendation;

The Committee recommends that the Accounting Officer scales down the scope to available resources and avails a completion roadmap within three (3) months of adoption of this report.

182.6 Incomplete Igembe North Sub-County Offices at Laare

The Department entered into a contract with a firm for the construction of Igembe North Sub County Offices on 10 June, 2020 at a contract sum of Kshs.28,234,704 for a period of twenty four (24) weeks. As at 30 June, 2022 the contractor had been paid a total amount of Kshs.25,479,566. However, audit verification conducted in November, 2022 revealed that the project was incomplete with doors and some windows not installed. Further, painting was not complete and the roof was leaking while the contractor was not on site.

Submission by the Accounting Officer

It is true the project completion has been delayed due to budget cuts in the FY 2021/22 and is currently at 90% completion level.

The retention money has not been paid and will be used to make good the observed defects.

The State Department has engaged the State Department for Public Works to undertake a project appraisal to inform the funding requirement for completion of the project.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a progress report within three (3) months of adoption of this report.

182.7 Stalled Construction of Staff Houses (4 Units two-bedroom Each) Kigumo Police Station

The project was allocated Kshs.10,000,000 on 8 May, 2018 and commencement date for the project was 12 June, 2018, with completion date of 12 October, 2018. The records further indicate that an amount of Kshs.6,942,952 was paid and the unused balance of Kshs.3,057,048 returned to The National Treasury. However, inspection of the project in November, 2022 revealed that the project had stalled. Further, there were construction materials on site that were exposed to theft or further deterioration.

Submission by the Accounting Officer

It is true the project had stalled. The work certified and paid for the project was Kshs. 6,942,952. The amount of Kshs. 3,057,048 was returned to the National Treasury as per the Public Finance Management Regulations at the close of the financial year.

The project was labor-based where vendors were contracted to supply materials only while Kenya prisons supplied bricks and provided labor. There are building materials on site (sand, 12 door frames, 6 window frames and building bricks) The door frames, window frames and the wood are secured in the stores while the sand and bricks are covered to protect them from different weather patterns

National Police Service has engaged the State Department for Public Works to undertake a project appraisal to inform funding requirement for completion of the project.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a progress report within three (3) months of adoption of this report.

182.8 Unoccupied County Police Headquarters in Kerugoya

The Department constructed Kerugoya County Police Headquarters in phases at a contract sum of Kshs.9,995,180 and a certificate of practical completion was issued on 25 October, 2021. As at 30 June, 2022 the contractor had been paid a total amount of Kshs.8,432,330. However, audit verification of the project carried out in November, 2022 revealed that the building had not been occupied. Reasons for the non-occupation of the building were not provided casting doubt on the value for money on the expenditure of Kshs.8,432,330 incurred on the project.

Submission by the Accounting Officer

It's true that the building had not been occupied at the time of the audit. This was occasioned by the fact that the administration block had not been equipped

The office block has since been equipped and is currently in use

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

182.9 Stalled Construction of Kirinyaga West (Ndia East) Sub-county Police Station and Offcies in Baricho

The first phase of construction of Kirinyaga West (Ndia East) Sub County Police Station at Baricho was awarded to a contractor at a contract sum of Kshs.9,440,155 for a period of 12 weeks. However, physical verification of the project conducted in November, 2022 revealed that although the ground floor had been constructed, finishing works, windows, doors and paintworks had not been carried out. Further, the design of the building included a first floor but the works on the first floor had not commenced. In addition, payment records and certificates issued for payment by works officers on the stalled project were not provided for audit. It was therefore not possible to confirm the amount paid up to the point when the project stalled.

Submission by the Accounting Officer

It is true the finishing works, windows, doors and paint works had not been carried out at the time of the audit. The phase one of the project which was completed to 100% as per the contract included the following

i) Substructure works
ii) Ground floor walling
iii) Ground floor columns

iv) First floor slab
v) Chain link fence
vi) Main gate
vii) Mechanical works
viii) Electrical works

The design of the project included first floor but the works on the first floor had not commenced due to lack of budget provision. Payment records and certificates relating to the project have since been availed to the auditors for verification.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer scales down the project and completes its phase 1.

182.10 Stalled Construction of Mwea East Sub-county Police Station and Offices

Phase one of the construction of Mwea East Sub County Police Station was awarded on 8 June, 2020 at a contract sum of Kshs.9,939,130. However, audit verification of the project carried out in November, 2022 revealed that the project had stalled and no allocation had been made to the project for several financial years. Further, the slab had deteriorated and had visible cracks due to continuous exposure to different weather patterns. In addition, payment records and certificates issued for payment by works officers on the stalled project were not provided for audit.

Submission by the Accounting Officer

It is true that the construction stalled due to budget cuts. It's also true the payment records and certificates were not presented at the time of audit. However, the records are now available to the Auditors for verification.

The retention money has not been paid and will be used to make good the observed defects.

National Police Service has written to the State Department of Public Works for project appraisal to inform the allocation of financial resources for the completion of the project.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a progress report within three (3) months of adoption of this report.

182.11 Delay in Completion of Construction of Mwea West Sub-county Headquarters Kandongu

Review of records provided for audit revealed that phase one of the construction of Mwea West Sub County Headquarters was awarded at a contract sum of Kshs.22,997,670 while phase two works were awarded at a contract sum of Kshs.9,723,140. The contracts were to run for twenty (20) weeks

from 14 March, 2022. Payments made for the first and second phase was Kshs.22,997,610 and Kshs.7,516,975 respectively. However, audit verification of the project conducted in November, 2022 revealed that works on the second floor had not been completed, the contractor was not on site and the contract period for second phase of project has already elapsed.

Submission by the Accounting Officer

It's true the project had not been completed at the time of audit. The project was done in a phased approach and the delay in completion was occasioned by budget cuts in FY 2021/2022. In the FY 2022/23, there was massive budget cuts in the development budget that led to the project not being funded. The building is partially occupied and therefore value for money is being realized since the services are being rendered from this building.

Committee Observations and Findings;

The Committee noted that the project had taken inordinately long to complete.

Committee Recommendation

The Committee recommends that the Accounting Officer scales down the scope to available resources and avails a completion roadmap within three (3) months of adoption of this report.

182.12 Construction of Mwea West Sub-county Police Station & Offices

Phase four (4) of the construction of Mwea West Sub County Police Station and Offices was awarded to a contractor at a contract sum of Kshs.19,697,540. The scope of works included electrical, paint, mechanical and external works. However, audit verification carried out in November, 2022 revealed that the although the contract period had elapsed, the contracted works were incomplete and contractor was still on site. Further, electrical ducts on the walls were left open, ceiling boards had cracks, the roof was leaking and the septic tank had cracks. In addition, payment records and certificates issued for payment by works officers on the stalled project were not provided for audit.

Submission by the Accounting Officer

It is true the phase 4 of the project included electrical, paint, mechanical and external works and that the contractor was on site at the time of the audit. As at the time of audit, the contractor had just completed the external works and was working on roofing, ceiling boards and other works which were all work in progress. The defects noted at the time of the audit have since been addressed and corrected. Currently the project is complete.

The payment records and certificates issued by works officers on the project have since been availed to the auditors.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

182.13 Proposed Renovation, Construction and Completion of Deputy County Commissioner's Office at Balambala Sub-County in Garissa County

The Department, through the Deputy County Commissioner- Garissa County, entered into a contract for renovation, construction and completion of Deputy County Commissioner's Office at Balambala Sub County at an estimated cost of Kshs.13,115,000 on 13 April, 2022. As at the time of the audit in November, 2022 the contractor had been paid a total of Kshs.8,093,853. However, review of the project file revealed the following:

(i) The Tender Opening Committee signed a tender opening register that was incomplete and the registers did not include the firm's names and bid amounts.

(ii) The contractor provided an invalid tax compliance certificate number KRAEON0158252021 dated 10 October, 2021.

(iii) Although the expected completion date was 14 September, 2022, audit inspection in November, 2022 revealed that the project had not been completed and there was no recommendation by the Evaluation Committee or approval by the Accounting Officer for extension of the contract period.

The Deputy County Commissioner did not have deposit account to hold retention sums totaling to Kshs.899,317 which were being held in the recurrent account and were subject to irregular use particularly when there was delay in Exchequer issues.

Submission by the Accounting Officer

The State Department takes note of the irregularities in procurement processes and a cautionary letter has been issued to the committee.

It is true the project completion was behind schedule. This is attributed to inadequate budget provision.

The State Department for Interior and Citizen Services maintains one account in respect of Recurrent, Development and Deposit. For the purposes of Retention money, the DCC issues an official receipt to the contractor and the said receipts are entered into the deposit ledger for internal control purposes for payment on the expiry of the contract liability period.

Committee Observations and Findings;

The Committee noted that;

i) **The Accounting Officer had taken administrative action on the tender opening committee;**
ii) **There was inadequate budgetary provision.**

Committee Recommendation;

The Committee recommends that the Accounting Officer prioritizes completion of the project.

182.14 Construction and Completion of Danyere Assistant County Commissioner's Offcie at Balambala Sub-county in Garissa County

The Department, through the Deputy County Commissioner (DCC) Garissa County, entered into a contract for the renovation, construction and completion of the Assistant County Commissioner's Office, Danyere Ward at an initial estimated cost of Kshs.14,990,685 on 13 April, 2022. As at the time of the audit in November, 2020, the contractor had been paid a total of Kshs.9,426,546. However, review of the project file revealed the following:

(i) Tender Opening Committee register dated 29 March, 2022 was incomplete with no names of companies participating and amounts quoted at the point of opening.

(ii) Although the contract period had elapsed, the project was incomplete as at the time of the audit in November, 2022.

(iii)There was no recommendation by the Evaluation Committee or approval by the Accounting Officer for extension of the contract period.

(iv)The office of the DCC did not have a deposit account to hold retention money totaling Kshs.1,047,394 which was held in the recurrent account and was at risk of use on normal operation activities or irregular use.

The land on which the office of the DCC Balambala was built had no title deed or proof of ownership.

Submission by the Accounting Officer

It is true that there was an omission in recording of the names of the bidders, amount quoted in the tender opening register. However, the same was recorded in the tender opening minutes.

i) The Project Committee will evaluate the works done against the Bill of Quantities, re-evaluate the remaining works for funding to completion.
ii) The State Department takes note of the irregularities in procurement processes and a cautionary letter has been issued to the Committee.
iii) The Ministry maintains one account at the Sub-County Treasury in respect of Recurrent, Development and Deposit funds. For the purposes of Retention money, the DCC issues an official receipt to the contractor and the said receipts are entered into the Deposit ledger for internal control purposes for payment on the expiry of the contract liability period.
iv) The Land on which the Deputy County Commissioners office is constructed is public land which has not been adjudicated. The process of formalization of ownership has commenced.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a progress report on completion and titling within three (3) months of adoption of this report

182.15 Proposed Construction of National Registration Office Block- Kakamega East Sub-county

The Department entered into a contract for the construction of the National Registration Office Block in Shinyalu Kakamega East, at an estimated cost of Kshs.4,164,138. The contract was signed on 3 March, 2022 for a period of 24 weeks. Review of documents provided for audit review revealed that payments made against AIE B133492 of 28 September, 2021 was Kshs.3,600,000. However, the project records and inspection carried out in November, 2022 indicated that the project was handed over to the State Department in May, 2022 but as at the time of the inspection, six months after completion, the office block was still not in use. Further, the inspection of the project revealed construction defects and non-adherence to provisions of the Bill of Quantities as detailed below:

i) Use of ordinary colored iron sheets instead of box profile iron sheets as per BQ specifications.
ii) Use of blue gum timber instead of cypress timber on trusses as per BQ specifications.
iii) The contractor did not use steel on the windows and did not install window fasteners.
iv) The contractor did not use steel doors, cypress frames for the doors and Union mortice locks.
v) Window curtain holders were not put in place and defects on walling were identified.

Submission by the Accounting Officer

It is true the project was handed over in May 2022 and at the time of inspection it was still not in use. This was occasioned by delay in installation of electricity.

It is true that some materials used in the project were different as per earlier specifications. The changes in materials was done through consultation with project management committee and approval granted.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

182.16 Dry Docking of Kenya Coast Guard Vessel

Examination of records at Kenya Coast Guard Service (KCGS) revealed that a contractor was engaged to provide dry docking services for the repair, service and maintenance of M/V KCGS DORIA at a contract price of Kshs.59,930,408. However, as at the time of the audit in November, 2022, the Department paid a total of Kshs.62,245,104 which was beyond the contracted amount. Further, audit verification of assets at the KCGS offices revealed that the vessel was not operational as at the time of audit in November, 2022 and was docked at the Shimoni Station despite the payment to the service provider.

In the circumstances, the Department may not have obtained value for money on expenditure incurred on projects and acquisition of assets expenditure of Kshs.5,430,216,381 could not be confirmed.

Submission by the Accounting Officer

It is true there was a variance of Kshs.2,314,696 which was beyond the contracted sum of Kshs. 59,930,408.

The variance was attributed to prolonged dry docking during the Covid Pandemic period resulting to increased costs of electricity and storage costs for the duration the works were being carried out. It is notable the repairs delayed due to reduction of workers working on the ship. Currently the vessel is in use.

A copy of variation and extract of minutes of the contract implementation committee and list of Assets have been availed.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

183. Lack of Ownership Documents for Police Land

Review of records provided for audit indicated that the Kenya Police Service has over three thousand (3,000) parcels of land around the country. However, only approximately four hundred and sixty-four (464) parcels had title deeds which were under the custody of the Deputy Inspector General. The title documents for other parcels of land were said to be in the custody of The National Treasury but their details were not provided for audit. This implies that only approximately 20% of the parcels of land owned by the Kenya Police Services have ownership documents while approximately 80% do not have the same. Further, the Department did not budget for land title processing cost for the year under review.

In the absence of ownership documents, the land is exposed to the risk of encroachment.

Submission by the Accounting Officer

It is true that there are no ownership documents for most of the land owned by the Kenya Police Service. However, the Kenya Police Service maintains a record of parcels of land with necessary details and is available for audit verification. The exercise of documenting land entails a lot of administrative and different costs which include valuation fees, survey fees, advertisement costs, stamp duty, registration fees, laying of beacons and fencing /securing charges.

Further the issue requires a multi-agency approach which will incorporate key stakeholders, like Director of Survey, Ministry of Lands and NPS personnel. Correspondences with the NLC and EACC on some of the cases have been provided.

The National Police Service have written to NLC to declare these parcels of land as police land.

The Kenya Police Service, factored this activity in the 2023/2024 budgets proposal but was dropped by the National Treasury because it was treated as a new development project. After follow up with National Treasury over the 2024/2025 Financial Year budget, the National Treasury dropped the processing of titles as a new development project and classified it as recurrent expenditure. The Kenya Police Service has included this activity in the 2024/2025 financial year recurrent budget.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation

The Committee recommends that the Auditor General confirms status in the financial year 2024/25.

184. Defective Birth certificate Booklets

Records at Civil Registration Services indicated that there were birth certificate booklets received from the Government Printer (GP) that were defective since they were double perforated and could easily tear. Further, the register for birth certificate booklets indicated that these booklets were returned to the Government Printer, however there was no records to confirm that the certificates were indeed returned and replaced.

The defective certificates may be irregularly issued to unsuspecting members of the public and therefore loss of revenue.

Submission by the Accounting Officer

The defective Birth Certificate books serial No.5628001-5629000 and 5629001- 5630000 (20 booklets) were returned to the Government Press on 30th September 2021 and a replacement was done vide dispatch note No.016624 dated 18th October 2021.
Due to the security nature of the Birth Certificates the serial numbers were not repeated for replacement as well as for accountability purposes.
The twenty defective booklets were destroyed and a confirmation letter from the Government Printer availed.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

185. Delay in Separation of Electricity Metres

Following the Presidential directive on National Police Service policy framework and strategy for reorganization of the National Police Service and provision of decent housing for police officers and integration with the community in September, 2018, a policy change was made which necessitated the separation of electricity meters between the Kenya Police Service and individual police officers who are required to pay their electricity bills. In the financial years 2020/2021 and 2021/2022, the Department paid Kshs.78,000,000 and Kshs.72,000,000

respectively to the Kenya Power and Lighting Company to aid in separating electricity meters from the one common meter paid by the State Department to individual police officers. However, during the year under review, the service provider had only fitted few housing units with separate meters at West Park Estate with prepaid meters in November, 2021 and no other works have been undertaken in other police lines. Explanation on why the separation of meters had not been completed was not provided.

Further, analysis of water and electricity budgetary allocation revealed that the State Department had reduced the budget provision to cater for electricity expenditure from Kshs.722,262,837 before policy change in the financial year 2018/2019 to Kshs.267,975,300 in the FY 2021/2022.

The reduction of the budgetary allocation for utilities was implemented before the meter separation exercise was completed by the State Department of Housing and the bills for the meters that were not separated were billed to the Kenya Police Service.

This has resulted to a pending bill of Kshs.179,000,000 owed to KPLC in regard to institutional houses occupied by police officers. However, a breakdown of the institutional houses and the pending electricity bills were not provided for audit.

In the circumstances, there exists a risk of loss public resources with the delayed separation of the meters

Submission by the Accounting Officer

It is true that a policy change was made in 2018 whose ultimate goal was to provide police officers with affordable and decent residential housing and enable them to integrate with civilians in the community in their residential areas and neighborhood which necessitated the separation of electricity meters between the National Police Service and individual police officers who are required to pay their electricity bills. The policy therefore recommended providing all police officers with house allowance.
To this effect and upon request by the Inspector General of Police, KPLC provided a quotation of Kshs. 78,323,943.00 for separation of electricity metres. This prompted the payment of Kshs. 78,323,943.00 to KPLC by the State Department of Housing and Urban Development and Kshs. 72,000,000 for Kenya Prison Service.

The Kenya Power has not provided the state department with explanation as to why the exercise has not been completed.

The pending bill of Kshs. 179,000,000 for the electricity bills has since been paid as the National Police Service has continuous use of electricity all year round. The process separation of electricity meters has since kicked off in Nairobi Region and Kiganjo Police Training College. This process has started with wiring of the houses which is necessary before the electricity meters are installed. A breakdown of institutional houses occupied by the police officers has been availed to the auditors.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer liaises with KPLC and ensures completion of the project, within three (3) months of adoption of this report.

186. Lack of Adequate Storage Space for Food and Ration at the National Police Service"B" Campus Embakasi

Inspection of stores at the National Police Service "B" Campus Embakasi revealed that the stores facilities which were built approximately fifty (50) years ago were still in use and were unable to accommodate food and ration requirement for the College.

In the circumstances, the inadequate storage space could result to inadequate controls and loss of stocks.

Submission by the Accounting Officer

The General Service Unit lacks adequate storage space for Food and Ration as observed during the audit. However, the Unit has been budgeting for expansion of storage space and a modern kitchen at the NPC 'B' Campus but due to budget constraints through austerity measures, this has not materialized.

Despite the inadequate space, there are adequate internal controls which include among others sufficient stock records which are updated regularly. The perishable goods are requested on demand and in broken bulks.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer prioritizes provision of adequate space in the FY 2024/25.

187. Stations Operating Without AIE Allocations

Review of records and physical verification revealed that forty-nine (49) gazetted police stations and nine (9) Coast Guard field stations were operating without funding (AIE). The stations were meeting their recurrent expenditures through support from the mother stations.

The lack of funding may affect the ability of the stations to adequately deliver services to the public.

Submission by the Accounting Officer

It is true that 49 gazetted police stations were operating without funding (AIE) and were meeting their expenditures through support from the mother stations at the time of the audit. Request for

funds to the National Treasury has been made but due to limited fiscal space, these police stations have not been funded.

The NPS is engaging with the National Treasury to facilitate the stations with funds amounting to Kshs 60 Million.

Kenya Coast Guard services is at the formative stages and therefore the nine (9) coast guard field stations were being funded directly from the Headquarters.

Committee Observations and Findings;

The Committee noted that the submission of the Accounting Officer was unsatisfactory as the stations were operational.

Committee Recommendation;

The Committee recommends that the Accounting Officer National Police Service issues AIEs to the stations, equal to the amount they expend from the mother stations.

188. Kenya Coast Guard Service-Assets with no Ownership Documents

The assets register of the Kenya Coast Guard Service (KCGS) revealed that the Service has a total of fifty-nine (59) boats without proof of title ownership despite custody, regular use, repair and maintenance of the vessels by KCGS. In addition, some of the vessels had been transferred to KCGS from other government Agencies without ownership documents or official transfer deed documentation.

In the circumstances, effective control and use of the assets without ownership documents increases the risk of assets loss.

Submission by the Accounting Officer

The Kenya Coast Guard service is at the formative stage and operates on a Multi-Agency approach.

A total of 59 boats have been donated by various agencies like National Police Service (NPS), Immigration, Kenya Forest Services (KFS) who still retain the ownership.

Committee Observations and Findings;

The Committee noted the explanation was unsatisfactory as the ownership documents could be obtained from the donating agencies.

Committee Recommendation;

The Committee recommends that the Accounting Officer obtains certified copies of ownership documents within three (3) months of adoption of this report, and that the Auditor General verifies in subsequent audit.

REPORT ON THE REVENUE STATEMENTS

189. Long Outstanding Arrears of Revenue

As disclosed in Note 7 to the revenue statements, the statement of arrears of revenue reflects arrears of Kshs.547,823,400 at 30 June, 2022 which includes a total of Kshs.453,872,900 that has been outstanding for over three years as detailed below:

Description	**Amount (Kshs.)**
Security of Government Buildings	246,827,500
Kenya Police Service (Nairobi Area)	517,600
Certificate of Good Conduct (DCI)	206,527,800
Total	**453,872,900**

Although the matter had been raised in previous audit reports and discussed by the Public Accounts Committee, the Committee recommendations and action taken by Management were not provided.

In the circumstances, the recoverability of the long outstanding arrears of Kshs.453,872,900 owed by various Government Agencies could not be confirmed.

Submission by the Accounting Officer

It is true that the revenue statements of arrears reflects arrears of Kshs.547,823,400 at 30 June, 2022 which includes a total of Kshs.453,872,900 that has been outstanding for over three years. The Kshs. 246,827,500 is a long outstanding debt due from KRA. The National Police Service has continued to write demand letters (Ref No. SGB/QM/009/VOL.VIII/79, Ref No. SGB/KRA/20/VOL.VI/50 and NPS/APS/FIN/2/2/VOL.11/(8). KRA, VIDE letter Ref NO. KRA/CSSD/24/7/Vol.IV/128 dated 10th April 2019 acknowledged the amount owed as at that date.

However, they cited that the National Treasury was yet to fund their request to settle the debt.

In February 2021, The Deputy Inspector General, Administration Police Service wrote to the Commissioner General requesting for the settlement of the bill per the services rendered. A follow-up letter was done on 16th August 2023. The Commissioner General has not responded to date.

The Kshs. 517,600 is a long outstanding debt due from United Bank of Africa (UBA). The Kenya Police Service has continued pursuing the debt through letters to the client with no response through letters reference number C/ORG/2/6/VOL III/70.

The amount of Kshs. 206,527,800 is a debt owed by Postal Corporation of Kenya who served as an agent for DCI for issuance of police clearance certificates in Huduma Centers across the country. Correspondences of demands for settlement of the debt have been made with Postal Corporation of Kenya with no response.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer issues notice of termination of provision of security services to the owing agencies (unless paid), within three (3) months of adoption of this report.

190. Budgetary Control and Performance

The State Department had budgeted to collect revenue amounting to Kshs.18,676,624,068 in the financial year 2021/2022 as detailed in Notes 1,2,3 and 4 of the revenue statements. However, a total of Kshs.14,423,267,175 was collected resulting to an unrealized revenue of Kshs.4,253,356,893 or 29% of the budgeted amounts.

The under collection of revenue adversely affected Exchequer releases, budget execution and the overall performance of the Government programmes.

Submission by the Accounting Officer

It is true there was a total unrealised receipt of Kshs.4,253,356,893.00 against a budget of Kshs. 18,676,624,068.00 or 29% of budgeted amounts.

Description	**Final Budget (Kshs.)**	**Actual Amount Collected (Kshs.)**	**Variance (Kshs.)**	**% Unrealised**
Fees on Use of Goods/Services	306,663,415	198,953,214	107,710,201	35%
Sale of Goods and Services	18,096,966,320	14,197,040,956	3,899,925,363	22%
Other Receipts not Classified	273,003,333	18,511,903	254,491,428	93%
Receipt from Sale of Non-financial assets	-	8,761,100.00	(8,761,100.00)	0%
Total	**18,676,624,068**	**14,423,267,175**	**4,253,356,893**	**29%**

On fees for use of goods/services (Betting) –It is notable that in the 2021-2022 financial year the country was preparing for the 2022 general elections and due to uncertainties associated with electioneering period, the betting activities declined lowering the revenue collection.

Other receipts not classified - Some items like verification fees were initially classified under unclassified receipts, however in the year under review they were given distinct classification in the budget, but the figure was inadvertently not revised downwards.

On sale of goods and services (Work permit fees and other immigration fees) are combined under the ecitizen online revenue collection. As reported a total of Kshs.6,010,358,000.00 was collected against a combined budget of Kshs.8,455,998,208.00. This indicates that 71% of the two combined items was realized leaving 29% unrealized.

During the financial year 2021/2022 due to Covid Pandemic a number of countries had not fully opened up or allowed their citizens to travel to Kenya

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

192. Manual Collection of Revenue by Civil Registration Service

As reported in the previous year, inquiry from the Civil Registration Service on the revenue collection from births and deaths revealed that the Service continued to use manual system in the collection and accounting of revenue. In addition, there were no effective controls in place to mitigate against the risk associated with the manual system. For instance, data on the various categories of the certificates issued during the year was not provided for audit in order to confirm the accuracy of the reported revenue.

In the circumstances, it was not possible to confirm the effectiveness of the internal -controls system in place.

Submission by the Accounting Officer

Its true revenue collection for Birth and Death Certificate applications Countrywide is manual since the department operations are semi- automated.
In Nairobi County Registry, the department has a Civil Registration and Vital Statistics System (CRVSS) for online processing applications. This is the main system meant to automate Civil Registration operations and is linked to e-Citizen platform and hence revenue collection is automated.
The rest of Civil registries countrywide are not automated due to budgetary constraints for infrastructure and digitization of records. Further, the already existing CRVSS is slow with frequent down times hence need upgrading.
However, the management has embarked on a process of automating the department operations and is currently upgrading CRVSS for roll out.
The department has existing controls using a cash register where the revenue collected is recorded as per the type and category of certificates issued, and a reconciliation is done on a monthly basis through the National office.

Committee Observations and Findings;

The Committee noted that the submission of the Accounting Officer was unsatisfactory.

Committee Recommendation;

The Committee recommends that the Accounting Officer fully automates operations at the registration service in liaison with the state department for ICT, within six (6) months of adoption of this report.

NATIONAL COHESION AND INTEGRATION COMMISSION

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

194. Irregular Expenditure on Taskforce Allowance

During the year under review, the Commission incurred an expenditure of Kshs.2,165,000 on taskforce allowances. However, there was no specific duration of the assignment stated contrary to the guidelines in the appointment and management of taskforce allowances in the public service as provided for in the circular from the Head of Public Service Ref.MSPS.2/1A VOL.XLVIII(119) of 2 August, 2013.

In the circumstances, the Commission was in breach of the provisions of the circular and regularity of the expenditure could not be confirmed.

Submission by the Accounting Officer

The Commission notes the observation and wishes to confirm that it appoints task forces / committees vide letters that clearly stipulate the terms of reference and timelines for the exercise. However, there were omissions in two cases which the Commission undertakes to address in future assignments.

Committee Observations and Findings;

The Committee observed that the explanation was unsatisfactory.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to abide by the appropriate guidelines.

4.5 VOTE 1023: STATE DEPARTMENT FOR CORRECTIONAL SERVICES

Dr. Salome Beacco, CBS, the Principal Secretary and Accounting Officer for State Department for Correctional Services, appeared before the Committee on 6th June 2024, accompanied by the following officers:

i)	Brig (Rtd) John Kibaso Warioba	– Commissioner General of Prisons
ii)	Mr. Johson W. Njuguna	– Senior Deputy Accountant General
iii)	Mr. Walter J. Oselu	– Senior Chief Finance Officer
iv)	Mr. Nicholas Thairu	– Director of Planning
v)	Mr. Patrick Aranduh	– Director of Planning
vi)	Mr. Jackob Ogur	– Chief Inspector of Prisons
vii)	Mrs. Christine A. Obindi	– Secretary

And submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

200. Inaccuracies in the Financial Statements

The statement of receipts and payments reflects total payments of Kshs. 28,626,720,359. Review of the Integrated Financial Management System (IFMIS) payment reports processed against the payments made in bank revealed that 605 transactions amounting to Kshs. 207,096,701 were paid in bank but not captured in payment details in the IFMIS.

In the circumstances, the propriety, accuracy and completeness of the payments of Kshs. 207,096,701 could not be confirmed.

Submission by the Accounting Officer

It is true that payments amounting to Kshs. 207,096,701 relating to 605 transactions were included in the statement of receipts and payments for the year under review. These payments were paid in the month of July 2022 and appeared in the bank statements for the same month.

The 605 transactions were processed in the IFMIS system in the month of July 2022 and therefore appeared in the IFMIS payment detail for July 2022.This was attributed to an extension period provided by the National Treasury to clear the outstanding bills incurred in the financial year under review.

All payments made by the state Department are processed and paid through two automated systems i.e. IFMIS and Central Bank of Kenya (CBK) Internet banking system. The two systems are interfaced to ensure that all payments made through CBK Internet Banking have been processed through the IFMIS system.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

201. Unsupported Cash and Cash Equivalents

As disclosed in Note 9A to the financial statements, the statement of assets and liabilities reflects a balance of Kshs. 187,143,716 in respect of total cash and cash equivalents. However, the bank reconciliations and cash book presented for audit had the following inaccuracies and inconsistencies;

i) Payments amounting to Kshs.7,726,653 were made in the bank but not recorded in the cash book with some dating as far back as 9th September, 2021;
ii) The reconciliation statement for the pending bills accounts as at 30th June, 2022 reflected unpresented cheques amounting to Kshs. 55,157,766, out of which payments of Kshs. 10,801,430 related to outstanding payments from previous financial years were yet to be written back to the cash book;
iii) Unpresented cheques amounted to Kshs.29,718,182, even though the State Department makes payments through Real Time Gross Settlement System (RTGS). No explanation was given for the long outstanding payments;
iv) The bank reconciliation statement for the pending bills account reflected receipts in the bank statement not recorded in the cash book of Kshs.4,385,459 out of which receipts amounting to Kshs.2,967,744 were related to the previous financial year. It was not explained why these amounts were yet to be recorded in the cash book;
v) Further, the statement reflected payments in bank not recorded in the cash book amounting to Kshs.27,593,051 indicating that payments may have been made in bank without processing them through IFMIS;
vi) Review of cash books held at various Sub-County Treasuries revealed an amount of Kshs.2,238,451 which remained unspent as at 30 June, 2022 but was not returned to the exchequer account.

In the circumstances, the accuracy and completeness of cash and cash equivalents balance of Kshs. 187,143,716 as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

(i) Payments amounting to Kshs. 7,726,653 were made in the bank and had not been recorded in the cashbook. However, the anomaly has since been addressed and the payments recorded in the cashbook;
(ii) It is true that the reconciliation statement for the pending bills account as at 30th June ,2022 reflected payments in cash book not in bank amounting to Kshs. 55,157,756 out of which payments of kshs. 10,801,430 related to the outstanding payments from the previous financial years, and were yet to be written back to the cash book. These payments had been made to various suppliers but were returned due to various reasons which include invalid bank account details, wrong bank accounts, inactive bank details and wrong definition in the system. The cashbook has since been adjusted;
(iii)It is true that the payments in cash book not in bank amounting to Kshs. 29,718,182 was outstanding. However, Kshs. 11,035,819.40 was cleared in July 2022 as per the schedule attached while the balance of Kshs. 18,682,362.20 was returned by the bank and received back in the cashbook;
(iv)It is true that the bank reconciliation statement for the pending bills account reflected receipts in the bank statement not recorded in the cashbook amounting to Kshs. 4,385,459 out of which receipts amounting to Kshs. 2,967,744 were related to the previous financial

year. These receipts related to pending bills that could not be paid since they had various bank detail issues although the funds had already been received. The funds were therefore transferred to the pending bills account until the issues were sorted and the payments were made in the subsequent year as per the attached schedule. The adjustments have since been made in the cashbook;

(v) Payments in the bank not recorded in the cash book amounting to Kshs. 27,593,051 have so far been posted in the cash book. In addition, these payments had been processed through the IFMIS and paid in Internet Banking hence reflected in the bank statement for the period under review;

(vi) The Kshs. 2,400,500 unspent balances relate to AIE's from Trans Nzioa, Kisumu and Nakuru and others were surrendered to the exchequer account in the subsequent financial year.

Committee Observations and Findings;

The Committee observed that the reconciliations have now been done.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to keep proper accounting records, as required by sections 81 & 83 of the PFM Act 2012.

202. Understated Pending Bills

Disclosed in Note 17.1 and Annexure 1 to the financial statements are pending accounts payable amounting to Kshs. 200,444,053. Further, examination of the supporting schedules indicates that the pending accounts payable excludes balances of Kshs. 265,331,826 and Kshs. 71,251,080 owed to Kenya Revenue Authority (KRA) unpaid PAYE from September, 2014 and suppliers to various correctional facilities, respectively. Although Management had requested for funds from The National Treasury for settlement of the debts owed to KRA, The National Treasury had declined the request.

In addition, as disclosed in Note 17.2 and Annexure 4 to the financial statements, the State Department had contingent liabilities amounting to Kshs. 65,822,046 relating to twenty-eight (28) determined court cases whose liabilities have not been settled. Although there were no active appeals filed against the court's determination, Management did not provide any evidence on the measure being taken to clear these outstanding liabilities.

In the circumstances, the accuracy of the reported pending account payables balance of Kshs.200,444,053 could not be confirmed.

Submission by the Accounting Officer

It is true that the pending bills accounts payable as at 30th June 2022 amounting to Kshs. 200,444,053 excluded the following amounts; -

(i) Kshs 265,331,826 being unpaid PAYE owed to KRA
(ii) Kshs 71,251,080 being outstanding bills attributed to various correctional facilities.

It is also true that a request for funding was submitted to the National Treasury and declined.

In the Financial Year 2022/2023 the State Department prioritized payment of the outstanding PAYE for the month of September 2014 which was paid on 22nd August 2022. The State Department subsequently paid the principal amount of Kshs. 126,983,027 and written to KRA for waiver of the penalties and interest amounting to Kshs 138,348,799 as per ref. letter SDC/SEC/ORG/10/17/VOLII/ (56) dated 8th February 2023.

It's true that an amount of Kshs. 71,251,080 was owed to suppliers in various correctional facilities at the end of the Financial Year under review. This was as a result of delay in disclosure of the pending bills by the stations at the time of financial reporting. However, bills totaling to Kshs 23,550,518 were settled as a first charge to the FY2022/2023 budget allocation and the balance of Kshs. 47,700,562 submitted to the National Treasury's Pending Bill verification Committee. The State Department is waiting for further direction from the National Treasury.

The details of paid and outstanding bills as per below summary;

PENDING BILLS INCURRED BY VARIOUS STATIONS				
STATION	**TOTAL PENDING BILLS KES**	**AMOUNT PAID IN 2022/2023**	**UNPAID**	**REMARKS**
Malindi Main Prison	15,266,800	10,814,450	4,452,350	The State Department has submitted the unpaid bills to the National Treasury Pending Bill verification Committee.
Shimo la Tewa Women	6,853,840	694,060	6,159,780	
Shimo la Tewa Medium	2,111,353	2,111,353	0	
Shimo la Tewa Maximum	43,617,232	6,681,040	36,936,192	
Kibos Medium Prison	3,401,855	3,249,615	152,240	
Total	**71,251,080**	**23,550,518**	**47,700,562**	

It's also true that the pending accounts payable as at 30 June 2022 amounting to Kshs. 200,444,053 excluded contingent liabilities amounting to Kshs. 65,822,046 as at 30th June 2022 relating to twenty-eight (28) determined court cases whose liabilities had not been settled. However, the budget has been provided for in the current FY 2023/24 and the bills amounting to Kshs. 46,976,168 have since been paid while processed bills totaling to Kshs. 18,845,878 are awaiting exchequer funding.

Committee Observations and Findings;

The Committee observed that;

i) **The Accounting Officer at the time was negligent in not remitting PAYE despite withholding the same from staff; and**

ii) **The resultant interest accrued had been outstanding since 2022 with appeals from the Accounting Officer to KRA for waiver not responded to.**

Committee Recommendation

The Committee reprimands the Accounting Officer and recommends that the engagement with KRA be settled within three (3) months of adoption of this report.

203. Encroachment on Prisons Land

Annex 2 to the financial statements on summary of fixed assets register reflects assets with historical total cost of Kshs. 3,114,336,538. However, the balance excludes undetermined values of parcels of land spread all over the Country whose details of ownership could not be determined. Audit inspection conducted in July, 2022 revealed various parcels belonging to five sampled correctional facilities of which four measured 2,483.4601 acres while one had unknown value, currently occupied by informal settlers such as people, churches and other Government institutions who continue to use such land for residential and commercial purposes.

Further, Management did not provide a report prepared by the Inter-Ministerial Committee on Narok Prison Land (16.1881 acres) pursuant to the Attorney General advice to the Commissioner General of Prison on informal settlers of 7 March, 2022 and evidence of the action taken so far as to evict the illegal occupants in compliance with Government directives among them the PAC directive issued on 28 May, 2022.

In the circumstances, the completeness, ownership and security of the assets of Kshs. 3,114,336,538 could not be confirmed.

Submission by the Accounting Officer

It is true that the historical cost of assets amounting to Kshs. 3,114,336,538 excludes undetermined values of parcels of land spread all over the country as at 30th June, 2022.

The Kenya Prisons Service has 117 parcels of land spread throughout the Country out of which 15 title deeds have been obtained. (Kitengela Prison, Naivasha Prison, Kamiti Prison, Murang'a Prison, Nyahururu Prison, Busia Prison, Kilgoris Prison, Maralal Prison, Ruiru Prison, Bura farm Prison, Makueni Prison, Ngeria Prison, Woodley Staff Quarters, Lumumba Farm Eldoret and Kibos).

(i) Total Prison land is 9,187.51Ha (22,693.15 acres)
(ii) Total encroached land is 1,717.00Ha (4,242.707acres)

Some of the Kenya Prison Service parcels of land were irregularly acquired in the 1990s by informal settlers. There are 36 active court cases at the various Environment and Land Courts. The court cases have however taken long to be concluded occasioning delay in surveying and titling.

Sampled parcels of land illegally acquired is shown below;

Correctional facility/GK.Prison	Amount of land alienated(acres)	Remarks
Kitale	2321.09	Occupied by unknown number of persons.

Shimo la Tewa Medium	141.24	Occupied by unknown occupants
Nakuru GK prison	21	Occupied by churches and Government Institutions. Recently the environment and land courts Nakuru made a ruling in favour of prison on 15 march,2024.
Narok	16.1881	Alienated and allocated by the County Council to private individuals.
Kitui G.K Prison	4.942	Occupied by a church and private individuals

Narok Prison Land

The original acreage of Narok Prison was 64.8 acres out of which twenty (20) has been encroached by private developers. At the moment, the County Government of Narok is regularizing Part Development Plan of 2016 that does not reflect the original acreage of Narok prison land. An objection filed against the same led to formulation of an Inter-Ministerial Committee to establish the original status of the land and the validity of the allotment of part of the land to private developers. The Inter-Ministerial Committee has not finalised their report.

In addition, there are two active court cases at the Narok Environment and Land Court (ELC 036 OF 2022 and ELC 97 OF 2023) where the private developers have sued the Commissioner General of Prisons, the Attorney General and the Officer-in-Charge Narok Prison for preventing them from putting up structures on the prison land.

Kitale GK Prison

It is true as indicated by Audit Inspection Report that the land occupied by both Kitale Main and Kitale Medium Prisons was occupied by illegal settlers thirty years ago. The Gazette Notice No. 359 of 1943 established Kitale Main Prison in L.R Plot No. 2197/2/2 measuring approximately 3,000 Acres and Legal notice 721 of 1961 Established Kitale Medium Prison approximately 159.01 Acres.

The ownership of the two parcels of land mentioned above has been the subject of court litigations between Kenya Prison Service (KPS) and other parties (encroachers). To date approximately 2,321.09 Acres of Kitale Main Prison Farm LR No. KAPKOI/MABONDE BLOCK 1/EX-PRISON-(LR2197/2/2) has been illegally acquired by private individuals.

a) Though the Parliamentary Accounts Committee directed the Commissioner General of Prisons to urgently evict the persons who are in occupation of Kitale Prison land and secure the same through a permanent fence, the service was deterred from taking any action due to the pending court cases.
b) It is true encroachment and alienation of Kitale Main and Kitale Medium prison land has led to continued decrease in size of Prisons land. Additionally, the Kenya Prisons may be limited in achieving its corrective mandate effectively.
c) Kenya Prisons Service has partnered with National Land Commission and Ethics and Anti -Corruption Commission to recover encroached parcels of land.

d) The State Department for correctional Services has set set aside Kshs. 4,188,600 for survey and titling of the various parcels of land in the FY 2024-2025.

The State Department has initiated the process of documenting, surveying and acquiring titles for the remaining parcels through an Inter-Ministerial Committee involving the Ministry of Land & Physical Planning and the National Land Commission.

Committee Observations and Findings;

The Committee observed that the prisons service had failed to secure its total land acreage.

Committee Recommendation;

The Committee recommends that;

i) **The Accounting Officer ensures the inter-ministerial committee on the Narok prison land submits its report with an action plan within three (3) months of adoption of this report;**
ii) **The Accounting Officer liases with the National Land Commission and obtains ownership documents for all gazetted prison land within six (6) months of adoption of this report;**
iii) **The Accounting Officer liaises with the Chief Land Valuer and establishes value of total land acreage owned by the department;**
iv) **The DCI immediately investigates circumstances under which encroachers have settled on prison land and ensures reposession and prosecution, within six (6) months of adoption of this report.**

204. Poor Maintenance of Motor Vehicles, Plant, Machinery and Equipment in Prisons

Review of motor vehicle, plant, machinery and equipment record in respect of repairs and maintenance provided for audit revealed that the Service has forty-one (41) departmental owned vehicles which are recorded as economical to repair. However, the vehicles were grounded due to lack of funds to purchase spare parts, carry out repairs or pay dealers were involved in major repairs. During the financial year under review, an annual procurement plan was prepared detailing various spare parts required for repairs of serviceable grounded vehicles and which are economical to repair at an estimated cost of Kshs. 13,975,784.

However, the State Department only funded the repairs totaling to Kshs. 6,156,656 during the year representing 44% of the estimated total cost. Further, several leased ambulance vehicles deployed to various stations in Kisii, Eldoret and Bungoma were grounded due to various mechanical problems.

In the circumstances, the inefficiencies in motor repair and maintenance may affect service delivery to both the inmates and other Government agencies that depend on the Prisons Service.

Submission by the Accounting Officer

It is true that the audit inspection report carried out in the month of July and August, 2022 indicated that the Service has got forty-one (41) owned vehicles which were grounded and economical to repair. It is also true that the Prisons' Central workshop in its FY 2021/2022 annual procurement plan detailed the various spare parts required to repair the serviceable grounded vehicles which were economical to repair with a total estimated cost of Kshs. 13,975,784.

However, the State Department utilized Kshs. 6,156,656 to procure spare parts for operational vehicles. Kshs. 5,339,773 was used to settle pending bills for FY 2020-2021 and the balance of Kshs. 2,479,355 was paid to Toyota Kenya and DT Dobie for normal routine maintenance and repair. The budget received was inadequate hence the State Department had to clear the pending bills as first charge as per the regulations. However, in FY 2022/2023 the state department received an additional budget of Kshs. 24,981,850 for maintenance of motor vehicle. It is worth noting that all the 41 vehicles have since been repaired.

It is also true that during the time of audit several vehicles had been leased and deployed to various stations and were grounded due to various mechanical problems. This is because Urysia Kenya Limited which is the leasing company for the Ambulances, Peugeot Boxer had delayed maintenance and repair of these vehicles which compromised the service response to emergency health constraints.

The State Department has written to the National Treasury raising concerns on delay by the leasing company to repair these ambulances. Nevertheless, Urysia Kenya Limited repaired the ambulances and finally returned them to their respective stations.

Further, Kenya Prisons Service surrendered GKB 207M for Bungoma Prison to the leasing company alongside other nine (9) ambulances on replacement under GOK motor vehicle leasing programme vide our office letter REF: PRIS3/27/VOL.I/74 dated 17th November, 2021.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The National Treasury henceforth ensures lessors abide by terms of contract.

205. Poor Living Conditions at Various Prisons

205.1 Poor Maintenance of Buildings at Nairobi Medium Security and Nairobi Remand Prison

Audit inspection conducted in September, 2022 revealed that Nairobi Medium Security Prison has inadequate office accommodation for staff. The Prison has three (3) office rooms utilized by the Officer in Charge (OIC), general office and accounts office. It was also observed that the floors to the prisoners' wards are dilapidated with rough floors,

potholes, dirty marks on the walls with some sections of the roof leaking when it rains. Further, the prison did not have adequate budget for repairs and maintenance of building, purchase of generator and installation of CCTV cameras for monitoring activities within the prisons.

In the circumstances, lack of adequate budget provision may lead to further deterioration of prisons assets and inefficient service delivery.

Submission by the Accounting Officer

It is true that audit and inspection conducted in September 2022 revealed that Nairobi medium security prison has inadequate office accommodation for the staff.

The station has three (3) office rooms which are utilized by the Officer in charge, General office and Accounts office. It is also true that floors to the prisoner's wards are dilapidated with rough floor, potholes, dirty marks on the wall with some section of the roof leaking when it rains and the station lacks standby generator and CCTV.

In order to prioritize and address the maintenance challenges at Nairobi Medium the station submitted BQS for prioritization and allocation of funds within the MTEF period 2024/2025 to 2026/2027.

However, it is important to note that most of the prisons facilities across the country have old and dilapidated infrastructure having been built either during the colonial era or early in the post-independence in which Nairobi Medium forms part of the stations that require urgent refurbishment. This has not been effectively achieved by the Service since its budget allocation on maintenance of buildings is insufficient to accommodate all the needy stations (In order to prioritize and address the noted maintenance challenges at Nairobi medium and other stations with similar or worse needs. The State Department for Correctional services has factored Kshs. 502,044,636 for Maintenance of buildings in FY 2025/2026 budget for maintenance of buildings).

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer makes adequate annual proposals for renovation and maintenance of prison facilities.

205.2. Poor Sanitation and Lack of Water at Migori Main Prison

Review of records provided for audit and an audit verification carried out in October, 2022 revealed that, Migori GK Prison is holding approximately 700 inmates and 230 members of staff. The main source of water for the facility is a seasonal unprotected well situated within the Institution and roof catchment with storage reservoirs. Reports of 17 June, 2022 and of 2 March, 2022 by Public Health and NEMA Inspectors respectively indicates that the available source of water for drinking and general use was non-compliant with national standards for safety. Further, the prison does not have in place appropriate safeguards for waste water management.

In the circumstances, the inmates, staff and the community may be exposed to contagious and other water borne diseases.

Submission by the Accounting Officer

It is true that records provided for audit and an audit verification carried out in October, 2022 revealed that, Migori GK Prison is holding approximately 700 inmates and 230 members of staff. It is also true that the main source of water for the facility is a seasonal well situated within the Institution and roof catchment with storage reservoirs.

In order to address the noted challenges, the station was allocated a total of Kshs. 4,509,600 for acquisition of water treatment chemicals and payment of water service providers in FY 2022/2023 and FY 2023/2024. In addition, during FY 2022/2023 the Service constructed a septic tank, a water tower and installed three 10,000ltrs water tanks to enhance water storage and waste water

management. The project is complete and operational. Following the installation, the water provided to the prisons service is adequate and safe for consumption.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

206. Stalled Projects

Physical inspection at various sampled correctional facilities revealed abandoned projects at different levels of completion in nine (9) correctional facilities with contracts sum and payments to date of Kshs. 116,655,736 and Kshs. 21,889,077 respectively.

In the circumstances, and with lack of adequate budgetary allocation, it was not possible to confirm that these projects will be completed in time to deliver the intended services and value for money.

Submission by the Accounting Officer

It's true that there are stalled projects at different levels of completion in nine correctional facilities with contract and payment to date of Ksh. 116,655,546.00 and 21,889,077 respectively due to inadequate budgetary allocation and frequent budget cuts.

The State Department has continuously budgeted for the projects with a view of completing them to offer the intended service and value for money. However, the projects' implementation has always been affected by supplementary budget cuts. The State Department has prioritized the completion of the mentioned project in 2024/2025 FY budget. The current status of the projects is as follows;

S/NO.	Project name	Contract sum	Cumulative expenditure	Completion status	Remarks
1.	1023102914 Construction of two bedroomed units staff houses Shimo medium Prison	7,071,700	5,000,000	70.70%	Prioritized for funding in FY 2024/2025
2.	1023100703 Construction of Classrooms Shimo Medium	2,000,000	1,000,000.00	50.00%	
3.	1023100125 Construction of Perimeter wall Shimo Medium Prison	18,030,000	14,819,893.00	82.20%	

4.	1023101223 Completion of main gate and gate lodge at Shimo Medium prison	5,637,316	1,500,000	26.61%
5.	1023100134 Construction of Perimeter Wall at Kajiado Prison	3,822,500	2,000,000	52.32%
6.	1023100599 Completion of Staff House at Kajiado Prison	2,000,000	885,000	44.25%
7.	1023102814 Construction of prisoner's multipurpose hall at Kibos Maximum Prison	6,100,000	2,500,000	40.98%
8.	1023102820 Overhaul of sewerage system Kisumu Main	34,999,005	11,876,521	33.93%
9.	1023102937 Construction of Administration Thika women Prison	8,500,000	3,000,000	35.29%
10.	1023100264 Construction of New Prison at Thika Women (Completion of storied blocks of prisoners' wards)	23,111,093	7,000,000	30.29%
11.	1023100197 Construction of administration block at Siaya	3,164,977	1,000,000	31.60%

	prison (siaya women prison)				
12.	Construction of 10 units houses at Siaya prison (Siaya women prison)	2,219,055	1,500,000.00	67.60%	

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation

The Committee recommends that;

i) **The Accounting Officer submits a status report on all the projects within three (3) months of adoption of this report;**
ii) **The Accounting Officer to liaise with State Department for Housing to provide for institutional housing for prisons officers under the affordable housing programme.**

207. Poor Construction of a Perimeter Wall at Busia G.K. Prison

During the year under review, the State Department entered into a contract for the construction of a perimeter wall at Busia G.K Prison at a contract sum of Kshs. 20,549,887. The contractor handed over the Project to the State Department without completing the following items in the contract:

(i) Counterfort walls had not been done to provide lateral support.
(ii) Inaccuracies in the original Bill of Quantities, where ground beams and ring beams were not captured. The said items had a big implication on the overall cost of the Project. The Project implementation team agreed to exchange the plaster work with ground beams and ring beams.

Further, the following deficiencies were noted in the project implementation phase:

(i) The Bill of Quantities provided for 300mm wide *75mm thick precast concrete coping bended which was not done.
(ii) The Bill of Quantities further provided for application of three coats of crown permacote paint on rendered surface externally which was not done.
(iii)The Bill of Quantities provided for two steel double gates of 5000mm x 2400mm high fabricated on 50 *5000mm R.H.S in framing and box 25mm R.H.S in fills at 100mm centers and with 100*100mm R.H.S side posts coat into mass which was not done.

No approved variations to the contract were provided for audit. Further, the Management did not explain the circumstances under which the above contracted works were omitted at the execution stage.

In the circumstances, the value for money for the expenditure of Kshs. 20,549,887incurred could not be confirmed.

Submission by the Accounting Officer

It is true the State Department for Correctional Services entered into contract with AMSTARD Engineering Company limited on 7th February 2022 for the construction of a perimeter wall at Busia GK Prison at a contract sum of Kshs. 20,549,887.20. Site handing over meeting was held on 4th March 2022 for a contract period of 24 weeks.

The noted omissions were cited by the project manager during the site handing over meeting held on 4th March, 2022. In order to address the structural integrity of the wall the Project Manager gave site instruction which had adverse cost implication on the overall project implementation.

The Project Manager noted that the site was swampy and needed a strong foundation to accommodate the weight of the wall. The site instruction included omission of;

(i) 300mm wide *75mm thick precast concrete coping bended,
(ii) Application of three coats of crown permacote paint on rendered surface externally,
(iii)Two steel double gates of 5000mm x 2400mm high fabricated on 50 *5000mm R.H.S in framing and box 25mm R.H.S in fills at 100mm centers and with 100*100mm R.H.S side posts coat into mass.

The omitted works were to cater for additional works required to reinforce the wall.

These additional works included;

(i) Hardcore filing 300mm (average) hand packed broken stones hardcore,
(ii) Class 20/20 concrete institution reinforced concrete class 20/20 in ground and ring,
(iii)Steel reinforcement deformed high tensile bar to BS 4461(different rates) and
(iv)Re-routing solid waste pipes and backfill to side of substructures.

The value of omitted and additional works was Kshs. 4,049,600.

The project manager (Western Regional Works office) documented and quantified all the variations and instructed the contractor on the envisaged changes with a view to ensuring that the intended objective of the project is achieved at the right cost without compromising the quality and workmanship.

Committee Observations and Findings;

The Committee observed that;

i) **The variations were not approved by the Accounting Officer and should have been foreseen at design stage as per section 139 of the PPADA 2015;**
ii) **The omitted works were curiously equal to the varied works, despite technical differences.**

Committee Recommendation

The Committee reprimands the Accounting Officer and recommends administrative action on the project manager.

208. Failure to Produce Offenders in Courts on Time

During the year under review, the Homa Bay Prison Management failed, on several occasions to produce offenders to various courts within Homa Bay County as and when required to do so. This was due to the existing official transport challenges whereby the Prison had one vehicle only to serve seven courts.

In the circumstances, failure to produce offenders in court frustrates the fair administration of justice and denies the offenders their constitutional rights to defend themselves in court.

Submission by the Accounting Officer

It is true that Homabay Main Prison on several occasions failed to produce offenders to various courts within Homabay county as and when required due to shortage of vehicles. The Station has only one vehicle, GK B273U Toyota land cruiser, against seven courts which are geographically far apart. This makes it difficult to timely produce remandees to courts as and when required.

It is worth noting that the State Department has experienced serious transport challenges due to acute shortage of vehicles meant to facilitate the transportation of the inmates to various courts, hospitals and security transfers across the country. This has been occasioned by the drastic expansion of the Court Stations across the country and the efficiency of the National Police Service in responding to various criminal activities that has led to the influx of inmates in the Prisons.

However, while the other institutions within the criminal justice has quite expanded and undergone infrastructural changes, the Service has remained static with few, old and unreliable motor vehicles that cannot support the timely production of the inmates to courts, thus the resultant delay or sometimes failure to promptly produce the offenders to courts as required. Homa-Bay GK prison has been utilizing county security to compliment transport services as a stop gap measure to ensure the inmates are timely produced in court awaiting additional vehicles under lease program by the National Treasury.

The State Department has engaged the National Treasury for allocation of additional leased vehicles that can match the various station needs since most of them serve at least seven courts which are geographically far apart with one or no vehicles.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation

The Committee recommends that the National Treasury avails adequate vehicles to the department under the vehicle leasing programme.

4.6 VOTE 1032: STATE DEPARTMENT FOR DEVOLUTION

Ms. Teresia M. Malokwe, the Principal Secretary and Accounting Officer for State Department for Devolution, appeared before the Committee on 22nd August 2024, accompanied by the following officers:

i) Ms. Mary Mwiti	–	CEO, Council of Governors
ii) Mr. Stanely Mwaura	–	Head of Accounting Unit
iii) Mr. Nyambati Kennedy	–	D/CBS
iv) Ms. Emmy Mabwanga	–	IDEAS - DEV
v) Ms. Joyce Chepkoech	–	Head of Finance
vi) Mr. Paul Masinde	–	Chief Finance Officer
vii) Mr. Alfonso Munyali	–	Ag. Secretary Devolution
viii) Mr. Kagali lumasei	–	Deputy Chief Finance Officer
ix) Mr. Nicodemus Mbwika	–	Principal Planner

And submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

209. Unaccounted for District Suspense

The Statement of assets and liabilities and as disclosed in Note 11 to the Financial Statements reflect accounts receivables outstanding imprest and clearance accounts balance of Kshs.85,782,292.00 relating to district suspense. However, no documents in form of returns were provided for audit, to explain the requisition process, evidence of receipt by the respective recipients and the usage.

In the circumstances, the accuracy, validity and completeness of the District suspense balance of Kshs. 85,782,292.00 could not be confirmed.

Submission by the Accounting Officer

The State Department for Devolution had an accumulated amount of Kshs.85,782,292 in the Suspense account. The amount represented Authority to Incur Expenditure (AIEs) issued to various Sub Counties and State Departments for distribution of relief food across the Country.

However, the affected State Departments and Sub Counties had not submitted expenditure returns during the time of audit. The State Department for Devolution in Partnership with the State Department for Interior, State Department for Arid and Semi Arid Lands, State Department for Social Protection and The National Treasury has managed to get all the expenditure returns and distribution schedule of relief food. We have written to the State Department for Asals and Regional Development to provide us with a list of beneficiaries of the relief food since the Directorate of Special Programme is no longer with us.

Committee Observations and Findings;

The Committee observed that the submission of the Accounting Officer was unsatisfactory.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the Accounting officer liaises with the State Department for Asals and Regional Development and avails the list of beneficiaries, within three (3) months of adoption of this report.

210. Non-payment of Pending Bills

Note 18.1 and 18.2 to the Financial Statements reflects pending bills totaling Kshs. 1,373,260,296 comprising of pending accounts payables of Kshs.1,034,991,583 and other pending payables of Kshs.338,268,713 respectively as detailed in Annex1 and 2. Management had not explained why the bills were not settled during the year when they occurred. The State Department is at risk of incurring significant interest costs and penalties with their continued delay in payment. Further, failure to settle bills during the year in which they relate to distorts the financial statements and adversely affects the budgetary provisions for the subsequent year as they form a first charge.

In the circumstances, completeness and accuracy of the pending accounts payables amounting to Kshs.1,373,260,296 could not be confirmed.

Submission by the Accounting Officer

During the financial year under consideration the total amount of pending bills was Kshs.1,373,260,296 as captured in Financial Statement. The State Department for Devolution was unable to settle the pending bills because the budget allocation for the Department was rationalized and some exchequer requests were not honoured.

However, in September, 2023 the Cabinet Secretary for National Treasury vide Kenya Gazettee No.13355 appointed Pending Bills Verification Committee to scrutinize pending bills for National Government entities. We undertook a verification exercise to establish the final figure for the pending bills and it was established that the final figure for pending bill was Kshs.2,824,133,581. The variance between the figure for pending bills reported during audit and the final figure submitted to the Pending Bill verification Committee was due to penalties on suspended construction at Kisumu Convention which has attached fine and penalties for delayed works, court award and other pending not captured during audit.

The analysis of variance is analyzed as follows:

Details	**Amount (Kshs).**
Pending bills reported by the auditor	1,373,260,296.00
Court award Spencon Ltd	219,276,542.00
Fine and penalties on stalled construction	1,134,100,586.00
M/S. China Jiangix	14,198,154.56
M/S. China Jiangix	6,905,841.65
Other pending bills	76,387,072.8

Pending bills Report to Pending Bills Verification Committee	2,824,133,492.00

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the matter awaits verification by the said pending bills verification committee.

211. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on a comparable basis of Kshs.4,802,396,610 and Kshs. 4,336,273,421 respectively resulting to an underfunding of Kshs.466,123,189 or 10% of the approved budget. The underfunding affected the planned activities and programmes of the State Department which may have impacted negatively on effective service delivery to the public.

Submission by the Accounting Officer

The State Department's budget was revised and therefore necessitated rationalization of our work plan.

Committee Observations and Findings;

The Committee noted that the submission of the Accounting Officer was unsatisfactory as pending bills submitted to the Auditor General, the pending bills verification committee and the Committee, were inconsistent.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends submission of a reconciled pending bills report within three (3) months of adoption of this report.

212. Unresolved Prior Year Matters

Various prior year audit issues remained unresolved as at 30 June, 2022. Management had not provided reasons for the delay in resolving prior year audit issues.

Submission by the Accounting Officer

The Accounting Officer appeared before The Public Accounts Committee on 23rd May, 2023. The Committee made several recommendations whose status of implementation has been availed.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

213. Delay in Completion of the Proposed AFRICITIES Convention Centre

The statement of receipts and payments and as disclosed in Note 9 to the Financial Statements reflect acquisition of assets expenditure of Kshs.344,015,400. The expenditure includes an amount of Kshs.280,000,000 for construction of buildings which further includes Kshs.250,000,000 which was paid to a contractor being part-payment for construction of proposed AFRICITIES convention Centre in Kisumu County. The contract was awarded at a contract 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 the new completion date of 16 December, 2022. However, physical verification carried out in the month of November, 2022 revealed that the Project was only fifty-five (55) percent complete. Although Management attributed the delay to lack of funding, the Project was behind schedule.

In the circumstances, the regularity and value for money realized from the expenditure of Kshs.250,000,000 incurred on the delayed Project could not be confirmed.

Submission by the Accounting Officer

The State Department received a Cabinet approval to undertake the construction of Kisumu convention Centre for use during the Africities Conference. The contract for the construction was awarded to M/S China Janggix for a period of 38 weeks at a total cost of Kshs.890,829,345. Further, the State Department requested for a budget from the National Treasury to finance the project but was only allocated Kshs.250,000,000 which was not sufficient to complete the project.

The project has since stalled due to lack of funding in the subsequent financial the years and the State Department has made several requests to the National Treasury for funding without success.

Committee Observations and Findings;

The Committee noted that the amounts spent thus far were at risk of waste.

Committee Recommendation;

The Committee recommends that the Cabinet Secretary National Treasury avails funds to complete the project within the next two (2) financial years.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

214. Lack of Audit Committee and Public Finance Management Committee

The State Department did not have an independent Audit Committee and Public Finance Management Committee as required by Regulations 174(1) and 18(1) of the Public Finance Management (National Government) Regulations, 2015 respectively. An Audit Committee forms a key component in the governance process by providing an independent expert assessment of the organization's activities, quality of the risk

management, financial reporting and management to the top management, while the Public Finance Management Standing Committee provides strategic guidance to the entity on public finance management matters.

In the circumstance, the effectiveness of the internal controls, risk management and overall governance for the State Department could not be confirmed.

Submission by the Accounting Officer

The State Department for Devolution did not have an active Audit Committee during the time of Audit since the term of the previous Audit Committee had come to an end. However, Gazette Notice No. 40 dated 15th April, 2016 (page 1406 paragraph 4.2.1 guides that Audit Committees can only be appointed at a Ministerial level. The State Department is under the Executive office of the Deputy President and the Accounting Officer cannot appoint an Audit Committee for the Department. The State Department is therefore awaiting the establishment of a new Audit Committee under the Executive of the Deputy President which is currently in the process.

Further, the Accounting officer vide letter Ref. No. MDP/DD/FIN 10/VOL.I(29) dated 20th February, 2024 appointed members of Public Finance Standing Committee and is currently in place and active.

Committee Observations and Findings;

The Committee noted that the submission of the Accounting Officer was unsatisfactory.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the Accounting Officer ensures an audit and Public Finance Management committee is in place within one (1) month of adoption of this report.

215. Lack of Approved Information Technology Security Policy

The State Department was using did not have an approved Information Communication Technology (ICT) Policy for governance and management of its ICT resources. In addition, there is no ICT steering committee in place to assist in the development of ICT policy framework to enable the Department to realize long-term ICT strategic goals. Lack of an approved ICT Policy may result in an unclear direction regarding maintenance of information security across the organization and safeguarding the Department's ICT assets. Further, without a sound and approved framework, users do not have any rules and procedures to follow in order to minimize risk of errors, fraud and the loss of data confidentiality, integrity and availability.

In the circumstances, the strength of governance systems around the Information Communication Technology could not be confirmed.

Submission by the Accounting Officer

During the year under review, the State Department was using the National Information Communications and technology (ICT) Policy from Ministry of Information Communication and Technology. The State Department for Devolution has since developed a draft ICT Policy. The draft Policy is awaiting Stakeholders validation to be operationalized. Further the State Department has Department has also constituted and operationalized an ICT steering committee to spearhead ICT agenda wholesomely.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures adoption of the ICT policy within three (3) months of adoption of this report.

DONOR FUNDED PROJECTS

INSTRUMENTS FOR DEVOLUTION ADVICE AND SUPPORT (IDEAS) CREDIT NO.KE/FED/024-230

REPORT ON THE FINANCIAL STATEMENTS

216. Double Payment for Supplies

The statement of receipts and payments reflects transfers to other Government entities expenditure of Kshs.100,438,873 as disclosed in Note 4 to the financial statements which includes an amount of Kshs.31,676,176 transferred to Kisumu County. However, review of contract documents revealed the following anomalies:

i. The contract for the supply and delivery of tractor, trailer and 3-Disc plough was awarded to a Company on 5 May, 2021. Payment were made vide PV NO.5060 dated 23 February, 2022 of Kshs.4,548,462 and PV No.5060 dated 13 October, 2021 of Kshs.5,276,216, resulting to double payments for the same supply.
ii. In addition, a proforma invoice from the Company attached to the payment voucher was for Kshs.5,276,210 and dated 20 September, 2021. The bank statement of the project confirmed that two payments were made to the Company on 14th February, 2022 of Kshs.4,548,462 for Local Purchase Order (LPO) Number 10778 and on 13 April, 2022 of Kshs.4,548,462 for the same LPO Number 10778.
iii. Further, another payment of Kshs.510,703 was made to the Company on 21 June, 2022 being refund of 16% VAT deducted. However, the supporting documents to confirm that withholding tax was deducted and remitted to the relevant authority were not provided for audit.
iv. Audit verification of the assets revealed that, a trailer was missing and no explanation was provided for the anomaly.

In the circumstances the propriety, accuracy and completeness of the expenditure of Kshs.10, 335,381 incurred could not be confirmed.

Submission by the Accounting Officer

The County Government of Kisumu received conditional grants to implement a LED Grant Project "Diary Enterprise Development". Implementation and disbursement of the grants was per the provisions of the IDEAS Financing Agreement (FA) and the County Grant Contract signed between State Department for Devolution, European Union (EU) and County Government of Kisumu.

The County was fully responsible for the grants received as per Article 1 of the General and Administrative provisions of the Contract and this included budget execution, procurement of works and services, expenditure control and reporting on overall Contract Actions to the Contracting Authority (SDD) and European Union.

The issues raised by the audit exercise were noted by the Contracting Authority and communicated to the County (leadership and project implementation unit) during the field monitoring and technical support meetings by the IDEAS Technical Team and LED Advisors. Since the project implementation period was coming to an end on 24th February, 2022, SDD and EU commissioned a final Expenditure Verification of the project for the period 25th September 2018 to 31st March 2021 and 1st April 2021 to 24th March 2022 in accord with Article 5.2 of the Special Conditions and Article 15.7 of Annex II General Conditions.

The expenditure verification revealed a number of errors related to missing and inadequate documentation, expenditure outside the contractual period and expenditure outside the approved budget. Based on the findings of the EV report, the EU has initiated a recovery of the Ineligible expenses as per the provisions of Article 16 of the FA and Article 18 of Annex II to the Grant Contract. The recovery amount is from the received first and second pre-financing totaling to KES 89,981,777.

Committee Observations and Findings;

The Committee noted the impropriety admitted by the Accounting Officer.

Committee Recommendation;

The Committee recommends that;

i. **The Accounting Officer ensures full recovery of double payments and surcharge/ recoveries be instituted on those liable, subject to Article 226(5) of the Constitution;**
ii. **The EACC conducts investigations on the payments and takes necessary action on any impropriety;**

217. Unapproved Expenditure on Transfers to Other Government Entities

The statement of receipts and payments reflects transfers to other Government entities of Kshs.100,438,873 as disclosed in Note 4 to the financial statements. However, review of the approved budget revealed Kshs. Nil amount for transfers to other Government entities resulting to an over expenditure of Kshs.100,438,873. No documents were provided for audit to explain the reallocation of funds. Failure to specify the expenditure in the budget as estimates is a contravention of the provision of Section 72(6) of the Public Financial Management (National Government) Regulations, 2015 which states that National Government shall ensure grants are factored in the budgets and counterpart funds appropriated accordingly.

In the circumstances, the propriety and approval of the expenditure of Kshs.100,438,873 transferred to other Government entities could not be confirmed.

Submission by the Accounting Officer

During the Period under consideration, the Project had a total budget of Kshs. 230,730,934 under expenditure item other Capital Grants and Transfers (2640503). Though the budget was domiciled in the State Department for Devolution as Appropriation in Aid, the actual transfer to the beneficiary County was done by the European Union directly. The European Union in the period 2021/2022 transferred Ksh.100, 438,873 to the beneficiary Counties. However, before the communication was made to the State Department for Devolution the budget was rationalized and the whole amount of Kshs.230,730,934 was removed from the budget of the State Department.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

218. Delay in Completion of Projects

Review of documents revealed that the European Union (EU) had transferred a cumulative total of Kshs.1, 251,492,628 to fifteen (15) Counties in two (2) tranches for the implementation of seventeen (17) Local Economic Development (LED) Projects as at 30 June, 2022. However, out of the 17 Projects, four (4) Projects worth Kshs.440,000,000 had not been completed and commissioned while seven (7) Projects valued at Kshs.660,000,000 did not receive the second tranche due to failure to adhere to the conditions of the Financing Agreement which included poor workmanship, utilization of funds in ineligible expenditure and misuse of the funds.

In the circumstances, the regularity and value for money realized from the expenditure of Kshs.1,100,000,000 incurred on the eleven (11) delayed Projects could not be confirmed.

Submission by the Accounting Officer

On incomplete projects amounting to Ksh.440,000,000.00, disbursements and transfer of the EU conditional grants to the 15 beneficiary counties (Baringo, Kisumu, Kisii, Kwale, Marsabit, Migori, Makueni, Nyandarua, Wajir, Tana River, West Pokot, Uasin Gishu, Laikipia, Samburu and Taita Taveta) were effected in two pre-financing and one final payment during the implementation period between the years 2018 – 2023. This transfers were made after the county complying with the conditions set for accessing the grants. Implementation of the County LED Projects was a responsibility of the beneficiary counties as provided in the Article 1 of the General and Administrative Provisions of the respective Contracts.

At the time of the audit, most of the County projects were still ongoing and in their last Phase of the implementation period. In line with the FA Annex II (1.2), SDD through the technical Assistance Team provided technical support towards the implementation of the projects. This included coordination and management of the grant in line with the guidelines for the management of EU grants and provision of technical support in financial management, procurement and product processing and standards.

Since the implementation period for ALL the LED projects was coming to an end between January 2021 and 24th September 2022, an Expenditure Verification provided in respective Contracts - Article 5.2 of the Special Conditions and Article 15.7 of Annex II General Conditions were carried out. Findings of the EV informed the payments of all pending payments to the counties.

Towards the end of the contracts, the PS issued an advisory on the need to ensure the completion of the projects within the contract period and also guided the counties on allocating budget provision for the works that would have not been completed by the end of the project period.

On delayed disbursements of Ksh.660,000,000.00, Article 4 of the Special conditions and article 15 of the respective Grant Contract Agreement provided that before a subsequent grant payment could be given an expenditure verification by external audit firm commissioned by the European Union (EU) would be conducted to inform further disbursements. During the time of audit exercise

most of the projects were still ongoing and had not received their subsequent and final payments. However, at the end of the project implementation period, most of the EV had been concluded and a total of Kshs.1,385,522,777 disbursed to the project counties.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

219. Failure to Transfer Grants to Specific Project Account in Wajir County

The statement of receipts and payments reflects transfers to other government entities expenditure of Kshs.100,438,873 as disclosed in Note 4 to the financial statements. The expenditure includes transfers to Wajir County of Kshs.19,908,166 which further includes an amount of Kshs.784,381 allocated for a milk project. However, review of supporting documents provided revealed that the money was not transferred to the specific project account. This was contrary to the provisions of Section 74(5) of Public Finance Management (County Governments) Regulations, 2015 which states that monies received for specified projects which have been paid into the County Revenue Fund, shall be released when required to the appropriate project bank account.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The State Department for Devolution received acknowledgement letter from Wajir County dated 17/3/2022 confirming receipt of grants from the European Union (EU in the County Revenue Fund account as per the requirements of the PFM Act (Section 109 (2)). This funds were later transferred to the Project Account where all expenditures were transacted from. Copy of the bank statement for the CRF and the Project Account at National Bank have been availed.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

220. Irregular Procurement of Construction of Camel Slaughter House

The statement of receipts and payments reflects transfers to other Government entities expenditure of Kshs.100, 438,873 as disclosed in Note 4 to the financial statements. The expenditure includes transfers to Wajir County of Kshs.19,908,166 which further includes the amount of Kshs.2,912,242 which was paid to a Company for the construction of a camel slaughter house including holding pen, concrete pathway and the rehabilitation of an alternative slaughter area. However, the slaughter house had a poor disposal system for by-products from slaughtered camels which might be an indication of poor workmanship. Further, purchase of construction materials were not supported with adequate relevant procurement documents such as stores register, goods received and issued vouchers, bin cards, procurement professional opinion, invoices, receipts, delivery notes, inspection and acceptance committee report and the stores ledger.

In the circumstances, the regularity and value for money realized from the expenditure of Kshs.2,912,242 incurred could not be confirmed.

Submission by the Accounting Officer

The County Government of Wajir received conditional grants to implement a LED Grant for LED Grant for "Camel Meat". Implementation and disbursement of the grants was in line with the provisions of the IDEAS Financing Agreement and the County Grant Contract signed between State Department for Devolution, European Union (EU) and County Government of Wajir.

The County Government of Wajir was fully responsible for the grants received as per Article 1 of the "General and Administrative provisions" of the Contract. This included budgeting, procurement, expenditure and reporting on contract Actions to the Contracting Authority (SDD) and EU respectively.

The issues raised by the audit exercise were duly noted by SDD and communicated to the county leadership during the field monitoring and technical support meetings by the IDEAS Technical Team and LED Advisors. This was followed with project circulars on fastracking implementation and closure of the grant contracts.

Since the project implementation period was coming to an end on 24th February 2022, SDD and EU commissioned a Final Expenditure Verification for the period starting 1st February, 2021 to 24th January, 2022 in accord with Article 5.2 of the Special Conditions and Article 15.7 of Annex II General Conditions. There were no major findings or errors detected and therefore the final payments were computed and paid. The Contract has since closed.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General assesses the completion status in the subsequent audit.

221. Irregular Procurement of Dairy Cows

The statement of receipts and payments reflects transfers to other Government entities expenditure of Kshs.100,438,873 as disclosed in Note 4 to the financial statements. The expenditure includes transfers to Kisumu County of Kshs.31,676,176 which further includes an amount of Kshs.2,900,000 incurred on purchase of dairy cows. However, review of contract documents revealed that a Company was paid Kshs.2,900,000 for supply and delivery of sixteen (16) dairy cows. However, audit verification conducted revealed that there were twelve (12) dairy cows and seven (7) calves as opposed to sixteen (16) dairy cows stated in the bill of quantities, delivery note, invoice, and inspection and acceptance committee minutes resulting to variance of four (4) dairy cows. No explanation was provided for the anomaly.

In the circumstances, the regularity and value for money realized from the expenditure of Kshs.2,900,000 incurred could not be confirmed.

Submission by the Accounting Officer

The County Government of Kisumu received conditional grants to implement a LED Grant for "Diary Enterprise Development". Implementation and disbursement of the grants was per the provisions of the IDEAS Financing Agreement (FA) and the County Grant Contract signed between State Department for Devolution, European Union (EU) and County Government of Kisumu.

The County was fully responsible for the grants received as per Article 1 of the General and Administrative provisions of the Contract and this included budget execution, procurement of works and services, expenditure control and reporting on overall Contract Actions to the Contracting Authority (SDD) and European Union.

The issues raised by the audit exercise were noted by the Contracting Authority and communicated to the county (leadership and project implementation unit) during the field monitoring and technical support meetings by the IDEAS Technical Team and LED Advisors. Since the project implementation period was coming to an end on 24th February 2022, SDD and EU commissioned a final Expenditure Verification of the project for the period 25th September 2018 to 31 March 2021 and 01 April 2021 to 24th March 22 in accord with Article 5.2 of the Special Conditions and Article 15.7 of Annex II General Conditions.

The expenditure verification revealed a number of errors related to missing and inadequate documentation, expenditure outside the contractual period and expenditure outside the approved budget. Based on the findings of the EV report, the EU has initiated a recovery of the Ineligible expenses as per the provisions of Article 16 of the FA and Article 18 of Annex II to the Grant Contract. The recovery amount is from the received first and second pre-financing.

Committee Observations and Findings;

The Committee noted that the submission by the Accounting Officer was unsatisfactory as it did not address the query.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that;

i. **The Accounting Officer ensures those liable are surcharged within three (3) months of adoption of this report;**
ii. **The EACC conducts investigations on the procurement and takes necessary action on any impropriety.**

222. Irregular Procurement of Goods and Services

The statement of receipts and payments reflects transfers to other Government entities expenditure of Kshs.100,438,873 as disclosed in Note 4 to the financial statements. The expenditure includes transfers to Kisumu County of Kshs.31,676,176 which further includes an amount of Kshs.11,588,565 incurred on purchase of assorted office items, farm equipment and electricity services at Muhoroni Milk Plant. However, the electricity connection to the Project had not been done despite the full payment of connection fees. Further, procurement documents supporting purchase of farm equipment were not provided for audit. In addition, Information Communication Technology equipment had not been delivered.

In the circumstances, the regularity and value for money from the expenditure of Kshs.11,588,565 incurred could not be confirmed.

Submission by the Accounting Officer

The County Government of Kisumu received conditional grants to implement a LED Grant for "Diary Enterprise Development" Implementation and disbursement of the grants was per the provisions of the IDEAS Financing Agreement (FA) and the County Grant Contract signed between State Department for Devolution, European Union (EU) and County Government of Kisumu.

The County was fully responsible for the grants received as per Article 1 of the General and Administrative provisions of the Contract and this included budget execution, procurement of works and services, expenditure control and reporting on overall Contract Actions to the Contracting Authority (SDD) and European Union.

The issues raised by the audit exercise were noted by the Contracting Authority and communicated to the county (leadership and project implementation unit) during the field monitoring and technical support meetings by the IDEAS Technical Team and LED Advisors. Since the project implementation period was coming to an end on 24th February 2022, SDD and EU commissioned a final Expenditure Verification of the project for the period 25th September 2018 to 31 March 2021 and 1st April 2021 to 24th March 2022 in accord with Article 5.2 of the Special Conditions and Article 15 7 of Annex II General Conditions.

The expenditure verification revealed a number of errors related to missing and inadequate documentation, expenditure outside the contractual period and expenditure outside the approved budget. Based on the findings of the EV report, the EU has initiated a recovery of the Ineligible expenses as per the provisions of Article 16 of the FA and Article 18 of Annex II to the Grant Contract. The recovery amount is from the received first and second pre-financing.

Committee Observations and Findings;

The Committee noted that the submission by the Accounting Officer was unsatisfactory as it did not address the query.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that;

i. **The Accounting Officer ensures those liable are surcharged within three (3) months of adoption of this report;**
ii. **The EACC conducts investigations on the procurement and takes necessary action on any impropriety.**

KENYA COOPERATION AND PARTNERSHIP FACILITY (KCPF) PROJECT NO. KE/FED 2019/041-712, CREDIT NO.FED/2021/423-175

REPORT ON THE FINANCIAL STATEMENTS

225. Inaccuracies in the Statement of Receipts and Payments

Review of the financial statements revealed variances between the figures reflected in The statement of receipts and payments with the ledgers and supporting documents as indicated below;

Component	Financial Statements Amount (Kshs.)	Ledgers Amount (Kshs.)	Variance (Kshs.)
Purchase of Goods and Services	4,594,500	4,686,835	92,335
Compensation of Employees	5,425,901	7,096,717	1,670,816
Total	**10,020,401**	**11,783,552**	**1,763,151**

In the circumstances, the completeness and accuracy of the financial statements could not be confirmed.

Submission by the Accounting Officer

The errors were noted and corrected and a new set of Financial Statements submitted;

Component	Verified Payment Voucher Amount	Ledger Figure	Financial Statement Figure
Purchase of Goods and Services	4,594,500	4,594,500	4,595,500
Compensation of Employees	5,425,901	5,425,901	5,425,901
Total	**10,020,401**	**10,020,401**	**10,020,401**

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to keep proper accounting records.

226. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget of Kshs.30,000,000 against actual receipts of Kshs.31,534,900 resulting to overfunding of Kshs.1,534,900 or 5% of the approved budget. Similarly, the Project expended an amount of Kshs.10,020,401 against final budget expenditure of Kshs.30,000,000 resulting to under expenditure of Kshs.19,979,599 or 67% of the budget.

The underperformance affected the planned activities and programmes which may have impacted negatively on service delivery to the citizens.

Submission by the Accounting Officer

The auditor's observations were noted and we clarify as follows;

- The KCPF Programme Estimate (PE) for the Ministry of Devolution was a grant to support SDD as Contracting Authority for the IDEAS projects in the 15 beneficiary counties. The PE implementation period started on 16th August 2021 to 15th May 2023. The total amount of the PE budget was KES46,634,700 to be expended within a period of 23months. The initial pre-financing received for PE was KES31,534,900.
- The PE Contract total amount was KES45,634,700 for the period 16th August 2021 to 16th May 2023 which cuts across two (2) financial years (2021/2022 and 2022/2023). Therefore, to facilitate expenditure in the Budget Estimate for FY 2021/2022, SDD estimated an amount of KES30,000,000 out of 45,634,700. The balance of KES 15,634,700 was to be budgeted in the FY 2022/2023 and this would include the queried overfunding of Kshs.1, 534,900.
- The under expenditure on the programme budget estimate was because some of Activities related to the Devolution and LED/ Closure conferences were not undertaken as planned. This was attributed to Covid 19 related restriction for the COG Devolution Conference in 2021 and delayed approval of the extension of the implementation period by the EU respectively to allow the closure workshop to take place.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

228. Lack of Internal Audit Unit and an Audit Committee

The Project does not have in place an Internal Audit Unit and Audit Committee contrary to the provisions of Section 73(1) and (5) of the Public Finance Management Act, 2012 which requires every public entity to have arrangements in place for internal audit unit for the purpose of carrying out in depth reviews of Management operations and internal controls. As such the Project did not benefit from the assurance and advisory services from the internal audit unit as well as oversight from the Audit Committee.

In the circumstances, the effectiveness of the internal controls could not be confirmed.

Submission by the Accounting Officer

The project was designed and created under the state department and by extension the Internal Audit Unit of the State Department had the responsibility to perform audit assurance services for the project activities that was included in its annual work plan.

The Ministry of Devolution when it was called the Ministry of Devolution and Planning made effort of setting up the Ministerial Audit Committee that was driven primarily by the State

Department for Planning but the process aborted at the stage of appointment of committee members when the Ministry was split and named the Ministry of Devolution and ASALs and which is now The State Department for Devolution under the Executive Office of the Deputy President and is in the process of establishing a new audit Committee as earlier explained.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails evidence of constitution of the committee within three (3) months of adoption of this report.

OTHER DONOR FUNDED PROJECT IMPLEMENTED BY AN AGENCY UNDER THE STATE DEPARTMENT FOR DEVOLUTION KENYA SYMBIOCITY PROGRAMME - PROJECT NO. SIDA 51110060 - COUNCIL OF GOVERNORS

REPORT ON THE FINANCIAL STATEMENTS

230. Unverified Assets

Note 5 to the financial statements reflects acquisition of non-financial assets cumulative balance of Kshs.9,592,060. However, analysis of the assets register reflected that fifteen (15) laptops and seven (7) projectors with a combined value of Kshs.1,444,100 held by the various County Governments and Project Programme Officers could not be physically verified during an audit inspection carried out in the month of October, 2022.

In the circumstances, the existence and ownership of the fixed assets totaling to Kshs.1,444,100 could not be confirmed.

Submission by the Accounting Officer

The Council of Governors issued the stated laptops and projectors to the respective Symbiocity pilot coordinators for the respective 7 pilot County Governments under the programme and the technical staff supporting the programme. Out of the 15 Laptops, 7 laptops were issued to the pilot Coordinators and 8 laptops issued to the technical officers who were supporting the programme implementation in different capacities. The laptops for technical officers were availed for Audit verification at the Council of Governors offices during the Audit exercise.

The other 7(seven) laptops and 7(seven) projectors are domiciled with the County Government under the custody of the relevant Symbiocity Programme Pilot coordinator whom the equipment was issued to. However, the Council wrote to the respective County Government to avail the equipment for audit verification.

Committee Observations and Findings;

The Committee noted the abstracts availed by the Accounting Officer were obtained years after the alleged loss, and did not provide information on any efforts towards recovery.

Committee Recommendation;

The Committee reprimands the Accounting Officer for negligence and recommends that those who had the lost equipment under their custody be surcharged the cost of purchase, within three (3) months of adoption of this report by the House.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

231. Irregular Procurement of Laptops and Printers

The statement of receipts and payments and as disclosed in Note 5 to the financial statements reflect an expenditure of Kshs.1,129,200 in respect to acquisition of non-financial assets which includes an amount of Kshs.969,200 which was incurred on purchase of laptops and printers. However, review of procurement documents revealed that two (2) bidders who did not pass the technical evaluation stage were allowed to proceed to the financial evaluation stage. Further, the winning bidder supplied laptops and printers whose specifications differed with the specifications contained in the quotation. In the circumstances, the regularity and value for money realized from the expenditure of Kshs.969,200 could not be confirmed.

Submission by the Accounting Officer

The technical evaluation carried out on the procurement of laptops and printers had an error of omission in the technical evaluation matrix where the marking of Yes/No entries was missing on one of the criterion (Warranty item). Further, one of the bidders was marked no (N) instead of yes (Y) under specification item 10th Gen Intel Core i7 but the brochure the vendor had provided indicated the correct specification as requested by the user unit. Also, the subject error of omission was highlighted as an observation by the Head of procurement in the professional opinion report.

Therefore, the mentioned bidders had qualified to proceed for Financial Evaluation stage.

On the aspect of specifications, the variance noted was on the brand-name for the quoted laptop in which the brand name as per the brochure is not the same as the brand that was supplied. Of important to note is that, whereas the brand name varied the relevant specifications as required were met. Further, the award was based on specification and not the brand. Refer to vendor brochure and Specifications as required. Further, this is in line with section 60 (4) of the Public Procurement Asset and Disposal Act 2015 that stipulates that "the technical requirements shall not refer to a particular trademark, name, patent, design, type, producer or service provider or to a specific origin unless;

i) there is no other sufficiently precise or intelligible way of describing the requirements; and
ii) the requirements allow equivalents to what is referred to.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

232. Purchase of Goods and Services

The statement of receipts and payments and as disclosed in Note 4 to the financial statements reflect purchase of goods and services expenditure of Kshs.97,466,233.

However, the following anomalies were noted in procurement;

232.1. Irregular Procurement of Consultancy Services

Review of the contract documents revealed that Kshs.199,800 was paid in respect of consultancy services for Environmental and Social Impact Assessment (ESIA) for the proposed Butere Multi-purpose Eco Park in Kakamega County. However, the procurement was undertaken through request for quotation instead of request for proposal method. Further, technical proposals submitted by bidders were not provided for audit to ascertain the validity of the award.

Submission by the Accounting Officer

The procurement of the consultancy services was through request for proposal in which the bidders expressed their interest by submitting Technical and Financial proposals. Refer to Request for proposal Bids. Further, the bid that was sent out is a request for proposal bid (RFP) and not a request for quotation(RFQ).

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

232.2. Inconistencies in Procurement of Metal Containers for Market Stalls

Review of the contract documents revealed that an amount of Kshs.18,543,319 was paid for procurement of metal containers in Mbita - Homabay County. However, the approved budget for the works was Kshs.10,256,701 while the actual expenditure was Kshs.10,678,892 leading to an over expenditure of Kshs.422,191 of the approved budget. This was contrary to the provisions of Section 45(3)(a) of the Public Procurement and Asset Disposal Act, 2015. Further restricted tender method was used instead of open tender method which was indicated in the procurement plan and the contractor failed to provide performance security. This was contrary to Section 142(1) and (3) of the Public Procurement and Asset Disposal Act, 2015 which states that a successful tenderer shall submit a performance security equivalent to not more than ten per cent of the contract amount before signing of the contract.

Submission by the Accounting Officer

The County Government of Homabay wrote to the Project Manager, Kenya Symbiocity Programme requesting for variation of the procurement plan vide letter Ref:HBCG/LHPPUD/SYMBIO/020(02) dated 29th January 2020. The variation request included variation of supply, modification and installation of metal containers of initial total budget of Kshs.10,256,704 to proposed varied amount of Kshs.10,678,892. This request was considered and approved and the approval reflected in the procurement plan for the year under review.

Further, the initial procurement plan had indicated the method of procurement to be through open tender method, however, in the revised approved procurement plan, the method of procurement indicated is through restricted tender. Therefore, under the restricted tendering method, Performance security was not part of the bid requirement. Refer to revised Procurement plan.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

232.3. Unprocedural Procurement of Air Tickets

Included in domestic travel and subsistence expenditure of Kshs.6,272,730 was an amount of Kshs.541,030 which was paid for purchase of air tickets for various officers.

However, the award was skewed in favor of a single service provider since there was no rotation of service providers despite the Project having prequalified a total of twenty-nine (29) firms for the provision of air ticketing services. This was contrary to the provisions of Section 91(5) of the Public Procurement and Asset Disposal Regulations, 2020 which requires the rotation of service providers while sending request for quotations.

Submission by the Accounting Officer

The procurement of air tickets under the programme for the year under review were sourced competitively with the best evaluated bidder awarded for provision of services as requested taking note that the criterion used was the lowest quoted price. Further, the procurements for the programme undertaken in the year under review with respect to air ticket were quite minimal to qualify for several rotations. Further, it is worth noting that the approved prequalified lists do not only apply to the program procurement but it also applies to the Council of Governors procurements at large.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

232.4. Irregular Purchase of Fuels and Lubricants

Review of the expenditure documents revealed that an amount of Kshs.375,000 was paid for purchase of fuels and lubricants. The fuel and lubricants were drawn from National Oil Corporation Kenya (NOCK) through fuel cards and payments were made in advance. However, the contract agreement between the National Oil Corporation of Kenya and the Council of Governors was not provided for audit review. In the circumstances, the regularity and value for money realized from the expenditure of Kshs.375,000 could not be confirmed.

Submission by the Accounting Officer

The engagement between Council of Governors and National Oil Corporation of Kenya was through Government to Government procurement. The subject agreement to render services at regulated Energy & Petroleum Regulatory Authority has been availed.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

232.5. Construction of Modern Mixed-Use Integrated Market

The statement of receipts and payments and as disclosed in Note 4 to the financial statements reflect purchase of goods and services expenditure of Kshs.97,466,233 which includes an amount

of Kshs.77,541,491 in respect to Change Project – Consultancy which further includes an amount of Kshs.20,843,743 which was paid in respect of proposed construction of a modern mixed - use integrated market in Ontulili Town, Meru County (Phase 1). However, review of tender documents revealed that the Contractor had provided performance bond of Kshs.2,045,671 dated 7 October, 2021 which was four (4) months after the receipt of letter of acceptance and over one (1) month after the signing of the contract. This was contrary to the provisions of Section 142(1) of the Public Procurement and Asset Disposal Act, 2015 which requires the performance security to be provided by the contractor before signing of the contract.

Submission by the Accounting Officer

As observed by the auditor, there was an erroneous mistake as stated, however, the risk was averted in time before commencement of works by the fact that the contractor provided the performance bond of Kshs.2,045,671 dated 7 October, 2021 before commencement of works as per clause 4.8 of the engagement contract. Also, the site handover was done after signing of the contract in line with the contract terms.

Committee Observations and Findings;

i) **The Committee noted the admission by the Accounting Officer.**

ii) **The Committee reprimands the Accounting Officer.**

232.6. Construction of Drainage Works at Jewathu Settlement

The statement of receipts and payments and as disclosed in Note 4 to the Financial Statements reflect purchase of goods and services expenditure of Kshs.97,466,233 which includes Change Project - Consultancy fees amounting to Kshs.77,541,491. The expenditure further includes an amount of Kshs.14,111,582 which was paid in respect to construction of proposed drainage works at Jewathu settlement in Njoro Sub County, Nakuru County. However, review of the tender documents revealed an over expenditure of Kshs.1,706,901 since the approved annual procurement plan had a budget of Kshs.12,404,681 for the works. This was contrary to the provisions of Section 45(3a) of the Public Procurement and Asset Disposal Act, 2015 which stipulates that all procurement processes shall be within the approved budget of the procuring entity and shall be planned by the procuring entity concerned through an annual procurement plan. In the circumstances, Management was in breach of the procurement law.

Submission by the Accounting Officer

The Kenya Symbiocity program had a multiyear procurement plan from 2019-2020- 2020-2021. The initial procurement plan had a budget of Kshs.12,404,682, however, there was a budget revision for the programme as per the Engineer's estimate and this resulted in variation of the Procurement Plan for the period under review. The approval was granted and the revised budget for the procurement of drainage construction works was adjusted to Kshs.15,263,000. Under this circumstance the procurement undertaken was within the approved budget for the year under review.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

4.7 VOTE 1035: STATE DEPARTMENT FOR DEVELOPMENT OF THE ARID AND SEMI-ARID LANDS (ASALS)

Mr. Kello Harsama, the Principal Secretary/Accounting Officer for the State Department for ASALs appeared before the Committee on 21st November 2023 and 16th April 2024, accompanied by the following officers:

i.	Mr. Wilfred Omari	Project Manager
ii.	Mr. James Sakwa	Ag. Head of Accounting
iii.	Ms. Wanjiku Manyatta	Ag. Director Regional Development
iv.	Mr. Paul Masinde	Chief Finance Officer
v.	Mr. Wilson Omulo	Project Manager
vi.	Mr. Kigen Kieti	Senior Deputy Director Supplies
vii.	Mr. Richard Misati	Project Accountant
viii.	Mr. Fredrick Juma	Senior Economist
ix.	Mr. Fred Nyakundi	Internal Auditor
x.	Mr. Charles Matacho	Public Communication Officer

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

235. Unsupported Expenditure

The statement of receipts and payments and as disclosed in Note 3 to the financial statements reflects use of goods and services expenditure of Kshs. 1,118,267,287. The expenditure includes the amounts of Kshs. 28,493,878, Kshs.157,539,125 and Kshs.2,626,886 for routine maintenance-vehicles and other transport equipment, routine maintenance-other assets and printing and advertising respectively all totaling Kshs. 188,659,889 which were not supported with adequate relevant documents.

In the circumstances, the accuracy and completeness of the expenditure of Kshs. 188,659,889 on use of goods and services could not be confirmed.

Submission by the Accounting Officer

The total expenditure Kshs. 188,659,889, constituted Kshs 2,762,082 incurred at the State Department Headquarters, Kshs. 28,132,806 at the project coordinating Unit -Headquarters and Kshs. 157,765,000 transferred to the KDRDIP project field stations which are involved in the supervision of projects in various regions. However, within the expenditure of motor vehicles there was a misclassification of expenditure while accounting for field returns where Kshs. 20,000,000 was classified as routine maintenance–motor Vehicles and other transport costs. The amount relates to other infrastructure and civil works.

The detailed Summary on funds utilization is as per the table below:

Description	Amount as per Trial Balance	State Department	KDRDIP Headquarters	Adjustment to civil works	Restated KDRDIP HQ	KDRDIP field

Routine Maintenance - Vehicles	28,493,878	1,085,081	23,053,796	(20,000,000)	3,053,796	4,355,000
Routine Maintenance- Other Assets	157,539,125	1,279,875	2,879,250	-	2,879,250	153,380,000
Printing And Advertising	2,626,886	397,125	2,199,760	-	2,199,760	30,000
Total	**188,659,889**	**2,762,082**	**24,992,350**	**(20,000,000)**	8,132,806	**157,765,000**

Adjustment Journal Voucher			
civil works			20,000,000
Routine Maintenance - Vehicles			(20,000,000)
Total			-

Account analysis (ledgers) for the expenditure that was incurred at the State Department Headquarters amounting to Kshs. 2,762,082 and the expenditure incurred at Project Headquarters- Kshs. 8,132,806 and amount of Kshs. 157,765,000 that was transferred to KDRDIP field Stations. The supporting AIEs for funds transferred to regional field stations were accounted for through the Sub- County treasuries.

The item Routine Maintenance-Other assets includes expenditures on; maintenance of computers, softwares and networks, maintenance of office furniture and equipments, maintenance of buildings and stations non-residential.

Committee Observations and Findings;

The Committee noted that there was a delay by the Sub-county treasuries in accounting for the funds transferred to them in time.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents during the audit in breach of Section 9 (1) (e) of the Public Audit Act, 2015.

236. Unsupported Accounts Payables

The statement of assets and liabilities and Note 7 to the financial statements reflects accounts payables retention balance of Kshs. 7,714,520 relating to retention for construction contracts. However, details of the constructions undertaken and their contracts that form the basis of the balance were not provided for audit. Further, no explanation was provided for the delay to refund the outstanding balances, some dating back to March, 2014.

In the circumstances, the accuracy, completeness and validity of the accounts payable balance of Kshs. 7,714,520 could not be confirmed.

Submission by the Accounting Officer

The details of the retention money held as that date is disclosed in the table below. The retention monies related the projects undertaken under the World Bank Project Western Kenya Community Development and Flood Mitigation Programme which ended in June 2017 under the Ministry of Special Programme. Retention monies relating to the Projects were later transferred to the State Department for Arid and Semi-Arid Lands. Details of the Constructions undertaken and their contracts are as per the table below:

S/NO	SUPPLIER	RETENTION AMOUNT	DESCRIPTION OF WORK	FORM OF AGREEMENT
1	Amaja Holding Ltd	148,860.00	Construction of block and chain link fence at wamono tomato processing plant	BGM/S/CSDCU/36/2015-2016
2.	Keromatt Ltd	1,806,258.90	Construction and completion of Kaimosi mini hydropower plant in Vihiga County	OOP/MOD&P/WKCDD&FMP/NCB/3/2014
3.	Keromatt Ltd	347,779.00	Erection and Completion of Kaimosi mini Hydro power plant in Vihiga County	
4.	Broadcore Construction	91,719.90	Construction and Completion of Agro and honey processing plant at Shinyalu	KAK/COU/SDCU/SDCU/MKCDD/FMP/53/2/013-2014
5.	Sharkles Construction Ltd	159,118.35	Construction of sorting shade at Kitapani coffee factory	ELG/005/2014
6.	Boneco Contractors	270,413.00	Construction of block and chain link fence at Chwele ICT centre and Muses Coffee Factory	BGM/5/CSDCU/45/2014-2025
7	Somu General Contractors	28,024.40	Construction of Wananga Box Culvert	VHG/CNTY/33/2014-2025
8.	Mosaic Company Ltd	45,234.00	Construction of Shihimba Manuna Foot Bridge in Shinyalu constituency	KAK/COU/SDCU/SDCU/MKCDD/FMP/48/2/013-2014-2015
9.	Mwamogusii Building contractors	146,388.15	Construction of Banana ripening Stores at Chepkube	WPITEN NO.D35NB801 JOB NO.8365A
10.	Stangen Construction	113,718.30	Electrical Works District Project Co-ordinators office block at Pan Paper	KAK/COU/SDCU/SDCU/MKCDD/FMP/51/2/013-2014-2015
11.	Trasjudy	9,554.00	Constriction and completion of Banan Repening stores at Chepkube	ELG/53/2013-2014
12	Jowk Enterprises	39,084.30	Election and Completion of coffee factor at Mwai Mwai sango	Note. After adding MR Receipts the balance of 39,084.3 was over as result of

S/NO	SUPPLIER	RETENTION AMOUNT	DESCRIPTION OF WORK	FORM OF AGREEMENT
				valuation of work done
13	Mavil Emporium	3,765.30	Construction of workshop for physically challenged at Musemwa-Likuyani Sub County	LUG/SBCOUNTY/PT/2013-2014
14	Davis and Shirtiff	153,212.00	Supply and installation of Ebubayi solar pumping unit and plumbing works (Vihiga County)	Vihiga/CNTY/35/2014-2015
15.	Davis and Shirtiff	387,585.00		
16	Resco Construction	542,740.80	Construction and completion of Resource Centre for Bunyala Centre of excellent in Busia County	OOP/MOD&P/WKCDD&FMP/NCB/06/2014-2015
17	Resco Construction	557,651.50		
18	Resco Construction	700,988.40		
19	Resco Construction	586,519.20		
20.	Resco Construction	374,005.90		
21.	Urban Option Ltd	242,568.00	Erection and completion of coffee factory at Musese in Bungoma County	PAID
22.	Ambe General Contactors	400,869.38	Erection and completion of Labaa Aqua Farm	PAID
23.	Citam Enterprises	128,481.50	Construction and completion of Ablution block and chain link fence at Tongaren Artificial insemination centre	PAID
24.	Open Yard Developers	724,189.22	Construction and completion of Ablution block and chain link fence at.e.g. Sanglalo,Wembuye Animal feeds and tailoring Centre at Bumula	PAID
25.	Wintech Limited	279,298.30	Construction of Khwisro fish hatchery, extraction of 6ft fish ponds holding tanks	PAID
26.	Wintech Limited	288,649.20	Erection and completion of Khwisro fish Hatcher at Mwitumbi	PAID
27.	Masera	96,837.30	Construction of sorting shade at Kitaban Coffee Factory	PAID
28.	Masera	76,167.90	Construction of chainlink fence at Chebukwabi animal feeds plant	PAID
29	Highway Emporium	49,171.00	Construction of Tigo-Sinogo Church water pipeline extension	PAID

S/NO	SUPPLIER	RETENTION AMOUNT	DESCRIPTION OF WORK	FORM OF AGREEMENT
30	Highway emporium	332,833.00	Construction of Masonry water tank at Mahanga Beach water supply	PAID
31.		92,311.00	Construction	PAID
32.	Highway Emporium	54,938.90	Junction Kooro-tiga-sinogo water	PAID
33.	Jonesmy Construction	296,193.50	Construction of mahanga beach water supply project	PAID
34.	Jonesmy Construction	112,868.00	Exta works for construction of mahanga beach water supply project	PAID
35.	Jonesmy Construction	182,120.00	Construction of mahanga beach water supply project	PAID
36.	Nyamasera	92,406.00	Construction to completion of Angulo tomato processing plant	PAID
37.	Nyamasera	88,989.40	Construction to completion of Angulo tomato processing plant	PAID
38.	Nyamasera	135,893.00	Construction to completion of Angulo tomato processing plant (Electrical works)	PAID
TOTAL		**10,187,405**		
TOTAL PAID 2021/22		**2,472,885**		
BALANCE		**7,714,520**		

Retention money is payable on certification by the relevant technical departments after ascertaining that the works have been completed as per the specifications in the contract signed between the two parties.

The National Treasury vide letter Ref AG.3/88 Vol.7 (24) dated 15th February 2023 directed State Departments to surrender all deposits held for more than 5 years.

Committee Observations and Findings;

The Committee noted that requisite documents were not availed to auditors on time.

Committee Recommendations;

The Accounting Officer is reprimanded for failure to provide information within reasonable time to the Auditor General pursuant to Section 62 (1) of the Public Audit Act, 2015.

237. Pending Accounts Payable

Note 12.1 to the financial statements reflects pending accounts payables of Kshs.30,632,211 and other pending payables of Kshs.7,714,520 both totaling Kshs.38,346,731 which were not settled during the year but instead carried forward to 2022/2023 financial year. Management has not

explained why the bills were not settled during the year they occurred. Further, pending bills reflected in Note 12.1 to the financial statements was at variance with Annex 1 to the financial statements which reflects pending accounts payable amount of Kshs. 29,703,310. The variance of Kshs. 8,643,421 was explained.

Failure to settle bills during the year in which they relate to distorts the financial statements and adversely affects the budgetary provisions for the subsequent year as they form a first charge.

Submission by the Accounting Officer

At the close of the financial year, the state Department had Pending bill owed to providers of goods and services totaling to Kshs. 29,257,911.00 and claimable retention monies owed to contractors totaling to Kshs. 7,714,520.

The pending bills remained outstanding due to low receipts of exchequers and lack of budgetary provision due to the budget cuts that were effected during the financial year. Bills amounting Kshs. 20,962,505.00 were paid in the financial year 2022/2023 under first charge as guided by the National Treasury. The variance of Kshs. 8,643,421 consists of the amount of Kshs. 7,714,520 being deposits payable to Contractors and Kshs. 928,901 which was a proforma invoices from Safaricom for supply of airtime which had not been delivered.

The statue of the bills during the year is indicated in the table below:

Liability	Nature of Goods and Services	Total	Paid 2022/2023	Remarks
Regional Centre of Mapping-Consultancy	Training on maintenance and operation of ASAL GIS System	4,995,406.00	-	Unpaid
Unicomm Technologies	Supply of toners 410 and E250 series	2,175,000.00	2,175,000.00	paid
Annay Agencies Software	Toner 26A	418,619.00	418,619.00	paid
Graphies Investments Ltd	Toner 64A	325,000.00	325,000.00	paid
Kerio Valley Development Authority	Certified Grass seeds	375,000.00	375,000.00	paid
Regional Centre for Mapping	Training on maintenance and operation of ASAL GIS System	3,300,000.00	-	Unpaid
Bestline Systems K limited	Supply of ICT Equipment, Laptop, UOS and Scanner	2,149,260.00	2,149,260.00	paid
Jaypa Enterprises	Supply of assorted toners	2,030,000.00	2,030,000.00	paid
Gelian Investment Ltd	Conference	105,000.00	105,000.00	paid
Oakar Services Limited	Supply of GIS specialized equipment	1,416,940.00	1,416,940.00	paid
Unicon Technologies Enterprise	Supply of Desktop Computers	1,054,900.00	1,054,900.00	paid
Trenchmax Solutions	Supply of hp toners	1,406,500.00	1,406,500.00	paid

Liability	Nature of Goods and Services	Total	Paid 2022/2023	Remarks
Simlaw Seeds Company	Certified assorted Seeds	1,796,000.00	1,796,000.00	paid
Trawell Company Ltd	Travel and Air Ticketing Services	165,600.00	165,600.00	paid
Trawell Company Ltd	Travel and Air Ticketing Services	24,990.00	24,990.00	paid
Attic Tours & Travel Ltd	Travel and Air Ticketing Services	52,900.00	52,900.00	paid
Ventag Enterprise Limited	General stores	834,075.00	834,075.00	paid
Alkeb Tour & Travel	Travel and Air Ticketing Services	142,000.00	142,000.00	paid
Raigways Tyres & Automart	Tyres	192,250.00	192,250.00	paid
Credos Supplies Ltd	Supply of assorted toners	574,750.00	574,750.00	paid
PS Broadcasting & Telecom	Advertisement	212,115.00	212,115.00	paid
Telecommunication Today Ltd	Repair and service of IPBX telephone lines	576,874.00	576,874.00	paid
Staing Enterprise Ltd	Cleaning services	486,300.00	486,300.00	paid
Arindo Enterprises	Supply of staff Uniform	308,580.00	308,580.00	paid
Maflex Limited	Supply of tyres	283,825.00	283,825.00	paid
Kentriah Enterprises	Supply of photocopying paper A4 size	418,500.00	418,500.00	paid
Davil Traders	Supply of envelopes	357,000.00	357,000.00	paid
Sharosen Enterprises	Toner TK6115 hp	145,000.00	145,000.00	paid
Sweet Lake Resort	Conference	836,500.00	836,500.00	paid
Alkab Tour & Travel	Travel and Air Ticketing Services	88,800.00	88,800.00	paid
Kenya School of Government Mombasa	Training	57,400.00	57,400.00	paid
Intermass Stationers	Repair and servicing of ICT Equipment	499,361.00	499,361.00	paid
Trawell Company Ltd	Travel and Air Ticketing Services	213,340.00	213,340.00	paid
Attic Tours & Travel Ltd	Travel and Air Ticketing Services	156,600.00	156,600.00	paid
Attic Tours & Travel Ltd	Travel and Air Ticketing Services	50,500.00	50,500.00	paid

Liability	Nature of Goods and Services	Total	Paid 2022/2023	Remarks
Attic Tours & Travel Ltd	Travel and Air Ticketing Services	190,400.00	190,400.00	paid
Attic Tours & Travel Ltd	Travel and Air Ticketing Services	175,000.00	175,000.00	paid
Attic Tours & Travel Ltd	Travel and Air Ticketing Services	13,790.00	13,790.00	paid
Shodsam Motors	Motor vehicle repair	25,636.00	25,636.00	paid
Kenya School of Government Mombasa	Training	243,600.00	243,600.00	paid
Kenya School of Revenue Administration	Training	185,600.00	185,600.00	paid
Kenya School of Government Mombasa	Training	47,800.00	47,800.00	paid
Attic Tours & Travel Ltd	Travel and Air Ticketing Services	151,200.00	151,200.00	paid
Total		29,257,911.00	20,962,505.00	8,295,406
Total Pending Bills		29,257,911.00		
Total Pending Bills Paid 2022/2023		20,962,505.00		
Outstanding balance to providers of goods and services **Less Outstanding proforma invoice from Safaricom** **Balance Outstanding for Retention Money claimable by contractors**		**8,643,421** **928,901** **7,714,520**		

Summary

Description	Amount Kshs
Pending bills 2021/2022	38,346,731
As per analysis	29,703,310

Variance	8,643,421
Deposit	7,714,520
Unserviced Proforma from Safaricom Ltd	928,901

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer settles pending bills as first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

238. Unresolved Prior Year Matters

Various prior year audit issues remained unresolved as at 30 June, 2022. Management has not provided reasons for the delay in resolving prior year audit issues.

Submission by the Accounting Officer

The State Department is awaiting Parliamentary Accounts Committee (PAC) recommendations for the financial year 2020/2021.

Committee Observations and Findings;

The Committee noted that its report for FY 2020/21 had since been adopted by the House.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report on implementation of its recommendations within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

240. Lack of an Effective Internal Audit Function

The State Department does not have an effective internal audit function and an active Audit Committee contrary to the provisions of Section 73(1) and (5) of the Public Finance Management Act, 2012 which requires every public entity to have arrangements in place for internal audit function and Audit Committee for the purpose of carrying out in depth reviews of Management operations and internal controls.

In the circumstances, the State Department did not benefit from the assurance and advisory services from the internal audit function as well as oversight from the Audit Committee.

Submission by the Accounting Officer

The State Department for the Development of the ASALs had insufficient staff at the time of the audit. However, after the Reorganization of Government, the State Department was merged with the State Department for Regional Development thus increasing the manpower in internal Audit Unit by three officers. Other officers were also posted to the Internal Audit unit.

The department has since prepared a risk based work plan for the FY 2023/2024 The Internal Audit Unit has prepared its work plan and risk assessment reports and is currently executing its mandate related to reviewing budgetary performance, giving assurance on risk management and reviewing the effectiveness of the financial and non-financial performances management systems

The Unit recently conducted a sensitization workshop to all Head of sections on the role of Internal Audit as an aid to management and Risk management process.

The Re-appointment process of the Audit Committee through the Ministry is in progress and the Committee is expected to be in place by December 2023.

Committee Observations and Findings;

i) **The Committee observed that the explanation and documents provided by the Accounting Officer were satisfactory.**

ii) **The Committee found that the matter was resolved.**

DONOR FUNDED PROJECT

KENYA DEVELOPMENT RESPONSE TO DISPLACEMENT IMPACTS PROJECT (KRDIP) IDA CREDIT NO.6021-KE AND GRANT NO. TFOA 7762-KE

REPORT ON THE FINANCIAL STATEMENTS

241. Inconsistencies in the Financial Statements

The statement of comparison of budget and actual amounts reflects miscellaneous receipts balance of Kshs. 1,503,027,234. However, the amount has not been disclosed in both the statement of receipts and payments and statement of cashflows for the year under review. In addition, there was no note in the financial statements to show the breakdown or composition of the miscellaneous receipts balance.

In the circumstances, the accuracy and completeness of the miscellaneous receipts of Kshs. 1,503,027,234 reflected in the statement of comparison of budget and actual amounts could not be confirmed.

Submission by the Accounting Officer

It is true the statement of comparison of budget and actual amounts reflected a miscellaneous receipts balance of Kshs. 1,503,027,234.

This was Cash and Cash Equivalent brought forward of Kshs 145,125,454 and Kshs 1,357,901,780 recognized as a prior year adjustment. The following figures were separately disclosed in the Statement of Receipts and payment page one, Statement of Cash flow page 5, Cash and Cash equivalent page 19 and prior year adjustment Annex 6, page 31 of the Financial Statement for the year ended June 30th 2022.

The above figures were recognized as miscellaneous receipts in the statement of comparative budget and actual amount as it's related to a prior period. This was a disclosure for an unutilized balance at the County Coordinator Bank Accounts, Sub Projects and Community Groups bank

accounts as at June 30th 2021 which was reinstated in the subsequent financial year 2021-2022 and recognized as prior year adjustment.

Committee Observations and findings;

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

242. Unsupported Compensation of Employees Expenditure

The statement of receipts and payments reflects compensation of employees' expenditure of Kshs. 620,893,048 as disclosed in Note 3 to the financial statements. The expenditure includes an amount of Kshs. 284,277,134 which was paid to temporary employees working under the Labour Intensive Public Works (LIPW) Program in Turkana West, Wajir South and Garissa. However, Needs Assessment Reports, Workplans, Soil Texture Tests, Site History Reports, Soil Fractional Tests or Jar Test Reports and Distribution of Seedlings Reports were not provided for audit review to confirm the effectiveness of the activities.

Further, the visited land reclaimed areas had invasive Prosopis and other overgrown invasive vegetation and the irrigation schemes have not been implemented due to heavy reliance on rains which had not materialized causing lack of any visible tangible agricultural activity on the sites.

In the circumstances, the accuracy and completeness of the expenditure of Kshs. 284,277,134 incurred could not be confirmed.

Submission by the Accounting Officer

It's true that several issues were raised about Compensation of Employees -Labour Intensive Public Works. The related explanations are presented in the table below;

S/NO	Issue	Response
i.	No needs assessment reports availed for audit review to guide the audit on the intended purpose of the exercise. The work-plan availed by the Facilitating Partner Turkana West sub-county was for the 2019/2020 financial year.	The Need assessment was only carried once during the development of Community Development Plans (CDPs). Every village developed a CDP upon which all the village Sub projects are based. PIST usually conducts a feasibility study of a sub project before it is forwarded for approval. The 2019-2020 work plan formed part of the implementation in the FY 2020-2021 which had been ratified and implemented since in 2019-2020 only component 0ne subprojects and community groups for component three were implemented. However, all sub county AWPs are available at the Sub County, County, NPIU and World Bank levels.

S/NO	Issue	Response
ii.	No soil texture tests, no site history reports to show what past activities have taken place on the land, no soil fractional test or jar test to determine the composition of the soil and how much sand, silt and clay is available were availed for audit review to determine the viability of the soil to agriculture repurposing.	All these are outside the scope of the project. The component supported construction of assets that have communal benefits and the focus on farmlands were to support a build-up of soil conservation and water harvesting structures from a watershed perspective. Depending on the sub project being implemented, soil properties may form (but not necessarily) be part of the feasibility assessment. The Component focuses interventions on renovation of already existing structures and expansion of land that is already dedicated for farming and is under agricultural productivity.
iii.	No evidence on the provision for seedlings to use in the planting exercise	Each sub project has its own implementation work plan and not all required seedlings.
V	The land reclaimed areas sampled and visited had the invasive Prosopis and other invasive vegetation outgrown again therefore, no visible impact.	The presence of new growth of the prosopis may not indicate lack of impact In the period under review, it is possible to find the invasive prosopis have grown depending on how long it took before the audit was done. Clearing prosopis is only a part of the initial process allowing for construction of the Structures. Visible regrowth of vegetation therefore could actually be a clear indication that sufficient water was retained to support a crop and regrowth of weeds-a natural phenomenon expected in farming.
vi.	The irrigation schemes have not been implemented due to the heavy reliance of rains which have not materialized.	KDRDIP mainly deals with "land rehabilitation through flood-based irrigation using runoff geared towards sustaining the natural resources. By design this naturally relies on flood waters once it rains. The component mainly deals with "land rehabilitation through flood-based irrigation taking advantage of surface runoff. By design these sub projects naturally rely on rain water. In cases where the design is different, and use of flood water is not relied upon as an approach but instead

S/NO	Issue	Response
		irrigation is supported through water from pans and boreholes.
Vii	No tangible agricultural productivity was visible.	The visit referred to here was made in the middle of the worst droughts in the country with no reliable rain in these arid lands for more than 3 seasons. It is also important to note that spate irrigation/flood-based farming is only expected when there are floods. The project aims to provided water harvesting structures It's therefore natural that no tangible agricultural activity could be found. Further, the Project does not directly deal with agricultural production. It aims to provide irrigation services in order to enhance agriculture productivity through bush clearing in order to provide access roads to community lands, Soil conservation measures to check on soil erosion and flood water harvesting by digging holding holes, terraces, canals and planting pasture, Construction of canals and water distribution mainly in Fafi along Tana River among others..

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General establishes current status in subsequent audit.

243. Budgetary Control and Performance

The statement of receipts and payments reflects compensation of employees' expenditure of Kshs. 620,893,048 as disclosed in Note 3 to the financial statements. The expenditure includes an amount of Kshs. 284,277,134 which was paid to temporary employees working under the Labour Intensive Public Works (LIPW) Program in Turkana West, Wajir South and Garissa. However, Needs Assessment Reports, Workplans, Soil Texture Tests, Site History Reports, Soil Fractional Tests or Jar Test Reports and Distribution of Seedlings Reports were not provided for audit review to confirm the effectiveness of the activities.

Further, the visited land reclaimed areas had invasive Prosopis and other overgrown invasive vegetation and the irrigation schemes have not been implemented due to heavy reliance on rains which had not materialized causing lack of any visible tangible agricultural activity on the sites.

In the circumstances, the accuracy and completeness of the expenditure of Kshs. 284,277,134 incurred could not be confirmed.

Submission by the Accounting Officer

The over expenditure noted in the statement of comparative budget amount was due to the prior year adjustments which was unutilized bank balances and cash and cash equivalent brought forward for financial year 2020/2021. This formed part of receipts for the financial year 2021/2022. See the tabulation below;

Source Of Funding	Approved Budget	Actual Receipts	Over Funded of 30%
GRANT	178,239,137.00	142,927,810.00	-
LOAN	3,700,000,000.00	3,403,403,059.00	-
CASH AND CASH EQUIVALENT B/F	-	145,125,454.00	
PRIOR YEAR ADJUSTMENTS	-	1,357,901,780.00	-
TOTAL	**3,878,239,137.00**	**5,049,358,103.00**	**1,171,118,966.00**

The under absorption of 9% was caused by the delayed project implementation by the community as the project design is a Community Driven Development (CDD) whereby the communities are required to come up with their project proposals and implement the Sub projects through

Community Project Management Committees (CPMCs) and Community Groups Management Committee (CGMCs).

The project implementation process is also done under government stipulated procurement guidelines which are very lengthy and takes time to implement, bearing in mind that the community has the mandate to procure their own services. The project is funded as a loan and disbursement is through advances.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General monitors project progress in subsequent audit.

244. Lack of Monitoring and Evaluation of the Community Groups

The statement of receipts and payments reflects purchase of goods and services expenditure of Kshs 1,795,961,678 as disclosed in Note 4 to the financial statements. The expenditure includes capital grants to community groups totalling to Kshs. 1,156,852,378 which further includes an amount of Kshs. 315,000,000 which was disbursed to community groups in Turkana County. However, the audit revealed that there were no regular meetings and monitoring and evaluation reports were not provided for audit.

Further, the community groups could not be verified since most of them are pastoralists and were not available for engagement and thus it could not be confirmed whether the project had a social and economic impact on them.

This is contrary to the provisions of the Community Operational Manual, which states that the CGs should receive grants after adhering to the five core group principles which are regular meetings, proper record keeping, inter-loaning and regular repayments and thereafter approval of their business plans.

In the circumstances, the projects management was in breach of the COM and the value for the funds spent could not be confirmed.

Submission by the Accounting Officer

The disbursement for capital grants for community groups for FY 2021/2022 had not been disbursed to community groups Bank accounts as by the first week on of July 2022. This was due to the fact that CGs were undergoing preparations and training to start spending. The schedule was not available when the audit team was on the ground, but now the funds have been disbursed to Community Groups banks accounts. The beneficiaries Sub Counties are pastoralist who could not be contacted in one place for audit verification to take place, because some of the groups deals with livestock trading and they had gone to search for greener pastures. These groups can be verified in future. Disbursements schedules, sampled bank statements, Monitoring and evaluation reports are available for review.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General reviews status in the subsequent FY audit.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

245. Lack of an Approved ICT Policy

Review of the Project's information technology systems revealed that the Project did not have an approved IT policy for governance and management of its ICT resources. In addition, there is no ICT steering committee in place to assist in the development of ICT policy framework to enable the Project to realize long-term ICT strategic goals. Lack of an approved IT policy may result in an unclear direction regarding maintenance of information security across the organization and

safeguarding the Project`s ICT assets. Further, without a sound and approved framework, users do not have any rules and procedures to follow in order to minimize risk of errors, fraud and the loss of data confidentiality, integrity and availability.In the circumstances, the security, confidentiality and integrity of the Project's data could not be confirmed.

Submission by the Accounting Officer

The Project is domiciled in the State Department for Development of the ASALs. Therefore, the Project uses the existing Government structures on financial, procurement and ICT cascading certain issues for use at various levels. As such, in terms of the IT Security Policy, the Project borrowed from what is at the State Department. Currently, the State Department implements the Information Security Standard (Second Edition 2019) developed by the Information Communication Authority (ICTA) on issues related to safeguarding information. Subsequently, the Project continues to utilize that standard for anything related to information confidentiality and integrity among many other issues therein.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

4.8 VOTE 1041: MINISTRY OF DEFENCE

Hon. Patrick Mariru, CBS, the Principal Secretary and Accounting Officer for the Ministry of Defence appeared before the Committee on 21st August 2023 accompanied by the following officers:

i.	Lt. General J.M. Mwangi	Vice Chief of the Defence Forces
ii.	Mr. Joseph Mutuma	Head of Finance
iii.	Ms. Electina W. Wanyonyi	Head of Accounting Unit
iv.	Ms. Daniel Mukolwe	Principal Supply Chain Management Service
v.	Brig. Sammy Kipng'etich	Chief of Finance
vi.	Brig. Titus Sokobe	Chief of Infrastructure
vii.	Brig. Yvonne Kerubo	Chief of Legal
viii.	Mr. Bogita W. Ongeri	Parliament Liaison
ix.	Mr. Emmanuel Masikonte	Personal Assistant to the Principal Secretary

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

248. Pending Bills

Note 17.2 and Annex 1 to the financial statements reflects pending bills balance of Kshs.1,755,046,240 as at 30 June, 2022 owed to suppliers of goods and services which were not paid in the year under review but were carried forward to 2022/2023 financial year. Failure to settle bills during the year to which they relate distorts the financial statements and adversely affects the budgetary provisions for the subsequent year as they form a first charge.

Submission by the Accounting Officer

The Ministry of Defence had an approved budget of Kshs. 130,608,604,247.00 under the Recurrent Vote R1041. The Ministry requested for and received Recurrent exchequer as detailed below:

DETAILS	AMOUNT (KSHS)
Exchequer Requisitioned	130,352,373,533.00
Exchequer Issued	(128,597,327,292.85)
Under - Issue	1,755,046,240.60

The Ministry therefore suffered an exchequer under-issue of Kshs. 1,755,046,240.60 as at 30 June 2022 and disclosed the same in the Financial Statements of the Ministry for the Financial Year under review.

Due to exchequer under-issue, the Ministry could not meet the financial obligations that had already been committed to as at the closure of the financial year 2021/2022. Had the exchequer of Kshs. 1,755,046,240.60 been availed, the Ministry could not have reflected the pending bills in question.

The Ministry would however wish to confirm that the pending bills were treated as *'first charge'* in the Financial Year 2022/2023 and were settled in full despite the resultant adverse effect of distorting the budget for the year.

Committee Observations and Findings;

The Committee observed that the ministry had since settled the pending bills occasioned by under-exchequer issues.

Committee Recommendation

The Committee recommends that Treasury releases exchequer in a timely manner once funds have been committed by implementing agencies.

249. Contingent Liabilities

As disclosed in Note 17.4 to the financial statements, the Ministry of Defence had contingent liabilities amounting to Kshs.1,807,350,099 as at 30 June, 2022. The contingent liabilities related to court cases against the Ministry. Detailed analysis of the balance provided for audit indicated that the total courts awards amounted to Kshs.2,171,750,099, out of which an amount of Kshs.364,400,000 was paid during the year, leaving a balance of Kshs.1,807,350,099 outstanding. No explanation was provided for failure to pay the outstanding balance of Kshs.1,807,350,099 in compliance with the court rulings.

Submission by the Accounting Officer

It is true that the Ministry under Note 17.4 to the Financial Statements for the Financial Year under review disclosed contingent liabilities totaling Kshs. 1,807,350,099.00 as at 30 June, 2022 related to court cases against the Ministry of Defence. It is also true that an amount of Kshs. 364,400,000.00 had been paid out in the course of the Financial Year, reducing the total judgement awards from Kshs. 2,171,750,099.00 to the balance outstanding of Kshs. 1,807,350,099.00.

Cognizant of the colossal amounts of some of the judgments and limited allocations from National Treasury to settle the awards, the MoD continues to engage National Treasury for additional funds to settle the judgments. In the financial year 2022/2023 MoD settled a further Kshs 22,352,475.98 and will continue to do so as and when the funds are availed.

To also manage the Ministry's exposure to legal liability, MoD negotiated with the Attorney General to appoint the Ministry's Legal Officers as Special State Counsel in 2017. Owing to the dedicated litigation management, the Ministry has noted a decline in the number of frivolous claims being filed against MoD as well as adverse judgments.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the ministry settles the outstanding liabilities totaling Kshs. 1,807,350,099 and give a status report within three (3) months of adoption of this report.

250. Unbudgeted Expenditure Incurred on Projects

During the year under review, Ministry of Defence received funding for infrastructure projects procured and supervised by the Ministry on behalf of another Ministry/Agency as detailed below:

	Ministry/ Agency	Project Description	Contract Amount (Kshs.)	Amount Paid (Kshs.)	Unbudgeted Expenditure (Kshs.)
1	Ministry of Interior & Citizen Services	National Police Service - Level IV Hospital	824,928,279	400,000,000	424,928,279
2	Ministry of Interior & Citizen Services	State Department for Correctional Services – Level IV Hospital	999,628,135	400,000,000	599,628,135
3	State House - Nairobi Metropolitan Service	Uhuru & Central Park Rehabilitation Project	1,183,494,712	778,192,768	405,301,944
	Total		**3,008,051,126**	**1,578,192,768**	**1,429,858,358**

However, Ministry of Defence signed contracts for amounts above the actual funds received for the respective projects resulting to an unbudgeted expenditure of Kshs.1,429,858,358. This was contrary to Section 53(8) of the Public Procurement and Asset Disposal Act, 2015 which requires an Accounting Officer not to commence any procurement proceeding until satisfied that sufficient funds to meet the obligations of the resulting contract are reflected in the approved budget estimates.

Further, although physical verification done in the month of October, 2022 confirmed that the projects were completed, the unpaid amounts totalling to Kshs.1,429,858,358 were not included as pending bills as at the end of the financial year. Ministry of Defence had continuously requested for the outstanding balances from the respective Ministry/Agency without success due to unavailability of funds. However, Management did not disclose how the extra expenditure of Kshs.1,429,858,358 committed by the Ministry would be funded in the absence of an approved budget.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

It is true that during the financial year 2021/2022, the Ministry of Defence received funding for infrastructure projects from another Ministry/Agency. It is also true that the projects were procured and supervised by the Ministry of Defence on behalf of another Ministry/Agency as indicated in the table.

a) The National Police Service Level IV Hospital Mbagathi:

The National Police Service (NPS) required to improve the organization of their medical referral system in line with the Universal Healthcare Programme to provide affordable healthcare for their personnel and families. Hence the NPS Hospital was conceptualized and a directive issued in which MOD was directed to construct a Level IV Hospital for the NPS having successfully established a regional hospital of similar scope and design (Nairobi Regional Hospital in Kahawa Garrison). The National Treasury was also directed to disburse Kshs 450 Million towards the project. This is shown by the letter from the Head of Public Service attached here as Annex 'A'.

The cost of the project was Kshs. 999,628,135.00 with a duration of six (6) months commencing on 27th April, 2022, cutting across two financial years 2021/2022 and 2022/2023. Consequently, the Ministry of Interior and Coordination of National Government disbursed Kshs. 400 Million leaving a balance of Kshs. 599,628,135.00. The Ministry has requested for the remaining balance from the Ministry of Interior.

The Ministry of Interior and National Administration has since requested that the project be handed over and the process is ongoing.

b) The Kenya Prisons Service Wanini Kireri Magereza Level IV Hospital at PSTC Ruiru:

The Cabinet Secretary for Interior and Coordination of National Government presented a memorandum to Government on the state of healthcare for prisoners and staff. It was directed that the National Treasury to release Kshs 200 Million from the Prison Enterprise Fund and an additional Kshs 600 Million towards implementation of the project. This is shown at Annex 'B'.

The cost of the project was Kshs. 824,928,279.00 with a duration of six (6) months, commencing on 4th March, 2022, cutting across two financial years 2021/2022 and 2022/2023. Consequently, the Ministry of Interior and Coordination of National Government disbursed Kshs 200 Million leaving a balance of Kshs 624,928,279.00. Additional funding amounting to Kshs 200 million was transferred by the Ministry of Interior and Coordination of National Government.

The Ministry of Interior and National Administration has since requested that the project be handed over and the process is ongoing.

c) Proposed Rehabilitation and Upgrading of Green Spaces in Uhuru Park and Central Park Project:

A directive was given to accelerate the upgrading and development of green spaces in Nairobi County i.e. Uhuru and Central park where a joint technical team was formed between Kenya Defence Forces and Nairobi Metropolitan Services (NMS) to redesign, cost and implement the project.

The cost of the project was Kshs 1,183,494,711.77 with a duration of six (6) months, commencing on 8th March, 2022, cutting across two financial years 2021/2022 and 2022/2023. Consequently, the State House disbursed Kshs 778,192,768.13 leaving a balance of Kshs 405,301,943.64. The Ministry has requested for the remaining balance from State House.

Committee Observations and Findings;

The Committee observed that these were one of the projects under the then Nairobi Metropolitan Service (NMS) that it has cited under the chapter of general observations and recommendations of this report.

Committee Recommendation;

The Committee recommends that the Auditor General conducts a special audit on accounts of the then Nairobi Metropolitan Service (NMS) and submits a report to the Committee within three (3) months of adoption of this report.

REVENUE STATEMENTS

253. Irregular Transfer of Revenue

The statement of receipts and disbursements reflects total tax receipts of Kshs.4,417,951,213 for the year ended 30 June, 2022. The statement also reflects disbursements of Kshs.496,791,300 and Kshs.3,921,159,913 to MOD Escrow Account and Exchequer Account, respectively. However, the disbursement of Kshs.496,791,300 to the Escrow Account was contrary to the provisions of Article 206(1) of the Constitution of Kenya, 2010 which established a Consolidated Fund, "into which shall be paid all money raised or received by or on behalf of the National Government, except when reasonably excluded from the Fund by an Act of Parliament and payable into another public fund established for a specific purpose; or under an Act of Parliament, retained by the State organ that received it for the purpose of defraying the expenses of the State organ".

Although Management provided authorization from the National Treasury for opening and operating the escrow account at the Central Bank of Kenya, there was no enabling legislation to support the transfer of revenue into an account other than the Consolidated Fund Account.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

It is true that the statement of receipts and disbursements reflects total tax receipts of Kshs. 4,417,951,213.00 and disbursements of Kshs. 496,791,300.00 and Kshs. 3,921,159,913.00 to Ministry of Defence Escrow Account and Exchequer Account respectively.

The Ministry of Defence faces acute shortfalls in housing for Military personnel, both officers and service members at all Barracks across the country. The shortfalls are for both single Quarters (for individual personnel) and married Quarters (for families), which translates into an overall requirement of 35,000 single Quarters and 10,000 Married Quarters.

The deficit greatly impairs mission readiness and the general welfare of the Defence Forces. In an effort to seek to bridge the gap in housing provision, the Ministry of Defence decided to explore the possibility of pursuing a Public Private Partnership (PPP) solution for the provision of housing of its uniformed staff.

Based on this background, a Memorandum on the Kenya Defence Forces Residential Accommodation project was submitted by the Cabinet Secretary for Defence jointly with the

Cabinet Secretary for the National Treasury and Planning and the Attorney General to the Government. The main objective was to appraise the Government on a proposal for Kenya Defence Forces Residential Accommodation project anticipated to be financed through the Public Private Partnership (PPP) model to address the shortfalls. The proposal was approved in order for the Ministry of Defence to proceed with the project.

Upon approval, The National Treasury and Planning in May 2021 further approved opening of an ESCROW Account for the purposes of ring-fencing a minimum of Kshs. 500 million in annual revenue collected from the Ministry of Defence GoK Housing Unit. During the Financial Year under review the Ministry collected revenue amounting to Kshs. 4,417,951,213 out of which Kshs. 496,791,300 was transferred to the ESCROW Account.

After the Auditor General observed that the Management was in breach of the law for lack of enabling legislation to support the transfer of revenue to an account other than the Consolidated Fund, the Ministry surrendered the funds to the Consolidated Fund Account in December 2022.

Committee Observations and Findings;

i) **The Committee observed that the matter had since been settled as the Kshs. 496,791,300 had since been remitted to the consolidated fund.**
ii) **The Committee found that the matter was resolved.**

4.9 VOTE 1052: MINISTRY OF FOREIGN AFFAIRS

Dr. Korir Sing'oei, PhD, EBS, the Principal Secretary and Accounting Officer for the State Department for Foreign Affairs appeared before the Committee on 12th September 2023 accompanied by the following officers:

i.	Mr. James Aloyo	Senior Finance Officer
ii.	Mr. Billy Mathu	Principal Accountant
iii.	Mr. James Nyange	Head, Internal Audit
iv.	Amb. Margaret gichuru	Deputy Global Assets
v.	Amb. Josphat K. Maikara	Secretary, Foreign Service Administration
vi.	Mr. Kenneth Karani	Head Supply Chain
vii.	Mr. Vincent Kirwa	Senior Deputy Accountant General
viii.	Ms. Anita Chepseba	Deputy Chief State Counsel
ix.	Ms. Ochieng Jackogango	Senior Human Resource Officer
x.	Ms. Dorcas Rukunga	Ag. Director, Parliamentary Affairs

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

255: Long Outstanding Reconciling Items

The statement of assets and liabilities reflects cash and cash equivalents balance of Kshs. 1,737,179,819 which includes bank balances totaling Kshs. 1,736,879,371 as disclosed in Note 11A to the financial statements. Review of the Ministry's bank reconciliation statements for the month of June, 2022 revealed long outstanding reconciling items which include; payments in cash book not in bank statements of Kshs. 233,210,044, receipts in bank statements not in cash book of Kshs. 50,815,226, payments in bank statement not in cash book of Kshs. 280,157,533 and receipts in cash book not in bank statement of Kshs. 13,030,179. No documentary evidence was provided for audit to confirm efforts made by Management to clear these long outstanding reconciling items.

In the circumstances, the accuracy and completeness of the cash and cash equivalents balance of Kshs. 1,737,179,819 as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

It is true that bank reconciliation statements for various Missions had long outstanding items totaling Kshs 577,212,982.25 as at 30th June 2022. These balances are explained as below: -

- Payments in cash book not in bank statements – These are unpresented cheques that have remained in the books of the Missions for more than six (6) months hence have gone stale. The Missions have been instructed to reverse the transactions by entering the same as credits in their cash books and to clear them from the bank reconciliation statements until the payees renew their claims. Schedules of the claimants for each mission are to be maintained separately, awaiting the payees to renew their claims.
- Receipts in bank statements not in cash book – These represents direct credits into the Missions bank accounts which have been awaiting the depositors to claim the same or to

provide details for which the deposits were been made. There are being cleared as and when the depositors come forward for the services for which the payments have been made.

- Payments in bank statements not in cash book – These represents direct debits in respect of utility bills in a number of Missions which had been placed as standing orders to avoid pending bills or delayed payments on the same. The relevant missions have been instructed to obtain the supporting documents for these payments from the service providers, use the same to update the cash books and clear the same from the Reconciliation Statements.
- Receipts in cash book not in bank statement – These represents cash collections on consular services utilized at source to support the consular services. The receipts were utilized directly as cash in hand and not through the bank. These transactions were regularized through relevant budgetary provisions in the supplementary estimates.

The National Treasury established a committee on resolution of long outstanding balances, recommendations from which are still awaited to guide the Ministry to resolve such long outstanding cases.

Committee Observations and Findings;

i) **The Committee observed that the ministry had written to missions abroad to do reconcilliations, and had made progress.**
ii) **The Accounting Officer submitted that the amounts received by the missions were AIA as per approved budget and not 'revenue' requiring an appointment as receiver of revenue.**

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures the outstanding discrepancies are reconciled within three (3) months of adoption of this report by the House.

256: Pending Bills

Note 19.2 to the financial statements reflects pending accounts payables totaling Kshs. 701,161,995 as at 30 June, 2022. These bills were not paid during the year under review but were instead carried forward to the financial year 2022/2023.

Failure to settle bills during the year to which they relate distorts the budget implementation of the subsequent year as the outstanding bills form a first charge on resources available.

Submission by the Accounting Officer

It is true that claims from the Ministry (delayed payments) stood at Kshs. 701,161,995.72 as at 30th June 2022. These bills were processed in IFMIS and loaded into Internet Banking platform awaiting exchequer release. Treasury was unable to release the exchequer by closure of 2021/2022 Financial Year thus forcing the Ministry to carry forward the bills to the next financial year 2022/2023.

The Ministry at the commencement of 2022/2023 Financial Year, verified the bills and settled the same (to the extent manageable within the budget and exchequer availed by the National Treasury) as a 1st charge on the 2022/2023 Financial Year's budget in accordance with the financial

regulations. The remaining bills were carried forward to be cleared hopefully in the subsequent (2023/24 FY), finances permitting.

Committee Observations and Findings;

The Committee observed that Kshs. 149,627,501 remained outstanding.

Committee Recommendation;

The Committee recommends that the Accounting Officer settles all valid pending bills promptly.

257: Contingent Liabilities

Disclosed in Note 19.4 to the financial statements are contingent liabilities totaling Kshs. 112,013,123 arising from court cases and awards against the Ministry. Review of the Ministry's records indicate that the Government of Kenya through the missions abroad had been sued by local staff employed by the missions. Further, in some cases the Ministry was yet to pay the court awards and has not appealed the decision of the courts.

In the circumstances, the court cases may attract further charges which may lead to loss of public funds.

Submission by the Accounting Officer

It is true that in the financial statements of the Ministry for the year ended 30th June 2022 there was a disclosure of contingent liability amounting to Kshs 112,013,123 arising from court cases and awards against the Ministry from various Missions abroad.

It should be noted that a majority of the suits against the various Missions abroad arose out of implementation of Guidelines on the Recruitment of Local Staff in Kenya Missions abroad contained in a Circular dated 27th June 2014 circulated to all Missions.

The Guidelines require Missions abroad to engage all local staff on Local Agreement Terms of Service of not more than three (3) years, renewable on performance. This therefore meant that the Missions had to convert permanent contracts to 3-year contracts or alternatively have the permanent contracts terminated, which has given rise to multiple suits in various countries.

Its is also true that some of these cases, which had reached the court award stage, were yet to be paid by the Ministry as at the time of audit. The Ministry requested the Attorney General's office to explore the possibility of appeal and the Attorney General's office after exploring all appeals options reverted back to the Ministry later on with a recommendation to settle.

The Ministry proceeded to settled the claims soon thereafter as advised by the Attorney General's Office.

Committee Observations and Findings;

The Committee observed that most of the claims arose from adoption of a policy that changed terms of service for foreign recruited employees to three years. The ministry ought to have negotiated with affected staff for mutually acceptable resolution considering some legal costs exceeded the court awards.

Committee Recommendation

i) **The Committee recommends that the ministry negotiates with petitioners of those cases that are yet to be determined with a view to amicable resolutions.**
ii) **Further, the Committee recommends that awards not appealed against should be correctly classified as pending bills/ payables, and not contingent liabilities.**

4.10 VOTE 1064: STATE DEPARTMENT FOR VOCATIONAL AND TECHNICAL TRAINING

Dr. Esther Muoria, PhD, the Principal Secretary and Accounting Officer for the State Department for Technical, Vocational Education and Training appeared before the Committee on 9th October 2023 and 19th October 2023, accompanied by the following officers:

i.	Ms. Joyce Mwale	Director Administration
ii.	Mr. Joseph Mwangi Kiraita	Deputy Accountant General
iii.	Dr. Meshack Opwora	Director TVET
iv.	Eng. Mwaa Mutinda	Director TVET
v.	Mr. Elicanah Mosiori	Director Human Resource Management
vi.	Ms. Risper Makasi	Chief Finance Officer
vii.	Mr. John Tuwei	Deputy Director TVET
viii.	Nelson Gitau	Deputy Director TVET
ix.	Ms. Joan Omuruli	Deputy Director TVET
x.	Mr. Peter Kamau	Assistant Director TVET
xi.	Mr. James Nyambune	Assistant Director TVET
xii.	Ms. Carolyne Nyambok	Principal Accountant
xiii.	Ms. Mary Muthoka	Chief Principal
xiv.	Ms. Catherine Kelonye	Chief Principal
xv.	Mr. Vincent Mayaka	Accountant
xvi.	Evan Kimari	Accountant

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

260: Unsupported Other Revenues

The statement of receipts and payments reflects other revenues amounting to Ksh. 4,676,474,119 being Appropriations-In-Aid collected by Vocational and Technical Training institutions. However, no supporting documents were provided to confirm the revenue earned, received and reported in the financial statements. Further, the amounts captured were extracted from the budget estimates and not the actual revenue from the institutions. In addition, no evidence was provided to show that revenue collected was surrendered to the Receiver of Revenue as required.

In the circumstances, the accuracy and completeness of other revenues amounting to Kshs.4,676,474,119 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The Appropriation-in-Aid collected by Vocational and Technical Training institutions that was captured by the IFMIS system amounted to Kshs. 4,676,474,119. However, the actual revenue collected amounted to Ksh. 6,210,339,300, while the approved AIA budget was Kshs.4,919,177,254.

The IFMIS system is configured in such a way that it does not allow over collected revenue to be captured, thus limiting revenue capture to the approved budget. This explains why the amounts were extracts from the budget and not the actual revenue from the institutions.

Out of the 26 institutions that collected AIA in the year under review, five of them sought for approval and were granted revision of their AIA budget.

The 13 institutions that did not revise their AIA budget realized over collection at the end of the financial year thus they could not seek for review as the Supplementary budget window was closed.

However, the State Department has since sought for authority from The National Treasury for Institutions to spend the extra revenues collected over and above the budget estimates in the Financial Year 2022/23, resulting to the revision of AIA budget to Ksh.5,795,218,628. This will subsequently solve the problem of over collection of revenues above the budget ceiling.

Committee Observations and Findings;

The Committee observed that the Accounting Officer under-projected revenue and proceeded to spend above approved ceiling.

Committee Recommendation;

The Committee reprimands the Accounting Officer for use of revenue unappropriated, at source, contrary to section 74 of the PFM Act.

261: Unsupported Procurement of Equipment under Kenya- China Project

The statement of receipts and payments reflects proceeds from foreign borrowings amounting to Kshs.895,820,309 as disclosed in Note 3 to the financial statements. The Government of Kenya through the then Ministry of Education, Science and Technology entered into a contract with a firm for supply of equipment. The project was for establishment of Technical and Vocational Training (TVET) workshops through an addendum dated 25 May, 2016 that includes an amount of Kshs.149,799,955 paid under the Kenya China Project for the installation of low voltage boards in fifteen (15) TVET institutions. However, Management did not provide the disbursement schedule, payment vouchers and information on how the firm was identified, selected and awarded, casting doubt on whether the payments were actually made and received. Further, no information was provided on how the beneficiary institutions were identified.

In the circumstances, the accuracy, completeness and regularity of the expenditure of Kshs.149,799,955 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The Government of Kenya entered into an agreement with the Government of China where the Ministry of Education was the implementing agency for the Government of Kenya, while AVIC International Holding Corporation was the implementing agency for the Government of China. The scope of the contract was to supply, install and commission the training equipment's to the TVET institutions in Kenya. They were also to train the trainers on the use of the supplied training equipment and carry out maintenance of the same during the contract period, among other

obligations as reflected in the addendum 1 to the main commercial contract provided in Annex 261a. The training equipment was supplied to one hundred and forty-four (144) TVET institutions.

As per the signed contract (Annex 261a) and the professional opinion (Annex 261c) the Ministry of Education engaged Ms. AVIC International Holding Corporation to install low voltage (LV) boards in fifteen (15) TVET institutions which was part of the 144 TVET institutions that received the training equipments. The installation of the L.V. boards allow the TVET institutions to be connected to three phase power to run the training equipments. This ensures that there is value for money for the supplied training equipments.

An amount of Kshs.149,799,955 was paid to the Contractor for the installation of LV boards in the fifteen (15) TVET institutions as per the copy of the voucher (Annex 261d). The award of the tender to Ms. AVIC International Holding Corporation was done in line with the professional opinion.

The payment of Kshs.149,799,955 was made by the National Treasury and Planning to the financier of the project (EXIM Bank of China) as per the irrevocable drawdown.

AVIC International Holding Corporation vide a letter Ref. MSTE/AVIC/22/12/2022 dated 22nd December 2022 confirmed to the Ministry of Education that the Contractor received Kshs.149,799,955 from the financier in respect to installation of LV boards in fifteen (15) TVET institutions. This amount was 70% of the sub- contract price since an advance payment of 30% had been made to the financier by the Ministry of Education as per the signed contract.

The fifteen (15) beneficiary TVET institutions were identified as per the clustering of the TVET institutions by the project manager (Ministry of Transport and Public Works). The Ministry of Education started with the first two LOTS which had a total of fifteen (15) TVET institutions due to limitation of funds. The clustering had a total of seven (7) LOTS as reflected in communication Ref. MOE/DTE/6/5/1 VOL.XVII (64) dated 4th April, 2022.

Committee Observations and Findings;

i) **The Committee observed that the financing agreement expressly provided for AVIC International to be China's implementing agency for the project, as a condition for concessionary terms;**
ii) **Payment was made directly by National Treasury.**

Committee Recommendation;

The Committee recommends that Treasury and the Attorney General competently negotiates financing agreements allowing for competitive bidding for all future projects.

262: Loss of Cash through use of Duplicate Bank Account Details in the IFMIS System

The statement of assets and liabilities reflects a bank balance of Kshs.84,898,890 as disclosed in Note 10 to the financial statements. However, review of IFMIS details, bank reconciliations and cash books revealed that the State Department lost a total of Kshs.356,000 due to an account in IFMIS created under an individual's name. No explanation was provided on how the account was created under the shared name without authority and how the State Department planned to recover the lost funds.

In addition, recovery of the amount is in doubt. Further, key processes and internal controls put in place to mitigate against theft, embezzlement, fraud or errors could be weak.

In the circumstances, the accuracy and completeness of the bank balance of Kshs.84,898,890 as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The imprests payable to Tabitha Kimani were not totaling to Ksh.356,000 but Ksh.188,200, and there was no other individual defined in the IFMIS with the same name. Payments to Tabitha Kimani were meant to cater for Tender opening (Ksh.100,800), site visit (Ksh. 52,400), airtime (Ksh.5,000), utensils (Ksh.15,000) and Staff tea (Ksh.15,000). Although the officer details were correctly selected for payment, the system picked different bank accounts as follows:

i.) Three payments of Ksh.158,200 (Tender opening, site visit and airtime) went to Co-operative Bank account in Central Bank of Kenya, and we subsequently wrote to the manager to do an inter entity transfer to our bank account in Central Bank.
ii.) Two payments of Ksh.30,000 (Utensils and Staff Tea) went to NCBA, and we equally wrote to the management to reverse the transactions into our bank account in Central Bank of Kenya.

The officer has since been paid her rightful amount.

Committee Observations and Findings;

The Committee observed that despite the rightful officer being eventually paid her dues, the erroneous payment was a result of negligence.

Committee Recommendation;

The Committee recommends that;

i) **The Accounting Officer takes administrative action on the IFMIS user(s) that made the erroneous entries, within three (3) months of adoption of this report by the House;**
ii) **The Auditor General confirms through the State Department's statements that the erronoues payments had indeed been received back to the State Department in full and reports in subsequent audit.**

263: Expenditure on Rent made without valid Lease Agreements

The statement of receipts and payments reflects use of goods and services amounting to Kshs.867,132,447 as disclosed in Note 6 to the financial statements. Included in this amount is Kshs.52,317,911 in respect of rentals of produced assets. The amount includes Kshs.50,052,418 in respect of rent of office space for the various departments whose lease agreements did not indicate the lease period and date signed.

In the circumstances, the accuracy and validity of the rent amounting to Kshs.50,052,418 could not be confirmed.

Submission by the Accounting Officer

During the financial year under review, there was rent paid that didn't have supporting lease agreements from landlords and property managers. Payments by the State Department are normally done using invoices. The State Department wish to state the lease agreements have since been availed with the required details for audit verification.

Committee Observations and Findings;

The Committee noted that the lease agreements were belatedly availed.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents on time, contrary to section 9 (i) (e) of the Public Audit Act, 2015.

264: Long Outstanding Receivables- District Suspense

The statement of assets and liabilities and Note 11 to the financial statements reflects accounts receivables of Kshs.856,570 relating to the district suspense which was not supported with the relevant supporting documents or schedules. Further, excluded from the balance is a district suspense balance of Kshs.1,012,351 brought forward in respect of disbursements to the districts to support their operations. However, the respective districts did not account for the amounts disbursed.

In the circumstances, the validity, accuracy, completeness and recoverability of the accounts receivables balance of Kshs.856,570 as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The statement of Assets and Liabilities reflects an account receivable relating to District Suspense has a brought forward figure of Ksh. 1,012,351 from year 2021/2022 which has been reduced by surrenders to Ksh. 856,870.00 that was not adequately supported with documents as at the time of audit. The State Department wish to state that the schedule supporting the above district suspense has since been availed as captured in the revised Financial Statements.

The un-surrendered District Suspense figure of Ksh.1,012,351 as at 30th June, 2021 was the opening balance of the Financial Year 2021/2022. The un-surrendered District AIEs' during the Financial Year under review were amounting to Ksh.856,570.05 as per the schedule below;

S/NO	COUNTY	BAL C/F
1	BUSIA	-
2	EMBU	1,259.15
3	GARISSA	120,348.00
4	HOMABAY	-
5	ISIOLO	67,079.80
6	KAJIADO	4,811.00
7	KAKAMEGA	5,280.00
8	KERICHO	-
9	KILIFI	67,189.00
10	KISII	67,363.00
11	KISUMU	-
12	LAIKIPIA	-
13	MAKUENI	-
14	MANDERA	5,704.00
15	MOMBASA	4,164.00
16	NAKURU	133,452.00
17	NYERI	48,794.50
18	SAMBURU	331,125.60
19	TRANSNZOIA	-
20	UASIN GISHU	-
21	NAIROBI	-
	TOTALS	**856,570.05**

This amount has further been surrendered during the subsequent financial year as below;

	COUNTY	AMOUNT	
1	GARISSA	120,348.00	
2	NAKURU	133,452.00	

In order to clear the remaining balance in the books of accounts, the Accounting Officer wrote a letter to the respective County Directors on the same matter. In order to close the issue, a team of officers will be sent to the respective county headquarters during this financial year, so as to reconcile the balances and avail the correct status of the same.

Committee Observations and Findings;

The Committee observed that the State Department through its county officers had taken inordinately long to reconcile the outstanding figures.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures full reconciliation within three (3) months of adoption of this report by the House.

265: Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.23,053,129,473 and Kshs.20,412,015,477 respectively, resulting to an underfunding of Kshs.2,641,113,996 (or 11%) of the budget. Similarly, the State Department spent Kshs.20,494,170,177 against an approved budget of Kshs.23,053,129,473 resulting to an under absorption of Kshs.2,558,959,297 (or 11%) of the budget.

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

Submission by the Accounting Officer

The State Department was underfunded by The National Treasury with the stated amount of money which resulted into under absorption of the budget.
The Management has been following up on exchequer funding from the National Treasury so as to meet its targets and hence bridge the gap between the budget and the actual expenditures; thus, improving service delivery to the public. However, The National Treasury could not release the expected exchequer because of limitation of funds, hence the underfunding.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

266: Lack of Public Finance Management Standing Committee

Review of documents provided for audit revealed that the State Department did not have a Public Finance Management Standing Committee in place as required by Regulation 18 (1) of the Public Finance Management (National Government) Regulations, 2015 that would have provided strategic guidance on Public Finance Management matters.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The State Department wish to state that the State Department has a Public Finance Management Standing Committee appointed by the Principal Secretary, with a mandate to execute its duties.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer that there was a lack of a PFM Standing Committee as at time of audit.

Committee Recommendation;

The Committee reprimands the Accounting Officer for breach of Regulation 18 (1) of the Public Finance Management (National Government) Regulations, 2015.

267: Mentorship Program and Construction of New Technical and Vocational Colleges

The state department-initiated construction of thirty (30) new Technical and Vocational Colleges (TVC's) across the Country to enhance technical training. To oversee these constructions a number of existing institutions were appointed to mentor the new institutes. Review of financial and contractual records as well as physical of these projects in the month of November,2022 revealed the following unsatisfactory matters:

267.1: Construction of the Kakrao Technical Training Institute (TTI)
Records examined at Rongo University College indicated that a contract was signed on 24 October 2014 between the College and a local contractor for construction of the proposed Kakrao Technical Training Institute at a contract sum of Kshs.48,720,833 for a period of 52 weeks ending on 14 October, 2015. Physical verification of the project in September ,2022 revealed that although the Project was handed over, it was still incomplete. Further, no explanation was provided for the significant delay in completion of the Project.

Submission by the Accounting Officer

Kakrao TVC contract sum was totaling Kshs. 53,720,833.50 out of which the State Department's contribution was Kshs.43,720,833.50. The construction was to be co-funded by Suna East National Government Constituency Development Fund (NG-CDF) that was to contribute Kshs.10 Million. Lack of contribution of Kshs 10 Million caused the delay in completion of the project. To date Suna East NG-CDF has not contributed its pledge, despite of several reminders made to the Funds Manager, Suna East NG-CDF by the mentor institution to that effect.

The project has been implemented by three contractors namely; Manya Investment Ltd, M/S Mbingo Enterprises Ltd and Unami Construction Company Ltd as per the tender evaluation reports availed.

The partial handing over of the institution was occasioned by the commitment by the County Government to contribute Kshs. 10 million towards the completion of the project due to pressure from the community. The initial contribution of Kshs. 2.5 million signaled a commitment by the County Government leading to the partial handing over of the site.

The State Department wish to state that there is no potential interest accrual since the first and second contracts were terminated while the third contract was handed over as per the contract. The building is currently being used partially because the ground-floor is complete.

Committee Observations and Findings;

The Committee observed that lack of a coherent policy on partnership with other levels of government had seen ambiguity in financing and the lack of uniform standards of TVETs across the country.

Committee Recommendation;

The Committee recommends that;

i) **The State Department funds the remaining balance of Kshs. 7.5 million of the Kakrao TTI within the next financial year;**

ii) **The State Department avails a policy towards construction of TVETs/ TTIs in liaison with other levels of government, within three (3) months of adoption of this report by the house.**

267.2: Kilifi North Technical Vocational College

The contract was awarded to a firm on 30 September, 2019 at a contract sum of Kshs.59,062,876 for construction and completion of twin workshop, classrooms and office block-2 storey under the mentorship of Kenya Coast National Polytechnic. The agreed contract period was 52 weeks. At the time of audit, the amount paid was Kshs.44,421,301 and the project had stalled at 60% completion.

Submission by the Accounting Officer

The County Government of Kilifi had closed down the quarries during the Covid 19 period during which the Contractor could not get the construction materials (Annex 267.2a). The contractor, namely Taxman Investment Ltd. resumed construction works and currently the project is at 75% completion. The contractor was given extension of contract period by project manager as per Clause 17.1 of the contract and is currently on site.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer. The project was at 95% completion as at time of appearance of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report by the House.

267.3: Matuga Technical Vocational College

The contract was awarded to a firm on 17 May 2019 at a contract sum of Kshs.57,794,573 for a period of 52 weeks. The total amount paid as at the time of audit was Kshs.45,487,514. The project had stalled at 70% completion as the contractor was waiting for funds to enable him proceed with the remaining part of the project. Further, the provisional sum of Kshs.2,072,000 paid to the contractor was not justified as required by Section 139(2)(e) of the Public Procurement and Asset Disposal Act, 2015 which provides that an Accounting Officer of a procuring entity, on the recommendation of an Evaluation Committee, may approve request for use of prime cost, provisional sum and contingencies which request shall be accompanied by a certificate from the tenderer making a justification for such cost.

Submission by the Accounting Officer

The project which commenced on 12th June, 2019, was affected by the Covid 19 whereby the works slowed down due to limited movement in the Country. The architect retired, leaving the project manager's office with only one officer while the electrical engineer had also died. It took time to appoint another Project management team which caused a delay also in the project implementation.

During the implementation of the project there has been a change of principals which necessitated change of signatories . The provisional sum of Kshs. 2,072,000.00 was never paid. The contractual agreement provides that the project manager gives direction on the use of prime cost, provisional sum and contingencies. The project manager had to be changed from Kwale County Works Officer to Mombasa Regional Works Officer. There was delay in disbursement of funds leading to late payment of works done. This was caused by a budget cut and lack of release of exchequer. By the time of the Audit, the contractor (Rumad Investment Ltd) had been paid a total of Kshs.40,984,694.00 which represents 70.94% and not 78% of the contract sum.

The project is progressing well with 85% work done.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report by the House.

267.4: Igembe Central Technical Vocational College

The mentor institution for this project was Mukiria Technical and Vocational Training College. The construction and completion of a two-storey twin workshop, classrooms and office block at Igembe Central TVC had received development funds from the Ministry amounting to Kshs. 33,097,400 from inception. Further the National Government Constituencies Development Fund had contributed Kshs.10,000,000 for the Project, bringing the total receipts to Kshs. 43,097,400. The project was 50% complete and had stalled for 2 years due to delayed funding from the National Government. The Project manager complained of defects noted due to poor workmanship. In addition, the financial evaluation for the contractor awarded this contract was also in doubt since works could only proceed once payments were received.

Submission by the Accounting Officer

The project at Igembe Central TVC commenced on 8th August, 2019 but was affected by the Covid 19 whereby, the works slowed down due to limited movement in the Country. There was delay in disbursement of funds leading to late payment of works done. The mentoring institution was instructed not to pay the contractor (Taxman Investment Ltd) by Kenya Revenue Authority since he had issues and his bank accounts were frozen. However, all necessary documents were availed by the contractor during the tendering process. The physical completion of the project stands at 70 %. The Contractor has since rectified the defects and committed to complete the works. The payment certificates were withheld until defects were rectified as a penalty.

The State Department wish to state that the contractor was the lowest evaluated bidder. As at the time of the tender evaluation, the contractor had a valid tax compliance certificate.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report by the House.

267.5: Kisii National Polytechnic

The Kisii National Polytechnic Mentors South Mugirango and Kitutu Chache South (KIAMWASI) technical and vocational colleges.

267.5.1: South Mugirango Technical and Vocation Training College

South Mugirango Technical and Vocation Training College construction project was awarded at a contract sum of Kshs.55,241,205. The Kisii National Polytechnic had paid Kshs.45,241,205 by the time the Project stalled at 60% completion level. At the time of the audit, the contractor was not on site. Further, the building was dilapidated, infested with weeds, site was not fenced which made the building prone to vandalism and rain water was dripping on the walls and the floor slab.

Submission by the Accounting Officer

The construction of South Mugirango TVC commenced on 9th June, 2019 but was affected by Covid 19. There was delay in disbursement of funds leading to late payment of works done. The Contractor (M/S Galaxy Ltd) requested for temporary closure of the site due to pending certificate No.2. The mentoring institution had paid the contractor two certificates totaling to Kshs.43,274,601.97. Two certificates of payment for South Mugirango TVC totaling to Kshs. 43,274,601 translates to (43,274,601x100)/55,241,601 =78.34% and not 82% as indicated. As at 18th August 2023, the percentage of work done was at 75% completion. The Contractor was instructed to resume and complete the remaining works by the project manager within 5 months from the date of commencement of works during a site meeting held on 18th August, 2023.

Committee Observations and Findings;

The Committee noted that the payment of 78.34% (including retention money) was beyond works done at 75%.

Committee Recommendation;

i) **The Committee reprimands the Accounting Officer for payment of certificates beyond works done; and**
ii) **Recommends that the Accounting Officer takes administrative action on the project manager and submits a status report within three (3) months of adoption of this report by the House.**

267.5.2: Kitutu Chache South Technical and Vocational Training College

Kitutu Chache South Technical and Vocation Training College project was awarded at a contract sum of Kshs.57,053,885 out of which an amount of Kshs.47,053,885 was paid. Audit verification revealed that works had stalled with floor, electrical works, ceiling, staircase, septic tank and soak pits, internal wooden doors, landscaping, and parking not completed.

In the circumstances, value for money may not be realized from the incomplete projects.

Submission by the Accounting Officer

The issue is that the same project money had gone to the construction of the basement which was a variation and the contractor demanded for a joint re-measurement of works which delayed to be accomplished. The project manager instructed the contractor to carry out additional works on the basement amounting to Kshs.10,048,225.00 due to a sloppy site. The joint re-measurement of works report indicated that the Mentoring institution owed the Contractor (Damtech Enterprises Ltd) Kshs.7, 565,323.79 which has been paid and he was instructed to resume works by the Project Manager. The physical completion of the project is 85% complete as per the project manager's report of 23rd March, 2021.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report by the House.

268: Excess Disbursements to Mentor Institutions

The statement of receipts and payments and Note 7 to the financial statements reflects transfers to other Government units amounting to Kshs.12,559,152,267. Included in the amount is Kshs.927,500,000 disbursed as development grants to various Technical Training Institutions and Technical Vocational Mentor Centres. It was however, noted that an amount of Kshs.11,300,600 out of a total of Kshs.927,500,000 disbursed to three (3) mentor institutions was above the Ministry's contribution to the projects. Further, no documents were provided to prove that the excess amount was recovered from the respective three (3) Mentor Institutions.
In the circumstances, value for money and regularity of the excess disbursement of Kshs.11,300,600.00 could not be confirmed.

Submission by the Accounting Officer

The Ministry disbursed Kshs.11,300,600 to two mentor institutions namely; (1) Machakos TIB for Yatta TVC (Kshs.8,300,600) and (2) Nairobi TTI for Gilgil TVC (Kshs.3,000,000) for payment for building works and not three(3) as stated in the query.

Machakos TIB had requested for funding for extra works which included fascia board and rain water goods, firefighting installations and external works which was granted. The works were approved, advertised, evaluated and completed thus the extra disbursement.

Nairobi TTI received an excess amount of Kshs. 3,000,000.00 for the construction of Gilgil TVC. The amount was later noticed and the Ministry instructed Nairobi TTI to refund the amount as per the attached letter, and the amount has since been refunded. The State Department wish to state the Institutions are complete and operational as per the attached copies of certificates of practical completion.

Committee Observations and Findings;

The Committee noted that the overdisbursement of Kshs. 3 million to Nairobi TTI was negligent. The refund was not evidenced.

Committee Recommendation

(i) **The Committee reprimands the Accounting Officer and recommends that evidence of the refund is availed within three (3) months of adoption of this report by the House.**
(ii) **The Committee recommends that the Accounting Officer takes administrative action on officers involved in processing the overdisbursement within three (3) months of adoption of this report.**

269: Allocation of Capital Grants to Non-Existent Technical and Vocational Centres

The statement of receipts and payments and Note 7 to the financial statements reflects an amount of Kshs.12,559,152,267 in respect of transfers to other Government units.

Included in this amount was capital disbursement to twelve (12) Technical Institutes of Kshs. 271,500,000 out of which Sigalagala National Polytechnic and Nairobi technical training Institute received Kshs.20,000,000 each for the construction of mentee institutions namely Emalulu and Mathare Technical and Vocational Colleges respectively. However, audit verifications carried out in the month of November, 2022 revealed that the sites for construction were yet to be identified and therefore, the amounts sent for the (2) institutions were not utilized. Further, the State Department did not provide evidence that funds were retained for future use.

In the circumstances, value for money may not be realized on the transfer of Kshs.40,000,000 for the construction of mentee institutions.

Submission by the Accounting Officer

Luanda and Mathare Constituencies didn't have TVCs as per the government policy for establishing a TVC in every constituency. Based on that, the Government allocated Kshs. 20,000,000.00 for each TVC for construction of the two TVCs, mentored by Sigalagala NP and Nairobi TTI respectively. Therefore, The State Department disbursed funds as per the budget allocation.

Luanda (Emululu TVC) in Luanda Constituency project commenced on 2nd May, 2023. During the time of audit, the Bill of Quantities were being revised by Public Works and so the construction had not been started. However, the works have since commenced and are at 38% completion. The contractor has also been paid for two certificates.

Mathare National Government Constituency Development Fund in collaboration with Nairobi Technical Training Institute has identified a site for the construction of Mathare TVC in Mathare Constituency. The State Department for Public Works were requested to revise the drawings and Bills of Quantities. However, the State Department wish to state that the amount of Kshs.20 million disbursed to Nairobi TTI for construction of Mathare TVC is available in the Institutes bank account.

Committee Observations and Findings;

The Committee observed that the Accounting Officer set aside idle funds for TVCs that were yet to be identified, while others like Kakrao TTI cited in paragraph 267.1 above had been starved of much needed funds.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that available funds be channeled to TVCs/ TTIs in need.

270: Failure to Enforce One Third Rule on Basic Salary

Review of compensation of employees' documents revealed that in the month of June, 2022, seven (7) officers earned less than one-third (1/3) of their basic salaries. This was contrary to Section 19(3) of the Employment Act, 2012 which provides that the total amount of all deductions that may be made by an employer from the wages of his employee at any one time shall not exceed two-thirds (2/3) of such wages or such additional or other amount as may be prescribed by the Minister either generally or in relation to a specified employer or employee or class of employers or employees or any trade or industry.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

As at 30th June 2022, seven (7) employees out of six thousand, six hundred and thirty-eight (6,638) in the State Department were earning less than one third of their basic salaries. This was caused by the following factors:

(i) During the Covid -19 pandemic period the government reviewed the PAYE rate downward which enhanced employee net pay, and some of them took advantage of these enhanced net incomes to acquire extra loans. When the tax rate was reviewed upwards, employees who had already over-committed their salary found themselves earning below one third of net income;

(ii) The implementation of the superannuation pension scheme which started with 2.5% in the year 2021, 5% in 2022 and later 7.5% in year 2023. Officers whose salaries were already at one third found themselves dropping below the required bracket due to these statutory deductions;

(iii)One (1) officer retired on 18th June, 2022 hence was not paid full salary for the month; and two (2) officers had statutory deductions implemented in the same month (HELB and over payment recovery). These statutory deductions are mandatory.

To curb the non-compliance, the State Department issued a letter to all employees through their supervisors and cautioned them to always adhere to the regulation of one-third and requested all those affected to take necessary action to ensure compliance. The officers in charge of payroll have since been constantly monitoring compliance of all the officers and taken corrective measures every month.

Additionally, we confirm that the affected seven (7) officers who were still in the service in the month of July 2022 had already rectified and complied.

Finally, the government has developed the Unified Human Resource System which is internet based and allows third party organizations to key in their requests for deductions directly to the system.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures incremental compliance to the law.

REPORT ON THE EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

271: Processing of Payments

271.1: Kilifi North Technical Vocational College

Analysis of the system payments indicated that twenty-seven (27) transactions of Kshs. 405,309,396.00 were voided during the year 2021/2022. No approval was given from the Controller of Budget approving the payments and the voiding.

Submission by the Accounting Officer

When payments are processed in IFMIS and transmitted to Internet Banking (IB) and, the exchequer is not received by The State Department, the same has to be stopped in IB and subsequently voided in IFMIS in order to reverse the expenditure already captured in the budget. The above stated transactions relate to internal suppliers who are not considered as pending bills;

thus, do not warrant further approval by the Controller of Budget as no expenditures would be incurred on them, at the beginning of a financial year. In order to clear the system of such unpaid transactions, voiding responsibility has been inbuilt in the IFMIS system.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee found that the matter was resolved.

271.2: Transactions in System Payments not Processed in Payment Details

Analysis of the IFMIS system payment reports processed against the payments made, revealed sixty-nine (69) transactions amounting to Kshs.63,953,049 that were paid but not captured in IFMIS payment details as at 30 June, 2022.

In the circumstances, the effectiveness of key processes and internal controls put in place to process payments could not be confirmed.

Submission by the Accounting Officer

The above stated payments could not be captured in payment details as at June 30, 2022 because the actual payments were remitted during that last day of the month and so they appeared in the following month of July 2022, despite having been registered and captured within the Financial Year under review. In the bank reconciliation for the month of July 2022, these payments were reconciled to the transactions in the bank statements.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General confirms the details in subsequent audit.

272: Failure to Update Pending Bills Annexure

During the year under review, there were no pending bills disclosed in the financial statements except for an amount of Kshs.58,702,226 which was disclosed in Note 12 as deposits. However, IFMIS data indicated accounts payable of Ksh.161,095,556 (recurrent accounts Kshs.1,393,888 and development accounts Kshs.159,701,668) that were not disclosed in the financial statements and whose supporting documents were not provided for audit review.

In the circumstances, the effectiveness of the key processes and controls put in place to capture accurately the accounts payables could not be confirmed.

Submission by the Accounting Officer

The schedule supporting the above deposits amounting to Kshs. 58,702,226 have since been availed as captured in the final revised financial statements for audit review.

The IFMIS data had accounts payables totaling Ksh.161,095,556.00 comprising of (recurrent account Kshs.1,393,888.00 and development account Kshs,159,701,668.00). We wish to state that these refer to payments that were processed after 30th June, 2022, due to late release of exchequer that was received in the month of July 2022, but with respect to transactions for the financial year ending 30th June, 2022. The same transactions were subsequently cleared in bank reconciliation statements for the month of July 2022.

Committee Observations and Findings;

The Committee noted that the supporting documents were belatedly availed.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to keep proper accounting records as per section 68 (2)(b) of the PFM Act 2012.

DONOR FUNDED PROJECTS
KENYA ITALY DEBT FOR DEVELOPMENT PROGRAM

REPORT ON THE FINANCIAL STATEMENTS

273: Unsupported Prior Year Adjustments

The statement of financial assets reflects a prior year adjustment amounting to Kshs.442,821. However, this has not been disclosed in the Notes to the financial statements on the nature of the error that relates to the prior period and the fact that comparative information has been restated or that it is impracticable to do so. Further, the cash at the beginning of the period has not been adjusted by the amount of error and journal entries signed by the Accounting Officer or an officer designated by him.
This was contrary to Regulation 103 of the Public Finance Management (National Government) Regulations, 2015 which provides that journal entries prepared for all adjustments to be authorized by the accounting officer or an officer designated by him or her before posting them in a financial record. Further, the Regulations requires that the journal vouchers to be supported by sufficient explanations, authorizations, and documentation to facilitate accounting adjustments to be understood.

In the circumstances, the accuracy and completeness of the prior year adjustments balance of Kshs.442,821 could not be confirmed.

Submission by the Accounting Officer

The State Department wish to state that the observation made on the statement of financial assets reflecting a prior year adjustment amounting to Kshs. 442,821.00 has now been disclosed under the notes in the revised financial statements as per the Public Sector Accounting Standard Board (PSASB) reporting requirements and National Treasury Circular AG.4/16/2/Vol.II (66) of 6 July, 2022 which is in line with the prescription of the International Public Sector Accounting Standards (IPSAS) on cash basis of accounting.

Committee Observations and Findings;

The Committee noted that the disclosures were belatedly made.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to keep proper accounting records as per section 68 (2)(b) of the PFM Act 2012.

274: Unsupported Domestic Travel and Subsistence

The statement of receipts and payments reflects purchase of goods and services amount of Kshs.6,348,978 as disclosed in Note 2 to the financial statements. Included in this amount is an amount of Kshs.6,319,400 in respect of domestic travel and subsistence allowances on monitoring and evaluation activities for the project. However, Management did not provide work plans and an imprest register for audit. Further, Note 2 to the financial statements reflects domestic travel and subsistence cumulative to date comparative amount of Kshs.28,904,902 which was at variance with the previous year audited amount of Kshs.24,015,759 resulting in an unreconciled variance of Kshs.4,889,143.

In the circumstances, the accuracy, completeness and regularity of domestic travel and subsistence expenditure amount of Kshs.6,319,400 and the cumulative to-date amount of Kshs.35,224,302 for the year ended 30 June,2022 could not be confirmed.

Submission by the Accounting Officer

The work plans pertaining to the monitoring and evaluation activities for the project have now been availed for audit verification.

Further, the amount of Kshs. 28,904,902.00 under domestic travel and subsistence was the cumulative figure for the prior year, and the cumulative figure for the year ended 30 June, 2022 amounted to Kshs. 35,224,302.00.

Committee Observations and Findings;

The Committee noted that the submission of the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to promptly avail work plans and imprest register.

275: Omitted Donor Commitment

The project information and overall performance reflect the source and application of funds on pages vii and viii. The summary does not reflect the donor commitment, amounts received, amounts undrawn and unutilized balances, and amounts received to date in donor currency as prescribed by the reporting template by the Public Sector Accounting Standard Board.

In the circumstances, the annual report and financial statements for the year ended 30 June, 2022 are not fairly stated in respect of the source and the application of funds.

Submission by the Accounting Officer

The observations made regarding the disclosure of donor commitment, amounts received, amounts undrawn and unutilized balances, and amounts received to date in donor currency is contained in the financing agreement which details how the entire amount of the Italian Government's development grants, applied across five different State Departments in Kenya.

However, The State Department for Technical, Vocational Education and Training's share of the fund, the KIDDP funds were apportioned in Kenyan shilling as detailed in the Funding summary.

Committee Observations and Findings;

i) **The Committee noted the explanation by the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

SUPPORT TO TECHNICAL AND VOCATIONAL EDUCATION AND TRAINING FOR RELEVANT SKILLS DEVELOPMENT PROJECT-PHASE II (LOAN NO.2100150033295)

REPORT ON THE FINANCIAL STATEMENTS

280: Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects a final budget and actual receipts on a comparable basis of Kshs.848,500,00 and Kshs.790,803,552 respectively, resulting to an underfunding of Kshs.57,696,448 (7%) of the budget. of Kshs.848,500,000, resulting to an under expenditure of Kshs.57,696,448 (7%) of the budget.

Submission by the Accounting Officer

The underfunding of Kshs. 57,696,448.00 (7%) of the budget of Kshs. 848,500,000.00 and the under absorption affected the planned activities and may have impacted negatively on service delivery to the public. The Management subsequently has been following up exchequer funding from the National Treasury to bridge the gap between the budget and the actual expenditures and improve service delivery to the public. The AFDB phase II construction projects that are paid through direct payments by the donor are also being fast tracked so that the consultant submits the certificates on time to improve on budget absorption.

Committee Observations and Findings;

i) **The Committee noted the explanation by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN THE USE OF PUBLIC RESOURCES

281: Delay in Completion of Training Institutes

The statement of receipts and payments reflects acquisition of non-financial assets amount of Kshs.541,222,628 as disclosed in Note 4 to the financial statements. The expenditure includes an amount of Kshs.426,222,628 in respect of overhaul, refurbishment of construction, and civil works for training institutions for contracts engaged in the year 2016/2017 whose performance bonds had expired. Review of these projects revealed that construction works in four (4) Institutions with a combined contract cost of Kshs.798,608,059 and payments of Kshs.629,578,884 had not been completed. The Project is scheduled to come to an end on 30 December, 2022 by which time the projects will be incomplete and not put to the intended use.

In the circumstances, value for money has not been realized.

Submission by the Accounting Officer

The Project management has noted the delays in the constructions in the four institutions. The issue has been addressed with the consultant/contractors and a plan on how to complete the project before the no cost extension contract expires is on course.

The contractors to the stated institutes were Sunrays Distributors Ltd, Napoleon Star Services, Eagle Scientific Ltd. and Xponcis Limited for St. Joseph Nyang'oma Technical Training Institute for the Deaf, Machakos Technical Training Institute for the Blind, Karen Technical Training Institute for the Deaf and Sikri Technical Training Institute for the Deaf and Blind respectively.

Below is a review of the project manager status report for the month of July 2023 indicating construction works in the four (4) Institutions with a combined contract price of Kshs.798,608,059 as shown in the table below. There is no cost extension as the manager do envisage completing the projects on time;

INSTITUTE	CONTRACT SUM (KSHS)	AMOUNT PROCESSED (KSHS)	COMPLETION STATUS AS AT JULY 2023
Mukurweini TTI	175,090,801.96	114,882,691.75	65%
Butere TTI	216,270,706.36	196,840,076.22	91%
Sikri TTIBD	291,775,174.48	259,820,510.06	89%
St. Josephs TTID	231,186,827.81	165,776,833.15	71%

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report by the House.

282: Delay in Supply, Delivery, Installation, Commissioning, Learning and Training Assistive Devices and Equipment

The Project Management entered into a contract for supply, delivery, installation, and commissioning of learning and training in the use of assistive devices and equipment to four (4) Special Technical Training Institutes at a contract sum of Kshs.119,989,397 in August, 2017. However, records to confirm receipt of the devices and equipment by the receiving institutions were not provided for audit.

In the circumstances, it was not possible to confirm whether value for money was achieved in the procurement.

Submission by the Accounting Officer

The project Management entered into a contract in August 2017 for the supply, delivery, installation, and commissioning of learning and training in the use of assistive devices and equipment to four (4) special Technical Training Institutes for a combined contract sum of Ksh.119,989,397. The delays in the execution of the project were occasioned by challenges in the manufacture of the assistive devices from abroad since they are specialized.

The current state of implementation of the contracts for Karen TTIB, Machakos TTIB, St. Joseph's TTID and Sikri TTIBD is as follows;

Institution	Type of Devices	Status
Karen TTID	Learning and Assistive Devices for Hearing impaired	The equipment has been delivered, inspected and handed over to the institution
Machakos STTIB	Learning and Assistive for Visually impaired	The equipment has been delivered, inspected and handed over to the institution
Sikri TTIBD	Learning and Assistive Devices for-Visual and Hearing	The equipment has been delivered, inspected and handed over to the institution
St. Joseph Nyangoma TTID	Learning and Assistive Device for the Deaf	The equipment has been delivered, inspected and handed over to the institution

Committee Observations and Findings;

The Committee noted that evidence of receipt was not availed by the recipient schools.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to provide documentation and recommends that the Accounting Officer avails to the Committee evidence and acknowledgement of receipt by the schools within three (3) months of adoption of this report by the House.

283: Failure to Open and Maintain a Separate Project Bank Account

The Project Management did not maintain a specific project bank account as funds received were credited to the Ministry's development bank account instead of a separate project account. It was therefore not possible to trace the receipts to the cash book and in the bank statement. This is contrary to Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015 which provides for the purpose of disbursement of project funds, there shall be opened and maintained a project account for every project at the Central Bank of Kenya unless it is exempted by the Cabinet Secretary, in writing, into which all funds shall be kept and such an account shall be known by the name of the project it is opened and each project shall maintain only one bank account.

In the circumstances, the Project Management was in breach of the law.

Submission by the Accounting Officer

There was no separate project account because the donor funds (loans and grants Appropriation - In-Aid) are not disbursed to Consolidated Funds Account at the Central Bank of Kenya. The funding is held by the donor bank account where they are disbursed directly to the suppliers and contractors as Direct Payments. The State Department's responsibility regarding processing of direct payments is to pass journals to capture expenditure from the department's budget. The payment documents are then forwarded to The National Treasury by the Accounting Officer for onward transmission to the AfDB bank for eventual payment to the suppliers.

The AfDB (TVET project phase II) project therefore, the same cash book and bank account with the government fund. Equally, the exchequers come as a consolidated figure and captured in the IFMIS Accounts Receivables Module and subsequently recorded in the cashbook.

The Accounting Officer wrote to the National Treasury requesting for separation of the project's development bank account from the development account of the State Department at the Central Bank of Kenya, so as to ensure that each Development Project has its own dedicated Special Deposit Account in order to ring fence the project funds. The State Department wish to state that the project's funds come in form of Appropriation in Aid from foreign grants, or borrowings from AFDB bank and are disbursed directly to the consultants, suppliers and contractors without passing through the Consolidated Account at the Central Bank of Kenya. The State Department then pass journals to capture expenditure and forward the same to The National Treasury Disbursement Unit. Only the GoK counterpart funding which is a percentage of the loan that comes to the State

Department bank account at the Central Bank of Kenya, which is spent on financing administrative work of the project.

The exchequer receipts have now been supported with the respective development exchequer notifications and receipt vouchers (FO 17) in order to confirm the receipt of the funds.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer henceforth seeks exemption from the Cabinet Secretary National Treasury, as provided for under section 76(1) of PFM Regulations.

EAST AFRICA SKILLS FOR TRANSFORMATION AND REGIONAL INTEGRATION PROJECT (EASTRIP) IDA LOAN CREDIT NO.6334-KE

REPORT ON THE FINANCIAL STATEMENTS

287: Budgetary Control and Performance
The statement of comparison of budget and actual amounts reflects final expenditure budget and actual on comparable basis of Kshs.700,000,000 and Kshs.87,107,119 resulting in an under expenditure of Kshs.612,892,881 (88%) of the budget.

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

Submission by the Accounting Officer

The Statement of Comparison of Budget and Actual amounts reflect final expenditure budget and actual on comparable basis of Kshs.700,000,000.00 and expenditure Kshs. 87,107,119.00 resulting in an under expenditure of Kshs.612,892,881.00 (88%) of the budget. I wish to state that the Kshs.700,000,000.00 is the total budget which includes the amounts for the Regional Flagship Technical Institutions (RFTIs) of Kshs. 550,000,000.00 which the RFTIs were not able to request from the World Bank.

The National Project Coordinating Unit (NPCU) had disbursed amount totaling Kshs.945million in two batches of Kshs.200m and Kshs.115million to each of the RFTIs in the financial year 2020/2021. The country went into lockdown due to Covid 19 immediately after receiving the first batch of funds in the month of March 2020. The RFTIs could not undertake any physical activities such as construction of the Institutes and Curriculum Development and hence no withdrawal application of funds was done from the World Bank.

The disbursement balances the RFTIs brought forward from previous financial year were able to cater for their expenses in the financial year 2021/2022.

The headquarters budget was Kshs. 150,000,000.00 out of which Kshs.87,107,119.00 (58%) was utilized. The headquarters carried forward Kshs. 98,160,028.00 from the FY 2020/2021, which was utilized in the FY2021/2022.

Committee Observations and Findings;

i) **The Committee noted the explanation by the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

REPORT ON THE EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

289: Failure to Tag Assets

The summary of the fixed assets register reflects fixed assets valued at Kshs.30,632,223 as disclosed in Annex 2 to the financial statements. Included in this balance is Kshs.6,315,200 and Kshs.11,065,423 in respect to office equipment, furniture and fittings, and ICT equipment, software and other ICT assets respectively. Verification of the assets revealed that the assets had not been tagged or serialized for ease of identification and management.

In the circumstances, the security and custody of the assets may not be assured raising the likelihood of misuse, theft and loss.

Submission by the Accounting Officer

It was observed that various assets of The State Department had not been tagged as at the time of audit. However, the office equipment, furniture and fittings, ICT equipments, software and other ICT assets in the Asset Register are now tagged/ serialized as required and ready for inspection.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the Auditor General ascertains compliance in subsequent audit.

PROMOTION OF YOUTH EMPLOYMENT AND VOCATIONAL TRAINING IN KENYA (TVET PHASE I) PROJECT LOAN REFERENCE: BMZ NO.2016 67 211 & BMZ NO.2016 65 298 AND PROJECT GRANT REFERENCE NO.1930 05 527

REPORT ON THE FINANCIAL STATEMENTS

292: Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects a final budget and actual receipts on a comparable basis of Kshs.633,000,000 and Kshs.135,196,299 respectively, resulting in an underfunding of Kshs. 497,803,701 (79%) of the budget similarly, the project spent an amount of Kshs. 135,196,299 against an approved budget of Kshs. 633,000,000, resulting in an under expenditure of Kshs. 497,803,701 (79%) of the budget.

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

Submission by the Accounting Officer

There was a budgetary underfunding and underperformance of Kshs.497,803,701.00 (79%) of the budget during the Financial Year under review. The State Department wish to state that this was caused by the lengthy procurement processes. The State Department through the Consultant Niras Africa Limited has since identified contractors to implement the construction works in the Centers of Excellence and to furnish the same with specialized equipment. In the current financial year 2023/2024, the Project Management is fast tracking budgetary performance and ensure that all the activities planned for are undertaken in order to improve on budget absorption.

Committee Observations and Findings;

The Committee noted that the explanation by the Accounting Officer was unsatisfactory.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to effectively implement work plans, and recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report by the House.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

293: Slow Pace of Project Implementation

The Financing Agreement dated 21 February, 2020 indicated that Phase I of the Project had twelve (12) activities. The activities were meant to construct, equip and upgrade three (3) Institutions identified as Centres of Excellence through training of trainers on the use and maintenance of equipment, development, and procurement of teaching, learning and assessment materials and tools as well as provision of scholarships to disadvantaged youths. However, the project is at the

third activity, an indication that nine (9) activities had not been implemented as of the time of the audit in October, 2022. Further, the Project has only fourteen (14) months remaining before the expiry of the three (3) year period casting doubt on the completion of the project.

In the circumstances, value for money may not be realized in the implementation of the project due to the slow implementation.

Submission by the Accounting Officer

The slow pace of project implementation was occasioned by the COVID-19 pandemic that caused a worldwide lockdown on movement and activities of people; Kenya included.

The pace of implementation of Phase I was further impacted by the lengthy procurement procedures arising from the project requirement of adhering to the Public Procurement and Disposal Act and the KFW procurement guidelines. The State Department wish to state that all the planned activities and procurements have since been undertaken and others are on course. The implementation of the project is within the planned financing timelines and will be completed as planned.

Committee Observations and Findings;

The Committee noted that the explanation by the Accounting Officer was unsatisfactory.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to effectively implement work plans, and recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report by the House.

294: Irregular Procurement and Payment for Consultancy Services

As previously reported, the State Department requested assistance from the Development Partner in undertaking the procurement of a consultant on 22 August, 2017. The consultancy service contract was awarded at a contract sum of Kshs. 446,041,869 on 9 September, 2020. However, this was done before the Project financier was identified.

The following anomalies were also noted: -

(i) A Tender Agent based in Germany was engaged on an unidentified date to undertake the evaluation on behalf of the State Department;
(ii) The terms of engagement of the Tender Agent including the contract, procurement process, appointment, remuneration if any, and the contractual obligations were not provided for audit review;
(iii) The engagement with KfW to assist in the procurement of the consultant was on 22 August, 2017 which was more than two years before the signing of the Financial Agreement on 21 February, 2020;
(iv) The notification of the award was made on 17 July, 2018 to the successful consultant based in Germany while the contract was signed on 9 September, 2020 which was more than two years after the notification of the award;

(v) The contract was signed between the State Department and a locally incorporated company that was not part of the bidding consortium and which was not the one notified of the award; and,

(vi) The payments were made to the local company that did the invoicing even though they were not a party to the contract and there was no apparent contractual obligation.

In the circumstances, the Project Management and the State Department were in breach of the law of procurement and value for money has not been realized. Further, the payments made were irregular as the Company was not part of the consortium at bidding for the service.

Submission by the Accounting Officer

The Tender Agent for the KfW phase I project is based in Germany and was contracted by Kreditanstalt fur Wiederaufbau Bank, (KfW) (German Development Bank) who is the financier of the project. The State Department wish to state the following:

The Tender Agent was procured on 5th July, 2017 on behalf of the Ministry of Education. The request for the tender Agent was reached upon during the Project Appraisal Mission held on 26th May 2017. Minutes of Appraisal Mission and confirmation of the Tender Agent Procurement process by KfW have been availed. The Consulting Agreement between the Tender Agent and the KfW bank was availed; itemizing the terms of reference, remuneration and contractual obligations of each party.

The Tender Agent initiated the procurement process in August 2017 in line with the KfW procurement guidelines and Kenya Procurement law (PPOA 2015) and concluded the process in 2018. However, the signing of the contract for the provision of consulting services was done after the signing of the Financing Agreement. The delay between the award of the contract and the notification was occasioned by a delay in meeting a pre-condition of the financial co-operation which stated that each beneficiary institution possesses a title deed. The resolution to this requirement was protracted and lasted from 2017 to 2019. On acquisition of the title deed by Kiambu Institute of Science and Technology, the Financing Agreement was signed on 21st February 2020 and the Consultancy Contract on 9th September, 2020.

The Consultant (NIRAS) is a consortium of companies with the parent company in Germany of which NIRAS Africa (Kenya) is a member. The contract for the Project Promotion of Youth Employment and Vocation Training was awarded to the successful bidder, NIRAS IP Consult GmbH which is a legal entity registered in Germany. Both NIRAS African Limited and NIRAS IP consult GmbH are owned 100% by the same shareholder (NIRAS Gruppen A/S). Communication regarding implementation of the project by the NIRAS Kenya have been availed. In addition, KfW - the financier gave a No Objection letter to NIRAS Africa to sign the contract on behalf of NIRAS IP of which a Copy of No Objection letter and group structure were availed.

Committee Observations and Findings;

The Committee observed that;

(i) The State Department had no reason to outsource procurement to an agent as it is a procuring entity itself;

(ii) The financing agreement was skewed in favor of the domicile country of the financier, evidenced by the fact that the winning bidder eventually came from there;

(iii)Evidence of shareholding of the local implementing company by the winning bidder was not availed, and it may have been a vehicle to secure the tender and sub-contract.

Committee Recommendation;

The Committee recommends that the EACC conducts investigations to the procurement.

295: Failure to Open and Maintain a Separate Project Bank Account

The Project Management did not maintain a specific project account as funds received were credited to the Ministry's development bank account instead of separate project account. It was therefore, not possible to trace the receipts to the cashbook and in the bank statement.

This is contrary to Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015 which provides for the purpose of disbursement of project funds, there shall be opened and maintained a project account for every project at the Central Bank of Kenya unless it is exempted by the Cabinet Secretary, in writing, into which it is opened, and each project shall maintain only one bank account.

In the circumstances, the project management was in breach of the law.

Submission by the Accounting Officer

The project management did not maintain a separate bank account because donor funds (loans and grants Appropriation -In-Aid) are not disbursed to Consolidated Fund Account at the Central Bank of Kenya. The funding is held by the donor bank account to be disbursed directly to the suppliers and /or contractors as Direct Payments. The State department's responsibility regarding payments processing is to pass journals in the IFMIS system so as to capture expenditure from the State department's budget. The payment documents are then forwarded to The National Treasury by the Accounting Officer for onward transmission to the KFW bank for eventual payment to the suppliers.

The KFW phase I project shares both development cash book and bank account with the GoK. The exchequers come in bulk for the entire development vote for the State Department and the same captured in the IFMIS using module of Accounts Receivables and subsequently recorded in the cashbook.

The Accounting Officer wrote to the National Treasury requesting for separation of the project's bank account from that of the State Department at the Central Bank of Kenya in order to ensure that Development Project has its own dedicated Special Deposit Account so as to ring fence the project's funds.

The project funds come in form of Appropriation-in-Aid from foreign grants or borrowings from KFW bank and then the funds are disbursed directly to the consultants, suppliers and contractors without passing through the Consolidated Account at the Central Bank of Kenya. It is only the

GoK counterpart funding which is a percentage of the loan that comes to the State department bank account at the Central Bank of Kenya, and is spent on financing administrative part of the project.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer henceforth seeks exemption from the Cabinet Secretary National Treasury, as provided for under section 76(1) of PFM Regulations.

PROMOTION OF YOUTH EMPLOYMENT AND VOCATIONAL TRAINING PHASE II IN KENYA LOAN NO.BMZ 2018 65 120

REPORT ON THE FINANCIAL STATEMENTS

299: Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects a final budget and actual receipts on a comparable basis of Kshs.217,000,000 and Kshs.14,559,774, respectively, resulting in an underfunding of Kshs.202,440,226 (93%) of the budget. Similarly, the Project spent an amount of Kshs.14,559,774 against an approved budget of Kshs.217,000,000 resulting in an under expenditure of Kshs.202,440,226 (93%) of the budget.
The underfunding and underperformance affected the planned activities and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

There was an under-expenditure/absorption of Kshs. 202,440,226.00 (93%) of the budget) during the period under review. This was occasioned by delays in implementing the lengthy procurement processes in the phase II of the KFW project. The processes have now been fast tracked and everything put on course. The consultant for project implementation has since been procured and the contractors are now on board; hence the direct payments by KFW are now being effected, thus improving on budget absorption.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report by the House.

300: Failure to Open and Maintain a Separate Project Bank Account

The Project Management did not maintain a specific project bank account as funds received were credited to the Ministry's development bank account instead of a separate project account. It was therefore not possible to trace the receipts to the cashbook in the bank statement. This is contrary to Regulation 76(1) of the Public Finance management (National Government) Regulations , 2015 which provides for the purpose of disbursement of project funds, there shall be opened and maintained a project account for every project at the Central Bank of Kenya unless it is exempted by the Cabinet Secretary, in writing, into which all funds shall be kept and such an account shall be known by the name of the project for which it is opened and each project shall maintain only one bank account. Further, the receipts were not supported with respective itemized exchequer issue notifications and receipt vouchers to confirm the receipt of funds.

In the circumstances, the Project Management was in breach of the law.

Submission by the Accounting Officer

The project management didn't maintain a separate bank account for the donor funds (loans and grants Appropriation-In-Aid) because the funds are not disbursed to the Consolidated Fund Account at the Central Bank of Kenya. The funding function is held by the donor bank account, hence disbursed directly to the suppliers and /or contractors as Direct Payments. The State departments then pass journals in the IFMIS to capture expenditure from the department's budget. The payment documents are then forwarded to The National Treasury by the Accounting Officer for onward transmission to the KFW bank for eventual payment to the suppliers.
The KFW phase II project shares development cash book and bank account, with the GOK proportion of funding. The exchequers also come in bulk and captured in the IFMIS Accounts Receivables Module, and subsequently recorded in the cashbook.

The Accounting Officer wrote to the National Treasury requesting for separation of the project's bank account from that of the State Department at the Central Bank of Kenya, so as to ensure that each Project has its own dedicated Special Deposit Account in order to ring fence the project's funds.

However, the State Department wish to state that the project funds come in form of Appropriation-in- Aid from foreign grants, or borrowings from KfW bank and the funds are then disbursed directly to the consultants, suppliers and contractors without passing through the Consolidated Account at the Central Bank of Kenya. Only the GoK counterpart funding which is a percentage of the loan that comes to the State Department's bank account which is spent on administrative work of the project. Copies of receipts (FO17) and exchequer notification have been availed.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer henceforth seeks exemption from the Cabinet Secretary National Treasury, as provided for under section 76(1) of PFM Regulations.

SUPPORT TO TECHNICAL AND VOCATIONAL EDUCATION TRAINING AND ENTREPRENEURSHIP (TVETE PROJECT PHASE III) (LOAN NO. 2100150042254)

REPORT ON THE FINANCIAL STATEMENTS

304: Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects a final budget and actual receipts on a comparable basis of Kshs.445,000,000 and Kshs,52,749,532 respectively, resulting in an underfunding of Kshs.392,250,468 (88%) of the budget. Similarly, the Project spent an amount of Kshs.52,749,532 against an approved budget of Kshs.445,000,000, resulting in an under expenditure of Kshs.392,250,468 (88%) of the budget.

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

Submission by the Accounting Officer

This was an underfunding of Kshs.392,250,468.00 (88%) of the budget, thus the Project only spent an amount of Kshs.52,749,532.00(12%) against the approved budget of Kshs.445,000,000 thus resulting to an under-expenditure of Kshs.392,250,468.00 (12%) of the budget. The project was still at the inception stage due to the lengthy process of procurement of consultants and contractors to implement the development project. The project management confirms that the project is now on course and all the activities projected to be completed within the project cycle timelines as per the financing agreement and the African Development Fund approved procurement plan.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report by the House.

305: Failure to Open and Maintain a Separate Project Bank Account

The Project Management did not maintain a separate Project bank account instead funds received were credited to the Ministry's development bank account. This is contrary to Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015 which provides that, for the purpose of disbursement of project funds there shall be opened and maintained a Project account for every Project at the Central Bank of Kenya unless it is exempted by the Cabinet Secretary, in writing, into which all funds shall be kept and such an account shall be known by the name of the Project for which itis opened and each Project shall maintain only one bank account.

In the circumstances, the Project Management was in breach of the law.

Submission by the Accounting Officer

The project management didn't maintain a separate bank account for the donor funds (loans and grants Appropriation-In-Aid) because the funds are not disbursed to the Consolidated Fund Account at the Central Bank of Kenya. The funds are held by the donor bank account which are disbursed directly to the suppliers/contractors as Direct Payments. The State Department then pass journals in the IFMIS to capture expenditure from the department's budget. The payment documents are later forwarded to The National Treasury by the Accounting Officer for onward transmission to the AfDB bank for eventual payment to the suppliers.

The AfDB (TVETE project phase III) project shares the cash book and bank account with the Gok counterpart. The exchequers come in bulk and the same are captured in the IFMIS, Accounts Receivables Module, and subsequently recorded in the development cashbook.

The Accounting Officer wrote to the National Treasury requesting for separation of the project's bank account from the account of the State Department at the Central Bank of Kenya, so as to ensure that each Project has its own dedicated Special Deposit Account in order to ring fence the project's funds.

However, the State Department wish to state that the project funds come in form of Appropriation-in-Aid from foreign grants, or borrowings from AfDB bank and the funds are disbursed directly to the consultants, suppliers and contractors without passing through the Consolidated Account at the Central Bank of Kenya. Only the GoK counterpart funding which is a percentage of the loan that comes to the State Department's bank account at the Central Bank of Kenya, which is spent on the administrative work of the project.

The receipts have now been supported with respective exchequer notifications and receipt vouchers (FO17).

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer henceforth seeks exemption from the Cabinet Secretary National Treasury, as provided for under section 76(1) of PFM Regulations.

REPORT ON THE EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

306: Failure to Constitute Procurement Committees

Review of documents revealed that during the year, the accounting officer did not establish ad hoc opening and evaluation Committees to open, evaluate and record the procurement proceedings. This is contrary to Section 44(1) and 2(b) of the Public Procurement and Asset Disposal Act, 2015 which states that, In the performance of the responsibility under subsection (I), an accounting officer shall constitute all procurement and asset disposal committees within a procuring entity in accordance with the Act.

In the circumstances, governance systems of the Project were not effective.

Submission by the Accounting Officer

The AfDB (TVETE project phase III) has only undertaken procurement of upskilling of trainers at the Technical University of Mombasa (TUM) and procurement of a motor vehicle and office consumables since its inception. All these procurement activities have ad hoc committees appointed by the Accounting Officer.

The ad hoc committee appointment letters for evaluation of upskilling of TVET Trainers at TUM, evaluation report and professional opinion have been availed.

The opening and evaluation for office consumables responsibilities are inbuilt in the IFMIS. The procurement officers are given rights by The National Treasury to access and sign the documents in the IFMIS.

The State Department wish to state that the opening and evaluation for purchase of motor vehicle responsibilities are inbuilt in the IFMIS. The procurement officers are given rights by The National Treasury to access and sign the documents in the system, and guided by Ministry of Public works supplies Branch which runs for two years renewable.

Committee Observations and Findings;

i. **The Committee noted the explanation by the Accounting Officer.**
ii. **The Committee found that the matter was resolved.**

OTHER DONOR FUNDED PROJECTS IMPLEMENTED BY AGENCIES UNDER THE STATE DEPARTMENT FOR VOCATIONAL AND TECHNICAL TRAINING

EAST AFRICA SKILLS FOR TRANSFORMATION AND REGIONAL INTEGRATION PROJECT (EASTRIP) (IDA LOAN NO.6334-KE) - MERU NATIONAL POLYTECHNIC

REPORT ON THE FINANCIAL STATEMENTS

308: Inaccuracies in the Financial Statements

308.1: Statement of Cash Flows

The statement of cash flows reflects net cash flow from operating activities of Kshs.61,625,064 which is incorrectly stated due to the following;

(i) Increase in accounts receivables of Kshs.2,815,000 which ought to be subtracted was added to payments from operating activities.
(ii) Recomputation of net cash flows from operating activities revealed that the increase of accounts receivables of Kshs.2,815,000 was not included in the total of Kshs.61,625,064.
(iii)The statement reflects Nil balance on change in accounts payable. However, note 17 reflect increase in accounts payable of Kshs.13,483,335.

Submission by the Accounting Officer

The cash flow statement and the other disclosures have been revised to reflect the correct position, by reversing the amount of Ksh.2,815,000.00 which had been recognized as a receivable in the cash flow statement. The stated amount was an imprest issued on 1st July, 2022 which has since been surrendered.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to keep proper accounting records as per section 68 (2)(b) of the PFM Act 2012.

308.2: Changes in Accounts Receivables

Note 16 to the financial statements reflects changes in accounts receivables which was wrongly described as follows;

(i) Opening receivables as at 1 July, 2021 was wrongly described as deposit and retentions as at 1 July, 2021.
(ii) Closing accounts receivables as at 30 June, 2022 was wrongly described as closing accounts payable as at 30 June, 2022.

(iii)Change in receivables of Kshs.2,815,000 was wrongly described as change in payables.

Submission by the Accounting Officer

The financial statement's description notes on changes in receivables and payables have been adjusted to reflect the correct position.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to keep proper accounting records as per section 68 (2)(b) of the PFM Act 2012.

308.3: Changes in Accounts Payable

TNote 17 to the financial statements reflects Kshs.13,483,335 in respect of changes in accounts payable. However, recomputation revealed a balance of Kshs.13,904,223 resulting to a variance of Kshs.420,888 which was not reconciled or explained.
In the circumstances, the accuracy of the financial statements for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The note has been re-casted accordingly to reflect the correct position. The closing accounts payables was disclosed as Kshs 13,483,335.41 which was as a result of a casting error, and has been adjusted.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to keep proper accounting records as per section 68 (2)(b) of the PFM Act 2012.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

309: Cost Variation to the Construction Project

Management advertised works in June 2021 for the construction of building technology Flagship Center and other facilities where a contract was signed on 8 October, 2021 at a contract sum of Kshs.444,473,290 with a project duration of eighteen (18) months. However, review of site meeting minutes of the Project Implementation Team dated 10 June, 2022 revealed that the

progress of works was behind schedule and the contractor was advised to provide project status report and give recovery plan for the lost time, which was not provided for audit verification.

Further, the Quantity Surveyor for the project at the same meeting, acknowledged receipt of cost variation claims from the contractor amounting to Kshs. 96,372,034 which was a variation of 21.67 % of the original contract sum. The Quantity Surveyor indicated that the claim was being reviewed for onward transmission to the client. However, it was not possible to confirm what percentage of the claim was payable.

In addition, audit verification carried out in October, 2022 revealed that the works were progressing at a slow pace since the contractor appeared to have slowed down the works awaiting the decision from the Project Management on the cost escalation claims.

Further, there was no evidence to show that the cost variation was reviewed by the Project Implementation Team and submitted through the head of procurement function to the Project Coordinator for approval as required by law.

In the circumstances, value for money expended on the Project could not be confirmed.

Submission by the Accounting Officer

The contractor submitted a variation claim amounting to Kshs. 96,372,034.00 which was a variation of 21.67 % of the original contract sum. It was noted that this was a fixed sum contract and as such any request for variation needed the approval of the World Bank.

Audit verification carried out in October 2022 revealed that the works were progressing at a slow pace since the contractor appeared to have slowed down the works awaiting the decision from the Project Management on the cost escalation claims.

In a virtual meeting, the World Bank advised that the Contract was not subject to any variation. However, the contractor kept disputing the advice of the World Bank. This forced the institution to seek the intervention of the Attorney General.

The Attorney General has since advised on arbitration and the construction is proceeding.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report by the House.

310: Non-Compliance with Ethnicity and Regional Distribution

Review of personal files revealed that all project employees were from the same ethnic community. This was contrary to Section 7(2) of the National Cohesion and Integration Act, 2008 which states

that no public establishment shall have more than one third of its staff from the same ethnic community.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The project recruited three officers namely:-

- Project Assistant
- Office Assistant
- Driver

The Project assistant attracted 11 applicants. Of the 11, three met the advert requirements of possession of a degree in Project Management/ related field and at least three years administrative/project management experience. Coincidentally, the three came from the same ethnicity.

The position of Office Assistant attracted 9 applicants, 8 from the same ethnic community (Meru). The only candidate that was from a different ethnicity (Luo) did not attach the required documents for the application, hence was not shortlisted.

The position of a Driver attracted 10 applicants, 9 from the same ethnicity (Meru). The candidate from a different ethnic community (Kalenjin) did not provide a valid driving license hence not shortlisted.

It is worth noting that two of these positions were lower cadre positions which mainly attracted locals despite the advert being circulated.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures compliance with section 7(2) of the National Cohesion and Integration Act, 2008 and re-advertises unresponsive advertisements.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

311: Failure to Insure Project Assets

During the year under review, the Project Management only procured insurance services for two project vehicles but did not insure ICT equipment, office equipment and furniture and fittings all appearing in the assets register and valued at Kshs. 17,084,714 as required by law and EASTRIP risk policy.

In the circumstances, the safety and security of the Project assets could not be confirmed.

Submission by the Accounting Officer

Although at the time of audit the project had not insured some assets of the project, The State Department wish to state that the management shall procure insurance cover for the office equipment, Furniture and fittings, and ICT equipment as soon as The State Department gets a budget clearance for the same from The National Treasury. A request letter was written to the National Treasury by The State Department requesting to be allowed to insure the assets.

Committee Observations and Findings;

The Committee noted that the explanation by the Accounting Officer was unsatisfactory.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report on compliance within three (3) months of adoption of this report by the House.

EAST AFRICA SKILLS TRANSFORMATION AND REGIONAL INTEGRATION PROJECT (EASTRIP) GRANT/CREDIT NO.IDA 6334-KE-KISUMU NATIONAL POLYTECHNIC

REPORT ON THE FINANCIAL STATEMENTS

314: Budgetary Control and Performance

Section 1.2 of the financial statements on project information and overall performance indicates that the Project duration is five (5) years or 60 months from 2020 to 2024, with a donor commitment of EUR 9,280,000 equivalent to Kshs. 1,080,000,000, However, as at 30 June, 2022, the Project had received EUR 2,715,517 equivalent to Kshs.315,000,000 or 29% of total budgeted funds despite 30 months or 50% of the project timeline having lapsed. Further, out of the Kshs.315,000,000 total amount received as at 30 June, 2022 only Kshs.274,390,015 had been spent on project activities representing 25.4% of the donor project commitment amount of Kshs,1,080,000,000 and an 87% absorption rate of the received funds.

This was an Indication of delay in project implementation and Management had not explained interventions that were put in place to recover the lost time.

Further, the statement of comparison of budget and actual amounts reflects nil actual receipts against budgeted amount of Kshs.509,122,906 resulting to a 100% underfunding. Similarly, the statement reflects an actual expenditure of Kshs.158,681,506 against budgeted amount of Kshs.509,122,906 resulting to under expenditure of Kshs.350,441,401 or 69% of the budget. Although, the Management attributes the underfunding and under absorption to the effects of COVID-19 pandemic, it is an indication that the goals and objectives of the Project may not have been achieved.

Submission by the Accounting Officer

The statement of comparative budget and actual amounts reflects nil actual receipts against budgeted amount. The State Department wish to state that the institution had not spent the advance payment of Kshs. 200,000,000.00 granted to them at the beginning of the project. The funds could not be absorbed because both curriculum development and construction that needed physical contact could not take place. Equally, the achievements of the Disbursement Linked Indicators (DLIs) had not been verified to enable them receive their entitlements. During the financial year under review, DLIs were not used as a basis for funding. All the Regional Flagship Technical Institutions (RFTIs) received Kshs. 315,000,000.00 from The National Treasury.

The State Department wish also to state that the prevailing COVID-19 pandemic in the country occasioned a lockdown on people's movement and activities. This was however fast tracked after COVID-19. Currently the institution has achieved the deliverables and has embarked on completion of construction and acquisition of equipments.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report by the House.

EAST AFRICA SKILLS TRANSFORMATION AND REGIONAL INTEGRATION PROJECT (CREDIT NUMBER 6334 - KE) - KENYA COAST NATIONAL POLYTECHNIC

REPORT ON THE FINANCIAL STATEMENTS

319: Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.300,000,000 and nil respectively resulting to 100% underfunding. Similarly, the project spent Kshs.46,907,550 against the budgeted expenditure of Kshs.300,000,000 resulting to under expenditure of Kshs. 253,092,450 or 84 % of the budget. Management attributed underfunding and related under expenditure to lengthy approval and contract signing process for acquisition of equipment.

Submission by the Accounting Officer

The approved budget was Kshs. 300,000,000.00 with an absorption of Kshs. 46,907,550 (15.64%). At the time of formulation of the budget it was accurately estimated that the budget was going to be absorbed but contract approval and signing of the acquisition of equipment took a long time than expected.

The process of acquiring the equipment started in October 2021 as per evidence Marked NTE1 and after following the recommended procedure by the World Bank, the Contract was signed after the end of the financial year 2021/2022, on 4th July, 2022 as per the attached Marked CA/INT/KCNP1.

The cost of these equipment is over Kshs. 200,000,000.00 or agreed amount in USD 1,675,160.00 The process of Contraction also started in May 2022 as per evidence Marked ETN 1, and as at now the Polytechnic is waiting for the World Bank to approve evaluation report.

Payment for Equipment is done in % as per the signed contract. The contract was being executed across two (2) financial years with part payment in the year under review. Had the whole procurement been executed within the financial year, then the whole amount could have been absorbed as was envisioned.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report by the House.

4.11 VOTE 1065: STATE DEPARTMENT FOR UNIVERSITY EDUCATION AND RESEARCH

Dr. Beatrice Muganda Inyangala, the Principal Secretary and Accounting Officer for the State Department for Higher Education and Research appeared before the Committee on 25th September 2023 and on 13th May 2024 accompanied by the following officers:

i.	Ms. Margaret Kariuki	Head of Accounting Unit
ii.	Mr. Maina Chira	Head of Finance
iii.	Mr. Geoffrey Monari	CEO, Universities Funding Board
iv.	Prof. Darius Andika	Centre Leader, World Back Centre of Excellence
v.	Mr. Cheboriot Julius	Accountant, Moi University
vi.	Prof. Samuel Mwonga	Deputy Centre Leader, Egerton University
vii.	Mr. George Aduda	Chief Finance Officer, Jaramogi University
viii.	Mr. Robert Gicheru	Deputy Project manager

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

322: Unsupported Other Grants and Transfers

The statement of receipts and payments reflects other grants and transfers amount of Kshs.251,964,581 as disclosed in Note 7 to the financial statements. Included in the amount is an expenditure of Kshs.14,964,580 which was not supported with relevant records and documents including receipts, minutes, committee appointment letters, back-to-office reports, invitations and travel documents. Further, an amount of Kshs.2,286,800 was spent on payment for tea, snacks, security and training and Management had not explained how the expenditure relates to scholarships and other educational benefits.

In the circumstances, the regularity of the expenditure of Kshs. 17,251,380 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

Kshs 14,964,580 which was included in other grants and transfers figure of Kshs. 251,964,581 related to Scholarships and other Educational Benefits - Tertiary Education under recurrent budget on Bursaries; Scholarships; Subsidies and Education Attachments. The amount of Kshs.2,286,800 spent on payment for tea, snacks, security and training was expenditure incurred by the committee members. The payment vouchers with the relevant records and documents including receipts, minutes, committee appointment letters, back to office reports, invitations and travel documents have now been availed for audit review.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

323: Failure to prepare Bank Reconcilliations

The statement of financial assets reflects a bank balance of Kshs.182,274,170 asdisclosed in Note 10A to the financial statements. Review of records revealed that the State Department did not prepare monthly bank reconciliations for deposit and recurrentaccounts except for the month of June, 2022. Further, the bank reconciliation statementsfor the month of June, 2022 reflects payments in the recurrent and development cash books not in the bank statements of Kshs.166,163,553 and Kshs.84,413,082 respectivelywhose dates of clearance by the bank was not indicated.

In the circumstances, the accuracy and completeness of the bank balance of Kshs.182,274,170 as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The payment amounting to Kshs.166,163,553 and Kshs.84,413,082 respectively which were reflected as payments in recurrent and development cashbooks but not in the Bank statements as of 30th June 2022 were payments whose exchequer was received after 30th June. These payments related to period ending 30th June 2022. They were cleared in the Bank reconciliation for July 2022.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

324: Undisclosed Foreign Travel

The statement of receipts and payments reflects use of goods and services amount of Kshs.136,047,476 as disclosed in Note 5 to the financial statements. The amountincludes Kshs.8,774,221 in respect of foreign travel and subsistence which was not captured in the financial year's expenditure work plan.

In the circumstances, the accuracy and completeness of foreign travel and subsistence expenditure of Kshs.8,774,221 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The Amount of Kshs. 8,774,221.00 relating to foreign travel and subsistence was not captured in the Financial Years workplan. These amounts relate to foreign travel and subsistence by officers who were instructed to represent the Ministry/State Department on invitation to various

International forums and meetings. Therefore, it was not possible to plan for such forums in advance. The state department workplans only include programmed/planned activities.

Committee Observations and Findings;

The Committee observed that despite the expenditure falling under foreign travel, the state department's work plan did not provide for contingency to cater for unforeseen travels as had been explained by the accounting officer.

Committee Recommendation;

The Committee recommends that the accounting officer provides for projected unforeseen travels, based on past trends, in future work plans.

325: Other Operating Expenses

325.1 Expenditure not Disclosed as a Pending Bill

The statement of receipts and payments reflects Kshs.136,047,476 in respect to use of goods and services as disclosed in Note 5 to the financial statements. Included in the expenditure is an amount of Kshs.5,117,748 in respect of other operating expenses out of which Kshs.814,320 was for the provision of garbage collection and disposal for the months of July, 2020 to June, 2021. However, the amount was not disclosed as a pendingbill in the 2020/2021 financial year.

Submission by the Accounting Officer

The Ministry of Education has three State Departments which are all housed at Jogoo House "B''. Considering that there are some common services required by all the three State Departments and, to cut on the Administrative costs of having several Service Providers for the same service within the same Building, the State Departments agreed on sharing the costs for such services. Provision of garbage collection services is among the shared service and this expense was forwarded to the State Department towards the end of the subsequent Financial Year.

Committee Observations and Findings;

The Committee observed that despite being a shared service, each state department ought to have its definitive services to cater for, and budget for it and make payment within the financial year. Garbage collection was not unforeseen.

Committee Recommendation;

The Committee recommends that the accounting officer in liaison with the accounting officer State Department for Basic Education budget for and provide for the shared services, per state department.

325.2 Expenditure Wrongly Classified

Included in other operating expenses are transactions amounting to Kshs.621,890 wrongly classified and posted under other operating expenses instead of conference facilities and domestic travel.

In the circumstances, the validity and accuracy of other operating expenses amounting to Kshs.5,117,748 could not be confirmed.

Submission by the Accounting Officer

During the financial year under review, the State Department suffered budget cuts as a result of the austerity measures instituted by the National Treasury. The expenditure had already been incurred by the time of the budget cuts and therefore the State Department charged on other operating expenses to clear the negative balances.

Committee Observations and Findings;

The Committee observed that this was a case of irregular re-allocation of finances.

Committee Recommendation

The Committee reprimands the Accounting Officer for breach of the law.

326: Compensation of Employees

The statement of receipts and payments reflects Kshs.258,008,361 in respect of compensation of employees as disclosed in Note 4 to the financial statements. The expenditure increased from Kshs.209,477,209 in previous year to Kshs.258,008,361 by Kshs.48,531,152 (or 23.2%) which was not explained. Further, the verified payment vouchers total was Kshs.244,939,158 resulting into an unreconciled and unexplained variance of Kshs.13,069,203. In addition, the statement of comparison of budget and actual amounts reflects employee compensation over-expenditure of Kshs.16,408,361 that was not supported by an approved budget contrary to Regulation 43(2) of Public Finance Management (National Governments) Regulations, 2015 which states thatNational Government entities shall execute their approved budgets based on the annualappropriation legislation, and the approved annual cash flow plan with the exception of unforeseen and unavoidable spending dealt with through the Contingencies Fund, or supplementary estimates.

In the circumstances, the accuracy, completeness and regularity of compensation of employee's expenditure of Kshs.258,008,361 could not be confirmed.

Submission by the Accounting Officer

The variance of Kshs. 13,069,202.65 was as a result of errors in posting salary journals for the financial year 2021-2022.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to keep proper accounting records.

327: Transfers to Other Government Entities

327.1 Current Grants to Government Agencies and Other Levels of Government

The statement of receipts and payments reflects transfers to other Government units of Kshs.85,016,468,678 as disclosed in Note 6 to the financial statements. The amount includes Kshs.78,128,307,412 in respect of current grants to Government Agencies andother levels of Government. Included in the amount is a transfer of Kshs.42,057,700 to Biosafety Appeals Board whose supporting documents was not provided for audit.

Further, the board is not functional as a separate entity and was also not included in the authorized schedule for disbursements to Semi-Autonomous Government Agencies(SAGAS).

Transfer to other government units also includes a total of Kshs.448,473,444 disbursed to two (2) Institutions in which the institutions only acknowledged receipts amounting to Kshs.363,629,885 resulting in an unexplained and unreconciled variance of Kshs.84,843,559. In addition, the transfers included an expenditure of Kshs.11,290,000 in respect of the procurement of motor vehicles whose log books were not provided for audit.

Submission by the Accounting Officer

The supporting documents relating to the expenditure amounting to Kshs. 42,057,700 for Biosafety Appeals Board for the financial year under review have now been availed.

Biosafety appeals board was envisaged to be a SAGA and in the interim as they were setting up the structures their budget was utilized from the headquarters.

With respect to Kshs.448,473,444 disbursed to two (2) Institutions in which the institutions only acknowledged receipts amounting to Kshs.363,629,885 the response is as below;

a) Gatundu University college.

Mama Ngina University, which was formerly known as Gatundu University college was initially being mentored by Kenyatta University. Recurrent and capital grants for the college were therefore being channeled through Kenyatta University. The amount of kshs 84,373,505 which appears as variance was acknowledged by Kenyatta university through which the grants were channeled before Mama Ngina University was granted permission to open a bank account.

b) Tharaka University College

The amount disbursed to Tharaka university college was kshs 303,833,150 as disclosed in annex 4 on inter entity confirmations. However, the university had sent a confirmation for Kshs. 303,363,096. Upon realizing the error, the university sent a confirmation on 10/6/2022 acknowledging the correct amount of 303,833,150 Attached is the correct confirmation.

With regards to the expenditure of Kshs.11,290,000, the motor vehicle was procured as per availed supporting documents.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

327.2 Unsupported Capital Grants to Government Agencies

The statement of receipts and payments reflects transfers to other Government units of Kshs.85,016,468,678 as disclosed in Note 6 to the financial statements. Included in the transfers is Kshs.3,513,369,663 in respect to capital grants to Government Agencies. Review of the transfers revealed that an amount of Kshs.412,933,116 was disbursed to Kenya Advanced Institute of Science and Technology (KAIST) and Eastern and SouthernAfrica Higher Education Centres of Excellence (ACE II) projects. However, the Project'sfinancial statements for the year ended 30 June, 2022 reflected receipts of Kshs.97,521,005 and Kshs.313,477,533 respectively totalling to Kshs.410,998,538 resulting to an unexplained and unreconciled variance of Kshs.1,934,578.

Further, the supporting schedule provided indicated that an amount of Kshs.170,594,181was used by the State Department to purchase a motor vehicle, subsistence allowances,hire of conference facilities, purchase of air tickets, purchase of fuel, and other unrelatedexpenses and not disbursed to Government agencies. This was contrary to Section 43(1)(b) of the Public Finance Management Act, 2012 which prohibits the reallocation offunds appropriated for capital expenditure.

Submission by the Accounting Officer

During the financial year under review, Kshs.97,521,005 was utilized for KAIST project – GOK component out of a budget allocation of Kshs. 100, 000.000 while Kshs. 5,440,260.00 was utilized for ACEII project out of a budget allocation of Kshs. 10,000,000. All the payment vouchers and supporting documents have been availed for audit review.

Committee Observation

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

327.3 Unsupported Transfers to Private Universities

The statement of receipts and payments reflects Kshs.85,016,468,678 in respect of transfers to other Government units which as disclosed in Note 6 to the financial statements includes Kshs.3,374,791,603 in respect of transfers to private universities. However, the following anomalies were noted:

i. Kshs.265,301,319 was disbursed to five (5) universities. However, no acknowledgment letters and receipts from the universities were provided to confirm receipt of the funds.
ii. An amount of Kshs.198,500,261 was disbursed to three (3) universities which confirmed to have only received a total of Kshs.183,339,074 resulting in an unreconciled and unexplained variance of Kshs.15,161,187;
iii. An amount of Kshs.22,591,680 was disbursed to thirteen (13) universities for 404 students. However, analysis of the supporting schedules revealed that these students had been duplicated in the schedules resulting to an overpayment of Kshs.22,591,680;
iv. A transfer to private universities of Kshs.136,295,811 was made for 3,357 students who had graduated by November, 2021 and, therefore, Management may have disbursed funds for students who had already completed studies and exited the Universities;
v. An amount of Kshs. 376,990,032 was disbursed for a total of 8,964 students who were not active in the period July, 2021 to June, 2022 as they had not registered to sit for the scheduled exams in their respective Universities. Management may have disbursed funds for students who had deferred or quit the universities; and,

vi. An amount of Kshs.337,207,284 was disbursed for a total of 7,828 students who had been in the Universities for more than four (4) years which is the normal period undertaken for most undergraduate programs. Management may have paid tuition fees to non-existent students in private universities.

In the circumstances, the accuracy, completeness and regularity of transfers to other Government units of Kshs.85,016,468,678 could not be confirmed.

Submission by the Accounting Officer

i. Management wishes to confirm that Ksh.265,301,319 was disbursed to the 5 Private Universities as provided in the table below. Confirmation of receipts have been provided;

University	**Amount**
Africa International University	35,190,991
AMREF International University	1,038,856
Pioneer International University	63,021,629
Presbyterian University of East Africa	160,806,734
Raf International University	5,243,109
Total	**265,301,319**

ii. International Leadership University confirmed the balance of Kshs.73,646 as per the table below and receipts availed;

Date	**Receipt No**	**Amount**
10 August 2021	27297	73,646.10
14 March 2022	27294	52,902.30
11 May 2022	27300	398,402.00
Total		**577,852.70**

iii. With regards to issues iii-vi, the Management wishes to state that the University Funding Board after receiving the audit findings wrote to the affected Private Universities. Most of the affected Universities have disputed the findings indicating that the data they submitted to the Funding Board was correct and without any duplications, inactive students or students who had overstayed in the Universities

Committee Observations and Findings;

The Committee noted that a special audit report had been conducted on the entire programme and was before the Public Investments Committee on Governance and Education.

Committee Recommendation;

The Committee recommends that the report of PIC-G&E cited above be considered by the House.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

328: Lack of an Audit Committee

The State Department did not have an Audit Committee in place. Further, the internal audit reports were not provided for review. This was contrary to Section 73(5) of the Public Finance Management Act, 2012 which provides that every national government public entity shall establish an audit committee whose composition and functions shall be as prescribed by the regulations.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

There existed an Audit committee whose appointment was renewed on 1st September 2021 as per availed Renewal of Appointment letter – Ref: MOE.CONF/G6/16 (68). The Audit Committee was active as evidenced by minutes provided.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

329: Non-Compliance with One-Third Basic Pay Rule

Review of monthly payrolls revealed that fifteen (15) officers had committed their salariesover and above the required two-thirds of the basic pay contrary to the policy on paymentof salaries. This was contrary to Section 19(3) of the Employment Act, 2012 which provides that the total amount of all deductions that may be made by an employer from the wages of his employee at any one time shall not exceed two-thirds (2/3) of such wages or such additional or other amount as may be prescribed by the Minister either generallyor in relation to a specified employer or employee or class of employers or employees orany trade or industry

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer
The Management agrees with the audit finding that a total of 14 officers had committed their salaries over and above the required two thirds of the basic pay at the time of audit. In the year 2020 income tax was reduced to cushion against the effects of COVID-19. This reflected an increase on the basic pay and also the allowable two thirds of the salary available. In January 2021, the income tax was reinstated back. This occasioned over commitment of salaries by the officers.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

330: Lack of Fixed Asset Register

Annex 2 on fixed assets schedule reflects historical cost of assets amounting to Kshs.6,305,853,289. However, Management did not provide a detailed asset register to support the balance of Kshs.6,305,853,289 and confirm the existence of the assets. Thiswas contrary to Regulation 143(1) of the Public Finance Management (National Government) Regulations, 2015 which requires that the Accounting Officer be responsible for maintaining a register of assets under his or her control or possession asprescribed by the relevant laws.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer
The management states that the State Department had prepared an asset catalogue in February 2020 which had captured its assets. A detailed register is now maintained by the State Department in the recently prescribed format by the National Treasury.

Committee Observations and Findings;
The Committee observed that the Accounting Officer failed to meet the requirements of Regulation 143(1) of the PFM (National Government) Regulations, 2015 by not providing an assets' register to support the assets valued at Kshs. 6,305,853,289 at the time of audit.

Committee Recommendation;
The Committee reprimands the Accounting Officer.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

331: Non-Conformity to the Staff Establishment

Examination of the State Department`s approved staff establishment revealed that it had a capacity of one hundred and fifteen (115) officers in sixty-one (61) cadres. However, there were variations between the staff in post and the approved establishment. The State Department exceeded the approved staff establishment in various cadres by ninety-eight (98) staff and understaffed other cadres by seventeen (17) staff. No justifiable explanation was provided for the overstaffing and understaffing of staff.

In the circumstances, internal controls on staffing were not effective.

Submission by the Accounting Officer
Staff establishment is approved by the Public Service Commission. The different cadres are managed by different administrators. Posting in and out of the State Department is entirely dependent on different scheme administrators and the department has no control. The succession management that was carried out within the period across majority of the cadres also resulted in some grades being overstaffed or understaffed.

Committee Observations and Findings
The Committee noted the submission by the Accounting Officer.

Committee Recommendation
The Committee recommends that the Accounting Officer liaises with the Public Service Commission and aligns staff in-post to the approved establishment, within three (3) months of adoption of this report.

332: Employees in Biodata but not in Payroll

Review of payroll and the biodata revealed that names of forty-five (45) officers appearedin the biodata but were not in the IPPD payroll system. No explanation was provided for the anomaly.

In the circumstances, controls over the complement control are weak and may expose the State Department to fraud and other irregularities.

Submission by the Accounting Officer

Transfer out, secondment of officers to other institutions and exit are not immediately reflected in the payroll but are reflected in the staff compliment register which is used normally to generate bio data. Payroll only reflects staff who are eligible for salary and allowances payment (in post). The names of 45 officers that appeared in the biodata and not in the IPPD payroll system was as a result of transfers out, secondment of officers to other institutions and officers who had exited from service. These names were however reflected in Staff Compliment Register which was used to generate Bio-data.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

DONOR FUNDED PROJECTS

SUPPORT TO ENHANCEMENT OF QUALITY AND RELEVANCE IN HIGHER EDUCATION, SCIENCE AND TECHNOLOGY PROJECT (ID NO. P-KE-IAD-001-LOAN AGREEMENT NO.2100150027993)

REPORT ON THE FINANCIAL STATEMENTS

333: Inaccuracies in the Financial Statements

Review of statement of receipts and payments for the year ended 30 June, 2022 revealedcomparative cumulative to date balances that are at variance with the balances reflected in the audited financial statements for the year ended 30 June, 2021 as here under:

Item	Financial Statements		Variance (Kshs.)
	2021/2022 (Kshs.)	2020/2021 (Kshs.)	
Loan from External Development Partners	3,757,627,736	3,576,020,397	181,607,339
Acquisition of Non-Financial Assets	3,364,346,908	3,182,739,569	181,607,339

Further, review of Note 1.7A of the funding summary under the Project Information and Overall Performance revealed current year's cumulative donor receipts balance of 27,270,803 unit of accounts equivalent to Kshs.3,757,627,740 which is at variance with the respective previous year's balance of 27,270,803 unit of accounts equivalent to Kshs.3,576,020,397 which should otherwise have remained constant since no funding was received during the year under review. Management has not given any explanation for the discrepancies.

In absence of any restatement of balances, the accuracy of the financial statements could not be ascertained.

Submission by the Accounting Officer
The error was noted and financial statements amended to reflect the correct cumulative figures for the financial year ended 30 June 2021.

Committee Observations and Findings;
The Committee noted failure by the State Department to keep accurate financial statements.

Committee Recommendation;
The Committee reprimands the Accounting Officer for failure to perform duties bestowed upon the office.

334: Defects and Delays in Delivery of Equipment to Various Universities
As previously reported, the Project entered into supply contracts with various vendors forsupply of specialized science and engineering equipment to selected public universities.Under the terms of the contracts, the vendors were to receive advance payments of 20%of their respective contract values upon submission of bank guarantees of equivalent amounts. A further 60% of the contract sum was to be paid after the equipment was shipped and relevant documents submitted to Management. The remaining 20% was to be paid upon receipt and acceptance of the items supplied.

As at 30 June, 2022, the Project's cumulative expenditure from 2013/2014 financial yearon procurement of specialized plant, equipment and machinery totaled Kshs.2,799,042,159. However, records provided for audit revealed that the project was expected to end by 31 December, 2021 and that equipment totaling Kshs.112,598,346 were rejected by the respective inspection and acceptance committees.

The Project Management explained that the State Department finalized the status of delivery and acceptance of equipment and wrote to the Attorney General in July and August, 2021 seeking for an advisory on payment of any outstanding balances due to thesuppliers, refund of advance guarantees recovered and levying of liquidated damages from any payments to the suppliers. The State Department is awaiting the final advisory on the mode of recovery of the liquidated damages from the Office of the Attorney General.

In view of the defective and unfulfilled supplies, the validity of the cumulative expenditureof Kshs.2,799,042,159 at Note 4 to the financial statements reported under purchase of specialized plant, equipment and machinery could not be confirmed. Further, value for money has not been realized on the project.

Submission by the Accounting Officer
The matter was discussed by the Public Accounts Committee (PAC) in the 2016/2017 and 2017/2018, 2018/2019, 2019/2020 and 2020/21 financial years report of the Auditor General on the audited financial statements of this State Department and the matter the issue was resolved.

Committee Observations and Findings;
The Committee noted that this matter was recurring in the FY 2016/17, 2017/18, 2018/19, 2019/2020 and 2020/21 and recommendations issued therein.

Committee Recommendation;
The Committee recommends that the Accounting Officer avails a matrix on implementation of various recommendations, within three (3) months of adoption of this report.

335: Uncorrected Prior Periods Error on Recall of Performance Securities

Review of records revealed that sums of Kshs.138,568,038 for performance bonds for the project were recovered from several suppliers for breach of contract and were deposited at Central Bank of Kenya in an account owned by the State Department for University Education on 17 September, 2019. These transactions have not been disclosed in the statement of financial assets as at 30 June, 2020, 30 June, 2021 and 30 June, 2022. Management did not make any correction in the financial statements for these prior periods' errors.

Further, explanation for the errors and their adjustment have not been included in the notes to the financial statements as indicated below;

Contract Date	Contract Number	Supplier	Amount Recovered (Kshs.)
08 January, 2015	ICB/HEST/17/2013-2014	Limited Company	13,985,209
14 October, 2013	ICB/HEST/08/2012-2013	Trading Company	25,164,584
23 October, 2013	ICB/HEST/07/2012-2013	Trading Company	27,002,395
23 October, 2013	ICB/HEST/06/2012-2013	Aviation Company	15,500,422
14 October, 2013	ICB/HEST/17/2012-2013	Services Company	22,896,093
28 November, 2013	ICB/HEST/26/2012-2013	Limited Company	10,315,262
23 October, 2013	ICB/HEST/13/2013-2014	Commercial Agencies	12,425,613
23 October, 2013	ICB/HEST/14/2013-2014	Commercial Agencies	11,278,458
TOTAL			**138,568,037**

In the circumstances, the accuracy and completeness of the annual report and financial statements could not be confirmed.

Submission by the Accounting Officer

The figures mentioned have always been disclosed to the Auditors and the African development Bank as these were performance securities that were released in the financial year 2022 - 2023. The funds were reflected and disclosed in the State Department's financial statements for the years ended 2019/2020, 2020/2021 and 2021/2022.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

336: Undisclosed Pending Accounts Payables

During the year under review, the Project Management entered into a contract for consultancy services with two firms at a contract cost of Kshs. 15,532,287. However, review of the financial statements submitted for audit revealed that these pending accounts payables had not been disclosed in the financial statements.

In the circumstances, the accuracy and completeness of the annual report and financial statements could not be confirmed.

Submission by the Accounting Officer
As the Project did not have a budget in 2021/2022 financial year the payments/refund requests could not be presented for payment as there were no funds to settle them. The State Department sought allocation for budget to fund the payments during the period but was unsuccessful. Provision of Budget for the project was successful in the financial year 2022/2023.

Committee Observations and Findings;

i) **The Committee noted the explanation of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

337: Late Submission of Financial Statements
The financial statements were submitted to the Auditor General on 29 November, 2022. This was contrary to Section 47(1) of the Public Audit Act, 2015 which requires that financial statements should be submitted to the Auditor-General within three months afterthe end of the fiscal year to which the accounts relate.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer
In the financial year under review there were no financial transactions as the Project was not allocated any budget. The State Department requested for Allocation of budget under Supplementary Budget II of 2021/2022 financial year but was not successful. As such there were no financial transactions to be reported in the year. The Auditor General wrote to State Department on 13th October 2022 seeking confirmation whether the Project had closed. Upon the State Department response on the matter sent to Auditor General on 7th November, 2022, the Auditor General directed those financial statements be prepared and submitted. The State Department complied and submitted the financial statements on 29th November, 2022.

Committee Observations and Findings;
The Committee noted the delay by the State Department in availing complete financial statements.

Committee Recommendation;
The Committee reprimands the Accounting Officer for breach of section 47(1) of the Public Audit Act.

338: Irregular Signing of Contract
The State Department for University Education entered into a contract for the provision of consultancy services on the conduct of end-of-project evaluation. The validity period for the said tender was 120 days starting from 12 May, 2021. The Project Management entered into a contract on 22 October, 2021 while the validity in respect of this tender lapsed on 9 September, 2021. This was contrary to Clause 12.1 of the Request for Proposal Document and Section 135(3) of the Public Procurement and Asset Disposal Act, 2015. Further, in the absence of a valid contract, disputes arising will not be legally enforceable.

In the circumstances, the regularity of the contract entered into could not be confirmed.

Submission by the Accounting Officer
The African Development Bank required that the State Department forwards all documents for review at every stage of the procurement process of the consultancy for consideration and approval before proceeding to the next stage thereby leading to overall delay in the final contract signing.

The State Department did everything possible to execute the processes leading to the Procurement of the consultancy. For instance, the technical and financial proposal evaluation was finalized on 17th June, 2021 and negotiations for the contract were completed on 29th June, 2021 as advised by the African Development Bank in its letter of "no objection" dated 3rd June, 2021. The State Department submitted the combined evaluation report, minutes of negotiation, and draft contract for review and approval by ADB on 5th July, 2021.

The approval was granted on 16th July, 2021 and communicated on 26th July, 2021 and thereafter we submitted an initialed copy of the draft contract document.

The Award of consultancy was made on 31st August, 2021 which was still within the proposal validity period as envisaged in Section 12.4 of the Request for Proposal Document on extension of proposal validity period which inter alia States that "the Client will make its best efforts to complete the negotiations and award the contract within the proposal's validity period".

The Consultant, M/S 3D Africa Communications Limited accepted the offer and undertook to execute the task as per the deliverables communicated through their letter received in the State Department on 2nd September, 2021.

The approval of the initialed draft copy of the contract document earlier submitted was cleared for signing by ADB on 18th August 2021. This necessitated the contract to be signed on 19th October, 2021 by the Accounting Officer and the Consultant on 22/10/2022.

Committee Observations and Findings;and Findings

i) **The Committee noted the explanation of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

339: Failure to Open and Maintain a Separate Project Bank Account
The Project Management did not maintain a specific project bank account as funds received were credited to the Ministry's development bank account instead of a separateproject account. It was therefore not possible to trace the receipts to the cash book and in the bank statement. This is contrary to Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015 which provides for the purpose of disbursement of project funds, there shall be opened and maintained a project accountfor every project at the Central Bank of Kenya unless it is exempted by the Cabinet Secretary, in writing, into which all funds shall be kept and such an account shall be knownby the name of the project for which it is opened and each project shall maintain only onebank account.

In the circumstances, the Project Management was in breach of the law.

Submission by the Accounting Officer
The project was designed to allow direct payments by the donor and the expenditure were being journalized and the payment documents submitted to the National Treasury. The GoK counter funds were channeled through the State Department development account.

Committee Observations and Findings;
The Committee observed that the Accounting Officer admitted that a separate project bank account had not been opened at the time of the audit in breach of Regulation 76 of the PFM National Government Regulations, 2015.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to maintain separate project bank accounts as required by Regulation 76 of the Public Finance Management (National Government) Regulation, 2015.

ESTABLISHMENT OF KENYA ADVANCED INSTITUTE OF SCIENCE AND TECHNOLOGY PROJECT NO KEN-4

REPORT ON THE FINANCIAL STATEMENTS

342: Unsupported and Unaccounted for Expenditure on Fuel and Lubricants for Motor Vehicles
The statement of receipts and payments reflects an amount of Kshs.86,231,005 in respect of purchase of goods and services as disclosed in Note 3 to the financial statements. Included in the amount is Kshs.499,999 in respect of fuel and lubricants for motor vehicles. However, the following anomalies were noted: -

i. The fuel was not recorded in the Project's motor vehicle work tickets;
ii. A number of work tickets for vehicles used by the Project were not provided for audit in support of the expenditure; and,
iii. The contract between the Project Management and the service provider was not provided for audit review.

In the circumstances, the regularity of the expenditure of Kshs.499,999 in respect of fuel and lubricants for motor vehicles could not be confirmed.

Submission by the Accounting Officer
KAIST project's administrative costs which includes financial, accounting and procurement functions are carried out by employees of the State Department for University and Research. In the course of undertaking these functions there are common costs, which includes fuel and lubricants that are shared by the project and the State Department for University Education and Research.

The amount of Kshs. 499,999.00 relating to fuel and lubricants for motor vehicles were recorded in the work tickets, as required by law and the work tickets were availed for audit verification. The contract documents between State Department for University Education and Research and the service provider were availed for Audit review.

Committee Observations and Findings;
The Committee observed that the Accounting Officer failed to prepare and keep proper accounting records in contravention of Section 68 (2) (b) of the PFM Act, 2012.

Committee Recommendation;
The Committee reprimands the Accounting Officer.

343: Payment for Undelivered Goods and Irregular Charge of Unrelated Expenditure
The statement of receipts and payments reflects acquisition of non-financial assets - purchase of vehicles and other transport equipment amounting to Kshs.11,290,000 as disclosed in Note 4 to the financial statements which had not been delivered and could not be physically verified. Further, as previously reported, the Project incurred an expenditure of Kshs.25,030,000 on the purchase of vehicles and other transport equipment which had not been delivered to the Project. However, available information revealed that the vehicles were being used by Ministry officials for non-project activities.

In the circumstances, the regularity of the expenditure of Kshs.36,320,000 on purchase of vehicles and other transport equipment could not be confirmed and value for money may not have been realized.

Submission by the Accounting Officer
During the year under review, Kshs. 11,290,000 in respect of purchase of a Project Vehicle was made but the vehicle had not been delivered as at the date of audit. The Dealer, M/S CFAO (Formerly Toyota Kenya Ltd) had committed in writing in the letter dated 14th July 2022 indicating that communication on the targeted delivery date for the vehicle would be communicated by mid November 2022. The firm had confirmed that the vehicle had already been cleared and the process of registration was in progress. So far, the vehicle has been delivered and it is in use by the project.

KAIST Project's implementation activities are carried out by employees of the State Department for University and Research. The project does not have a separate implementation unit and it is therefore in the course of undertaking the project functions that there are common costs, which includes transport expenses that are shared by the project and the State Department.

Committee Observations and Findings;
i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

344: Lack of Fixed Asset Register and Ownership Documents
The statement of receipts and payments reflects the acquisition of non-financial assets cumulative expenditure amounting to Kshs. 1,934,423,523 as disclosed in Note 4 to the financial statements. However, the Management did not provide for audit review a fixed asset register and logbooks for the two vehicles owned by the project.

In the circumstances, the existence, ownership, and valuation of assets with a cumulativebalance of Kshs. 1,934,423,523 could not be confirmed.

Submission by the Accounting Officer
The management has since provided a copy of the fixed asset register.

Committee Observations and Findings;
The Committee observed that the Accounting Officer failed to meet the requirements of Regulation 143(1) of the PFM (National Government) Regulations, 2015 by not providing an assets' register to support the assets valued at Kshs. 1,934,423,523 at the time of audit.

Committee Recommendation;
The Committee reprimands the Accounting Officer.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN THE USE OF PUBLIC RESOURCES

345: Delayed Construction Works
The Project's financial records indicate that the project has been ongoing for five (5) yearssince the loan agreement was signed on 28 December, 2017. The project has recorded an accumulated expenditure on the acquisition of non-financial assets amounting to Kshs. 1,934,423,523 with the summary of fixed assets register reflecting buildings and structures of Kshs. 1,897,510,523 for which the value of work done has not been measured. Further, the project Management ought to have made four (4) semi-annual consecutive repayments of the loan on February, 2020, August, 2020, February, 2021, and August, 2021 in compliance with the provisions of Article 1 Section 1.02 on general terms and conditions of the loan agreement. The project therefore continues to attract interest on the unutilized amounts.

In the circumstances, value for money has not been realized in the implementation of theproject. In addition, the project continues to attract interest on the unspent amounts.

Submission by the Accounting Officer
The Loan agreement was signed on 28th December 2017. However, the Contract for the Consultant was signed on 30th November 2018. The Consultant was to work in three phases as follows:

Phase 1: Drawing and designs for Kenya-AIST

Phase 2: Bidding assistance for the Contractor for Kenya-AIST

Phase 3: Supervision for the contraction works, equipment delivery and development of ERP for Kenya-AIST which were to be done by the Contractor.

The final designs were submitted by consortium of KAIST (Korea Advanced Institute of Science and Technology), SAMOO and SUNJIN in December 2019. The advertisement for a building contractor was made in March 2020. The signing of the contract between the Ministry of Education (MoE) and BOMI Engineering and Construction Consortium from Korea (Contractor) was done in April 2021. The construction works commenced on 24th September 2021 because of COVID-19.

The payment for phase 1 and 2 were done accordingly as per the availed payment schedule. The payment for Phase 3 which is for supervision started when the contract for the main Contractor had been signed. The payment was done accordingly as outlined in the payment schedule. All the payments to the Consultant and Contractor were guided by the Contracts which were signed by the Parties.

Committee Observations and Findings
i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

REPORT ON THE EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

346: Lack of Internal Audit on the Project
Review of internal audit function revealed that no audit was carried out. Further, the Audit Committee did not sit to deliberate on matters relating to the project.

In the circumstances, the project did not benefit from the assurance and advisory services from the internal audit function as well as oversight from the Audit Committee.

Submission by the Accounting Officer
During the year under review 2021-2022, the audit of the project had not been undertaken as a result of delays in the implementation of the project. However, the audit of the project was carried out in the financial year 2022-2023 which covered operations for period 2021-2022 and 2022-2023.

Committee Observations and Findings
The Committee noted the failure by the Accounting Officer to submit the internal audit reports during the audit contrary to Section 62 of the Public Audit Act, 2015.

Committee Recommendation
The Committee reprimands the Accounting Officer.

EASTERN AND SOUTHERN AFRICA HIGHER EDUCATION CENTRES OF EXCELLENCE (ACE II) PROJECT (CREDIT NO.5798-KE)

REPORT ON THE FINANCIAL STATEMENTS

349: Budgetary Control and Performance
The statement of comparison of budget and actual amounts reflects final receipts budget and actual on a comparable basis of Kshs.360,000,000 and Kshs.313,477,533 respectively, resulting in an underfunding of Kshs.46,522,467 (or 13%) of the budget. Similarly, the Project spent Kshs.313,477,533 against an approved budget of Kshs.360,000,000 resulting in an underperformance of Kshs.46,522,467 (or 13%) of thebudget.

The underfunding and underperformance affected the planned activities and may have impacted negatively on service delivery to the public for the year ended.

Submission by the Accounting Officer
The underutilization of the budget was occasioned by delay in release of the verifier's report on attainment of direct linked result as stipulated in the financing agreement. During the year under review, the three centres of excellence attained direct linked result 2.2 and 2.6 by which the independent verifier's report was released on 28th June 2022 and it was not possible to process and seek for funding to utilize during the financial year given that the financial year was ending on 30th June 2022.

Committee Observations and Findings
i) **The Committee noted the submission by the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN THE USE OF PUBLIC RESOURCES

350: Failure to Open and Maintain a Separate Project Bank Account

The Project Management did not maintain a specific project bank account as funds received were credited to the Ministry's development bank account instead of a separateproject account. It was, therefore, not possible to trace the receipts to the cash book andin the bank statement. This is contrary to Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015 which provides for the purpose of disbursement of project funds, there shall be opened and maintained a project accountfor every project at the Central Bank of Kenya unless it is exempted by the Cabinet Secretary, in writing, into which all funds shall be kept and such an account shall be knownby the name of the project for which it is opened and each project shall maintain only onebank account.

In the circumstances, the Project Management was in breach of the law.

Submission by the Accounting Officer

The State Department did not open and maintain a separate project bank account for the project since the financing agreement between the Republic of Kenya and the International Development Association (IDA) states that, counterpart funds for the project shall be deposited in the main State Department's development account at CBK and that availability of budget will be adequate confirmation of the deposit in the said development account.

Committee Observations and Findings;

The Committee observed that the Accounting Officer admitted that separate project bank account had not been opened at the time of the audit in breach of Regulation 76 of the PFM National Government Regulations, 2015.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to maintain separate project bank accounts as required by Regulation 76 of the Public Finance Management (National Government) Regulation, 2015.

OTHER DONOR FUNDED PROJECTS IMPLEMENTED BY AGENCIES UNDER THE STATE DEPARTMENT FOR UNIVERSITY EDUCATION

AFRICA CENTER OF EXCELLENCE IN SUSTAINABLE USE OF INSECTS AS FOOD AND FEEDS PROJECT (IDA CREDIT NO.5798-KE) -JARAMOGI OGINGA ODINGA UNIVERSITY OF SCIENCE AND TECHNOLOGY

REPORT ON THE FINANCIAL STATEMENTS

353: Unsupported Adjustments in the Financial Statements

The statement of receipts and payments reflects purchase of goods and services expenditure amounting to Kshs.110,825,981 which, as disclosed in Note 11.5 to the financial statements includes an amount of Kshs.28,628,210 relating to domestic travel and allowances. However, the ledger relating to domestic travel and allowances reflects an amount of Kshs.29,167,834, resulting to a variance of Kshs.539,624, which was explained as a reversal of amounts paid but expenditure

recognized fully. Management has not explained why the revised amount was not updated in the ledger.

In the circumstances, the completeness and accuracy of the amount of Kshs.28,628,210 under purchase of goods and services could not be confirmed.

Submission by the Accounting Officer
The variance of Kshs 539,624 was an adjustment arising out of funds that were refunded back to the Project bank account from unutilized travel funds. The funds had initially been expensed but an adjustment was passed in order to correctly state the expenditure. The Project thus amended the financial records and submitted the updated ledger for domestic travel and subsistence amounting to Kshs 28,628,210 that is in agreement with the financial statements before the finalization of the audit. The amended ledger was provided with the responses to the Draft Audit Report.

Committee Observations and Findings;
The Committee noted that the Accounting Officer failed to provide complete financial records to the Auditor General within the stipulated period of three (3) months after close of the Financial Year as provided for in Article 229 (4)(h), and Section 81 4(a) of the Public Finance Management Act.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to perform duties bestowed upon the office.

354: Ineligible Expenditure
The statement of receipts and payments reflects an amount of Kshs.110,825,981 under purchase of goods and services and which, as disclosed in Note 11.5 to the financial statements includes amounts of Kshs.28,628,210, Kshs.12,173,652 and Kshs.29,269,897 in respect of domestic travel and subsistence, training expenses and research expenses, respectively. However, examination of records revealed that amounts of Kshs.10,565,694, Kshs.6,832,510 and Kshs.9,783,762 in respect of domestic and subsistence, training expenses and research expenses, respectively which did not directly relate to the Project. The relevance of the expenditure to the Project were not demonstrated and no evidence was provided to indicate that the expenditures were in the annual work plan and had been budgeted for.

In the circumstances, the regularity of the expenditure amounting to Kshs.27,553,123 under research expenditure could not be confirmed.

Submission by the Accounting Officer
The various expenditures amounting to Kshs 27,553,123 under research expenditure contributed to specific Disbursement Linked Results (DLRs) that the Project is based on. The Project provided documentation, evidence and explanations demonstrating the relevance of the expenditures to the Project and also indicated the specific DLRs that the expenditures were contributing to. We have provided the Annual Work Plan with clear references to indicate that the activities had been budgeted for.

The details of the specific expenditures are detailed below:

S/No	Description	Amount	Submission by the Accounting Officer
1	Council payment meeting and retreat with UMB members to be held at Kenya School of Govt	2,229,500.00	The University Management Board (UMB) is the Center Advisory Board that spearheads the oversight authority for the project. There was thus the need for retreat with the University Council to update them on the progress of the project and to ensure that the project is on course. This activity was duly budgeted for in the Annual Work Plan (AWP) 2021-2022:5.8.1 Facilitate Center Advisory Meeting.
2	Payment for JOOUST ACE II Project financial statement for FY 2020/2021	592,564.00	This expenditure was made to facilitate the preparation of the project financial statements in a timely manner. It directly contributes to DLR#3.1: Timely Withdrawal Applications supported by interim unaudited financial reports for each ACE.
3	PASET activity meeting in Kisumu	922,500.00	DLR#2.8: Institution participating in benchmarking exercise. The DLR is disbursed if the ACE hosting university participates in the Partnership of Applied Sciences, Engineering and Technology (PASET) benchmarking exercise. This payment was, therefore, made to facilitate attendance of the meeting and to achieve the DLR as stated above.
4	Allowances while in Kisumu for development of AWP 2022/2023	1,118,800.00	The Annual Work Plan (AWP) is the fundamental tool that guides the operations of the center and in this several stakeholders (Task Leaders) are engaged in ensuring allocation of funds in various vote heads in regards to achievement of DLRs. A workshop was thus organized to discuss and approve the AWP.
5	Facilitation for attending to Procurement Queries	162,400.00	This expenditure contributed to achievement of DLR# 4.1 Timely procurement audit report for each ACE. The center retreated to respond to PPRA audit queries for submission before the deadline date.
6	Facilitation while auditing procurement	214,820.00	This contributed to achievement of DLR#4.2: Timely and satisfactory procurement progress report for each ACE
7	Review and implementation of performance and final audit report findings	184,310.00	This expenditure relates to review of the recommendations made by PPRA in the FY 2019/20 for preparation of PPRA audit for FY 2020/21. This audit from PPRA contributes to DLR# 4.1 Timely procurement audit report for each ACE. See PV No. 20004-22-00012
8	Kenya ACE II Phase funding	366,900.00	This expenditure was initiated by the Ministry of Higher education in the quest to seek for phase II funding from the world bank. The 3 ACE's met to draft proposals in that regard. The expenditure was therefore necessary to facilitate attendance of the meeting.

S/No	Description	Amount	Submission by the Accounting Officer
9	Capacity Building for Council, UMB and Internal Audit staff	896,700.00	This activity was necessary as it contributes to DLR#3.3: Functioning internal audit unit for each Eastern and Southern African Higher Education Institution. This was a Capacity Building meeting held to ensure that the University has a functioning Internal Audit Unit that meets the requirements of the World Bank and other bodies.
10	Payment to Facilitators during Council, UMB and Internal audit retreat.	300,000.00	This contributes to achievement of DLR#3.3: Functioning internal audit unit for each Eastern and Southern African Higher Education Institution. The payment was made to various facilitators who provided the technical knowledge during the retreat.
11	Capacity Building for council members	676,200.00	The University Council is the highest oversight organ in the University. To enable the Council execute its duties and have capacity to oversight the management of the University and by extension oversees the progress of the project and ensure that it is on track there was a need for capacity building for the Council Members.
12	Daily subsistence allowances to council members while attending Capacity Building and audit staffs	127,400.00	This contributed to achievement of DLR#3.3: Functioning internal audit unit for each Eastern and Southern African Higher Education Institution
13	Participation in Kenya ACE II Project NSC Meeting.	825,800.00	The National Steering Committee, SC, is mandated to oversee the project implementation of all the ACEs in the country. The expenditure was incurred to facilitate this meeting and for the Center to benchmark with the other ACEs in the country i.e. CESSAM and PTRE during the NSC visits. .
14	Daily subsistence allowance to Ciala resort for council UMB and Audit staffs	37,800.00	This contributed to achievement of DLR#3.3: Functioning internal audit unit for each Eastern and Southern African Higher Education Institution
15	Daily subsistence allowance to undertake financial procedure	529,000.00	Directly contribute to DLR#3.1: Timely Withdrawal Applications supported by interim unaudited financial reports for each ACE. The expenditure was incurred to facilitate undertaking of various financial procedures necessary for the preparation of the annual financial statements in good time to achieve the DLR.
16	Payment for review of Annual work plan 2021/2022	212,800.00	The center retreated to revise the Annual Work Plan for 2021/2022 and this relates to DLR#3.4: Transparency of financial management (audit reports, interim unaudited financial reports, budgets and Annual Work Programs are all web accessible)

S/No	Description	Amount	Submission by the Accounting Officer
17	Daily subsistence allowance to NMK for training	530,600.00	DLR#2.4 relates to Partnerships for collaboration in applied research and training and it is in this that the center entered into partnership with NMK in construction of repository and training our staff on maintenance of the same since they are the professional in that field. In addition, they are also engaged in the insect collection, pinning and identification
18	Kenya Revenue Authority	300,000.00	This relates to taxes withheld from payment of staff allowances in Participation of TAM meeting and capacity building for Council members. See attached PV No. 20004-22-00356
19	Honorarium during virtual meeting	136,800.00	These are payment made in regard to project staffs who participated in the virtual Technical Advisory Meeting which discusses the project execution and make recommendations. TAM is a body comprising all the ACEs in the region, is coordinated by the World Bank, hence the importance of attending the meeting.
20	Payment for clearance of Audit queries	60,800.00	The center had paid directly NMK Kshs. 514,096, (see attached PV) to facilitate the response to an Internal Audit query concerning expertise facilitation of Ksh. 102,150 and thus there was need for clarity on how the same funds was utilized from NMK side
21	Payment of daily subsistence allowance for proposal development for FAO	140,000.00	Proposal development is geared towards income generating activities for the Center from donors. This expenditure was, therefore, done to facilitate writing of the proposal to FAO. This proposal was successful and the University has received funding of Kshs 5 million in FY 2022/2023. This expenditure was budgeted for under Sustainability in expenditure line 6.1.1: Facilitate Income Generating Activities

B. Training Expenses

This related to an expenditure of Kshs 5,783,710 incurred on training in United Arabs Emirates and an amount of Kshs. 1,048,800 that was also for training in ESAMI. One of the Project's key strategic objectives is to build human resource and infrastructural capacity for research, training and technology development. Training of staff is, therefore, very vital in enhancing skills and knowledge of project staff in ensuring efficient and effective execution of the project's mandate and objectives.

ESAMI (Eastern and Southern Africa Management Institute) is mandated to offer trainings and it is in this regard that the Center selected staff for training on "Strategic Negotiation Programme" that was held in Hilton Garden Inn in Muraquabat, Dubai and a course in "Leadership, Good Governance and Financial Management in the Public Sector". The trainings were relevant to the Project and in line with the objective of building human capacity by enhancing skills and knowledge of staff.

This expenditure was budgeted for under the Center's Annual Work plan 5.2: Adopt Best Practices in Financial Management and 5.3: Establish fiduciary practices. The AWP 2021-2022 was

provided to the Auditor General for verification that the expenditures were budgeted and provided for in the Annual Work Plan, contrary to the assertions in the audit report.

C: Research Expenses

The Project is required under the agreement to attract externally generated funds. The Project also, as part of its revenue generating activities and sustainability plans, attracts research funds which have been reported in the financial statements. These are research projects that are not funded by the World Bank but whose proposals have been done and funds attracted under the aegis of the Project. The World Bank matches the attracted funds under the financing agreement.

The expenditures have, therefore, been reported under the various donor funded research projects that they relate to as indicated below:

S/No	Description	Amount in Kshs.	Response
1	Training workshop in Karbanet	1,099,600.00	Relates to WHO One Health project whose expenditure was geared towards training stakeholders towards mitigation of Vector borne disease outbreak. See Imprest 20004-21-IMP-01212 with its surrender No. 00526
2	Daily subsistence allowances to Kisumu	176,050.00	This expenditure relates to COVID 19 Containment Project for joint workshop with stakeholders to receive projects implementation progress
3	Repair and maintenance of doors	91,636.00	This relates to expenses for the Healthynsect for the Quarter ended Jan- Mar 2022
4	Partition of doors fitted with locks	873,672.00	This relates to expenditure under NRF Infrastructure grants in refurbishment of University Research Laboratory
5	Payment for tuition fees PhD Students	922,000.00	This relates to payment of tuition fees for a student under Africa Centre for Technology Studies Project.
6	Remittance of 15% admin fees for EDCTP, PACKS Participatory	2,631,246.00	The withheld 15% admin cost relates to EDCTP-CDAE, PACKS, Safewaters and Participatory Projects
7	Daily subsistence allowance during PACKs Project activities	748,400.00	This expenditure is linked to PACKS Project and relates to payment of activities for the 1st quarter Jan- June 2022. See imprest 20004-21-IMP-01340 with the surrender No. 00727
8	15% Administrative fees paid to JOOUST	3,141,158.00	This expenditure entail deduction of 15% admin cost for ACTs, Participatory, One Health and Healthy sects Projects as per the university policies
9	Payment for Audit services	70,000.00	This relates to audit services offered by Obwanga and Associates to Healthynsect Project for the year 2021
	Total	**9,753,762.00**	

The Project has contract agreements for the aforementioned projects to support the expenditures. As indicated above, these expenditures related to the various research projects and since the project categorizes the expenditures by function, they were categorized as research expenses. The expenditures are relevant expenditures to the Project and they were budgeted for and included in the Annual Work Plan.

Committee Observations and Findings;
The Committee observed that the Accounting Officer failed to present work plans to the Auditor General during audit in breach of Section 9 (1) (e) of the Public Audit Act, 2015.

Committee Recommendation;
The Committee reprimands the Accounting Officer.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

355: Non-Compliance with the Public Finance Management Regulations, 2015 - Budgetary Control and Performance
The statement of comparison of budget and actual amounts reflects final receipts budgetand actual on comparable basis of Kshs.144,731,861 and Kshs.225,609,176, respectively resulting to an over-funding of Kshs.80,877,315 or 56% of the budget. The Management attributed the increased actual receipts to receipt of Kshs.87,051,520 towards the tail end of the financial year which could not be absorbed and receipt of more foreign grants as a result of MOU'S that had been signed in the previous year but funds remitted in the current year under review.

Similarly, the Fund expended Kshs.136,408,010 against an approved budget of Kshs.231,783,381 resulting to an under expenditure of Kshs.95,375,371 or 41 % of the budget. The Project therefore had a deficit budget of Kshs.6,174,205. Management has not indicated how it intended to finance the deficit. This is contrary to Regulation 33(c) of the Public Finance Management Regulations, 2015 which stipulates that the budget mustbe balanced.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer
The Project received Kshs 87,051,520 in the last quarter of the financial year. Due to the late receipt of the funds, the Project could not absorb the funds fully within the financial year. The Project also received externally mobilized funds from various donors that were remitted in the current year, hence contributing to the total funds of Kshs 80,877,315 that was received above the budgeted amount.

The Project, therefore, put in place plans to absorb the funds fully in FY 2022/2023.

The actual expenditure for the year was Kshs 136,408,010 against a budgeted amount of Kshs 231,783,381. The total budgeted amount included the funds received in the last quarter of the year and therefore the Project was not able to fully absorb them due to the limited time that was left to the end of the financial year. The Project thus re-budgeted for the funds in order to absorb them in FY 2022/2023.

The Project had an initial final balanced budget of Kshs 144,731,861 that was approved for the financial year 2021/2022. The breakdown of the initial budget is shown in the table below;

Details	Amount
Income	
Transfers from foreign entities	122,703,000
Other Foreign Grants	20,528,861
Miscellaneous receipts	1,500,000
Total Income	**144,731,861**
Expenditure	
Compensation of employees	11,978,000
Purchase of goods and services	112,753,861
Acquisition of assets	20,000,000
Total Expenditure	**144,731,861**

The Project, therefore, complied with the law in preparing a balanced budget that was in use during the financial year. The actual expenditure for the year of Kshs 136,408,010 was in line with this budget.

However, at the end of the year, the Project revised the budget to incorporate Kshs 87,051,520 that was received in the tail end of the last quarter but which had not been anticipated in the initial budget. The Kshs 6,174,205 is the difference between the total actual income of Kshs 225,609,176 and the budgeted expenditure of Kshs 231,783,381. The Project's actual expenditure was Kshs 138,408,010, which was lower than the total budgeted expenditure. Had the full budgeted expenditure been achieved, the Project had planned to use the funds brought forward amounting to Kshs 107,954,145 to finance the difference.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

356: Delays in Project Implementation

The Project was to run for 83 months from 1 February, 2017 to 31 December, 2023. As at 30 June, 2022, the project had been in existence for 65 months or 78.3% of the set timelines. The Project total commitment amounted to Kshs.809,504,563. However, Table B on application of funds reflects total utilization balance of Kshs.399,996,877 implying that the Project had only utilized 49.42% of the committed funds, an indication that it had achieved less than 50% of its intended purpose.

Management indicated that financing is based on target given in form of Deliverable Linked Results (DLR) segregated into DLR1.1 to DLR 4.2, and the Center has received 65.8% withdrawal of the financier's funds and has utilized 92% of the withdrawn amount.Although the Project has achieved some of its deliverables, the Project remains behind schedule. No efforts appear to have been made to ensure that the Project timelines and set objectives are fast tracked.

In the circumstances, the Project is behind schedule and value for money may not be realized.

Submission by the Accounting Officer

The University wishes to state that the Project is on schedule as explained below:

The table below shows the summary of the committed funds and the amounts received by the Project to date:

Source of Funds	Committed Amount (Kshs)	Amount Received (Kshs)	DLR achieved, withdrawal application submitted (Kshs)	Total Amount Receivable to date (Kshs)
World Bank	600,000,000	394,896,623	66,173,684	461,070,307
Other Grants	209,504,563	94,301,420	-	
	809,504,563	**489,198,043**		

As can be seen from the above table, the Project has received 65.8% of the total funds from the World Bank and has a 92% utilization of the Kshs. 363,426,342 funds utilized to date as shown on Table B in the financial statements. The total receivable amount based on the achieved DLRs amount to 77% of the total committed funds (Kshs 600,000,000).

Table D in the financial statements shows the DLR Status of the respective DLRs that was set for the Project as per the signed contract. The Project has achieved an overall DLR Status of 89%, with many of targets already achieved and/or course as indicated in the Table.

Table C in the financial statements shows the progress of the Project in achieving its Results Framework. The Project has not just achieved but exceeded many of the targets that had been set.

An analysis of the performance of the Project against predetermined objectives as shown in the financial statements shows that the Project has achieved most of the predetermined objectives and is on course to achieving all of them by the end of the contract period.

It is worth noting that the Project has achieved 100% of all the DLRs as at August 2023. On the overall, the Project is on course both on its timelines and in achievement of its objectives as evidenced by the achieved and verified DLRs.

Committee Observations and Findings;

i) **The Committee noted that the project had since been closed.**
ii) **The Committee found that the matter was resolved.**

AFRICA CENTRE OF EXCELLENCE (ACE II) IN PHYTOCHEMICALS, TEXTILES AND RENEWABLE ENERGY (PTRE) PROJECT (IDA CREDITNO.5798-KE) – MOI UNIVERSITY

REPORT ON THE FINANCIAL STATEMENTS

360: Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budgetand actual on comparable basis of Kshs.338,676,806 and Kshs.176,046,197 respectively resulting to an underfunding of Kshs.162,630,609 or 48% of the budget. Similarly, the Project expended

Kshs.124,306,288 against an approved budget of Kshs.338,676,806 resulting to an under expenditure of Kshs.214,370,518 or 63% of the budget.

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

Submission by the Accounting Officer
The University Management has awarded the tender and the work has commenced. Other project activities have been consolidated with the remaining uncompleted Deliverable Linked Indicators (DLIs) in the current financial year 2022/2023. The strategies put in place will assist the project to have marked increase in funds absorption rates in FY 2022/2023 and to ensure that all the project objectives are achieved as required.

Committee Observations and Findings;

i) **The Committee noted that the explanation by the Accounting Officer was satisfactory.**
ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLICRESOURCES

361: Acquisition of Non-Financial Assets - Renewable Energy Equipment
The statement of receipts and payments reflects an amount of Kshs.31,180,248 under acquisition

of non-financial assets as disclosed in Note 11.5 to the financial statements. Included in this amount is Kshs.30,442,348 for strengthening research capacity excellence which in turn includes Kshs.21,634,514 that was paid to a firm for supply, installation, commissioning and acceptance of renewable energy equipment.

However, the asset register and the delivery note did not indicate the serial numbers of the equipment delivered.

In the circumstances, the Management was in breach of the law.

Submission by the Accounting Officer
The University Management through the upgrade of its ERP software has incorporated the observations of the auditors in the design of its assets management and purchases module to ensure the critical information in the acquisition of non-financial assets is captured such as the serial numbers both in the delivery notes and the assets register. Further controls upon receiving of the equipment at the central stores and prior to surrender to the users, the items are:

No.	Details	Serial No.	Amount
1	Compression Molding	YS2012GI-214	4,750,000
2	Gel Documentation system	201120018	1,255,000
3	Nano drop spectrophotometer	80483	1,289,176
4	8-Watt White Light Trans illuminator	90617A031	325,338
5	Oscilloscopes	1-DSIET223603540 2-DSIET223203007	105,000

6	Solar photovoltaic	0122764268	3,320,000
7	QA phastep surface profiler		7,120,000
8	Real Time PCR	M0005546	3,470,000

With the aforementioned measures put in place, the Goods Received Notes (GRNs) and projects assets register has been updated accordingly to include the serial numbers.

Committee Observations and Findings;

i) **The Committee noted that the explanation by the Accounting Officer was satisfactory.**
ii) **The Committee found that the matter was resolved.**

362: Imprests and Advances

The statement of financial assets reflects imprests and advances balance of Kshs.4,299,583 as disclosed in Note 11.7 to the financial statements. However, a total ofKshs.1,196,970 held by five (5) payees remained unsurrendered or unaccounted for as at the time of audit in October, 2022. No evidence of recovery action or other appropriatedisciplinary action taken on the defaulting officers was provided, contrary to Regulation 93(10) of the Public Finance Management (National Government) Regulations, 2015 which requires the Accounting Officer to take such action.

Submission by the Accounting Officer

The university management has noted the auditor's observation and have put in place measures to ensure the complete and timely accounting of all imprests advanced for student's research activities. All the outstanding imprests that were not accounted for in the year under review have now been fully accounted for in the financial year 2022/2023.

Committee Observations and Findings;

The Committee observed that the explanation was unsatisfactory.

Committee Recommendation;

The Committee recommends that the Auditor General reviews the documentation and reports in subsequent audit.

4.12 VOTE 1066: STATE DEPARTMENT FOR EARLY LEARNING AND BASIC EDUCATION

Dr. Belio Kipsang, CBS, the Principal Secretary and Accounting Officer for the State Department for Basic Education appeared before the Committee on 24th August 2023, 26th September 2023 and 13th February 2024, accompanied by the following officers:

i.	Mr. Emilio Mukira	Head of Accounting Unit
ii.	Dr. Hilder Kaavia	Director of Procurement
iii.	Mr. Wakesa Khaoya	Senior, Chief Finance Officer
iv.	Ms. Florence Amoit	Secretary Administration
v.	Mr. Elijah Mungai	Ag. Director projects
vi.	Ms. Evelyne Owoko	Director quality assurance and standards
vii.	Mr. Paul Kibet	Director Secondary
viii.	Mr. Humpharey Masai	Senior Accountant
ix.	Mr. Stephen Muthama	Senior Principal Finance Officer
x.	Mr. Joseph Nguuri	Finance Officer

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

365: Unsupported Revenue from Registration and Re-registration of Schools

The statement of receipts and payments reflects total receipts of Kshs.100,010,099,685 which includes an amount of Kshs.2,662,400 in respect of revenue from registration and re-registration of schools. However, Management did not provide supporting documents on how many schools were registered and re-registered during the year. Further, the revenue from registration and re-registration of schools was not included in the approved budget for the 2022/2022 financial year.

In circumstances, the accuracy and completeness of the total receipts amount of Kshs.100,010,099,685 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

During the financial year 2021-2022 the State Department registered 309 and 188 public schools and private schools respectively.
Further to the above, the revenue from registration and re-registration of schools was budgeted under head 1066002502-00002001-3520301- Sale of Goods and Services Kshs. 6,000,000 for both 2021-2022.

Committee Observations and Findings;

i) **The Committee observes that management had since provided a list of the registered and re-registered schools. It noted that re-registration occurred when a school changed its status in terms of day-schooling or boarding, number of streams among other factors.**
ii) **The Committee found that the matter was resolved.**

366: Inaccuracies in Cash and Cash Equivalents- Holding/ Suspense Accounts

The statement of assets and liabilities reflects cash and cash equivalents balance of Kshs.205,020,777 as disclosed in Note 12A and 12B to the financial statements. However, review of the cash and cash equivalents for the year ended 30 June, 2022 revealed that the State Department maintained nine (9) holding/suspense accounts with various commercial banks for disbursements of subsidies, grants and transfers to other government entities. As at 30 June, 2022, the nine (9) holding/suspense accounts had a balance of Kshs.98,176,499 which was not included in the bank balances of Kshs.205,020,777 as at 30 June, 2022.

In the circumstances, the accuracy and validity of the cash and cash equivalents balance of Kshs.205,020,777 as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The State Department maintains holding accounts with 9 banks for conveyance of capitation funds to schools. The above accounts were disclosed in our financial statements and their various bank statements and certificate of balances provided by the banks. Further to the above, the balances on the accounts were already expensed in our books therefore, they were being held by the banks pending clearance between schools and their respective banks. i.e. some were active or erroneous. Consequently, including the same balances in our cash balances would have amounted/resulted in double accounting.

Committee Observations and Findings;

i) **The Committee observes that the explanation was satisfactory.**
ii) **The Committee found that the matter was resolved.**

367: Misclassification and Payment of Rent without Valid Lease Agreements

The statement of receipts and payments reflects an expenditure of Kshs.5,815,120,762 under use of goods and services which, as disclosed in Note 6 to the financial statements, includes an amount of Kshs.147,262,641 in respect of rentals of produced assets. The latter amount includes an expenditure of Kshs.60,960,113 being rent of office space for various State Department offices in the Counties whose lease agreements had expired.

In addition, analysis of the expenditure reflects that transportation costs amounting to Kshs.16,161,628 was excluded from expenditure on use of goods and services - rentals of produced assets and charged on grants and transfers to other Government entities against the Government budget classification and chart of accounts issued by The National Treasury.

In the circumstances, the regularity and validity of the expenditure of Kshs.60,960,113 incurred on rentals of produced assets during the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

It is true that some of the lease agreements had expired within the period and renewal process had commenced. The State Department has now reconciled records and some of the offices in question were not funded in the financial year 2021-2022. Below is an update of the current status:

County Education Office	Monthly Rate Charged (Kshs.)	Amount Per Year (Kshs.)	Details of Lease	Start Date	Remarks
Kaloleni	12,000	144,000	5 yrs	July, 2012	No funding was done, premises no longer in use
Eldoret	45,000	540,000	6 yrs	July, 2020	No funding was done, premises no longer in use
Gucha	45,000	540,000	5 yrs	July, 2022	No funding was done, premises no longer in use
Rumuruti	44,000	528,000	-	-	No funding was done, premises no longer in use
Embu	28,000	336,000	5 yrs	October, 2012	Lease Expired
Moyale Town	24,000	288,000	5 yrs	January, 2018	Lease running no formal document
Marsabit	34,000	408,000	5 yrs	January, 2011	No funding was done, premises no longer in use
Malindi	15,000	180,000	5 yrs	January, 2014	No funding was done, premises no longer in use
Laisamis	31,500	378,000	5 yrs	May, 2014	No funding was done, premises no longer in use
Wajir East	60,000	720,000	5 yrs	July 2019	The office vacated the premises on 14th Dec 2021, vide letter REF EDW/OA/1325/VOL.1(95) dated 29th November 2021.
Anabkoi	45,000	540,000	5 yrs	May 2009	Lease prepared by NCPB

Further, it is true that the underlisted firms were charged on Grants and Transfers to other Government entities. This was a line item budgeted under head 1066001601 for school feeding. We would wish to state that, Item 2630101- Transfers to other Government entities was specifically budgeted for the purpose of food purchase and facilitation of movement;

Date	Payment Voucher No.	Details	Amount Paid (Kshs.)
19 June, 2022	PV011445	Transportation costs under school feeding programme 2021-2022, Turkana	10,806,092
29 June, 2022	PV17661	Transportation costs under school feeding programme 2021-2022, Garissa	1,948,856
20 June, 2022	PV011393	Transportation costs CSB (World Bank) under school feeding programme 2021-2022	1,736,679

20 June, 2022	PV012490	Transportation Costs, Hire of VIP Vehicles for 5 days and Transportation, Hire of Executive Buses for 3 Days	1,670,000
		Total	16,161,627

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

368: Irregular disbursement of Free Primary Education Funds

The statement of receipts and payments reflects an expenditure of Kshs.30,546,359,898 under transfers to other Government units which, as disclosed in Note 8 to the financial statements, includes an amount of Kshs.19,971,035,325 in respect of transfers to National Government Entities. Included in the latter amount is an expenditure of Kshs.9,062,694,606 relating to funds disbursed for free primary schools during the year. However, analysis of the Free Primary Education data revealed the following anomalies;

368.1; Disbursements of Free Primary Education Funds to Schools with Duplicate Bank Accounts

Review of the disbursements revealed that thirty-eight (38) schools shared bank accounts and received disbursements totalling Kshs.1,557,119.

Submission by the Accounting Officer

The duplication of Bank Account numbers affected schools that bank with the Kenya Commercial Bank (KCB). When this was first queried in the audit for the financial year 2020 – 2021, the department wrote to the bank and requested the bank to explain the reason as to why this was so. In response the bank informed the department that the duplicated accounts '*were opened under the Bank's core banking system in which it was possible to have customers sharing the same series of account numbers with the sort codes being the key differentiator, thus implying that funds for one school could not be credited to any other school.*' The Bank further informed the department that the bank had since decommissioned the old core system and adapted a new robust system which eliminated the duplication. All the schools had been issued with new account numbers which the department used in the April 2022 and subsequent disbursements.

Committee Observations and Findings;

i) **The Committee observed that the Submission by the Accounting Officer was satisfactory.**
ii) **The Committee found that the matter was resolved.**

368.2; Disbursements of Free Primary Education Funds to Schools Sharing Registration Numbers (TSC Codes)

Review of the Free Primary Education bank disbursements schedule revealed twenty-four thousand one hundred and nineteen (24,119) schools sharing TSC registration numbers. The schools received disbursements amounting to Kshs.737,669,134 during the year under review.

Submission by the Accounting Officer

All schools were issued with new TSC codes by the Teachers Service Commission; In all codes, the first 5 digits are the same (14701) and represent the country code. The next 2 or 3 digits represent the code for the county in which the school is located. The next 4 digits represent the station code. Some new schools, however, were not assigned the last 4 digits of the code and thus instead of the last 4 digits, the word NEW was incorporated in their TSC code. Where 2 or more such schools exist in the same county, their codes would appear to be similar.

With effect from May 2023, the Department started using the National Educational Management Information System, NEMIS in which every school is identified using a unique, 4-digit code.

Committee Observations and Findings;

The Committee observes that the State Department ought to have had its own unique identifier codes for schools, rather than rely on codes of a semi-autonomous Commission whose mandate was limited to teachers.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures all schools have unique identifier codes within three (3) months of adoption of this report.

368.3; Disbursements of Free Primary Education Funds to Schools Without TSC Codes

Review of the Free Primary Education bank disbursements schedule provided revealed that four hundred and thirty-six (436) schools did not have TSC registration numbers/Codes. The schools received a total disbursement of Kshs.14,664,414 during the year under review.

Submission by the Accounting Officer

In the audit for the financial year 2020 – 2021, a query on the TSC codes for several schools was raised. To ensure that in subsequent audits such a query does not recur, the Department requested all Public Primary schools in the country to furnish it with their TSC codes so that they could be captured afresh in the FPE disbursement system.

While capturing the codes afresh in the FPE disbursement system, there was power disruption which led to loss of some data.

With effect from May 2023, the Department started using the National Educational Management Information System, NEMIS in which every school is identified using a unique, 4-digit code.

Committee Observations and Findings;

The Committee observes that the State Department ought to have had its own unique identifier codes for schools, rather than rely on codes of a semi-autonomous Commission whose mandate was limited to teachers.

Committee Recommendation;

The Committee recommends that all schools be onboarded to the NEMIS system within three months of adoption of this report by the House, and that the Accounting Officer ensures all schools have unique identifier codes within three (3) months of adoption of this report.

368.4; Disbursements of Free Primary Education Funds to Schools with Unknown TSC Codes

Review of the Free Primary Education bank disbursements schedule provided revealed that three thousand four hundred and eighty-six (3,486) schools were assigned a TSC code with different code formats from those provided by the State Department. The schools received disbursements amounting to Kshs.102,329,013.

In the circumstances, the accuracy and authenticity of the disbursements of Kshs.9,062,694,606 for free primary education funds for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

In the audit for the financial year 2020 – 2021, a query on the TSC codes for several schools was raised. To ensure that in subsequent audits such a query does not recur, the Department requested all Public Primary schools in the country to furnish it with their TSC codes so the TSC codes could be captured afresh in the FPE disbursement system.
While capturing the TSC codes afresh, it was realised that all schools had been issued with new 12-digit TSC codes;

- In all codes, the first 5 digits are the same (14701) and represent the country code
- The next 2 or 3 digits represent the code for the county in which the school is located
- The next 4 digits represent the station code

When sending the TSC codes for the various schools, some SCDEs omitted the Country and/or County codes. The officers in the FPE section captured the new TSC codes as received, without amendments. As a result, some codes appear shorter than others, but the schools exist.

With effect from May 2023, the Department started using the National Educational Management Information System, NEMIS in which every school is identified using a unique, 4-digit code. All the schools receiving FPE capitation have unique codes to differentiate them.

Committee Observations and Findings;

The Committee observes that the State Department ought to have had its own unique identifier codes for schools, rather than rely on codes of a semi-autonomous Commission whose mandate was limited to teachers.

Committee Recommendation;

The Committee recommends that all schools be onboarded to the NEMIS system within three months of adoption of this report by the House, and that the Accounting Officer ensures all schools have unique identifier codes within three (3) months of adoption of this report.

369: Irregularities in Free Day Secondary School Education Subsidies Disbursements

The statement of receipts and payments reflects an amount of Kshs.62,560,672,721 in respect of subsidies as disclosed in Note 7 to financial statements. Review of the NEMIS system in relation to the capitation disbursements schedule to secondary schools revealed the following anomalies;

369.1; Disbursements of Day Secondary Schools Subsidies Through Duplicate Bank Accounts

Review of the schools lists on capitation per quarter reports revealed instances where schools shared bank accounts. An amount Kshs.6,281,741 was disbursed through the shared banks accounts. It was not clear why the duplicate bank accounts continued to recur in subsequent disbursements without being detected and corrected.

Submission by the Accounting Officer

It is true that Kshs.6,281,741 sent to four schools as identified by the auditors had enlisted the same bank accounts for either tuition or operations. This resulted from schools using the same data entry point. This was corrected and the schools received their funds and the schools have acknowledged having received the funds.

The schools have also acknowledged receipts of funds on the National Education Management information system (NEMIS).

The State Department has since configured NEMIS not to accept such entries. In the case of the schools that the auditor identified, the correct bank accounts have been keyed into the NEMIS and the anomaly will not recur.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

369.2; Bank Account Used to Receive Operations and Tuition Capitation

Review of the schools lists on capitation per quarter reports revealed six (6) schools that operated one bank account for both operations and tuition funds with total payments of Kshs.40,927,074.

In the circumstances, the accuracy and authenticity of the subsidies totaling Kshs.47,208,815 for free day secondary school education could not be confirmed.

Submission by the Accounting Officer

It is true that Kshs.40,927,074 was disbursed to three Schools that were using the same account for both operation and tuition. These schools had keyed these bank accounts for both tuition and operations when they were allowed to so on NEMIS. At the time NEMIS had not been configured to not allow use of the same bank accounts.

The said schools have acknowledged having received the funds and utilised them for tuition and operation as expected.

The State Department has since restricted the ability of NEMIS to capture the same account number for operation and tuition. Therefore, inputting a duplicate account can no longer not be accepted by NEMIS. If a school in an endeavour to beat the system during entry using spaces (at the beginning or end of account entry) to make the account number different, NEMIS will still filter that as the same account. This ensures no two accounts regardless of spaces will be used to allocate funds to the same school.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General conducts a systems audit report on NEMIS in the subsequent financial year audit.

370: Mistatement of Reported Imprests and Advances

The statement of assets and liabilities reflects a balance of Kshs.94,508,522 in respect of accounts receivables which, as disclosed in Note 13 to the financial statements, includes amounts of Kshs.1,814,630, Kshs.220,178 and Kshs.92,473,714 in respect of Government imprest to staff, domestic debtors and advances, and district suspense respectively. However, Analysis of the imprest register provided indicated that the Management issued imprest totalling Kshs.329,381,044.35. However, the payment details of transactions made during the year indicated that the Management paid a total of Kshs.345,309,425.90 on temporary and standing imprest resulting in an unexplained variance of Kshs.15,928,380.

Further, reported as district expenses are amounts owed by the Sub-County and County Directors of Education totaling Kshs.1,890,168 that related to 2020/2021 financial year but were still outstanding during the year under review.

In the circumstances, the accuracy, completeness, presentation and disclosure of the imprest and advances balance of Kshs.94,508,522 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

During audit review, there was a difference of Kshs. 15,928,380 between the payment details and imprest register. The State Department in collaboration with the IFMIS department did the system reconciliation of the imprest register, leaving a difference of Kshs. 4,361,060 that was being worked on.

The district expenses are small balances at the end of the financial year that are uneconomical to surrender as the bank charges under RTGS could be higher than the balances being surrendered. Therefore, the balances remain outstanding at the end of the financial year. However, some counties and sub counties have since surrendered the balances. The figures are as below;

	Reported Amount (Kshs.)	Amount (Current year) (Kshs.)	Amount (Prior year) (Kshs.)
Sub-Counties	3,139,829	1,261,192	1,878,637
Counties	3,019,336	3,007,805	11,530
Total	6,159,165	4,268,997	1,890,168

Committee Observations and Findings;

The Committee observed that the state department was doing the reconciliations with the assistance of Treasury.

Committee Recommendation;

The Committee recommends that the Accounting Officer withholds the amounts owed by county and sub-counties of Kshs. 1,890,168 in subsequent disbursements.

371: Unsupported Long Outstanding Accounts Payables

The statement of assets and liabilities reflects an accounts payables balance of Kshs.117,319,416 whose nature and supporting documents were not provided for audit. Further, payables amount of Kshs.64,881,834 have been outstanding for over eight (8) years. Management did not provide explanations on why they have not been settled.

In the circumstances, the accuracy, validity and completeness of the accounts payables balance of Kshs.117,319,416 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

It is true that the financial statement reflects account payables balance of Kshs. 117,319,416 and that Kshs.64,881,834 has been outstanding and not settled as at the date of this report. We have since surrendered Kshs.64,852,390 which is a long outstanding and unsupported balance to the National Treasury vide PV. No.06859 and electronic transfer dated 21 February 2023.

This was in line with the recommendation from the Public Accounts Committee for 2016/2017 financial year and a subsequent request letter from the national Treasury ref:AG.3/88 vol.7/ (24) dated 15th February 2023.

Committee Observations and Findings;

i. **The Committee observes that the Kshs. 64,881,834 had since been settled, while Kshs. 117,319,416 was retention money.**
ii. **The Committee found that the matter was resolved.**

372: Unauthorized reallocation of Funds for Construction of CBC Classrooms

The statement of receipts and payments reflects an expenditure of Kshs.30,546,359,898 in respect of transfers to other government units which, as disclosed in Note 8 to the financial statements, includes an amount of Kshs.19,971,035,325 that relates to transfers to national government entities. The transfers to other government entities amount included an expenditure of Kshs.4,476,068,016 incurred on construction of Competency Based Curriculum (CBC) classrooms against an approved expenditure budget of Kshs.2,692,000,000 resulting in an unapproved over-expenditure of Kshs.1,784,068,016 or (66%) whose approval was not provided for audit.

In the circumstances, the accuracy, completeness, validity and regularity of the expenditure amounting to Kshs.1,784,068,016 could not be confirmed as a proper charge to public funds.

Submission by the Accounting Officer

During the FY 2021/2022, the State Department needed to construct over 10,000 classrooms in secondary schools to facilitate smooth transition for grade six learners in primary schools to grade seven/junior secondary schools. During the same period, the State Department was also implementing a 100% transition to secondary schools in the 8-4-4 curriculum. With this potential double intake in FY 2022/23, the State Department embarked on construction of classrooms in secondary schools to ease impending congestion in secondary schools.

To this effect, Secondary School Infrastructure Improvement funds amounting to Kshs.1,449,800,000 were earmarked for constructing additional classrooms to address the infrastructure gap in secondary schools.

The National Treasury vide letter Ref. DV/ES 1066/21/01 'A' (39) approved Kshs.4 Billion for construction of CBC classrooms. In this regard, the State Department entered into a contract with contractors for construction of CBC classrooms. However, only Kshs.2 Billion was provided under Article 223 of the Constitution, with Kshs.2 Billion to be provided during Supplementary Estimates II of FY 2021/222 which the National Treasury did not provide. The State Department also requested for reallocation of Kshs.692 Million from Provision of Locally Fabricated Desks for Primary Schools to construction of CBC classrooms. Therefore, the total allocation for construction of CBC classrooms was Kshs. 4,141,800,000.

Committee Observations and Findings;

i) **The Committee observes that Kshs. 1.4 billion was already in the State Department's budget line. In addition to this, Kshs. 2 billion was availed through a Supplementary Budget, and Kshs. 692 million reallocated from fabricated desks with Treasury's approval.**
   There was therefore no unauthorized reallocation.
ii) **The Committee found that the matter was resolved.**

373: Budgetary Control and Performance

The summary statement of appropriation development reflects final receipts development budget and actual on a comparable basis of Kshs.14,099,945,379 and Kshs.7,528,073,544, respectively resulting in an under-funding of Kshs.6,571,871,835 (or 47%) of the budget. Similarly, the State Department spent Kshs.10,469,124,573 against an approved development budget of Kshs.14,099,945,379 resulting in an under-expenditure of Kshs.3,630,820,806 (or 26%) of the budget.

In the circumstances, the underfunding and underperformance affected the planned activities and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The development budget was underfunded through the exchequer by 47%. This was attributed to the constrained fiscal space due to hard economic times during the period of COVID-19 pandemic. Subsequently, the National Treasury was not able to fund the budget due to a shortfall in revenue collection.

Committee Observation

iii) The Committee noted the submission from the Accounting Officer.
iv) The Committee found that the matter was resolved.

374: Pending Bills

The State Department had pending accounts payable of Kshs.429,299,232 as at 30 June, 2020. Management did not explain why the bills were not settled during the year when they occurred. Failure to settle bills during the year in which they relate to distorts the financial statements and adversely affects the budgetary provisions for the subsequent year as they form a first charge.

Submission by the Accounting Officer

It is true that the State Department had pending bills to the tune of Kshs. 429,299,232 due to insufficient exchequer. The same was treated as a first charge in the FY 2022/2023 and therefore already settled.

Committee Observation

i) The Committee observes that the matter was settled.
ii) The Committee found that the matter was resolved.

375: Unresolved Prior Year Matters

In the audit report of the previous year, several issues were raised under the Report on Financial Statements, Report on Lawfulness and Effectiveness in Use of Public Resources and Report on Effectiveness of Internal Controls, Risk Management and Governance. However, the Management had not resolved the issues or given any explanation for failure to implement the recommendations.

Submission by the Accounting Officer

Management had not received the Committee's recommendations but was incrementally improving its accounting standards based on observations of the Auditor General.

Committee Observations and Findings;

The Committee observes that its report had since been adopted by the House.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a status report of implementation of the Committee's recommendations within three (3) months of adoption of this report.

376: Irregularities in the Procurement and Construction of Competency Based Curriculum Classrooms

The statement of receipts and payments reflects an expenditure of Kshs.30,546,359,898 in respect of transfers to other Government Units which includes an amount of Kshs.19,971,035,325 in respect of transfers to National Government entities out of which Kshs.4,476,068,016 was used in the construction of Competency Based Curriculum (CBC) classrooms. However, the following anomalies were observed;

376.1 Unsupported Procurement Method

The State Department Management did not provide for audit explanations and documentation on the procurement method used on the tenders for the construction of the CBC classrooms and how the various contractors were identified.

Submission by the Accounting Officer

The Government sought to urgently construct 10,000 new classrooms countrywide for use by learners joining Junior Secondary School in January 2023 under the CBC Infrastructure Development Program. This was further to be undertaken as part of the Kenya Economic Stimulus Package by engaging contractors at the school community level. This engagement was carried through community participation procurement methods as allowed under Public Procurement and Assets Disposal Regulations 2020. The section states .... pursuant to section 92 (m) of the Act, where a procuring entity may involve a beneficiary community to participate in the delivery of services if it is established that it shall contribute to— Community participation method. (a) the economy; (b) value for money; (c) project sustainability; and (d) socio-economic objectives such as creation of employment.

The method may involve two approaches, namely— (a) direct community participation; or (b) organised community participation through the appointment of community-based service providers.

Thus, the Ministry undertook the construction of CBC Classroom through use of Direct Community Participation as provided in the law. This was implemented through a delegated authority done at the Sub- County level by local contractors within the vicinity of the benefitting schools.

Committee Observations and Findings;

The Committee observes that it has since requested from the Auditor General a special audit on construction of infrastructure in schools across the country.

Committee Recommendation;

The Committee will make substantive recommendations in the special audit report.

376.2 Irregular Pricing of Construction of CBC Classrooms

The State Department Management tendered for the construction of the CBC classrooms at a cost of Kshs.709,398 for each classroom across the country. It was, however, not clear how the amount was arrived at taking into consideration the terrain and topographical layout across the country making it impossible to have a standard rate. Management did not also provide for audit Bills of Quantities, market surveys, and status reports on the construction of the classrooms.

Further, the procurement and payments of the contractors were made outside the e-procurement system. This was contrary to Regulation 49(2) of the Public Procurement and Assets Disposal Regulations, 2020 which provides that the conduct of e-procurement procedures for the supply of goods works and services shall be carried out by a procuring entity using an e-procurement system which is integrated to the State Portal.

In the circumstances, Management was in breach of the law in the procurement and award of the contract for the construction of the CBC classrooms.

Submission by the Accounting Officer

The process was driven by a multi-agency team that involved the Ministry of Public Works, Ministry of Education, Ministry of Interior and citizen services, Teachers Service Commission. The team approved the BQ and the cost of the construction of classrooms. The BQ were for a basic classroom and therefore the diversities of topography in different region had no major impact on the class. The BQ had an an allowance of Kshs. 3000 per metre to cover extra excavation in rock (for all classes).

The procurement was undertaken at the Sub County level where e-procurement system is not established but use manual procurement system using the public procurement and asset disposal procedures.

Committee Observations and Findings;

The Committee observes that it has since requested from the Auditor General a special audit on construction of infrastructure in schools across the country.

Committee Recommendation;

The Committee will make substantive recommendations in the special audit report.

377: Unsupported Procurement and Supply of Desktop Computers

Note 20.1 to the financial statements reflects a pending bills amount of Kshs.429,087,117 out of which an amount of Kshs.189,072,000 relates to the supply of two thousand and twenty (2,020) desktop computers to one hundred and ninety-six (196) Secondary Schools across the forty-seven (47) Counties. Review of the procurement process reflects the following anomalies: -

i. The computers were delivered on 20 June, 2022, twenty (20) days after the lapse of the contract. The liquidated damage was at the rate of 0.5% per week, which would translate to about Kshs.2,836,080 and which was not charged as per the contract agreement;
ii. The signed contract related to SEQUIP Contract No. MOE/SEQUIP/NCB /04/2021-2022 as titled and not the State Department while the award and professional opinion relates to tender no. MOE/SDELBE/NCB/04/2021-2022 on supply of computers;

iii. There were no appointment letters to the Inspection and Acceptance Committee and there was no report on the inspection attached to the pending bill voucher. It is not clear whether an Inspection and Acceptance Committee had been constituted at the point of delivery despite the computers being delivered in schools;

iv. In addition, the contract for the supply of the desktop computers did not specify what tests were to be carried out to confirm the functioning of the machines;

v. No documentary evidence was provided on negotiations that actually took place and what tests were agreed upon; and,

vi. The procurement inspection and acceptance certificate attached did not give any remarks on the quality of the desktop computers received. It is not clear how the certificate was issued without a complete inspection and acceptance report.

In the circumstances, the validity of the contract as signed and implemented could not be confirmed.

Submission by the Accounting Officer

i) This was an open tender and the supplier wrote a letter requesting contract extension to the Ministry dated 24th May, 2022 giving reasons on delayed delivery and the reason was disruption in global supply chain among others occasioned by Covid 19 pandemic. The contract was extended up to 24th June, 2022 vide professional opinion MOE/SDELBE/NCB/04/2021-2022 dated 25th May, 2022.
ii) This was a typo indicated as SEQUIP instead of SDELBE the typo regrettable.
iii) The inspection and acceptance committee were appointed vide letter dated 1st March, 2022 and inspected the computers subject to technical ICT Unit report also forming part of this report.

iv) All computers were tested according to the specifications as outlined in the tender document (minimum technical specifications) by inspection and acceptance committee and inspection report by ICT unit availed on 2020 computers dated 20th June, 2022.
v) This having been an open tender the awarded computers were to meet the minimum technical specifications as stated in the Signed Contract, tender documents and were tested against given technical specifications with no room for negotiations and the computers were distributed to benefiting schools fully functioning.
vi) All computers were tested according to the specifications as outlined in the tender document (minimum technical specifications) by inspection and acceptance committee and inspection report by the ICT unit availed on 2020 computers dated 20th June, 2022.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee found that the matter was resolved.

378: Irregularities in Implementation of the School Feeding Programme

The statement of receipts and payments reflects an amount of Kshs.30,546,359,898 in respect of transfers to other Government Units. The expenditure includes an amount of Kshs.19,971,035,325 in respect of transfers to National Government entities out of which an amount of Kshs.1,196,296,000 was spent on the purchase of various foodstuffs for the school feeding programme. The following anomalies were noted;

378.1 Lack of an Inventory Management System

The State Department had not invested in an Inventory Management System to track and account for the inventory movement. There were no stock sheets or store records to record the movement of stock. The supplies were received and distributed manually which exposes the process to loss, manipulation, and other inaccuracies.

In the circumstances, the tracking and distribution of the foodstuff procured could not be ascertained.

Submission by the Accounting Officer

It is true the Ministry has been previously using a manual Inventory Management System to record movement of stock at different levels of delivery which included but not limited to signed delivery notes of food, signed waybills showing quantity, destination and vehicle transporting the food to Sub-County and School stock card for food received and issued at School level.

However, to ensure efficiency and accountability, the State Department for Basic Education ICT Unit with the support of the World Food Program had developed a school feeding management

system for monitoring, distribution, control and reporting on feeding program. The system was tested/piloted in Isiolo County successfully, and was about to be implemented in other counties that benefit from school feeding program.

Committee Observations and Findings;

The Committee observed that the Accounting Officer demonstrated adequate management of inventory, despite not having an automated system at the time due to budgetary constraints. The automation was being implemented.

Committee Recommendation;

The Committee recommends that the Accounting Officer implements recommendations contained in the Auditor General's performance audit report on national school meals and nutrition programme, within three (3) months of adoption of this report by the House.

378.2 Irregular Procurement of School Feeding Supplies

Review of the professional opinion dated 9 November, 2021 revealed that the required quantities for the school feeding programme had been predetermined. The desired quantities are tabulated below: -

Item	Quantity
Rice	107,000 bags (47,000 bags - Ahero Sindano and 60,000 bags of Pishori rice)
Beans	25,749 bags of 90 Kgs
Vegetable Oil	12,780 Jerricans of 20 litres
Salt	5112 bales of 20 kgs
Corn soya blend	194,421 bags of 25 Kgs

However, the State Department adopted a framework contract from Public Works REF.NO MOE/SDELBE/FA/01/2021-2022 and requested quotations from only one firm for supply of corn soya from a list of twenty-eight suppliers, three firms for supply of salt and five firms for supply of vegetable oil. This was contrary to provisions of Section 114(1) of the Public Procurement and Asset Disposal Act, 2015 which provides that a procuring entity may enter into a framework through open tender if the procurement value is within the thresholds prescribed under regulation to this Act; the required quantity of goods, works or non-consultancy services cannot be determined at the time of entering into the agreement; and a minimum of seven alternative vendors are included in each category.

Submission by the Accounting Officer

The Ministry had no running contracts for food items since in the past the food was being provided by the World Food Program (WFP).

The State Department of Public Works through the Supplies Branch is mandated to shortlist on behalf of the Government or provide contracts on behalf of other government agencies. They have running framework contracts and always give circulars on items they have contracted on behalf of procuring entities for adoption and use. Re: Circular No. SDPW/SB/009/2020-2021 – Supply and Delivery of Dry Food Stuffs dated 20th April, 2021 provided contract for supply of dry foods. Any Government Department can utilise any of the firms listed. The decision to Supply Branch Framework contracts was adopted by approval by Accounting Officer vide professional opinion no. MOE/. SCHM/7/68 dated 9th November, 2021. For the Supplies branch to settle for the firms under framework contracts, they did so through open tender.

Invitation under Oil Category

The State Department invited 37 firms under this category where 14 responded and were subjected to our criteria to ascertain their capacity. These firms were from the Public Works list of qualified suppliers whose contract price was Kshs.3,800 per 20ltr jerrican being the lowest price contracted. Upon completion of the evaluation process 5 firms were responsive and recommended for award.

Invitation Under Salt Category

Under the salt category, 23 firms were invited where 11 responded and were subjected to a preset criteria communicated in the invitation to bid (Mini competition) to ascertain their capacity. These firms were from the Public Works list of qualified suppliers whose contract price was Kshs.715 per 20kg bale. Upon completion of the evaluation process, 3 firms under the salt category were responsive and recommended for award.

Invitation Under Corn- Soya

The State Department received a list of framework agreement firms from the State Department of Public Works with 28 suppliers under the Con-soya category. A criterion was developed that among others required that due to the then covid related protocols and the sensitivity of food handling for schools, the SDBE only engages bidders/ suppliers who had local processing plant in Kenya. The process therefore established that only one bidder had a processing plant among the 28 provided list of suppliers who also happened to be the lowest in the list. i.e M/S Equatorial Nut Processor.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer implements recommendations contained in the Auditor General's performance audit report on national school meals and nutrition programme, within three (3) months of adoption of this report by the House.

378.3 Failure to Deliver Required Quantities of Corn Soya and Beans

Included in the expenditure of Kshs.1,196,296,000 is an amount of Kshs.14,462,500 for the purchase of Corn Soya. However, review of the contract revealed that the supplier was to supply

25kg bags of Corn Soya at a unit cost of Kshs 3,250 whenever required. The supplier was issued with four LPOs which were partly delivered and some cancelled by the State Department as indicated below:

LPO No.	Date of LPO	Quantity	Amount (Kshs.)	Status
1981	16 November, 2021	39,564	128,583,000	Cancelled
1983	16 November, 2021	39,564	128,583,000	Cancelled
2143	21 February, 2022	39,563	128,579,750	Partly delivered 4,450bags
2142	21 February, 2022	39,563	128,579,750	Cancelled
	Total		**514,325,500**	

However, the following anomalies were observed: -

i) Through a letter dated 12 May, 2022 from the supplier, the vendor stated that they were unable to process Local Purchase Order No. 1981 and 1983 valued at Kshs.257,165,000 but committed to deliver Local Purchase Orders No. 2142 and 2143. However, out of the 79,126 bags that were to be supplied, the supplier managed to deliver only 4,450 bags at Kshs.14,462,500. It was also observed that clause 3.17.1 on liquidated damages was not effected when paying for the part delivery of Local Purchase Order 2143. The contractor communicated one month later after receiving the Local Purchase Orders and it is not clear at what point the cancellation of orders was effected or by whom.

ii) Local Purchase Orders No. 1981 and 1983 dated 16 November, 2021 were issued to suppliers on 3 March, 2022 and 1 March, 2022 after the expiry date of the contract. This was contrary to Section 53 of the Public Procurement and Asset Disposal Act, 2015 which provides that the validity period of LPO is thirty (30) days. It is also not clear whether the State Department appointed a Contract Implementation Committee to report on the way forward with regard to the implementation of the contract.

iii) In addition, four (4) firms had been recommended for the supply of beans and had entered into contracts with the State Department but failed to supply. Minutes of a meeting held on 10 January, 2022 stated that the delay had led to undocumented dropout of learners from the arid and semi-arid areas.

iv) The State Department did not take any action against the suppliers after failure to deliver besides cancellation of their Local Purchase Orders as required by circular dated 20 April, 2021 from the State Department of Public Works ref; SDPW/SB/53/11 which states that, "complaints with regard to improper fulfilment of contract terms should be made in the first instance with the contractor. In case no satisfactory solution is obtained from the contractor; the Ministry should refer the matter in writing to the Principal Secretary Public Works who will take up the matter." It was noted that the State Department did not escalate the matter to the State Department of Public Works after the contractors failed to perform.

In the circumstances, failure to deliver the required food ration is an indication of inefficiencies in the procurement process within the State Department which negatively impacted on the school feeding programme and thus affected the performance of students in school due to absenteeism

Submission by the Accounting Officer

i) It's true the supplier for con soya requested for cancellation of the LPO's due to reasons beyond any of the parties' control. The prices fluctuated way above the the variation limit due to Covid 19 dynamics, the raw materials were also no longer available from the farmers due to distribution challenges across the country and those that were available the prices could not have matched at the then quoted amounts. The supplier committed to honour Lpo no. 2142 and 2143, however under paragraph five of the supplier letter was pleading to be allowed to deliver by 25th July, 2022 which was beyond the financial year in question. The financial year was ending and supplier was paid what was delivered at the close of the year.
ii) The amounts of cancelled LPO's for corn soya amounting to Ksh. 385,745,750.00 was reallocated for supply of Beans and Rice.
iii) The contract was not complex and equally not specialised in nature as provided under Section 151 of PPADA,2015. The technical team and inspections committee were able to monitor the implementations and inspection of the contract as signed. The contract for the supply of con-soya was awarded to Equatorial Nut Processors (ENP) for supply of con soya for the financial year 2021-2022 ending on 30th June, 2022 as and when required basis.
iv) It is true that four (4) suppliers initially awarded the supply of beans were unable to honour the LPO's within the given timelines which were subsequently cancelled. The suppliers cited inadequate stock of the requested beans in the market. Therefore, through a meeting held on 10th January, 2022 chaired by the Accounting Officer the seven (7) Suppliers were given utmost two (2 weeks) to deliver failure to which their orders would be cancelled and re-allocated to other suppliers. Four (4) failed to deliver hence their orders were cancelled and to re-allocated to bidders who had ex-stock and supplied immediately.
v) It is true no action was taken to suppliers for non- delivery however, the cancellation was due to satisfactory reasons given by the supplier. The reason was due to non-availability of raw materials across the country due to COVID 19 pandemic as earlier mentioned.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

378.4. Failure to Provide Performance Security on Contract

Included in the expenditure of Kshs.19,971,035,325 in respect of transfers to National Government entities is an amount of Kshs.1,196,296,000 which relates to the school feeding programme. However, the framework contracts signed made provisions for performance security, referring to the special conditions of the contract for specifics of the performance security. Review of the contract documents revealed that the special conditions of the contract had no provisions for performance security. There was no evidence that any of the contracted firms presented the State Department with performance security. Additionally, there was no evidence that the compensation from the performance bonds had been effected for the suppliers who failed to deliver, an indication that due diligence was not undertaken when signing the contracts.

In the circumstances, the State Department Management was in breach of the law in failing to implement the framework contracting process thereby locking out other potential suppliers. Further, value for money may not have been realised in the redistributed foodstuffs as the redistribution affected the nutritional value as planned.

Submission by the Accounting Officer

The State Department after undertaking verification/due diligence of the capacity and capability of the supplier, it entered into a framework contract for the supply beans (@ 9,000), rice (@ 5,300), Vegetable oil (@ 3,800), Salt (@715) and con-soya blend at Kshs.3,250 to be supplied AS AND WHEN REQUIRED and not a contract committing any funds hence there was no need for performance security.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

379. Irregular Procurement of Tyres

The statement of receipts and payments reflects an expenditure of Kshs.5,815,120,762 in respect of use of goods and services which, as disclosed in Note 6 to the financial statements, includes an amount of Kshs.50,725,322 for routine maintenance - vehicles and other transport equipment. Review of procurement documents revealed that the State Department incurred an expenditure of Kshs.1,972,672 on the purchase of tyres. However, the cost of the same tyres within framework agreement (Circular No. SDPW/SB/038/2021-2023) was Kshs.850,772. The evaluation report did not provide any justification for the selection of the winning companies with higher quotes over the other listed suppliers whose quotes were cheaper. The State Department engaged various Agencies that were not from the prequalified list adopted from the State Department for Public Works.

In the circumstances, value for money was not realised in the expenditure of Kshs.1,972,672 on the purchase of tyres.

Submission by the Accounting Officer

The list of suppliers listed by the Supplies Branch had various brands proposed for tyres. Not all tyres, even being of the same size, have the same quality that can withstand the rough terrain that technical departments visit within a financial year. Therefore, the user request was very specific on the quality and through past experience ensured the choice of tyre quality that can deliver service for a longer period without replacement. Where a specific tire size was not in the list adopted from the State Department for Public Works, the state Department engaged various AGPO suppliers to supply the required tire size.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

380. Use of Suppliers not in Pre-qualified List of Suppliers

The statement of receipts and payments reflects an expenditure of Kshs.2,988,658 in respect of the acquisition of assets as disclosed in Note 11 to the financial statements. Review of the sampled payment vouchers amounting to Kshs.2,469,100 revealed that firms invited to bid for the supply of computers, printers, UPS units and related items were not pre-qualified by the State Department. This was contrary to Section 95(3) of the Public Procurement and Asset Disposal Act, 2015 which provides that a procuring entity shall invite tenders from only approved persons who have been pre-qualified. Further, there were no documents provided to indicate that the firms were subjected to a procurement process before the invitation to submit quotations.

The absence of a pre-qualification process denied fairness, equitability, transparency, cost-effectiveness and competition among those who may wish to submit their applications.

In the circumstances, the Management was in breach of the law.

Submission by the Accounting Officer

It is true, the State Department procured goods from the suppliers who were under AGPO category (youth women and PWD) and registered by the National Treasury under section 157 (17) of the Public Procurement and Asset Disposal act of 2015. This is intended to ensure Ministries achieve 30% procurement requirements on the disadvantaged group (AGPO). This category is included in the department pre-qualified list automatically all throughout when requested or upon submission of the said certificates at any given time of the year. Thus, the suppliers of the said items were under the AGPO Category who were included in the amended and computerised list of registered suppliers and invited to quote.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

REPORT ON THE EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

381. Incomplete Assets Register

The annual consolidated inventory of assets (assets register) provided by the State Department disclosed all movable and immovable assets that the State Department has in its possession. However, it was observed that seventy-five (75) motor vehicles owned by the State Department were not included in the assets register.

In the circumstances, the completeness, existence, ownership and condition of the motor vehicles could not be confirmed.

Submission by the Accounting Officer

It is true the motor vehicles were not included in the asset register. This was an error of omission which is regrettable and the asset register was updated and motor vehicles have since been included.

Committee Observations and Findings;

The Committee noted the admission of the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer.

382. Failure to Hold Minimum Number of Audit Committee Meetings

During the year under review, the Audit Committee met only twice i.e. on 24 March, 2022 and on 28 October, 2021 as per the minutes provided for audit. This was contrary to Regulation 179 of Public Finance Management (National Government) Regulations, 2015 which requires that the audit committee meet at least once every three months (quarterly).

In the circumstances, the State Department did not benefit from the assurance and advisory, and oversight services from the Audit Committee.

Submission by the Accounting Officer

At the inception of the FY 2021/2022, the term for the Audit Committee had expired. The term of the Audit committee members was renewed in September 2021 when the first quarter was ending.

The Committee was able to have 3 meetings and not 2 as stated. The first meeting was held after renewal on 28th October 2021, second 24th March and the third on 15th June 2022. They meet every quarter hence 3 meetings were held.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

383. Use of Non-official Email Addresses in Official Communication

During the year under review, it was observed that the State Department's staff used personal emails especially google email application for official business communication. This was contrary to Public Service Commission circular number SH/ADM/23(1) dated 14 June, 2022 on use of personal email addresses for official Government business. All Ministries, State Departments and Semi-Autonomous Government Agencies were required to have their staff members boarded onto the Government domain email addresses provided by the ICT Authority. The circular stated that any email communication that is non-compliant will be considered non-official.

In the circumstances, the use of personal emails may lead to the compromise of the State Department's data and potentially exposes the entity and the Government in matters of National security and National interests.

Submission by the Accounting Officer

ZIMBRA Web client platform is the official government platform which is a bit unreliable and from time-to-time officers are unable to open mails. This is because the domain server @education.go.ke is controlled by the Information Communication Technology Authority.

However, the state department has since created official emails for the directorates and departments for official commutation. The ICT Department is also sensitising and encouraging officers on the use of official emails for commutation and its importance.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

384. Lack of an IT Steering Committee

The State Department does not have an IT Steering Committee in place. This was contrary to Section 6.2 of the IT Governance Standard by the ICT Authority on ICT Governance direct that all Ministries, County, Departments and Agencies shall establish two ICT Governance Committees namely; an IT Strategy Committee to provide strategic advice on ICT initiatives and investments to the management and an IT Steering Committee to define the IT mission and goals aligned with the strategic direction of the organisation, to authorise and direct the development of the services and operation plans.

Lack of an ICT Steering Committee exposes the State Department to the risk of unclear direction regarding the maintenance of information security and safeguard of ICT assets across the State Department.

Submission by the Accounting Officer

It is true there is no steering committee in place. The State Department is in the process of constituting one.

Committee Observations and Findings;

The Committee noted the admission of the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the steering committee is in place within three (3) months of adoption of this report.

385. Lack of Anti-Fraud Policy

Review of the internal control processes and risk management measures revealed that the State Department did not have an Anti-Fraud Policy in place. Further, there was no Risk Register. This was in contravention of Regulation 165 (1)(a) and (b) of the Public Finance Management (National Government) Regulations, 2015 which requires the Accounting Officer to ensure that the national government entity develops risk management strategies, which include fraud prevention mechanism; and the county government entity develops a system of risk management and internal control that builds robust business operations.

Lack of Anti-Fraud Policy exposes the State Department to embezzlement, fraud, loss of assets which may negatively impacted on the financial, material or reputation of the State Department.

Submission by the Accounting Officer

It is true that the State Department does not have an Anti-fraud Policy in place. We are in the process of developing one and have engaged the EACC for guidance on the same.

Further to the above, the State Department has put the following measures for preventive, detective, compliance/enforcement, feedback mechanism, in place:

i) Risk Profile Register
ii) Committees and Boards
iii) Audit Committee
iv) Budget Implementation Committee
v) Ministerial Human Resources Management Committee
vi) Anti-Corruption Committee
vii) Disciplinary Committee
viii) Tender Evaluation Committee
ix) Monitoring and Evaluation
x) Authorization approval procedures
xi) Duty allocation and rosters
xii) Service Charter – Displayed.
xiii) Vision and Mission – Strategic plan
xiv) Work plans, Procurement plans, and expenditure plan
xv) Camera's, spot on Checks
xvi) Advocacy – Memos and circulars on Corruption matters
xvii) Trainings on Integrity / Ethics
xviii) ISO Audits (QMS Documents).

Committee Observations and Findings;

The Committee noted the admission of the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the policy is in place within three (3) months of adoption of this report.

DONOR FUNDED PROJECTS

KENYA PRIMARY EDUCATION DEVELOPMENT PROJECT (GRANT NO. TFO18863)

REPORT ON THE FINANCIAL STATEMENTS

386. Failure to Maintain an Updated Assets Register

Annex 2 to the financial statements - summary of fixed asset register reflects assets with a cumulative historical cost of Kshs.715,138,466. The balance includes assets valued at Kshs.475,353,633 brought forward and additional assets acquired at a cost of Kshs.239,784,833. The register provided for audit was compiled on 6 January, 2017 and is not up-to-date and this may lead to loss of assets not recorded. Further, the assets had not been identified by any tag and therefore the completeness of the record provided could not be verified.

In the circumstances, the accuracy, completeness, ownership, and existence of assets valued at Kshs.715,138,466 could not be confirmed.

Submission by the Accounting Officer

The variance was as a result of capitalization of ICT equipment installation expenses/payments which could not be detached from the equipment purchased resulting to the whole contract amount as per the voucher being treated as an asset in the financial statement, which had not been reflected as a fixed asset. However, this has since then been updated. The assets have also been tagged.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

387. Unreconciled Special Account Statement

The statement of receipt and payments reflects proceeds from domestic and foreign grants of Kshs.783,683,539 as disclosed in Note 12.2 to the financial statements. However, the corresponding account balance reflected in the special account statement is Kshs.783,952,872 made up of Kshs.306,180,000 in respect of Disbursement Linked Indicator designated account, Kshs.283,862,621 in respect of withdrawals and Kshs.193,910,251 in respect of direct payments resulting in an unexplained variance of Kshs.269,333.

In the circumstances, the accuracy and completeness of the proceeds from domestic and foreign grants amounting to Kshs.783,683,539 could not be confirmed.

Submission by the Accounting Officer

The state department has requested for clarification from the National treasury on the balance of Kshs 783,952,872 to enable us reconcile the difference since The National Treasury is the custodian of the special account.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures reconciliation within three (3) months of adoption of this report.

388. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects the final expenditure budget and actual on a comparable basis of Kshs.1,538,783,671 and Kshs.1,121,849,455, respectively resulting in an under-expenditure of Kshs.416,934,416 (or 27%) of the budget.

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

Submission by the Accounting Officer

It is true that 27% of the budgeted funds was not absorbed. The variance between the budgeted amount and the expenditure of Kshs. 416,934,416 in the F/Y 2021/2022 was due of the following reasons;

i) The Ministry of Education was still trying to recover from the effects of COVID-19 which necessitated the condensing of the school calendar. For instance, due to the long closure of schools in 2020, the Class 8 pupils and the Form four students (2020 cohort) did the final examination in November/December 2021 instead of October/November 2020. The 2021 cohort of learners started their exams in February/March 2022. This to a very large extent affected the implementation of the planned project activities since the field education officials and school managers spent a lot of the time in preparation and administration of the exams.
ii) The project planned activities were to be implemented within 6 months from July -Dec 2021, since the project was ending on 31st December 2021.The implication is that due to the condensed school calendar and the preparation for the administration of the National exams, the project lost the whole of the period covering October -December for project implementation which were mainly to be undertaken at County and at school level since schools concentrated on preparation of candidates for exams.
iii) Some activities could not be implemented during the FY 2019/2020 and FY 2020/2021 because of the prolonged closure of schools due to COVID-19. This created a backlog of activities to be implemented within a very short time which affected the absorption of funds.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

389. Irregularities in the Prcourement Procedures

The statement of receipts and payments as disclosed in Note 12.4 to the financial statement reflects an amount of Kshs.137,764,077 for purchase of goods and services which includes an amount of Kshs.16,721,142 in respect of hospitality services. However, review of expenditure on hospitality services revealed that Local Purchase Orders (LPOs) were issued after invoicing in the following instances:

i. The Project Management paid Kshs.1,490,000 through payment voucher No.831. Review of the supporting local purchase order revealed that the LPO is dated 7 December, 2021 while the Invoice No. 3324 is dated 3 December, 2021;

ii. The Project Management paid Kshs.618,000 through payment voucher No. 321. Review of the supporting local purchase order revealed that the LPO is dated 14 October, 2021 while the Invoice No. 2101 is dated 1 October, 2021;

iii. The Project Management paid Kshs.1,233,000 through payment voucher No. 834. Review of the supporting local purchase order revealed that the LPO is dated 7 December, 2021 while the Invoice No. 3276 is dated 25 November, 2021;

iv. The Project Management paid Kshs.303,000 through payment voucher No. 830. However, the Local Purchase Order was dated 22 December, 2021 while Invoice No. 2245 of the same amount was dated 15 December, 2021;

v. The Project Management paid Kshs.78,000 through payment voucher No. 847 against a Local Purchase Order 1812838 dated 25 December, 2021 while Invoice No. INV190000001577 of the same amount was dated 30 November, 2021;

vi. The Project Management paid Kshs.579,000 through payment voucher No. 849 of against Local Purchase Order 1812842 dated 29 December, 2021 while Invoice No. INV190000001615 of the same amount was dated 20 December, 2021;

vii. The Project Management paid Kshs.579,000 through payment voucher No. 832 against Local Purchase Order 1812837 dated 22 December, 2021 while Invoice No. 2229 of the same amount was dated 2 December, 2021; and,

viii. The Project Management incurred an expenditure of Kshs.576,000 on the procurement of airtime for GPE/PRIEDE Project Coordination Unit (PCU) staff for the month of October to December, 2021. This was made against a Local Purchase Order (LPO) No. 3756157 dated 31 December, 2021 while the invoice was dated 30 December, 2021 a day before the LPO was issued.

In the circumstances, the regularity of the expenditure of Kshs.5,456,000 in respect of hospitality services could not be confirmed.

Submission by the Accounting Officer

In procurement of conferences services, the service provides i.e hotels and conference venues usually provide proforma invoices at quotation level to allow for LSO preparation. They later then provide an actual invoice that has the actual numbers of attendees of conferences. During sourcing process, the Project requested quotations for provision of conference facilities from service providers. The service providers responded and submitted proforma invoices upon which the Local service orders were prepared. After provision of the services, the service providers submitted invoices for payment.

It is stated that during preparation of payment vouchers, the project erroneously used proforma invoices (quotation price) to support payment instead of the actual invoices. However, the payments were made actual. This error led to dates of invoices appear to have been before the issuance LPOs.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

390. Unsurrendered Project Assets

The Project ended on 31 December, 2021. However, the Project Management had not prepared the statement of assets for handing over to the Accounting Officer ten (10) months after the closure of the project. This has been caused partly by the failure to maintain an updated asset register. This is contrary to Regulation 74(6) of the Public Finance Management (National Government) Regulations, 2015 which stipulates; an Accounting Officer of a National Government entity shall ensure that whenever projects are completed, the project assets including buildings, plant, motor

vehicles, furniture, fitting, and equipment are properly recorded and handed over to the accounting officer in accordance with the financing agreement. Further, the Regulation provides that when no time frame is provided for the project, the assets are handed over within three (3) months from the date of closure of the project; and in absence of any instructions to the contrary, any unexpended balance standing in the credit of the projects is paid into the Consolidated Fund.

In the circumstances, the Project Management was in breach of the law and risk loss of assets.

Submission by the Accounting Officer

It is true that the project assets had not been surrendered at the time of the audit.

The process of reassigning the assets to the Kenya Primary Education Equity in Learning (KPEEL) Program has commenced. In addition, the PRIEDE Project and KPEEL Program are funded by the same donor (Global Partnership for Education) and the Project Coordination Unit team is the same.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures complete handover within three (3) months of adoption of this report.

GOK/ UNICEF EDUCATION FOR YOUNG PEOPLE PROGRAMME

REPORT ON THE FINANCIAL STATEMENTS

393. Inaccuracies in the Presentation of the Annual Report and Financial Statements

Review of the annual report and financial statements presented for audit revealed the following inaccuracies: -

i. Details on the program grant/credit number were not indicated on the title page of the financial statements;
ii. The financial statements do not include the Statement of Performance Against the Project's Predetermined Objectives, and the Environmental and Sustainability Reporting;
iii. The project Funding Summary does not reflect the donor commitment and amount received in donor currency as prescribed by the report template by the Public Sector Accounting Standards Board;
iv. The table of contents included notes to the financial statements however, three (3) reports namely Significant Accounting Policies, Other Important Disclosures, and Annexes were missing from the submitted financial statements;
v. Page v of the financial statement reflects a subtitle (ref 1.6) as Project Governance which contradicts the revised financial reporting template which indicates the same reference as Roles and Responsibilities; and,
vi. The annual report and financial statements do not include the names, title/designation, key qualifications, and responsibilities of the key persons working in the project.

Submission by the Accounting Officer

i. GOK UNICEF is a continuous program which has been going on since 2006. Most of its activities are coordinated at the National Treasury and are of Ad hoc nature
ii. A statement of Statement of Performance Against the Project's Predetermined Objectives, and the Environmental and Sustainability Reporting was included in NOTE 3 PAGE xi in the revised financial statements submitted to the Auditor General.
iii. The project Funding Summary does under note 1.7 of the revised financial submitted financial statement did not have donor commitment either in Donor currency or Kenya Shillings since as in the case of the previous financial year, the GOK/UNICEF program was not included in the budget of the State Department and no funds were received.
iv. The submitted GOK/UNICEF financial statements included a note on Significant Accounting Policies under NOTE 10, however, the statement on other important disclosure and annexes were missing. The project had zero expenditure hence this does not materially affect the validity of the financial statements.
v. The note was missing and the same was corrected in the revised financial statements submitted in the course of the Audit.
vi. The submitted Audited financial statement included the name of the Project accountant and the Director projects since they were actively involved in the preparation and submission of the financial statements. However, there's no defined project coordination unit since the program is inactive.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

394. Inaccuracies in the Cash and Cash Equivalents

The statement of financial assets reflects cash and cash equivalents balance of Kshs.1,077,215 as disclosed in Note 8.6 to the financial statements. However, the bank reconciliation statement reflects payment in the bank not recorded in the cashbook of Kshs.503,350 which occurred in the year 2016. The amount has not been recorded in the cash book leading to an overstatement of the cash and cash equivalents.

In the circumstances, the accuracy and completeness of the cash and cash equivalents balance of Kshs.1,077,215 could not be confirmed.

Submission by the Accounting Officer

The outward payment of Kshs. 503,350 in the bank reconciliation statement relates to the period ended June 2016.The details of the outward payment could not be traced.

Committee Observations and Findings;

i) The Committee observed that the long outstanding reconciliation item was resolved in its previous report.
ii) The Committee found that the matter was resolved.

395. Unaccounted for Accumulated Surplus

The statement of receipts and payments reflects an accumulated surplus balance of Kshs.325,249,171 as at 30 June, 2021. The accumulated surplus was not included in the fund balance brought forward in the financial year 2021/2022 of Kshs.1,077,215 in the statement of financial assets resulting in an unexplained difference of Kshs.324,171,956. The Project Management did not provide explanations on how the surplus was treated.

In the circumstances, the accuracy, occurrence and completeness of the accumulated surplus balance of Kshs.325, 249,171 could not be confirmed.

Submission by the Accounting Officer

GOK/ UNICEF funding was majorly in direct payments made by the donor. The direct expenditures were captured through a journal entry in the ledger. However, the expenditure could not be captured in the cashbook since no support of the expenditure was given. This could be a reason for disparity in the accumulated surplus over the years.

Committee Observations and Findings;

i) **The Committee observed that the long outstanding reconciliation item was resolved in its previous report.**
ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

396. Failure to Transfer Unspent Funds

The statement of financial assets reflects a cash and cash equivalents balance of Kshs.1,077,215 as disclosed in Note 8.6 to the financial statements. The amount has not been paid into the Consolidated Fund and remains unspent for three (3) consecutive years. This is contrary to Regulation 74(6)(d) of the Public Finance Management (National Government) Regulations, 2015 which provides that the Accounting Officer of a national government entity shall in the absence of any instructions to the contrary, ensure that any unexpended balance standing in the credit of the project account is paid into the Consolidated Fund.

In the circumstances, the Project Management was in breach of the law.

Submission by the Accounting Officer

The management has taken note and will take the necessary steps of remitting the funds back to the consolidated fund.

Committee Observations and Findings;

The Committee noted that the Accounting Officer had failed to remit the unspent funds.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the funds are remitted within three (3) months of adoption of this report.

SECONDARY EDUCATION QUALITY IMPROVEMENT PROJECT (CREDIT NO.61380-KE)

REPORT ON THE FINANCIAL STATEMENTS

398. Non-Itemization of Budget Line Items

Review of the approved budget for the financial year 2021-2022 indicated that the allocations were based on activities, however, there were no budget line items linked with the activities to enable comparison with the format of the financial statements and the Government Chart of Accounts. This was contrary to the International Public Sector Accounting Standards (IPSAS) 24 on the presentation of budget information in financial statements.

In the circumstances, the accuracy of the budget as approved and the allocation to the various line items could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer acknowledged the observation that there were no budget line items linked with the activities in the Annual work plan and Budget. He further submitted that henceforth, the project implementation team will endeavour to align the Annual Work plan and Budget work to the reporting items in the financial statements.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

399. Unreconciled Special Account Statements

The statement of receipts and payments reflects proceeds from external development partners amount of Kshs.971,196,695 as disclosed in Note 1 to the financial statements. However, the corresponding account balance in the special account statement reflected a withdrawal amount of Kshs.972,195,810 resulting in an unreconciled and unexplained variance of Kshs.999,115. Further, the special deposit accounts movement schedule reflects an amount of Kshs.326,452,939 being the total amount withdrawn in respect of the special account which was at variance with the corresponding nil withdrawal in the special account statement as at 30 June, 2022 resulting in an unexplained variance of Kshs.326,452,939.

In the circumstances, the accuracy and completeness of the special deposit account of Kshs.971,196,695 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that during the year under review, the project made a withdrawal request of Euros 7,778,241.63 from the Development partner (IDA) as per the evidence that was provided.

The funds were deposited in the project's special account and consequently, an exchequer request for the same was made. The amount received from the loan proceeds of Euros 7,778,241.63 was Kshs. 971,196,694.65 and the exchange rate disclosed on the transaction date was 124.8607.

The operations of the special accounts are domiciled at the national Treasury, External Resources Department. To understand the variances as highlighted by the OAG, the Ministry wrote to the National treasury seeking clarification on the matter.

As disclosed in the special accounts movement schedule (Note 7) of the financial statements, the project made a withdrawal application of Euros 2,685,558 which was disbursed by the donor to the project special account. However, the exchequer for the same was not received by the end of the financial year under review (2021/22). The amount was received via exchequer notification Ref. No.001/01/22/23, as Kshs. 326,452,939.25 in the financial year (2022/23 FYR). The exchange rate disclosed was Usd. 121.5587.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

400. Undisclosed Bank Account Balance

The statement of financial assets reflects a bank balance of Kshs.83,308,697. However, review of the Equity Group Foundation bank statements revealed that the account had a balance of Kshs.17,923,635 as at 30 June, 2022 which was not disclosed in the Project's financial statements. Further, the Project Management did not provide information and documents on the scholarship beneficiaries and a list of those who did not receive the scholarships, or the reasons for the failure to remit the scholarship funds.

In the circumstances, the accuracy and completeness of the bank balance of Kshs.83,308,697 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted the statement of financial assets reflected a bank balance of Kshs.83,308,697. While the Equity Group Foundation bank statement reflected a bank balance of kshs.17, 923,635 which was not disclosed in the financial statements. The management acknowledge the anomaly and the necessary adjustments were effected in the subsequent requests for Scholarship funds by Equity Group Foundation.

Additionally, the project management acknowledges the surpluses of Kshs.17, 923,635 which arose from the difference between the projected budget estimates and the actual expenses incurred after facilitating all the scholars.

The list of the scholarship beneficiaries was availed for audit review.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to provide information within reasonable time to the Auditor General pursuant to Section 62 (1) of the Public Audit Act, 2015.

401. Irregularities in the Operation of the Elimu Scholarship Fund

The statement of receipts and payments reflects cumulative other grants and transfers and payments amounting to Kshs.3,009,313,011 as disclosed in Note 6 to the financial statements in respect of SEQIP transfers to Equity Group Foundation. The following anomalies were noted: -

401.1 Unsupported List of Beneficiaries

The Project Management did not provide an approved list of beneficiaries against which the transfers were made. In the absence of the approved list by the Ministry, the audit could not establish whether the Foundation disbursed funds to bona fide students.

Submission by the Accounting Officer

The Accounting Officer submitted that the project management regrets the anomaly of not availing an approved list of beneficiaries for audit review. An approved list of beneficiaries for both cohorts was provided to the Committee.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer failure to provide information within reasonable time to the Auditor General pursuant to Section 62 (1) of the Public Audit Act, 2015.

401.2 Unapproved Change of Contract Terms

Review of contract documents revealed that the Project Management entered into an agreement the Foundation for Consultancy Services for the Design and Support, Implementation of Scholarship, Mentorship, Gender Sensitization, and Social Support Programme for secondary students under the Secondary Education Quality Improvement Project (SEQIP) through contract-MOE/SEQIP/NCB/07/2017-2018 dated 21 November, 2019. The contract did not provide for the transfer of funds to the Foundation for onward transfer to Schools and the Procurement of School kits. The Project Management did not provide evidence to prove that the transfer of roles by the Ministry to the Foundation was approved by The National Treasury, World Bank, and the Cabinet Secretary for the Ministry of Education.

Submission by the Accounting Officer

The Accounting Officer submitted that it is true that the contract MOE/NCB/SEQIP/07/2017-2018 dated 21st November, 2019 did not provide for transfer of funds to the Foundation for onward transfer to schools and the procurement of school kits.

However, the world bank through an email dated January,13th 2020 advised the project management that scholarships include transport, stipend, school kit and mentorships as envisaged in paragraph 51 of the Project Appraisal Document. It was envisaged that the Ministry of Education would partner with one or more agency with a proven record in managing scholarships and

mentorship programs. As such, the provision of school kit and disbursement of funds is part of the scholarships package.

Based on that understanding, the World Bank provided guidance to MOE, that school kits are processed as part of school fees and no objections for disbursement of funds to EGF have always been provided. The no objections are evidence of approval by the World Bank was provided to the Committee.

It is important to note that EGF offered to disburse school fees and distribute school kit at no extra cost.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

401.3 Unauthorized Opening and Operation of Project Bank Account

The Project Management transferred an amount of Kshs.2,102,385,727 to the Foundation during the year under review. However, the Project Management did not provide the following for audit verification: -

(i) Approval from The National Treasury to open the account in accordance with Section 28(1) of the Public Finance Management Act, 2012;

(ii) Details of the signatories to the account;

(iii) Monthly reports reconciling payments from the account with the recipient school in the list of approved Elimu Scholarship beneficiaries;

(iv) Monthly reports of uncleared amounts detailing the intended recipients which should be verified and approved by the client to ensure funds are allocated to the relevant cost centre;

(v) A sample of payments amounting to Kshs.2,347,473,772 analyzed from an extract in the Foundation Account revealed payments for which the Project Management did not provide supporting documents with details on the payee and bank details to which these payments were made. Further, the Project Management did not provide evidence of interest earned while the funds remained in the account;

(vi) Review of the bank statements reflected transfers to other bank accounts. However, the monthly returns indicating the details of the transferee, purpose of the transfers, the intended beneficiary, and acknowledgement by the schools or students were not provided for audit; and,

(vii) Bank credit with different particulars such as unutilized transfers and transport, banked cheques, bank transfers were noted. However, the intended recipient/source and reasons for the credit entries were not provided for audit review.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

(i) It is true that the account used for disbursement of scholarship funds at the time of the audit was not authorized by the National Treasury. However, the Ministry obtained authority from the National Treasury and opened operations account for Elimu Scholarship program at Equity bank and the details are as follows:

Account Name: Secondary Education Quality Improvement Project Elimu Scholarship

Account Number: 0810283759770

Branch: Equity Centre.

Authority letter from the National Treasury was provided.

(ii) The Accounting Officer submitted that the signatories to the account are as follows:

- The Project Coordinator-Jane mbugua
- The Project Accountant – Grace Njoki
- The deputy head of accounting unit – Roselyn Wairagu
- The head of accounting unit. – Emilio Mukira.

(iii)The Accounting officer submitted that monthly reports were not available as the project disburses funds as per the school terms. The Equity Group Foundation provides details of expenditure based on the disbursements made during the school term.

(iv)The Accounting Officer submitted that there are no monthly reports as funds are disbursed as per the school terms and incase of any unutilized balances, the amount is offset in the subsequent disbursements. A sample of expenditure return is was provided.

(v) It is true that at as at the time of the audit some documents were not available to support the sample extract of Kshs. 2,347,473,772 which was debited from the project account on various dates as per the Elimu scholarship bank statement.

(vi)The Accounting Officer submitted that monthly returns are not available as the funds are disbursed based on the school terms. However, the transfers made from the Elimu scholarship account relates to the payment of School fees, School Kit, Transport and Stipend for Elimu Scholars were provided for audit review.

(vii) It is true that the management did not provide sufficient documents to support the credits made into the Elimu account. The credits relate to school fees and transport funds that had been paid for scholars, who did not report to school or utilize the money for transport for various reasons. The unutilized funds were credited back to the Elimu Scholarship account.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

401.4 Unapproved Procurement and Distribution of School Kits

Review of the approved budget revealed that Kshs.938,286,789 was allocated for procurement of school kits for Elimu Scholarship Beneficiaries Cohort 1 and Cohort 2 as per the approved annual work plan. The procurement was made by the Equity Group Foundation without a contract and was based on an addendum made to the original contract. The Project Management did not obtain approval from The National Treasury, The World Bank, and the Cabinet Secretary - Ministry of Education authorising the procurement to be conducted by the Equity Group Foundation. Further, field verification conducted during the month of November, 2022 revealed the following anomalies:

i) Bank charges for the card management were born by the student which was affecting the transport of some of the students as transport is based on actual charges;

ii) Some students had their approved transport reduced without any explanation, while other students were not provided with sufficient amount to take them to school and back home;

iii) During monitoring and evaluation by the Project Management, it was noted that the school kits had items that were reduced or omitted as follows; books, ream papers, slippers, sugar,

blue band, shoe brush, cocoa, and revision books. The reduction of the items had material implications on the contract sum and support to the students. However, no contract variation was made to cater for the reduction in the school kit;

iv) Form three (3) students interviewed raised concerns that there were important materials like set books, geometrical sets, calculators, mathematical tables, and trips not provided for;

v) Most of the schools were sending the students home for Parent Teachers Association (PTA) fees, development fees or other fees not paid for. This was contrary to circular reference No. MOE/HQS/3/10/18 of 12 July, 2022 exempting the students from paying any other fees;

vi) Three (3) students in Makueni Girls Secondary School had visual impairment which was affecting their studies and needed medical attention. However, the Project had not factored in medical issues affecting the scholars which could have impacted on their studies;

vii) Most of the students in Form three (3) did not receive the second pair of uniforms and Physical Education (PE) kits;

Submission by the Accounting Officer

The Accounting Officer submitted that the world bank through official emails dated 13th January,2020 and 21st August 2023 advised the project management that scholarships include payment of school fees, school kit, stipend to cater for transport to and from school and pocket money, implementation of mentorship and gender sensitization activities as one package as envisaged in paragraph 51 of the Project Appraisal Document. It was envisaged that the Ministry of Education would partner with one or more agency with a proven record in managing scholarships and mentorship programs. As such, the provision of school kit is part of the scholarships package.

i) The Accounting Officer submitted that management takes note and regrets this anomaly. The learners in Cohort 1 were issued with cards in Form 1, Term 2. During the prepaid product formation, some cards were erroneously subjected to transaction charges. However, the charges were reversed as per the evidence provided.

ii) The Accounting Officer submitted that management acknowledges this observation. As a control measure, transport schedules are continually rationalized in accordance with the prevailing transport rates for different destinations.
During the COVID-19 pandemic, public transport fare rates were erratic due to the then containment measures. When the measures were lifted the rates reduced and stabilized.

iii) The Accounting Officer submitted that it is true that after rationalisation by the ministry, some of the items in the school kit were dropped from the list.
However, the management would wish to clarify as follows; The Ministry contracted EGF to support design and implementation of Scholarship, Mentorship, Social Support and Gender sensitization programme. The contract sum was to meet the cost of administration of scholarships and implementation of mentorship social support and gender sensitization programme as a package. As such there is no unit cost for consultancy services tied to the number of items in the school kit list.

iv) The Accounting Officer submitted that the SEQIP design for school kit required that each learner be:

- Provided with a Geometrical set and a mathematical table twice (at Form 1 and Form 3) during 4-year education cycle.
- Provided with a Calculator once (at Form 3) during 4-year education cycle.

However, the project design did not provide for set books and the school trips due to limitation of funding.

v) The Accounting Officer submitted that it is true that principals in some schools unfortunately send students home for extra levies despite the guidelines issued by the Ministry. However, the Ministry has intervened to ensure that there is no disruption of learning in schools through the following:
   - Circular reference No. MOE/HQS/3/10/18 of 12th July, 2022.
   - A circular to the County Directors of Education REF No. MOE. CONF/G6/31/Vol. VII/76 of 13th July, 2023 instructing them to remind all principals to adhere to the requirements of circular reference No. MOE/HQS/3/10/18 of 12th July, 2022.
   - Instructions given to the County Directors during meetings
   - Sensitization of Heads of schools during KESSHA National conference meetings
   - Sensitization of stakeholders during advocacy and gender sensitization, public gatherings.

   The Ministry will continue to enforce this through continuous monitoring and evaluation.

vi) The Accounting Officer submitted that management takes note of this and clarifies as follows; All learners in public Secondary Schools were covered under the Edu -Afya medical scheme, hence medical issues were not included in the program under SEQIP.

vii) The Accounting Officer submitted that it true that some scholars in form 3 had not received a second pair of uniform by the time of the audit. Elimu Scholarship beneficiaries are provided with a second pair of school uniforms and Physical Education (PE) kits while in Form three.

   This is normally done during the school holidays. However due to the shortened school holidays this exercise had not been completed as at the time of the audit. Regrettably also, some schools delayed in putting in their requests for the new set of uniforms and this affected the students. All scholars were provided with a second pair of uniform

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures that school principals adhere to regulations set by the government and any further levies be refunded.

401.5 Students Benefiting from More than One Scholarship Programme

Review of sampled fees statement on students under Elimu Scholarship revealed that some students had fees overpayment amounting to Kshs.1,300,760 as a result of benefiting from more than one scholarship programme. This was especially noted in Kwale County where the County Government of Kwale sponsors students who qualify for National Schools on full scholarship. It was noted that the Elimu Scholarship Programme did not have structures in place to prevent multiple scholarships which may disadvantage other needy students.

Submission by the Accounting Officer

The Accounting Officer submitted that there were systemic challenges in coordination of scholarships, bursaries and social support provisions. The remittance of school fees by EGF is in accordance to the list of the scholarship beneficiaries and the fee structures for respective schools. As such, there has not been any overpayment of fees for any learner from the project's funds, However, to ensure effectiveness in scholarship management the Ministry is doing the following:

i) Initiated reforms to establish the Jomo Kenyatta Foundation (JKF) as an agency for management and coordination of scholarships and social support activities in Basic Education. This will strengthen regulation of scholarship and bursary provision by among others; Objective targeting of deserving learners and prevention of duplication of support.
ii) NEMIS re-engineering to enable efficiency in identifying support to individual learners. This will enable early identification of duplication of support.

Committee Observations and Findings;

The Committee noted that there were structural weaknesses that made it possible for students to benefit from more than one scholarship due to the multiplicity of the programmes.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures students have unique identifiers in NEMIS to eliminate possibility of double allocation.

401.6 Indiscipline and Poor Performance of Students under Elimu Scholarship Programme

The Project Management did not set the benchmark to be used in appraising compliance with the requirements in the Project Appraisal Document which stipulates that a scholar would continue to enjoy programme benefits until she/he completed Form Four (4), subject to satisfactory school attendance, behavior and academic performance. Interviews with the Teacher Gender Champions of the various sampled schools indicated that the performance of some of the students under the Elimu Scholarship Programme was deemed poor with cases of indiscipline.

Submission by the Accounting Officer

The Accounting Officer submitted that there have been cases of low academic performance and indiscipline among some of the beneficiaries. However, the imperative to provide education has constrained the Ministry to go slow of discontinuing learners from the programme due to the cited reasons. In addition, cognisance is taken on the reality that due to the circumstances, occasioned by the COVID-19 Pandemic some learners especially from poor background and who could not access alternative tuition platforms lost learning time. The aforementioned coupled with the government's drive to provide basic education to all children of school –going age through the 100% Transition Initiative overrode the provisions in the PAD.

To remediate these all issues affecting the scholars' participation and learning, the Ministry has forged alternative interventions including; Mentorship and psychosocial support for learners at school by the gender champions and inspirations drawn from leadership congresses under the Elimu Scholarship Programme.

Committee Observations and Findings;

i) The Committee noted the explanation given by the Accounting Officer.
ii) The Committee found that the matter was resolved.

401.7 School Fees Arrears for Form One Students

Field verification in sampled schools revealed that school fees had not been paid for Form 1 students for the whole year. This was contrary to the SEQIP Project Appraisal Document which provides that the second intervention, a secondary school scholarship program combined with child-specific mentorship, would support deserving primary school graduates in the targeted sub-counties who did not have the means to continue their education. The children eligible for the scholarship were to be selected from Grade 8 cohorts in the targeted areas in the first and second years of the Project. Scholarship recipients were to have their school fees (including boarding fees) paid for at the beginning of Form 1 at schools to which the students were admitted.

In the circumstances, the accuracy, occurrence, regularity, and validity of the expenditure of Kshs.2,102,385,727 in respect of other grants and transfers and payments for the Elimu Scholarship Fund could not be confirmed. Further, the contract for the disbursement of funds through Equity Group Foundation and procurement of the school kits was irregular.

Submission by the Accounting Officer

The Accounting Officer submitted that it is true that there were some students whose fees had not been processed as at the time of the audit. However, the fees have now been settled.

The world bank through official emails dated January, 13th 2020 advised the project management that scholarships include payment of school fees, school kit, stipend to cater for transport to and from school and pocket money, implementation of mentorship and gender sensitization activities as one package as envisaged in paragraph 51 of the Project Appraisal Document.

Committee Observations and Findings;

i) The Committee noted the explanation given by the Accounting Officer.
ii) The Committee found that the matter was resolved.

402. Funding Summary

The Project's information and overall performance and funding summary at Note 1.7 reflects cumulative IDA amount received totalling Kshs.99,578,085, which differs with cumulative to date amount of Kshs.6,741,465,535 shown in the statement of receipts and payments. The difference was not explained or supported.

In the circumstances, the accuracy of the financial statements could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that it is true that there was error in the presentation of the project funding summary as per note 7 of the financial statements, where the cumulative funding in Kenya shillings was presented as Kshs 99,578,085 instead of Kshs. 6,741,465,535 as reflected

in the statement of receipts and payments. This was noted and corrections were effected in the financial statements for the financial year 2022/23.

Committee Observations and Findings;

The Committee noted the explanation given by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to ensure that the records are reconciled and analyzed with necessary supporting documents and submitted to the Auditor General in compliance with provisions of Section 68 (2) of the PFM Act 2012.

403. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects the final receipts budget and actual on a comparable basis of Kshs.3,700,000,000 and Kshs.971,176,695 respectively resulting in an underfunding of Kshs.2,728,823,305 (or 74%) of the budget. Similarly, the Project expended an amount of Kshs.3,304,971,376 against an approved budget of Kshs.3,700,000,000 resulting in an underexpenditure of Kshs.395,028,624 (or 11%) of the budget. Further, the revised budget and annual work plan for the financial year ended 30 June, 2022 reflects an amount of Kshs.4,541,385,469 while the final budget as reported in the statement of comparison of budget and actual amounts reflected a balance of Kshs.3,700,000,000 resulting in an unexplained and unreconciled variance of Kshs.841,385,469.

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

Submission by the Accounting Officer

The Accounting Officer submitted that the project had an opening balance of Kshs.2,414,074,860 carried forward from the financial year 2020/21. Additionally, the project received exchequer amounting to 971,196,695. Therefore, the project had Kshs. 3,385,271,501 to utilize in the year under review, out of which Kshs. 3,057,808,796 was spent.

The Accounting Officer further submitted that the mismatch of the amount in the annual work plan and budget and the final budget is due to the reduction of the amount allocated to the project during the supplementary budget.

Committee Observations and Findings;

i) The Committee noted the explanation given by the Accounting Officer.

ii) The Committee found that the matter was resolved.

404. Prior Year Matters

In the audit report of the previous year, several issues were raised under the Report on Financial Statements and Report on Lawfulness and Effectiveness in Use of Public Resources. However, the Management had not resolved the issues nor given any explanation for the failure to implement the recommendations.

Submission by the Accounting Officer

The Accounting Officer submitted that the State Department is waiting for the adoption of the 2020/2021 Public Accounts Committee report to be adopted by the House for further action.

Committee Observations and Findings;

The Committee noted that its report had since been adopted by the House.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a status report of implementation of its recommendations within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN THE USE OF PUBLIC RESOURCES

405. Failure to Return Unspent Funds for Re-Voting

The SEQIP implementing Agencies - Kenya National Examination Council (KNEC) and Kenya Institute of Curriculum Development (KICD) had balances of Kshs.150,076,157 and Kshs.247,433,842 respectively. This resulted in cumulative unspent funds of Kshs.397,509,999 as at 30 June, 2022. The funds were not returned to the Project account for re-voting. This was contrary to Regulation 117 of the Public Finance Management (National Government) Regulations, 2015 which stipulates that an A.I.E holder should ensure that the funds are re-voted for the Project in the following financial year.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that KICD and KNEC are implementing Agencies for the SEQIP project components 3.1 ,3.2 & 1.3.

As per financial arrangements in place, MOE transfers funds for the implementation of approved activities based on the approved work plans and project activities. As at 30th June 2022, KICD had a cashbook balance of KES. 247,433,841.99 while KNEC had a balance of Kshs 150,076,157, as un-utilised funds for the SEQIP Project.

The two Institutions had been implementing the work plan and as at the closure of the financial year had made some commitment against the unspent bank balance. In this case the unspent balance is treated as liability to institution and the same is utilized in the subsequent financial year.

The amount which was un spent was utilized to implement the approved work plan activities for the financial Year 2022-2023 and no funding was disbursed in the said period from MOE to the two institutions.

the Annual Workplan for the two financial years (2021/22 and 2022/23) indicating that the activities carried forward were re-approved was provided for the Committee to review.

Committee Observations and Findings;

The Committee noted that the Accounting Officer failed to act in accordance to Regulation 117 of the Public Finance Management (National Government) Regulations, 2015 which stipulates that an A.I.E holder should ensure that the funds are re-voted for the Project in the following financial year.

Committee Recommendation;

The Committee reprimands the Accounting Officer for acting against the provisions of the law.

406. Irregular and Highly Priced Consultancy Services

Review of records revealed that the Project had entered into an agreement with Equity Group Foundation for consultancy services for design and support, implementation of scholarship, mentorship, gender sensitization and social support programme for secondary students through contract-MOE/SEQIP/NCB/07/2017-2018 dated 21 November, 2019 at a sum of Kshs.1,131,568,762. The Project total cost was estimated at Kshs. 4,955,050,000 at the time the contract was signed and aimed at enhancing transition and retention of poor and vulnerable learners in secondary education. This is as outlined in subcomponent 2.2: of the SEQIP Project Appraisal Document.

The single contract price is 22.83% of the total cost of the Project. This casts doubt on whether public resources have been applied in an effective, efficient and economical manner while determining the cost of the Equity Group Foundation consultancy services.

In the circumstances, the effectiveness and economy in the use of public resources could not be established.

Submission by the Accounting Officer

It is true that the Ministry entered into an agreement with Equity Group Foundation for consultancy services to design and support implementation of scholarship, mentorship, social support and gender sensitization program for secondary students through contract-MOE/SEQIP/NCB/07/2017-2018 dated 21st November, 2019 at a sum of Kshs.1, 131,568,762 derived from an open competitive bidding process. The Project total cost is KShs. 20Billion hence the contract sum of KShs. 1,131,568,762 translates to 5.5% which was KShs. 1.2Billion lower than the 2nd ranked bidder.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

KENYA GPE COVID-19 LEARNING CONTINUITY IN BASIC EDUCATION PROJECT (GRANT ID. P174059 AND CREDIT NO. TFB03336)

REPORT ON THE FINANCIAL STATEMENTS

408. Irregular Expenditure on Fortified Meals

The statement of receipts and payments reflects cumulative expenditure to date of Kshs.874,718,669 in respect of transfers to other Government entities as disclosed in Note 11.5 to the financial statements. Included in this amount is the expenditure of Kshs.199,998,500 being transfers to the Directorate of Primary Education for purchase of fortified meals under the Covid-19 Learning Continuity Basic Education Project. However, the following anomalies were noted;

408.1 Inconsistencies in the List of Enrolment for Beneficiary Schools

Examination of documents provided for audit revealed a list of two hundred and eighty thousand, three hundred and thirty-one (280,331) students in the beneficiary schools which was used as a basis for the purchase of the 61,525 bags of corn soya blend. However, the enrolment numbers in the beneficiary schools and the enrolment as per the approved list had material variances. In all the sampled schools, the enrolment was higher than the numbers quoted in the contract. The basis of the enrolment list used to do the procurement could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the enrolment data for the beneficiary learners from the ECDE sections of the beneficiary schools was obtained through the respective County Directors of Education as follows;

i) 2561 ECDE centres within Schools drawn from the ASAL Counties of Baringo, Isiolo, Garissa, Mandera, Marsabit, Samburu, Tana River, Wajir and West Pokot with an enrolment of 235,660 learners.
ii) 382 ECDE centres within Schools drawn from informal settlements of Nairobi, Mombasa, Kisumu, Nakuru, Eldoret, Kiambu, Kitale, Machakos and Kajiado with an enrolment of 36,912 learners.
iii) 67 SNE schools with an enrolment of 7,759 learners.
iv) The enrolment in categories i, ii and iii above totalled to 280,331 ECDE learners.

In addition, food being an incentive, it may have attracted more learners to schools thus causing variation in enrollment. Transfers also could have contributed to the variance in enrollment data in targeted schools for school feeding program.

Therefore, the list provided could not be accurately used to verify the exact numbers of benefiting learners from the intervention but was to be used as a guide in the procurement of corn soya meal.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

408.2 Irregularities in Procurement and Distribution of Fortified Meals

The Project Management made a request for procurement of food commodities on 27 September, 2021. The Principal Secretary approved the purchase of 53,751 bags of 25kg each at a cost of Kshs.3,665 amounting to Kshs.196,997,415 on the procurement of corn soya blend. This was adjusted in the revised budget to 60,615 bags of 25kg each at a cost of Kshs.3,250 per bag amounting to Kshs.196,998,750. The Project Management did not provide justification for the adjustments for audit. The Project Management procured the food commodity through the State Department for Public Works framework contracts. However, the following irregularities were noted:

408.2.1 Inadequacies in the Purchase of Corn-Soya

The following anomalies were noted: -

vii. The Project Management invited bids from only one contractor despite having a list of twenty-eight suppliers who had framework contracts with the State Department of Public Works. This was contrary to Section 114(3)(b) of the Public Procurement and Assets Disposal Act, 2015 which provides that a procuring entity should invite mini-competition among persons that have entered into the framework agreement in the respective category;

viii. The procurement for the blended meals was entered into the procurement plan on the same day that the vendor was awarded the contract for supply of the blended corn-soya mealie;

ix. The list of schools identified to benefit from the project was amended to include other schools that were not in the initial list;

x. Variances were noted in the approved supply list and the actual number of bags supplied;

xi. The Project Management did not provide the schools with clear instructions on the usage. This led to some schools issuing the food stuff to parents for use at home instead of having it prepared in schools;

xii. The basis of distribution was not provided. Field verification revealed that some schools were given more than the required amounts leading to the fortified meals expiring before use;

xiii. Documentation on deliveries of the fortified meals were not provided in most of the schools.

Submission by the Accounting Officer

The request for procurement of corn soya blend, was based on the estimates used for the previous year's procurement. The actual cost was arrived at when the framework contracts were received from the State Department for Supplies branch. The actual cost was reduced from Ksh. 3,665.00 to Ksh. 3,250 per the 25kg bag. This therefore allowed for more quantities of corn soya blend to be procured within the same approved and available budget. (From 53,751 to 60,615 bags of 25 kgs each);

i) The observation is noted. It is regrettable that the explanation provided at the time of the audit was not exhaustive which was an oversight. The Ministry wishes to clarify as follows:
   a) The State Department for Basic Education received a list of twenty-eight (28) suppliers who had framework contracts from the State Department of Public Works under the Corn-soya blend category.
   b) The State Department began procuring corn-soya blend during the COVID-19 period and one of the requirements from the user department had been that due to safety of the food in regard to hygiene and handling of the corn-soya, the awarded supplier should be a

certified local processor who could handle the process from manufacturing to packaging. In this regard, from the 28 suppliers who had framework contracts from the State Department of Public Works under the Corn-soya blend category, only one was a certified local processor.

c) Section 114 of PPAD regulation 2020, provides that a framework agreement can be implemented in two ways; Through Direct call-offs contracts when necessary to the shortlisted suppliers or; Invite a mini-competition among suppliers who have entered into a Framework Agreement

The essence of mini-competition is to lower the prices further in case the awarded price is higher than what is offered in the market. MOE was also very concerned about a supplier who could meet the required threshold of safety, hygiene and quality in the prevailing context of COVID – 19. However, in these circumstances, there was only one supplier who met the criteria of being a local processor hence being the only one invited.

ii) it is true that at the beginning of financial year 2021/2022, the procurement of corn soya blend meals had not been factored in the consolidated annual procurement plan together with other food stuffs. The user Department occasioned by the COVID- 19 pandemic, requisitioned for additional corn soya meals to feed learners in schools after savings from the COVID 19 Project were realized and earmarked for procurement of additional Corn soya blend. This necessitated the inclusion of corn soya meals into the procurement plan as an addition. The same was amended in the IFMIS procurement plan as required. Therefore, this enabled the contract to be signed and call for Local Purchase Orders be raised to the supplier urgently since this was an emergency period and meals were much required to feed learners in schools. These Covid 19 project procurements were an additional to the already procured corn soya under existing MoE School Meals Program;

iii) the list of beneficiary schools in the FY 2021/2022 was a replica of the one used to identify the benefiting schools during the FY 2020/2021. This was as per the shared list of 2,978 schools with an enrolment of 280, 331 learners. The list was changed in response to COVID 19 emergency in especially to bring on board schools from ASAL areas which was hard hit with hunger. This has necessitated the State Department to migrate to NEMIS in order to handle the data issues for the Ministry of Education programs;

iv) There was an emergency which necessitated urgent distribution of corn soya due to the prevailing drought that time. The distribution schedule was the guide used during the dispatch of the fortified meals to the sub-counties. However, the waybills submitted to your office give the accurate number of bags and the sub-counties to which they were supplied as per the schedule. Hence, there was no loss of funds since all the deliveries were made;

v) fortified meals delivered to schools have always been meant for learners. Due to prolonged closure of schools occasioned by COVID- 19 the food stored in schools could expire hence MoE sent circulars on usage of the fortified meals to schools through the respective CDEs. During the COVID 19 period, the PS State Department for Early Learning and Basic Education granted authority for parents to be issued with the fortified meals to prepare at their homes;

vi) the quantities for the distribution of the fortified meals to the sub-counties and schools were based on the respective schools' enrolment. In addition, there was no surplus, however at the time of audit the corn soya blend had not been used due to the prolonged closure of schools as a result of Covid 19. Therefore, the Accounting Officer issued a circular directing the corn soya blend to be released to parents to prepare at home;

vii) for the fortified meals, the procedure involves MoE distributing the meals to SCDE stores; from where it is distributed to the schools by the SCDEs and reports made to the MoE Hqs through SCDEs in the form of acknowledgement letters by the respective head teachers;

Committee Observations and Findings;

i) The Committee observed that the explanation given by the Accounting Officer was satisfactory.

ii) The Committee found that the matter was resolved.

408.2.2 Irregular Supply of Fortified Meals to Counties

Field inspection conducted in Kajiado, Machakos, Makueni, Kisumu, Homabay, Siaya, Isiolo, Tharaka Nithi, and Meru Counties revealed the following anomalies;

408.2.2.1 Kajiado and Machakos Counties

The Project Management delivered fortified food amounting to Kshs.2,030,569 and Kshs.1,209,544 to Kajiado and Machakos Counties on 28 and 29 June, 2021 respectively. However, the County Director of Education, Kajiado County was not able to confirm receipt of corn-soya blend received in his County and a visit to sampled schools revealed that no flour was delivered to the primary schools. The delivery to Machakos County Offices vide waybill No.10351 obtained from the CDE office Machakos County was not supported by any distribution list to confirm the distribution of the fortified food. Verification of the identified schools also confirmed the fortified food was not delivered to the schools.

Submission by the Accounting Officer

The Accounting Officer submitted that the distribution lists for food in Machakos and Kajiado were well captured as per evidence provided but the food was erroneously delivered to Mandera and Wajir counties.

408.2.2.2 Isiolo County

The Project Management delivered 917 bags of fortified food worth Kshs.2,833,266 to Isiolo County. However, data obtained from the County Director of Education at Isiolo County revealed that a total of 845 bags were received resulting in a difference of seventy- two (72) bags.

Submission by the Accounting Officer

The Accounting Officer submitted that the distribution of corn soya included both the MOE School Meals Program foodstuffs as well the COVID-19 Project corn soya blend. The distribution lists were different however the transporters were the same. This caused logistical challenges that ended up having certain schools having excess food while others did not receive the food. Please see the report attached on allocated food against received food.

408.2.2.3 Kisumu County

The Project Management delivered 1,372 bags at a total cost of Kshs.5,028,772 to Kisumu County. However, the deliveries made could not be confirmed since no documentation was provided for

review. Further, the Sub County Directors of Education were not aware of the program as the corn-soya blend flour was directly distributed to schools.

Submission by the Accounting Officer

The Accounting Officer submitted that as per the distribution schedule, Kisumu central, Kisumu East and Muhoroni received their full allocation as per the schedule. However, Kisumu West, Nyakach and Nyando did not receive their allocation due to logistical challenges. This was because food for schools in the 3 Sub-Counties was erroneously delivered to Mandera, Marsabit, Wajir and Garissa Counties which received an excess of 26,326 bags (Mandera-10,678, Marsabit- 4,566, Wajir- 6,683 and Garissa- 4,399).

Committee Observations and Findings;

i) **The Committee observed that the Accounting Officer availed the complete distribution list.**
ii) **The Committee found that the matter was resolved.**

408.3 Failure to Provide Performance Security for the Contract

Clause 3.7.1 of the framework agreement between the winning bidder and the State Department required the tenderer to furnish performance security to procuring entity within thirty (30) days of notification of award or as per the special conditions of contract. Further, Section 142 of the Public Procurement and Asset Disposal Act, 2015 requires the tenderer to provide performance security equivalent to not more than ten percent of the contract amount before signing of the contract. However, there was no performance security for this contract to cover the procuring entity in case of any failure of the contract not being fully executed.

In the circumstances, the Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that it was an oversight although there was no loss as the contract was fully implemented. However, going forward the performance security shall be a mandatory requirement in all our future contracts.

Committee Observations and Findings;

The Committee noted that a performance security was not availed.

Committee Recommendation;

The Committee reprimands the Accounting Officer for acting in breach of Section 142 of the Public Procurement and Asset Disposal Act, 2015.

409. Irregular Expenditure on Purchase of Electronic News Gathering and Field Production Equipment

The statement of receipts and payments reflects an amount of Kshs.100,762,639 in respect of acquisition of non-financial assets as disclosed in Note 11.4 to the financial statements. Included in the amount is the expenditure of Kshs.11,916,880 on purchase of electronic news gathering and

field production equipment. However, the contract agreement had not been signed. Further, discrepancies were noted on the local service order, which was dated 25 October, 2021 whilst the delivery notes were dated 16 September, 2021, 23 September, 2021 and 24 September, 2021 respectively, an indication that deliveries were made before issue of local service order.

In the circumstances, regularity, occurrence and validity of the expenditure of Kshs.11,916,880 could not be confirmed.

Submission by the Accounting Officer

The contract referred to was not implemented as a result of the events which were beyond and reasonable control of the contractor. Non-performance of the contract was attributed to the Covid 19 global lockdown of industries and when the lock downs were lifted the firms took longer than expected to receive equipment from the manufacturer. This contract was not implemented since the Covid 19 Project was coming to an end. In addition, non-performance of the contract was secured through a 10% unconditional bank guarantee issued By Kenya Commercial Bank. The contractor paid the client KES 3,459,617.13 as damages for non-delivery of the contract. There was no loss of funds

The expenditure of Kshs. 11,916,880 was part of a contract for purchase of digital archiving materials worth Kshs. 14,896,100. The contract was fully executed. The LSO discrepancies have been noted but the binding document was the contract.

Committee Observations and Findings;

i) The Committee noted the explanation given by the Accounting Officer.
ii) The Committee found that the matter was resolved.

410. Unreconciled Special Account Statement

The statement of receipt and payments reflects proceeds from domestic and foreign grants of Kshs.238,265,907 as disclosed in Note 11.1 of the financial statements. However, the corresponding account balance reflected in the special account statement reflects an amount of Kshs.238,499,099 resulting in an unexplained variance of Kshs.233,192.

In the circumstances, the accuracy and completeness of the proceeds from domestic and foreign grants amounting to Kshs.238,265,907 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the State department has since requested for clarification from the National treasury on the balance of Kshs 238,499,099 to enable reconciliation of the difference since The National Treasury is the custodian of the special account.

Committee Observations and Findings;

The Committee noted that the figure was still outstanding.

Committee Recommendation;

The Committee recommends that the Accounting Officer and National Treasury reconciles the account within three (3) months of adoption of this report.

411. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects the final expenditure budget and actual on a comparable basis of Kshs.564,661,708 and Kshs.516,064,278 respectively resulting in an underexpenditure of Kshs.48,597,430 (or 9%) of the budget which has not been explained by way of a footnote.

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

Submission by the Accounting Officer

The Accounting Officer submitted that there was an under expenditure of 9% of the budget during the financial year under review. This was due to the following reasons;

i) The Ministry of Education was still recovering from the effects of COVID-19 which necessitated the condensing of the school calendar. For instance, due to the long closure of schools in 2020, the Class 8 pupils and the Form four students (2020 cohort) did the national examination in November/December 2021 instead of October/November 2020. The 2021 cohort of learners started their national exams in February/March 2022. This to a very large extent affected the implementation of the planned project activities since the field education officials and school managers spent a lot of the time in preparation and administration of the national exams.

ii) The project planned activities were to be implemented within 6 months from July -Dec 2021, since the project was ending on 31st December 2021.The implication is that due to the condensed school calendar and the preparation for the administration of the national exams, the project lost the whole of the period covering October -December for project implementation which were mainly to be undertaken at County and at school level since schools concentrated on preparation of candidates for exams.

iii) Some activities could not be implemented during the FY 2020/2021 because of the prolonged closure of schools due to COVID-19. This created a backlog of activities, since some of them had to be carried forward to be implemented within a very short time (Only 6 months during the FY because of closure of the Project on 31st December, 2021) which affected the absorption of funds.

Committee Observations and Findings;

i) The Committee noted that the explanation given by the Accounting Officer was satisfactory.

ii) The Committee found that the matter was resolved.

412. Unsupported Contract Period Extension

The Project Management entered into a contract for consultancy to provide blended online and face-to-face psychosocial support services at a contract price of Kshs.81,545,886 for a period of sixteen (16) weeks. Later the contract was extended by four (4) weeks from the initial sixteen (16) weeks through a request by the Project Coordinator on 28 September, 2021. However, the approvals by the International Development Association (IDA) and the Accounting Officer were not provided for audit. Further, a revised work plan and performance security for the extended period was not provided for audit.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that some documents were not availed during the time of audit.

Paragraph 10.1 of World Bank regulations 4th edition November 2020, states that the Borrower shall seek the Bank's no objection before agreeing to an extension of the stipulated time for execution of a contract that has an impact on the planned completion of the project.

i) During contract implementation request for extension of contract may originate from either the contractor or the Client. In regard to this contract, the consultant wrote to the Ministry requesting for extension of the contract time vide letter dated 13th September 2021. The request was reviewed by the Project Coordination Unit technical team before submission of the request to the Bank for approval.
ii) In fulfillment of the stated regulations stated in Para 1 above, the project coordinator, by virtue of being the client's representative and contact person as provided in clause 9.1 of the special conditions of the contract sought Bank's No Objection for the extension upon receipt of request for extension.
iii) The Bank gave a No Objection to the extension of the contract by one month vide email dated 20 Sept 2021 and requested the firm to submit a revised work plan to achieve the remaining deliverables.
iv) After getting the Bank's No Objection, a professional opinion by Head supply chain management was submitted to the Accounting Officer for approval.
v) Also, it is clarified that in consultancies performance bonds are not applicable since consultancies are performance based and payments are based on achievement of specified deliverables in the contract.

Committee Observations and Findings;

The Committee noted that the Accounting Officer failed to provide the revised workplan and other documents during the audit process.

Committee Recommendation;

The Committee reprimands the Accounting Officer.

413. Alterations of Procurement Records

The Project Management entered into a contract for consultancy to provide blended online and face-to-face psychosocial support services at a contract price of Kshs.81,545,886. However, it was observed that the evaluation documents provided for audit for the provision of psychosocial consultancy services with a contract sum of Kshs.81,545,886 had score sheets containing arithmetical errors and alterations. The alterations were not countersigned making it difficult to ascertain if they were due to error or fraud. This is contrary to Regulation 102(3) of the Public Finance Management (National Government) Regulations, 2015 which provides that an Accounting Officer shall satisfy himself or herself that, where an alteration of a financial record requires the authorization, approval and, or deletion of any transaction or data whether electronic or manual by any means other than in writing, that there is sufficient audit trail which shall identify the person who approved the transaction.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that the score sheets was corrected without countersigning during evaluation as required by the law. The evaluator acknowledged that it was an error of omission and wrote to Head Supply Chain Management confirming that the corrected score was a true reflection of what was in the final bid evaluation report signed by technical team members.

Committee Observations and Findings;

The Committee observed that the explanation was unsatisfactory.

Committee recommendations;

The Committee recommends that the Accounting Officer takes administrative action on those involved within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

414. Lack of Internal Audit on the Project

Review of Internal Audit Unit revealed that no audit was carried out on the Project and was planned for the subsequent year. Further, the Audit Committee of the Ministry did not sit to deliberate on matters relating to the Project in the year under review.

In the circumstances, the Project did not benefit from the assurance and advisory services from the Internal Audit Unit as well as oversight from the Audit Committee.

Submission by the Accounting Officer

The Accounting Officer submitted that during the year under review, the PRIDE project, which was funded by the same donor, GPE and implemented by the same team which was also implementing the COVID-19 Project, was audited. The report of the audit focused on the internal control measures that the teams both at the Ministry of Education Headquarters and the Field were expected to observe.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

4.13 VOTE 1068: STATE DEPARTMENT FOR POST TRAINING AND SKILLS DEVELOPMENT

Mr. Shadrack Mwadime, the Principal Secretary and Accounting Officer for State Department for Labour and Skills Development, appeared before the Committee on 29th April 2024, accompanied by the following officers:

i.	Ms. Eunice Ndinda Benard	Asst. Director SCMS
ii.	Ms. Meldah Angir	Asst. Director KMRA
iii.	Mr. Amos Omari	Deputy Accountant General
iv.	Mr. Joseph kinuthia	Project Coordinator KYEOP
v.	Dr. Wanjiru Kariuki	Secretary Skill Development
vi.	Mr. Festus Mutuse	Ag. Director Strategy
vii.	Ms. Everlyn Siriya	Project Accountant KYEOP

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

415. Inaccuracies in the Financial Statements

Review of the financial statements revealed the following unsatisfactory matters: -

i. The bank reconciliation statement in the annexures as at 30 June, 2022 discloses a bank certificate balance of Kshs.4,944,061 but the certificate of bank balance reflects a balance of Kshs.33,641,402 resulting into unexplained variance of Kshs.28,697,341. Further, the reconciliation was not approved by the responsible officer;
ii. The statement of assets and liabilities reflects Nil balance in respect to cash which was at variance with the reported IFMIS balance of Kshs.65,244,093;
iii. The statement of assets and liabilities reflects a balance of Kshs.690,000 in respect to accounts payables - deposits which was at variance with the reported IFMIS balance of Kshs.61,013,031 resulting in an unreconciled and unsupported difference of Kshs.60,323,031, and;
iv. The statement of cash flows reflects net cash flows from operating activities amounting to Kshs.27,773,354 which was at variance with the IFMIS generated statement of cash flows which disclosed Kshs.88,096,386 resulting in unreconciled difference of Kshs.31,505,003.

In the circumstances, the accuracy and completeness of the balances reflected in the statement of assets and liabilities and the statement of cash flows could not be confirmed.

Submission by the Accounting Officer;

The Accounting Officer responded as follows;

i. It is true that as at 30th June 2022, the bank certificate for the state department for post training and skills development showed a balance of kshs 33,641,402. It is also true that at the close of the financial year the cash book showed a balance of kshs 4,994,061.
The difference between the cash book balance and the bank certificate balance was due to payments clearing in the bank after 30th of June 2022. We wish to note that the closing

cash book balance as at the time of reporting showed a balance of kshs 4,994,061, which was the figure used in the statement as the balance for the recurrent bank account.

ii. It is true there was a variance between the reported figure of assets and liabilities and IFMIS generated report, however the same was resolved in the subsequent financial statements for the financial year 2022/2023.

iii. It is true the statement of assets and liabilities reflected a balance of kshs 690,000 in respect to accounts payables -deposits. There was no variance between the IFMIS statement of deposit and the statement of assets and Liabilities since the audited accounts for the financial year 2021/2022 statements of deposit reflect a balance of Kshs 690,000.

iv. It is true there was a variance between the statement of cash flows and the IFMIS generated statement of cash flows, however the same was resolved in the subsequent financial statements for the financial year 2022/2023.

Committee Observations and Findings;

The Committee observed that the Accounting Officer had failed to keep proper accounting records.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to ensure that reconciliations are done in time and the complete financial statements submitted to the Auditor General in time as provided for in Article 229 (4)(h), and section 81(4)(a) of the Public Finance Management 2012.

416. Irregular Advance Payments

The statement of receipts and payments reflects acquisition of assets expenditure of Kshs.22,870,170 as disclosed in Note 5 to the financial statements which includes Kshs.8,080,000 in respect to purchase of a motor vehicle. Review of records revealed that the payment for a vehicle was made in advance, but the vehicle could not be physically verified. This was contrary to Section 146 of the Public Procurement and Asset Disposal Act, 2015 which states that no works, goods or services contract shall be paid for before they are executed or delivered and accepted by the Accounting Officer.

In the circumstances, the propriety and value for money on the acquisition of assets expenditure totalling to Kshs.8,080,000 could not be confirmed.

Submission by the Accounting Officer;

The Accounting Officer submitted that the state department was granted authority which was communicated by the National Treasury via letter ref: RES 1068/21/01/A(24) date 11th February,2022. The department purchased the vehicle from Toyota Kenya. In order to guarantee the security of the funds amounting to Kshs 8,080,000 the dealer issued and advance payment guarantee of a similar amount from CITIBANK dated 19th August 2022, however, before delivery of the vehicle, the dealer informed the state department that the vehicle with the specifications required was not available. The state department therefore requested for a refund of the money already paid for the vehicle. The dealer in response to the request for refund submitted the refund to the state department on 4th April 2024.

Committee Observations and Findings;

The Committee observed that;

i. **The Accounting Officer acted irregularly to 'secure' funds; as evidenced by the failure to deliver the vehicle;**

ii. **The refund took inordinately long and payment should only have been made based on confirmed availability of the vehicle model;**

iii. **The purpoted 'authority' from Treasury lacked any basis since procurement is guided by approved procurement plans and availability of funds.**

Committee Recommendations;

The Committee recommends that;

i. **The Accounting Officer obtains interest earned by the dealer for the period the sums were held at CBK rate, within three (3) months of adoption of this report, failure to which they be barred from dealing with the State Department henceforth.**

ii. **The Accounting Officer is reprimanded for acting contrary to Section 146 of the Public Procurement and Asset Disposal Act, 2015.**

4.14 VOTE 1069: STATE DEPARTMENT FOR IMPLEMENTATION OF CURRICULUM REFORMS

Dr. Belio R. Kipsang PhD, CBS, the Principal Secretary and Accounting Officer for the State Department for Basic Education appeared before the Committee on 12th September 2023 accompanied by the following officers:

i.	Mr. Emilio Mukira	Head of Accounting Unit
ii.	Dr. Hilder Kaavia	Director of Procurement
iii.	Mr. Wakesa Khaoya	Senior, Chief Finance Officer
iv.	Mr. Humpharey Masai	Senior Accountant

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

420: Non-adherence to Procurement Procedures

During the year under review, the State Department irregularly awarded five (5) tenders worth Kshs. 4,452,500 to suppliers who did not have valid tax compliance certificates. This was contrary to Public Procurement Regulatory Authority Circular No. 1/2011 which requires bidders to submit valid Tax Compliance certificates.

In the circumstances, management was in breach of the law.

Submission by the Accounting Officer

This State Department regrets this anomaly, the suppliers had been registered earlier and placed in the supplier data base of the State Department and confirmation of TAX validity was not established at the point of utilizing them during request for quotations. The department adopted utilization of the KRA online checker prior to inviting any suppliers to quote.

The suppliers in question are listed below;

Date	PV No	Amount (Kshs.)	Payee	TCC No.
8-Apr- 22	45	1,946,000	Nediza Supplies	KRAMCS1200205520
21-Jun-22	Inv174	1,110,600	Ecoma Investments	KRASON1190749921
14-Apr-22	2154	440,000	Epton Technologies	KRAEON1182519821
19-Apr-22	173	869,000	Elite Shakay Enterprises	KRAENON1248785921
9-Jun-22	5	86,000	Venus Global Merchants Ltd	KRAEON1181819821
	Total	**4,452,500**		

Committee Observations and Findings;

The Committee observed that the then procurement officers had breached the Public Procurement Regulatory Authority Circular No. 1/2011 which requires bidders to submit valid Tax Compliance certificates, by awarding tenders to non-compliant entities.

Committee Recommendation;

The Committee recommends that the Accounting Officer takes disciplinary action on the procurement officers involved in the procurements, within three (3) months of adoption of this report.

421: Failure to Maintain a Fixed Assets Register

Annex 4 to the financial statements on summary of fixed assets reflects an amount of 16,515,260. However, a fixed asset register detailing the assets, asset category, asset value and identification number of the assets was not provided for audit. Further, physical verification of the assets revealed that they were not tagged. This was contrary to regulation 139(1) of the Public Finance Management (national government) regulation, 2015 which requires accounting officer of a national Government entity to take full responsibility and ensure that proper control systems exist for assets and that preventative mechanisms are in place to eliminate theft, security threats, losses, wastage and misuse and that movement and conditions of assets can be tracked.

In the circumstances, management was in breach of the law.

Submission by the Accounting Officer

It is true the Asset register was not provided for review at the time of audit. The Asset register for the State Department is available and has since been presented for Audit review.

It is also true that tagging of the assets had not been done during the audit review. The State Department has ceased to exist and the assets transferred to the State Department of Basic Education. The exercise of tagging is ongoing, under the new State Department.

Committee Observations and Findings;

The Committee observes that despite the then state department existing for less than a year, an asset register is a basic document that the Accounting Officer ought to have maintained.

Committee Recommendation;

The Committee reprimands the then Accounting Officer.

REPORT ON THE EEFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

422: Lack of Risk Management Policy and Strategy

The state department management had not put in place a Risk management policy, strategies and risk register to mitigate against risk. It was therefore, not clear how the exposures were managed. This was in contravention of regulation 165(1) (a) and (b) of the public finance management (National Government) Regulations, 2015 which requires the accounting officer to ensure that the national Government entity develops risk management strategies, which include fraud prevention

mechanism and the county Government entity develops a system of risk management and internal control that builds robust business operations.

In the circumstancesw, the effectiveness of the internal controls, risk amangement and overall governance could not be established.

Submission by the Accounting Officer

The department was established on 9th February 2021 following a presidential directive and appointment of Principal Secretary. Given this short period the state department had been in existence, and insufficient staffing, the process of developing risk management policy delayed. The department relied on the ministry's Internal Audit department to enhance its internal control systems and reduce risks.

Further to the above, the State Department instituted the following measures for preventive, detective, compliance/enforcement, feedback mechanism, in place:

i. Ministerial Audit Committee
ii. Tender Evaluation Committee
iii. Monitoring and Evaluation
iv. Authorization approval procedures
v. Work plans, Procurement plans, and expenditure plan

Committee Observations and Findings;

i) The Committee observed that the explanation was satisfactory based on the fact that the then state department existed for less than one year, and had relied on the ministry's risk management policies.
ii) The Committee found that the matter was resolved.

423: Lack of an Audit Committee

The state department has not established an internal Audit Function and Audit committee of the board. This was contrary to section 73 of the public finance management Act, 2012 which provides for the establishment of an Audit committee of the board.

In the circumstances, the state department did not benefit from the assurance and advisory services from the Audit committee.

Submission by the Accounting Officer

The Ministry of Education had a functional Internal Audit Unit that served all the State Departments within the Ministry. The Audit committee members were appointed in September 2021 when the first quarter was ending.

We wish to state that the Committee was able to have 3 meetings. The first meeting was held after renewal on 28th October 2021, second 24th March and the third on 15th June 2022. They meet every quarter hence 3 meetings were held as per minutes availed.

Committee Observations and Findings;

i) The Committee observed that the explanation was satisfactory based on the fact that the then state department existed for less than one year, and had relied on the ministry's internal audit function.

ii) The Committee found that the matter was resolved.

4.15 VOTE 1081: MINISTRY OF HEALTH

Mr. Harry Kimtai, the Principal Secretary and Accounting Officer for the State Department for Medical Services, appeared before the Committee on 9th and 11th April 2024, accompanied by the following officers:

i.	Mr. Moses Gitari	–	Head of Accounting Unit
ii.	Mr. Leonard Ngotho	–	Director Human Resource Management
iii.	Mr. Waiganjo Karanja	–	Director Finance & Strategy
iv.	Mr. Moses Gitau	–	Senior Deputy Accountant
v.	Ms. Nancy Ndegwa	–	Asst. Director Supply Chain Management
vi.	Mr. David Muttu	–	Procurement Manager KEMSA
vii.	Ms. Olivia Kimata	–	Principal Accountant
viii.	Mr. Caroline Ndungu	–	Principal Accountant
ix.	Mr. Henry Wanja	–	Principal Accountant
x.	Mr. Dadson Munyiri	–	Principal Accountant
xi.	Mr. Lawrence Mwenda	–	Principal Accountant
xii.	Mr. Simon Macharia	–	Principal Accountant
xiii.	Mr. Albert Kamau	–	Project Finance Officer
xiv.	Ms. Fauzia Shauri	–	Parliamentary Liaison Officer

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

424. Misclassification of Expenditure

The financial statements presented for audit contained the following misclassifications;

Item	**Classification in Financial Statements**	**Correct Classification**	**Amount (Kshs.)**
Lease of land intended for construction of a level three (3) hospitals	Transfer to another government entity	Rentals of Produced Assets a	16,299,222
Financial support towards the international hybrid conference on harmonization of the curriculum and training of health professional	Facilitation of procurement of family planning commodities	Training	15,000,000
Payment to Kenyatta National Hospital	Social security benefits	Transfer to Other Government agencies	99,999,999

Server to KHPOA	Maintenance of motor vehicles	Purchase of Computers, Printers and other IT Equipment	1,430,000
Conference facilities for KHHRAC	Maintenance of motor vehicles	Hospitality Supplies and Services	285,400
Conference fees	Maintenance of motor vehicles	Hospitality Supplies and Services	340,000
Transfer to KEMRI as expenditure in Research Studies, Project Preparation, Design and Supervision	Asset additions in summary of fixed asset register	Transfer to Other Government Units	151,195,000
Refurbishment of buildings	Asset additions in summary of fixed asset register	Acquisition of Assets	41,044,534
Total			**325,594,155**

In the circumstances, the classification, accuracy and completeness of the above balances included in these financial statements could not be confirmed.

Submission by the Accounting Officer;

The State Department has since reclassified the items in the revised financial statements.

Committee Observations and Findings;

The Committee noted that reconciliations had since been done.

Committee Recommendations;

The Committee reprimands the Accounting Officer for failure to maintain proper accounting records as per section 68 (2)(k) of the PFM Act.

425. Unsupported Other Operating Expenses

The statement of receipts and payments reflects use of goods and services of Kshs.12,183,660,271 as disclosed in Note 7 to the financial statements. The amount includes other operating expenses balance of Kshs.2,070,212,450 out of which an amount of Kshs.24,200,000 was paid to a Company being 1st installment for consultancy services on public awareness campaigns to reduce Covid-19 vaccine hesitancy. However, Management did not provide for audit the bidders' documents for the eight (8) companies that tendered to offer the services.

In the circumstances, the proprietary, accuracy and completeness of operating expenses balance of Kshs.24,200,000 could not be confirmed.

Submission by the Accounting Officer;

It is true that the State Department spent Ksh.24,200,000 on consultancy services on public awareness campaigns to reduce Covid 19 hesitancy. The bidding documents for the eight bidders who participated in the competitive procurement for the consultancy services are now provided for your review and verification.

Committee Observations and Findings;

The Committee noted from the auditors that documentation had been belatedly availed.

Committee Recommendations;

The Committee reprimands the Accounting Officer for failure to avail supportive decoumentation to auditors on time as per section 81 (4) (a) of the PFM Act 2012.

426. Unsupported Specialized Materials and Services

Note 7 to the financial statements reflects specialized materials and services amount of Kshs.1,733,665,386 which includes Kshs.104,328,000 that was captured as adjustment for items wrongly charged in Governance for Enabling Service Delivery and Public Investment in Kenya (GESDEK). However, no payment vouchers or journal vouchers to support these expenditures were provided for audit. In addition, the supporting schedule reflects credit entries of Kshs.1,750,637 whose respective payment vouchers and other documents were not provided for audit.

In the circumstances, the proprietary, accuracy and completeness of specialized materials and services amount of Kshs.104,328,000 and Kshs.1,750,637 both totaling Kshs.106,078,637 could not be confirmed.

Submission by the Accounting Officer;

It is true that Note 7 to the financial statements reflects specialized materials and services amount of Kshs.1,733,665,386 which includes Kshs. 104,328,000 that was captured as adjustment for items wrongly charged in Governance for Enabling Service Delivery and Public Investment in Kenya (GESDEK). The adjustment of Kshs. 104,328,000 relates to a wrongly posted journal which was reversed as per the attached journal.

The credit entry of Kshs.1,750,637 relates to ;

i) Journal Number 35736534 of Kshs. 1,474,137.95, captured to correct returned cheque in favour of Frontex General Supplies which was captured twice as per Voucher No 000058 and,

ii) Journal Number 35736089 of Kshs. 276,499.15 in favour of Makenzi Auto Garage to capture returned cheque which was never paid.

Committee Observations and Findings;

The Committee noted from the auditors that the journal entries had been belatedly availed.

Committee Recommendations;

The Committee reprimands the Accounting Officer for failure to avail supportive decoumentation to auditors on time as per section 68 (2)(k) of the PFM Act.

427. Unreleased Deposit Amounts

The statement of assets and liabilities reflects accounts payable – deposits of Kshs.243,197,236 as disclosed in Note 14 of the financial statements. Included in the amount is Kshs.109,105,844 due for payment which had been outstanding for more than six (6) months and after the lapse of defect liability period.

The deposit outstanding for more than 6 months were for Equalization Fund project which had stalled as a result of litigation.

In circumstances, accuracy and completeness of accounts payable – deposits of Kshs.243,197,236 could not be confirmed.

Submission by the Accounting Officer;

The outstanding deposit was for payments of contracts under First Marginalization Policy-Equalization Fund Projects which had been stalled as a result of a court case filed by the Council of Governors under Constitution Petition No. 272 of 2016 Council of Governors -vs-The Attorney General & 2 Others. The Council of Governors was challenging the Guidelines issued by the National Treasury on Administration of the Equalization Fund published on 13th March 2015.The Ministry sought legal advice from the Attorney General Office on the Judgement issued in the said Petition vide letter Ref: No. EF/ADM GEN/VOL I/ (1). The Attorney General advised on the way forward vide letter Ref. No. AG/CONF/21/53 dated 21st March, 2023 and the Ministry has since taken action pursuant to the advice.

The State Department has commenced payment of the Retention monies.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendations;

The Committee recommends that the Accounting Officer submits confirmation of full settlement within one (1) month of adoption of this report.

428. Unsupported Credit Entry

The statement of receipts and payments reflects payment of other grants and transfers of Kshs.2,168,422,341 as disclosed in Note 9 to the financial statements. The amount includes Kshs.2,164,269,767 for emergency relief and refugee assistance whose ledger revealed a credit entry of Kshs.106,959,911 which was not supported by journal vouchers.

In the circumstances, the accuracy and completeness of credit entry of Kshs.106,959,911 could not be confirmed.

Submission by the Accounting Officer;

It is true that the emergency relief and refugee assistance ledger revealed a credit entry of Kshs. 106,959,911 which was not supported by journal vouchers. This credit entry relates to Journal entry number 34530339 of Kshs 1,016,561 charged wrongly to Emergency relief and refugee assistance instead of air ticket, Journal entry number 36495790 of Kshs 104,328,000 charged wrongly to emergency relief and refugee assistance instead of laboratory materials and Journal entry number 34530507 of Kshs 1,615,350 charged to emergency relief and refugee assistance instead of other capital grants.

Committee Observations and Findings;

The Committee noted from the auditors that the journal entries had been belatedly availed.

Committee Recommendations;

The Committee reprimands the Accounting Officer for failure to avail supportive decumentation to auditors on time as per section 68 (2)(k) of the PFM Act.

429. Unsupported Disbursements

The statement of receipts and payments reflects transfers to other Government units of Kshs.77,155,075,338 as disclosed in Note 8 to the financial statements. The amount includes current grants to Government Agencies and other level of government of Kshs.49,519,739,794 out of which Kshs.2,848,630 was disbursed to an International Company for settlement of outstanding amounts for a vector control project and a further Kshs.10,499,556 to the health attaches office in Geneva which were not supported. In addition, Kshs.37,845,650 was transferred to the same office without detailed explanations on purpose of the funds.

In the circumstances, the proprietary, accuracy and completeness of transfers to other Government units of Kshs.2,848,630; Kshs.10,499,556 and Kshs.37,845,650 all totaling Kshs.51,193,836 could not be confirmed.

Submission by the Accounting Officer;

The Ministry of Health vide payment voucher no. 0001840 disbursed Kshs. 2,848,630 to Labiofam in Cuba. This was to clear an outstanding amount emanating from foreign exchange loss. See attached Voucher No.0001840

In addition, Kshs.10,499,556 and Kshs. 37,845,650 constitutes funds transferred to the Health attaches office in Geneva. These are quarterly disbursements issued to support Office operations and Training. The total amount transferred was Kshs. 41,998,224 as per the Votebook extract attached and as analyzed below;

Payee	AIE Number	Quarter	Amount
PS Ministry of Foreign Affairs	A685714	01st Quarter	10,499,556
PS Ministry of Foreign Affairs	A685637	02nd Quarter	10,499,556
PS Ministry of Foreign Affairs	A685628	03rd Quarter	10,499,556
PS Ministry of Foreign Affairs	A685671	04th Quarter	10,499,556

TOTAL	41,998,224

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

430. Unconfirmed Commitments of Goods, Works and Services

The statement of comparison of budget and actual amounts reflects actual expenditure of Kshs.107,345,805,714. Review of the budget revealed negative commitments of Kshs.769,494,918. However, an analysis indicating the description of the goods, works and services and the respective dates of commitments was not provided for audit. In the circumstances, the accuracy and completeness of negative commitments balance of Kshs.769,494,918 could not be confirmed.

Submission by the Accounting Officer;

It is true that the budget revealed negative commitments of Kshs. 769,494,918. The negative values in the commitments resulted from budget cuts in the Supplementary Estimates No. I and II for the year ended 30th June 2022 as noted vide Circular Ref.No. ES 3/03 "F'(04) which appropriated Supplementary II on 22nd June 2022.These budgets cuts were done after commitments for key strategic programmes like HIV,TB,Malaria,Family planning and vaccines had been done.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

431. Unsupported Contingent Liabilities- Court Awards

Annex 6 to the financial statements reflects contingent liabilities amount of Kshs.39,613,135,462 after partial settlement of court awards amounting to Kshs.934,304,623. However, a breakdown of this settlement indicating details of Court awards, date of award and breakdown of each award were not provided for audit. In the circumstances, the accuracy and completeness of contingent liabilities settlement amount of Kshs.934,304,623 could not be confirmed.

Submission by the Accounting Officer;

Management is in agreement with the auditor's observations that the breakdown of the settlement indicating court awards, date of award and breakdown of each award were not provided for audit as at the time of audit, the list was being updated. The Ministry has since updated the list.

Committee Observations and Findings;

The Committee observed that the ministry had a huge court award bill of Kshs. 934 million over the years, pointing to probable mismanagement of contracts.

Committee Recommendations;

The Committee recommends that the Auditor General submits an analysis of causes of these awards, in the next audit report, to enable the Committee make conclusive recommendations.

432. Undisclosed Assets Disposal

The summary of fixed asset register in Annex 3 reflects historical cost amount of Kshs.4,198,764,838 with no disposals during the year under review. However, note 4 to the financial statements indicates proceeds from sale of assets of Kshs.10,742,319,287. Further, the details of specific items disposed were not provided for audit. In the circumstances, the accuracy and completeness of assets' historical cost of Kshs.4,198,764,838 could not be confirmed.

Submission by the Accounting Officer;

It is true that the summary of fixed asset register under annex 3 reflect nil disposals during the year; but Note 4 in the financial statements indicates proceeds from sale of assets of Kshs.10,742,319,287.00. This amount comprises of Appropriations in Aid (AIA) amounts from different Agencies within the Ministry for the respective Financial Year, denoted in the budget as 'Receipts from sales and other inventories, stocks and commodities', and itemized as 3520200. However, there were no disposals of assets during the year.

Committee Observations and Findings;

The Committee noted from the auditors that the complete asset register had been belatedly availed.

Committee Recommendations;

The Committee reprimands the Accounting Officer for failure to avail supportive decumentation to auditors on time as per section 68 (2)(k) of the PFM Act.

433. Delayed Construction of Kisii Cancer Centre

The statement of receipts and payments reflects acquisition of assets amount of Kshs.2,000,223,435 as disclosed in Note 11 to the financial statements. The amount includes construction of buildings of Kshs.1,088,277,999 out which Kshs.6,420,100 was a payment on behalf of the donor by the Ministry of Health but there was no evidence of its refund after renewal of the contract. In addition, a payment of Kshs.3,210,500 for consultancy services was not supported by payment voucher and other supporting documents. Further, the project duration was six (6) years from 10 August, 2016 to 10 August, 2022 but the construction had not commenced by 30 June, 2022.

In the circumstances, the proprietary and value for money of Kshs.6,420,100 and Kshs.3,210,500 both totaling Kshs.9,630,600 could not be confirmed.

Submission by the Accounting Officer;

It is true that the Ministry of Health paid KES 6,420,100 to Ms. Schon and Associates on behalf of Saudi Fund for Development and there was no evidence of its refund after renewal of the contract. As per the National Treasury letter Ref.No. EA/FA/B/214/78/(04), the National Treasury

advised that there was no provision to receive reimbursement from the Development Partners. Hence,the reimbursement was turned down.

Further, as at the time of audit, payment vouchers and other supporting documents for Kshs. 3,210,500 had not been provided. The payment voucher and supporting documents has now been attached for your review.

Committee Observations and Findings;

The Committee observed that;

i. **The vouchers for amount Kshs.3,210,500 for consultancy services had now been availed;**

ii. **The contracts had now been signed (on 24th January 2024) after donor gave the go ahead;**

Committee Recommendations;

The Committee recommends that the Auditor General reviews progress of the project in subsequent audits.

434. Unaccounted for Expenditure on Construction of Paediatric Emergency Centre and Burns

The statement of receipts and payments reflects acquisition of assets balance of Kshs.2,000,223,435 as disclosed in Note 11 to the financial statements. The amount includes Kshs. 1,088,277,999 for the construction of buildings out of which an amount of Kshs. 40,655,752 was paid for construction of pediatric emergency centre and burns management centre. However, payment vouchers, procurement file detailing how the contractor was identified and to show the bills of quantities were not provided for audit. In addition, physical inspection carried out revealed that no works were ongoing at the centre.

In the circumstances, proprietary and value for money of Kshs.40,655,752 could not be confirmed.

Submission by the Accounting Officer;

The Pediatric Emergency Burns and Management Center international tender was published in January 2018 and opened on 13th March 2018. The Evaluation was conducted on 15th -18th March 2018 and awarded on 3rd April 2018 to Vaghjiyani Enterprises Limited at a cost of Kshs. 2,959,511,555.29 after receiving a no Objection from the financiers. The Contract was signed on 30th July 2018 for 104 Weeks and site was handed over on 31st August 2018.

In the FY 2021/2022, the physical audit carried out showed there was no progress of work, since the contractor had suspended works from 23rd July 2021 at 53% complete due to delayed payments which could not be processed due to the lapse of the loan agreement in December 2020. The Loan agreements were extended on 31st December 2021 and KNH resubmitted the pending payments (Interim payment Certificates 10 and 11) amounting to Ksh 40,655,752.02 which were paid by the Financiers. The Contractor resumed site on 13th December 2022.

The Committee observed that;

i. **The documentation for the procurement and payments had now been availed;**

ii. **There were avoidable delays between the implementing state department and the financiers;**

iii. **The project was at 68% completion as at the time of the submission by the Accounting Officer;**

iv. **OPEC Fund had extended the withdrawal of loans proceeds period to 30th April 2025.**

Committee Recommendations;

The Committee recommends that the Auditor General reviews progress of the project in subsequent audits.

435. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget of Kshs.130,469,107,784 and actual on comparable basis of Kshs.107,376,446,249, resulting to underfunding of Kshs.23,092,661,535 or 17% of the budget. Similarly, the Ministry spent an amount of Kshs.107,345,805,714 out of the approved expenditure budget of Kshs.130,469,107,784, resulting in an under expenditure of Kshs.22,123,302,070 or 17% of the budget.

The underfunding and underperformance may have affected the Ministry's key mandate of coordinating health policy, health regulations, National Referral Health Facilities, capacity building and providing technical assistance to the counties.

Submission by the Accounting Officer;

It is true that during the year under review the Ministry had an underfunding and an under-expenditure of 17%. This resulted from inadequate exchequer. However, the Ministry has consistently met its key objectives.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

436. Variances Between Financial Statements and Vote Book

The financial statements presented for audit contained the following variances;

i. The summary statement of appropriation recurrent reflects actual payments of Kshs.65,617,522,427 while the vote book reflects Kshs.65,729,576,464 resulting to a variance of Kshs.112,054,037.

ii. The summary statement of appropriation development reflects final budget amount of Kshs.63,808,568,046 while the vote book reflects Kshs.63,861,568,258 resulting to a variance of Kshs.53,000,212.

iii. The summary statement of appropriation development reflects actual payments of Kshs.41,728,283,288 while the vote book reflects Kshs.42,771,351,525 resulting to a variance of Kshs.1,043,068,237.

In the circumstances, the accuracy and completeness of the above balances included in these financial statements could not be confirmed.

Submission by the Accounting Officer;

It is true that the figures reported in financial statements under the summary statement of appropriation recurrent and development and the Vote book had a variance. This was as result of timing differences because the vote book report is time based and updates figures as they are being cleared in the system. As at the time of the audit, the figures in the vote book had not updated thus the variance. This has since cleared and the two reports are now tying.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

437. Undisclosed Pending Bills

Note 19 to the financial statements reflects pending bills amount of Kshs.106,671,192. However, the Ministry's pending bills report for financial year 2021/2022 dated 26 July, 2022 reflects outstanding amounts of Kshs.45,899,794,836 resulting to an undisclosed pending bill of Kshs.45,793,123,644.

In the circumstances, the accuracy and completeness of pending bills amount of Kshs.106,671,192 could not be confirmed.

Submission by the Accounting Officer;

The correct figure for pending bills for the FY 2021/2022 was Kshs. 45,899,794,836 as per the attached schedule. These bills have since been cleared except the legal pending bills and historical bills which were forwarded to the Pending Bills Verification Committee at the National Treasury for further guidance.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

438. Unresolved Prior Year Audit Matters

In the audit report of the previous year, several issues were raised under the Report on Financial Statements, Report on Lawfulness and Effectiveness in Use of Public Resources, and Report on Effectiveness of Internal Controls, Risk Management and Governance. However, the Management has not resolved the issues or given any explanation for failure to adhere to the provisions of the Public Sector Accounting Standards Board templates.

Submission by the Accounting Officer;

As at the time of the audit, several prior year matter had not been resolved. The issues are being resolved progressively.

Committee Observations and Findings;

The Committee notes that its report for the previous financial year had since been adopted by the House.

Committee Recommendations;

The Committee recommends that the Accounting Officer submits a status report on implementation of its recommendations within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

439. Failure to Operationalize Institutions

The following institutions have been created but not fully operationalized as detailed below;

No.	Institution	Breached Law
1	Mathari Teaching and Referral Hospital	Legal Notice No.165
2	Kenya Health Human Resource Advisory Council	Health Act, 2017
3	Kenya Health Professions Oversight Authority	Health Act, 2017
4	Tobacco Control Fund	Tobacco Control Act, 2007

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer;

Mathari National Teaching and Referral Hospital was founded in 1910 and, over a century later, it remains Kenya's only National Mental Hospital. The Hospital was established as a State Corporation vide Legal Notice No. 165 of 21st August, 2020.The Cabinet Secretary appointed the first board vide Gazette Notice No. 7925 of 9th October, 2020.The Hospital was categorized under PC 5 as per the State Corporations Act, Cap 226 in February 2021. The Head of Public Service vide letter Ref. No. OP/CAB.1/9/266A dated 9th February, 2021 communicated the approval to the Ministry. Under the said letter the Board of the Hospital was advised to hasten the preparation and submit the following Human Resource Instruments to SCAC for consideration and approval;

a) Organization Structure

b) Staff Grading and Establishment

c) Career Guidelines

d) Human Resource Policy & Procedures Manual

The Human Resource Instruments including the Staff Establishment and Organization Structure were approved on 7th July, 2023 by the Public Service Commission vide letter Ref: PSC/GEN/22/11/(53). The Commission further directed that the Hospital be re-categorized from category 5 to 7 in line with the mandate and status of a National Teaching and Referral Hospital.

The process of fully operationalizing an institution is multifaceted which requires a holistic approach, however, the Ministry is committed to fully operationalizing the Hospital by ensuring that all structures are put in place for a seamless transition. Following the approval of the HR Instruments by the Commission, the Budget for the Recurrent and Development will be captured as a Grant Transfer to the Hospital in the Supplementary Budget. The Hospital will therefore have full autonomy in execution of the budget.

The Kenya Health Human Resource Advisory Council (KHHRAC) is established as a body corporate under the Section 30 of Health Act 2017.

The Ministry of Health commenced the operationalization of the Kenya Health Human Resource Advisory Council in May 2019 when the then Principal Secretary deployed the acting Chief Executive Officer (CEO) and other staff to KHHRAC secretariat.

In 2019, the Ministry of Health sent out requests for nominees to the board of KHHRAC as per the provisions of the Health Act 2017 and received names of nominees from all other bodies with the exception of three nominees from the Council of Governors (COG). With health being a devolved function, the Ministry of Health could not gazette the Board in the absence of the representatives from the Council of Governors.

As efforts were continued to get COG to nominate its representatives to KHHRAC Board the Ministry of Health continued to take concrete steps towards operationalization of the Council by;

1. Requesting and receiving from Treasury a recurrent budget allocation for KHHRAC for FY 2020/2021. The budget is itemized at the Ministry Headquarters and KHHRAC has received a similar allocation every financial year to date.

2. Deploying additional staff from the Ministry to work at the Council Secretariat;

3. Securing temporary office space at the Kenya Medical Practitioners and Dentists Council Building.

4. Supporting the Council to develop draft human resource management instruments (Human Resource Policy and Procedure Manual, Career Progression Guidelines, Organizational Structure, Staff Establishment).

5. Facilitating the Council, supported by a team from State Department for Housing, to search for and identify suitable premises to lease office space.

6. Facilitating the Secretariat in collecting and analyzing health workforce data on the National Health Workforce Account (NHWA) platform for use in planning and decision-making

In 2023, The Cabinet Secretary for Health took up the issue of operationalizing of KHHRAC with His Excellency, the President, who then agreed with the Chairperson, Council of Governors to provide the names of the three representatives from COG in KHHRAC Board. The names were submitted, the Board gazetted on 15th May 2023 by the Cabinet Secretary and the Council inaugurated on 26th June 2023 at State House Nairobi by His Excellency the President. Further,

KHHRAC Board underwent induction in September 2023 at the Kenya School of Government, Mombasa.

FINANCIAL YEAR	BUDGET ALLOCATION (APPROVED ESTIMATES)
FY 2020/2021	89,594,340
FY 2021/2022	78,758,171
FY 2022/2023	67,046,897
FY 2023/2024	68,638,589

The Kenya Health Professions Oversight Authority is established as a body corporate under section 45(1) of the Health Act, No. 21 of 2017. It is one of the State Agencies under the State Department of Public Health and Professional Standards as per the Executive Order No 1. Of 2023.

Further, the authority was operationalized in May,2019 when MOH deployed technical staff to start its operations.

The Authority has undertaken the following to ensure autonomy and full operationalization;

- Appointment of the board to administer the authority

The board composed of seven (7) members, was appointed through Gazette Notice of April, 2022. This is in addition to two (2) representatives of the Principal Secretary and the Director General, Health.

The first board meeting was held on 29th July 2022, following official inauguration on 04th July, 2022 by the Cabinet Secretary. Since then, 8 full board meetings have been held to transact its business.

- Bank Accounts

KHPOA was granted authority by the National Treasury to open bank accounts vide letter from the Principal Secretary Ref: MOH/ADM/1/1/19 dated 12th February, 2021(see attached copy of the letter). The bank accounts are at the National Bank of Kenya Ltd (for AIA) and Kenya Commercial bank (for Grant allocations)

- KHPOA Official Seal

The Authority has an official seal as provided in the Health Act, procured and delivered on 14th November,2022. (see attached delivery note)

- Categorization

The authority was graded as a Regulatory State Corporation category PC 6B by the State Corporations Advisory Committee (SCAC), on 25th January,2021 vide letter Ref: OP/CAB.1/14/9 dated 8th June, 2021 from the Head of Public Service and Chief of Staff (see attached copy). The HR instruments have also been approved.

The Tobacco Control Fund is yet to be operationalized because the regulations to govern the fund have not been finalized.

Committee Observations and Findings;

The Committee observed that;

i. **Mathari National Teaching and Referral Hospital had largely been operationalized save for budgetary autonomy;**

ii. **The Kenya Health Human Resource Advisory Council (KHHRAC) was now in place;**

iii. **The Kenya Health Professions Oversight Authority was now in place;**

iv. **The Tobacco Control Fund regulations were yet to be submitted to Parliament with no plausible reason, even as the fund was already receiving and dispensing funds.**

Committee Recommendations;

The Committee reprimands the Cabinet Secretary for failure to submit regulations for full operationalization of the Tobacco Fund and recommends that the Cabinet Secretary submits the Regulations within six (6) months of adoption of this report.

440. Unremited NSSF Contributions

Review of Ministry's Integrated Personnel and Payroll Data base records revealed that Management did not deduct and remit an amount of Kshs.93,359,823 to the National Social Security Fund. This was contrary to Section 19(1) and Section 20(1) (a)(b) of the National Social Security Fund Act, 2013.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer;

The Ministry of Health recruited 11,336 health care workers to support the County Governments undertake the Universal Health Coverage (UHC) and also to mitigate against the Covid-19 pandemic. These officers were placed on local contract terms and were eligible for NSSF deductions. However, by then the IPPD system was configured to deduct NSSF contributions from officers employed on temporary terms only.

The Ministry of Health vide letters Ref. No. MOH/HRM&D/IPPD/GC/ (29) date 22nd February 2022 (Attached) and MOH/HRM/IPPD/60/VOLX/ (13) dated 23rd November 2022 (Attached) requested the State Department for Public Service to configure the system to enable deductions of NSSF from the contractual employees and address the issue. Consequently, all employees are now being deducted.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

441. Delay in Closure of Donor Funded Projects

The following donor projects had not been closed despite them not having any transactions or activities during the year under review;

i. Support of the Health Financing Strategy-Output Based Approach Programme (OBA);

ii. Ministry of Health - United Nations Population Fund - (UNFPA);

iii. East Africa Public Health Laboratory Networking Project (KEMSA);

iv. Health Sector Services Fund (HSSF) Grant No.4771-Ke and TF-16027;

v. Health Sector Support Project (KEMSA); and,

vi. Support of the Health Financing Strategy - Output Based Approach - Reproductive Health (OBA-RH) No 20106- 5853

This is contrary to Regulation 74(6)(c) of the Public Finance Management (National Government) Regulations, 2015 which requires an Accounting Officer of a National Government entity to ensure that the assets are handed over within three months from the date of the closure of the project. In the circumstances, Management was in breach of the regulation.

Submission by the Accounting Officer;

i. Support of the Health Financing Strategy-Output Based Approach Programme (OBA);

It is true that this project ended in January 2017 but the bank account is yet to be closed. Even though the project activities ended in 2017, the accounts remained open because of the pending litigations. KFW had agreed to send any contingency funds that would be requested by PwC emanating from the proceedings and or determination by the courts.

The programme account will be closed as soon as the court cases are concluded.

ii. Ministry of Health - United Nations Population Fund - (UNFPA)

The account was opened as a requirement of the Implementing Partner Agreement between the Ministry of Health and UNFPA.

The bank account has remained dormant because UNFPA was to conduct capacity/micro assessment at Division of Reproductive and Maternal health before the funds are channeled into the bank account. The division still needs the bank account to facilitate funding from UNFPA. The Implementing partner agreement between Ministry of Health and UNFPA is renewed annually. Attached are copies of the latest agreements. UNFPA is making process to channel funds to the bank account

iii. East Africa Public Health Laboratory Networking Project (KEMSA)

The East Africa Public Health Laboratory Networking Project (KEMSA) was to close on 31st March 2020 but the project was extended to 30th September 2020. KEMSA Board of Directors passed a resolution to close the EAPHL project and the project bank account, Subsequently, KEMSA sought authorization to close the bank account from the National Treasury through the Ministry of Health, which was granted on 9th January 2023 the account was closed in March 2023.

iv. Health sector services fund (HSSF) Grant No.4771-Ke and TF-16027

The Kenya Health Sector Support Project- Health Sector Services Fund Account was closed upon the projects conclusion. See the attached MOH letter requesting for closure of the account and a letter from the National Treasury dated 28th June 2022 authorizing the closure.

v. Health Sector Support Project (KEMSA)

The KHSSP project was extended to 30th June 2018, however, the delay in project closure was due to the fact that one of the funding partners, DANIDA had not concluded an audit of their fund's contribution. On 21st May 2020, KEMSA sought guidance from the PS Ministry of Health on the project funds held. The Permanent Secretary via letter dated 9th of June 2020 requested KEMSA to refund back an amount of Ksh 289,090,323.48 as part of KHSSP project closing procedures.

This amount was refunded back to the Ministry of Health MOHP &S- SWAP Secretariat account on 22nd June 2020. The balance of the funds was transferred to KEMSA Bank account number 01136217405103 awaiting the conclusion of DANIDA audit. The Project bank accounts were closed as per treasury approval on 17th January 2022.

vi. Support of the Health Financing Strategy - Output Based Approach - Reproductive Health (OBA-RH) No 20106- 5853

The Donor had requested for a final audit of the project by independent auditors before the accounts could be closed. Following the completion of the audit by PWC, the accounts have now been closed.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

442. Unremitted Pension Contributions

Review of Integrated Personnel and Payroll Data base records revealed that Management did not deduct Kshs.2,245,580 pension contribution for employees below the age of 45 years who were engaged on permanent and pensionable terms.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer;

It is true a review of Integrated Personnel and Payroll Data base records revealed that Management did not deduct Kshs.2,245,580 pension contribution for employees below the age of 45 years who were engaged on permanent and pensionable terms.

The implementation of Defined Benefit scheme was centrally effected in the IPPD system by the Ministry of Public Service. However, it was realized that thirty (30) eligible officers were not deducted. This has since been resolved and all eligible officer are being deducted.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

443. Irregular Use of Low Value Procurement

Note 7 to the financial statements reflects routine maintenance – vehicles and other transport equipment of Kshs.23,319,869 out of which Kshs.8,723,434 relates to repair of vehicles paid through cash advances to employees. This is contrary to second schedule of the Public Procurement and Asset Disposal Regulations, 2020 which sets the maximum low value procurement at Kshs.50,000 per item per financial year. In the circumstances, Management was in breach of the regulation.

Submission by the Accounting Officer;

It is true that the Ministry incurred expenditure of Kshs. 8,723,434 for minor repair of vehicles. During the period under review, the Ministry was involved in the provision of various urgent real time services in responding to the Covid-19 pandemic. This necessitated marshalling all its one hundred (100) working and serviceable fleet to perform the activities hence the cost of maintenance.

The urgent responses to the pandemic therefore required officers to be facilitated with imprests to carry out minor repairs while performing their duties.

Committee Observations and Findings;

The Committee notes that the submission by the Accounting Officer on 'urgency' was unsatisfactory, despite him availing a breakdown of the expenditure. Procurement laws have provisions for such scenarios.

Committee Recommendations;

The Committee reprimands the Accounting Officer and recommends strict compliance to procurement laws henceforth.

444. Upgrading of Kigumo Sub-county Hospital

The statement of receipts and payments reflects grants and transfers to other Government entities balance of Kshs.77,155,075,338 as disclosed in Note 8 to the financial statements. The amount includes capital grants to government agencies and other level of Government amount of Kshs.15,537,403,394 out of which Kshs.23,375,738 was paid on account of an interim payment certificate No. 2 from contract sum of Kshs.383,242,795. However, procurement records of tender advertisement, bid documents, tender opening, evaluation and comparison minutes, professional opinion, notification and acceptance of the award letters, schedules and summary of the other principal terms and conditions of the tender were not provided for audit. In addition, the Project had a start date of 23 June, 2021 and completion date 21 December, 2022, but the contractor has sought for extension by twenty-four (24) weeks which had not been granted.

In the circumstances, value for money, the procurement process and competitiveness of the award could not be confirmed.

Submission by the Accounting Officer;

It is true that the State Department settled an Interim Payment Certificate (IPC) No. 2 amounting to Ksh.23,375,738.00 in favour of M/S Interlink Industries and the contract was to be completed on 21st December, 2022. The contract implementation was however faced by various challenges

including delay in settlement of IPCs prompting the contract period to be extended by further 12 weeks vide letter Ref. MOH/PROC/GEN/MF/ADSCMS/Vol.I dated 15th February, 2024. The contract period extension was however not to be attended to by any cost variations.

Availed are a copy of the press advertisement for the contract, tender opening register/minutes, the bid document, tender evaluation report, professional opinion and a copy of the contract document including the notification of award, acceptance letter by the tenderer and all the attendant terms and conditions of the contract.

A contract period extension revised the contract completion period to 21st May, 2024.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendations;

The Committee recommends that the Accounting Officer submits a status report on the project within three (3) months of expiry of the fresh contract period.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

445. Weaknesses on Compensation of Employees

The statement of receipts and payments and reflects compensation of employees amount of Kshs.13,712,918,331 as disclosed in Note 6 to the financial statements. However, one hundred and sixty-eight (168) had their net pay less than a third of their basic pay and eight (8) employees shared bank accounts. In addition, an amount of Kshs.54,253,428 was paid to interns and clinical officers outside the IPPD system as well as salary paid under AFD projects of Kshs.6,544,585. Further, two thousand two hundred and ninety six (2,296) employees were paid Kshs.93,987,280 as basic pay and Kshs.58,880,866 as special salary which was not explained.

In the circumstances, the controls on compensation of employees could not be confirmed.

Submission by the Accounting Officer;

i. **168 employees had their net pay less than a third of their basic pay.**

It is true that 168 employees had their net pay less than a third of their basic pay. This was occasioned by the following reasons which were outside the control of the payroll manager.

- The introduction of statutory deduction of Superannuation Scheme as from January, 2021.
- Expiry of tax exemptions for officers living with disabilities.
- Contract end dates – employees whose contracts ended mid-month therefore paid only for the few days worked
- Salary overpayment recovery
- GOK house rent recovery

ii. **Shared bank accounts by 8 employees**

It has been observed that eight (8) officers shared bank accounts as at June 2022.

It is important to note that during the period under review, the Ministry of Health was involved in an enormous assignment of data entry. The Ministry had recruited Eleven thousand, three hundred and thirty-six (11,336) health care workers to operationalize the Universal Health Coverage Programme. Some of the health care workers were also engaged to mitigate against the Covid 19 pandemic.

The process of data entry was quite involving given this bulk number of newly engaged employees.

However, the Ministry made a follow-up with Banks to ensure the money posted was reverted to the correct bank accounts. Therefore, no funds were lost as a result of duplicate bank accounts. The Ministry has since corrected the shared bank accounts through updating of the payroll.

iii. Kshs. 54,253,428 paid outside the payroll to interns

During the period under review the Ministry engaged about 11,336 UHC Workers and about seven thousand interns. Due to the high number of new employees, the State Department for Public Service could not generate their personal numbers in time and hence they could not be introduced in the IPPD system by the time their contracts ended. They were therefore paid manually through payment vouchers for the services rendered.

A detailed breakdown of the payment of Kshs 54,253,428, is availed.

iv. 2,296 employees paid basic salary of Kshs. 93,987,280 and special salary of Kshs. 58,880,866

It is indeed true that some officers were paid special salary and basic salary. These include; UHC Contract Staff, and Interns. Their salary is normally captured as special salary in the IPPD system. Whereas whenever they are paid salary arrears this is captured as basic salary. It is therefore confirmed that the payments were valid and there were no cases of double payment.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendations;

The Committee recommends that the State Department for Public Service configures the IPPD system to cater for all cadre of employees engaged by government.

446. Failure to Maintain Fixed Assets Register

The Ministry did not maintain a fixed asset register to record the assets indicating their nature, date of purchase, amount, unique identifier, depreciation among other details. Further, details of assets acquired and those disposed were not recorded.

In the circumstances, the effectiveness of controls on management of Ministry fixed assets could not be confirmed.

Submission by the Accounting Officer;

It is true that the State Department had not maintained a fixed asset register for the Financial Year 2021/2022. The State Department has however since then prepared a fixed asset register with

assets details including the asset description, asset location and the asset condition. The State Department will endeavour to have the same updated as and when any assets are acquired or disposed off and have all the requisite details of the assets including the values and year of purchase captured.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendations;

The Committee recommends that the Auditor General confirms the completeness of the register in the next audit cycle.

DONOR FUNDED PROJECTS

EAST AFRICA'S CENTRE OF EXCELLENCE FOR SKILLS AND TERTIARY EDUCATION IN BIOMEDICAL SCIENCES – PHASE 1 (LOAN NO. 2100150031997) PROJECT

REPORT ON THE FINANCIAL STATEMENTS

452. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final receipts budget of Kshs.1,160,000,000 and actual on comparable basis of Kshs.554,331,070, resulting in an under-funding of Kshs.605,668,930 (or 52%) of the budget. Similarly, the Project spent Kshs.551,755,580 out of the approved expenditure budget of Kshs.1,160,000,000, resulting in an under-absorption of Kshs.608,244,420 (or 52%) of the budget.

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

Submission by the Accounting Officer;

It is true that Kshs. 605,668,980 was not utilized as a result of the cancellation of Lot 1 (radiology equipment).This was due to an increase in the cost of the equipment before the intention to award, as per the attached No Objection from ADB bank. The budget was however revised and lot 1 was retendered and is yet to be awarded.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

453. Unutilized Balance

The project information and overall performance underfunding summary at paragraph 1.7 reflects total commitment of Kshs.3,674,000,000 and amount received to date (30 June, 2022) of Kshs.1,908,278,502 resulting to a difference of Kshs.1,765,721,498 (or 48%). Meaning the Project had attained 52% performance level with project end date indicated as 31 December, 2022.

In the circumstances, the primary objective of focusing on public health problems affecting the country, including infectious diseases, use of scientific evidence for policy formulation and program implementation may not be realized.

Submission by the Accounting Officer;

During the year under review, the project funds were meant for construction and equipping of East African Kidney Institute Complex at KNH grounds. However, the implementation of the project was affected by Covid-19 outbreak as the number of workers were reduced on site. In addition, the procurement process took longer than anticipated. Following the completion of the structure, absorption has increased to 79% as we have been able to procure the equipment. The project received an extension to 31st December 2024.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendations;

The Committee recommends that the Accounting Officer submits a status report by 31st January 2025.

GLOBAL FUND TUBERCULOSIS PROJECT GRANT/ CREDIT NO.KEN-T-TNT-1548

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

458. Long Outstanding Imprests and Advances

As previously reported, the statement of financial assets reflects imprest and advances balance of Kshs.3,238,374 as disclosed under Note 8A to the financial statements. The amount relates to long outstanding imprest and advances some dating back to financial year 2012/2013. This is contrary to Regulation 93(5) of the Public Finance Management (National Government) Regulations, 2015 which states that a holder of a temporary imprest shall account or surrender the imprest within 7 working days after returning to duty station. Further, Regulation 93(6) provides that in the event of the imprest holder failing to account for or surrender the imprest on the due date, the Accounting Officer shall take immediate action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank rate.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer;

It is true there was outstanding advances and imprest of Kshs. 3,238,374 composed of Kshs 784,650 as AIE advances to the former Provincial Directors of Health KEPI accounts and personal imprest of Kshs 2,520,400.

The following are the measures the Ministry of Health has taken to recover the outstanding advances and imprest;

i) The Ministry wrote to the respective provincial KEPI banks and received confirmation of balance in the account where previous balance of the funds were utilized to service bank charges. It has similarly instructed the banks to close the KEPI accounts.

ii) The Ministry has made efforts to recover the imprest from the individuals, however as the individuals are no longer in service recovery of the imprest and interest due from the salary has not been effected. Other legal measures are being instituted to recover money through a) Pension and/or b) asset recovery;

GLOBAL FUND TB GRANT OUTSTANDING IMPRESTS AS AT 30TH JUNE 2019					
S/NO.	**NAME O F OFFICE R /INSTIT UTIO N**	**AMOUNT TAKEN**	**DATE OF SURRENDE R**	**AMOUNT SURRENDERED**	**BALANCE**
1	PATRICK GAWO - 2003000198	21,000	30-01-15	18,000	3,000
2	BENJAMIN OTITA - 1985100314	30,000	30-06-14	0	30,000
3	JOSEPH KARIMI (PRINCIPAL DRIVER)	95,000	30-01-15	0	95,000
4	NICHOLAS NJERU - 1970013719	2,392,400	30-06-16	0	2,392,400
	SUB TOTAL	**2,538,400**		**18,000.00**	**2,520,400**
ADVANCES TO DEFUNCT PROVINCIAL ADMINISTRATION - KEPI ACCOUNTS					
S/NO.	**NAME OF OFFICER/INSTITUTION**	**AMOUNT TAKEN**	**DATE OF SURRENDE R**	**AMOUNT SURRENDERED**	**BALANCE**
1	EASTERN PROVINCE	7,441,500	30-12-13	7,430,699	10,801
2	NORTH EASTERN PROVINCE	11,682,060	30-12-13	11,662,110	19,950
3	NAIROBI NORTH	10,388,250	30-12-13	10,297,283	90,967
4	NYANZA PROVINCE	9,629,210	30-12-13	9,537,790	91,420
5	NAIROBI SOUTH	14,521,300	30-12-13	14,425,300	96,000
6	COAST PROVINCE	15,168,150	30-12-13	15,064,832	103,318
7	WESTERN PROVINCE	9,627,800	30-12-13	9,459,227	168,573
8	RIFT VALLEY PROVINCE	9,752,100	30-12-13	9,494,441	203,621
	SUB TOTAL	**88,210,370**		**86,710,838**	**784,650**
	TOTAL	**90,748,770**		**86,728,838**	**3,305,050**

Committee Observations and Findings;

The Committee observed that there was laxity in recovery of the outstanding imprests, some long outstanding.

Committee Recommendations;

The Committee reprimands the Accounting Officer and recommends that the Accounting Officer avails a report to the Committee on steps taken to make recoveries, including legal action on the beneficiaries, within three (3) months of adoption of this report.

SUPPORT OF THE HEALTHCARE FINANCING STRATEGY- REPRODUCTIVE HEALTH- OUTPUT BASED APPROACH PROJECT (CREDIT BMZ NO. KENYA 201065853)

REPORT ON THE FINACIAL STATEMENTS

462. Lack of Financing Plan for Payables

The statement of financial assets reflects bank balance of Kshs.967,833 as disclosed in Note 11A to the financial statements. However, pending accounts payable balance of Kshs.4,436,435 as disclosed under other important disclosures would not be fully settled by the bank balance. The resulting difference of Kshs.3,468,602 was not explained how it will be financed. In addition, other important disclosures reflect court cases with estimated contingent liabilities of Kshs.11,775,142 which were not explained how they will be financed if they crystalize.

In the circumstances, the financing of pending accounts payable of Kshs.4,436,435 and estimated claims arising from the court cases of Kshs.11,775,142 could not be confirmed.

Submission by the Accounting Officer;

There are discussions between the Ministry and the National Treasury on settlement of the pending payables.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendations;

The Committee recommends that the Accounting Officer submits a status report on settlement of the payables within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

463. Avoidable Bank Charges

The statement of receipts and payments reflects purchase of goods and services of Kshs.59,099 as disclosed in Note 6 to the financial statements. The amount is composed of bank charges of Kshs.31,277 and exchange losses/gains (net) of Kshs.27,822 resulting from failure to close the project bank accounts and which continue to reduce the bank balance.

In the circumstances, value for money on continued operations of the Project could not be confirmed.

Submission by the Accounting Officer;

The Donor had requested for a final audit of the project by independent auditors before the accounts could be closed. Following the completion of the audit by PWC, the accounts have now been closed and thus no more accumulation of bank charges.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

TRANSFORMING HEALTH SYSTEMS FOR UNIVERSAL CARE (THS-UC) PROJECT GRANT IDA CREDIT NO.5836- KE, TFOA2561, TFOA2792 AND CR. P152394

REPORT ON THE FINACIAL STATEMENTS

467. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final receipts budget of Kshs.4,516,799,990 and actual on comparable basis of Kshs.3,549,922,407 resulting to underfunding of Kshs.966,877,583 or 21% of the budget. Similarly, the Project spent an amount of Kshs.3,388,832,347 out of the approved expenditure budget of Kshs.4,516,799,990 resulting to an under expenditure of Kshs.1,127,967,643 or 25% of the budget.

In the circumstances, the primary objective of improving utilization and quality of primary health care services with focus on reproductive, maternal, new-born, child and adolescent health care may not be realized in light of the budget underperformance.

Submission by the Accounting Officer;

It is true that the statement of comparative budget and actual amounts reflects final budget of Kshs. 4,516,799,990 against actual expenditure of Kshs.3,388,832,347 resulting to an under absorption of Kshs.1,127,967,643.It is also true that the project actual receipts amounted to Kshs.3,549,922,407 against budgeted receipts of Kshs.4,516,799,990 resulting to a revenue shortfall of Kshs.966,877,583.

This is because during the year, Kshs 2,234,664,075 had been budgeted for disbursement to all the 47 counties. However only Kshs 1,445,456,880 was disbursed to 30 counties as 17 counties did not meet the minimum conditions. This led to reduced expenditure. It also led to reduced receipts as Kshs 1,445,456,880 was received and not the full amount as budgeted.

However, this did not affect the achievement of the primary objective of improving utilization and quality of primary health care services with focus on reproductive, maternal, new-born, child and adolescent health care.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

468. Delay in Disbursement of Funds

The statement of receipts and payments reflects transfers to other government entities of Kshs.2,878,953,881 as disclosed in Note 11.6 to the financial statements. Included in the amount is Kshs.1,445,456,881 in respect to transfers to County governments that were disbursed late in June, 2022. In the circumstances, implementation of the county governments annual work plans was delayed which impacted negatively on service delivery to the public.

Submission by the Accounting Officer;

The project endeavors to disburse funds to the counties early enough to allow for implementation i.e. 1st Tranche during the first quarter and 2nd tranche in the 3rd quarter. However, during the year under review there was a delay in disbursement of funds to the counties. This was due to a delay in passage of the County Government additional allocation bill which replaced the County Allocation Revenue Act(CARA). The Bill was assented on 22nd April 2022 and Gazetted on 29th April, however commencement of bill was on 13th May 2022.As a project we had to wait until the publication and commencement of the bill.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

469. Pending Bills

Other important disclosures reflect pending bills of Kshs.1,262,926 that were outstanding at the closure of the financial year. This was contrary to section 53(8) of the Public Procurement and Assets Disposal Act, 2015 which requires an accounting officer not to commence any procurement proceedings until satisfied that sufficient funds to meet the obligations of the resulting contract are reflected in approved budget estimates.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer;

Spicer's (Eastern Africa) had provided servicing and repair services for a printing machine at the Division of Health Promotion by virtue of being that they are one of the authorized dealers of that type of printing machines in the Country. The supplier had challenges accessing the supplier portal. The Project vide letter dated 1/10/2021(attached) wrote a reminder to the provider and advised them to visit the IFMIS department at Treasury to have the issue addressed for payment to be made. The service provider has since been paid.

Jumuia Conference and Beach Resort was among the suppliers that were invited to quote for provision of full day conference package for the project activity. The invitation was done manually through email and the provider emerged the most responsive. Following the activity, the project was unable to pay the provider due to IFMIS challenges. The Project vide letter dated 1/10/2021(attached) wrote a reminder to the provider and advised them to visit the IFMIS department at Treasury to have the issue addressed for payment to be made. The issues were addressed and the supplier has since been paid.

Silver Africa was among agents invited to provide air tickets for various activities for both national and county officers in the FY 2018/2019 and 2019/2020.

Following the provision of air tickets, the provider did not avail invoices for payment until May 2021. (confirmed through attached provider letter dated 1/9/2021). The Project has since verified and paid all the pending invoices owed to the supplier.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

GLOBAL FUND HIV AIDS PROGRAM GRANT NO. KEN-H-TNT GA 1547

REPORT ON THE FINACIAL STATEMENTS

473. Unresolved Prior Year Audit Matters

In the audit report of 2020/2021 financial year, several issues were raised under the Report on Financial Statements, Report on Lawfulness and Effectiveness in Use of Public Resources, and Report on Effectiveness of Internal Controls, Risk Management and Governance. However, the Management has not resolved all the issues.

Submission by the Accounting Officer;

It is true that there were several issues raised during the FY 2020/2021.The issues have since been resolved as per the attached extract of the financial statements for the year ending 30th June 2022.

Committee Observations and Findings;

The Committee notes that its report for the previous financial year had since been adopted by the House.

Committee Recommendations;

The Committee recommends that the Accounting Officer submits a status report on implementation of its recommendations within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

474. Unliquidated Commitments

Other important disclosures reflect pending accounts payables of Kshs.5,818,699. However, the amount was outstanding for more than six months period allowed by Global Fund to liquidate commitments. This was contrary to paragraph 24 of Global Fund guidelines for grant budgeting, 2019 which states six months after the start of the new Implementation Period, Principal Recipients will be required to report the final available cash balance from the previous allocation period (after all financial commitments are fully paid). Any unliquidated commitment remaining at the end of the six-months period will be considered closed by the Global Fund unless otherwise approved in writing by the Global Fund.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer;

It is true that Kshs. 5,818,699 was outstanding for more than six months period allowed by Global Fund to liquidate commitments. There have been several correspondences between the Global Fund Finance Manager NASCOP and the Principal recipient 1 at National Treasury requesting for a way forward on liquidation of the commitments.

Committee Observations and Findings;

The Committee observed that the matter had taken inordinately long to settle.

Committee Recommendations;

The Committee recommends that the principal recipient (National Treasury) settle the matter within three (3) months of adoption of this report.

COVID-19 HEALTH EMERGENCY RESPONSE PROJECT GRANT/CREDIT NO.6598-KE

REPORT ON THE FINACIAL STATEMENTS

477. Unsupported Compensation of Employees

The statement of receipts and payments reflects compensation of employee's balance of Kshs.241,631,465 as disclosed in Note 11.2 to the financial statements. However, the Project paid consultants varying monthly allowances of between Kshs.75,000 and Kshs.120,000 without stating the basis of arriving at these allowances. Further, contracts for the period January, 2022 to June, 2022 were not provided for audit and payments made were not supported by invoices and reports from consultants.

In the circumstances, the accuracy and completeness of compensation of employees' balance of Kshs.241,631,465 could not be confirmed.

Submission by the Accounting Officer;

It is true that the statement of receipts and payments reflects compensation of employee balance of Kshs. 241,631,465 as disclosed in Note 11.2 to the financial statements. The World Bank allows hire of consultants on short term basis under the project as per the Financing Agreement. As part of the COVID-19 response, the project procured short term consultants using the Public Procurement and Disposal Act (2015) and the payment was negotiated based on expertise of each consultant. Payment terms were as per the contract upon submission of staff returns by the supervisor at the work station.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

478. Undisclosed Retention Fees

The statement of receipts and payments reflects acquisition of non-financial assets balance of Kshs.265,226,611 as disclosed in Note 11.4 to the financial statements. Included in the amount is Kshs.139,860,111 for rehabilitation and renovation of plant, equipment and machinery out

of which an amount of Kshs.100,817,680 was spent on gas installation in various hospitals. However, the 10% retention fees balance of Kshs.10,081,768 withheld was not disclosed in the financial statements.

In the circumstances, the accuracy and completeness of acquisition of non-financial assets - retention fees of Kshs.10,081,768 could not be confirmed.

Submission by the Accounting Officer;

The project does not have its own retention bank account. The Ministry of Health has one deposit account where all retention fees are deposited and a Miscellaneous Receipt(MR) issued to the supplier. A copy of MOH deposit analysis extract showing retention money amounting to Kshs. 10,081,768 from the project has been availed.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

479. Inaccuracy in Cash and Cash Equivalents

The statement of financial assets reflects bank balance of Kshs. 62,433,792 as disclosed in Note 11.7A to the financial statements. However, the bank reconciliation statement included unreconciling items of Kshs.1,674,315 and stale cheques of Kshs.967,109 which were not adjusted in the cash book.

In the circumstances, the accuracy and completeness of bank balance of Kshs.62,433,792 could not be confirmed.

Submission by the Accounting Officer;

It is true that the bank reconciliation statement had outstanding issues. These issues were due to posting errors that has since been corrected. The bank reconciliation statement showing the correct position and the cash book extract as at 30th June 2022.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendations;

The Committee recommends that the Auditor General confirms amended opening statements in subsequent audit.

480. Undisclosed Imprests and Advances

The statement of financial assets reflects accounts receivables - imprests and advances balance of Kshs.4,668,877 as disclosed in Note 11.8 to the financial statements. However, analysis of the imprest register and supporting schedules revealed unsurrendered imprest amounting to Kshs.43,671,525 resulting to unreconciled variance of Kshs.39,002,648.

In the circumstances, the accuracy and completeness of accounts receivables - imprests and advances of Kshs.4,668,877 could not be confirmed.

Submission by the Accounting Officer;

It is true that the project had outstanding imprest amounting to Kshs. 4,668,877 as at 30th June 2022. These imprests were still in process within the IFMIS system as at the time of the audit. These imprests have since been fully processed.

Committee Observations and Findings;

The Committee noted that the submission from the Accounting Officer was unsatisfactory as the amounts had taken too long to clear.

Committee Recommendations;

The Committee recommends that the Accounting Officer ensures imprests are surrendered within stipulated time.

481. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget of Kshs.6,972,534,981 and actual on comparable basis of Kshs.2,074,941,263, resulting to underfunding of Kshs.4,897,593,714 (or 70%) of the budget. Similarly, the Project spent an amount of Kshs.1,922,271,387 out of the approved expenditure budget of Kshs.3,340,840,724, resulting in an under expenditure of Kshs.1,418,569,337 (or 42%) of the budget.

The underfunding and underperformance may have affected the Project's key objective of preventing, detecting and responding to the threat posed by Covid-19 and strengthening national systems for public health preparedness.

Submission by the Accounting Officer;

The project presented its budgetary requirements of Ksh. 6,972,534,981 to the National treasury based on the anticipated support of preventing, detecting and responding to the threat posed by Covid-19 and strengthening national systems for public health preparedness. The National Treasury allocated Ksh. 2,074,941,263 and the project had an option to request for additional funds during supplementary budget appropriation upon exhausting the allocated funds.

The COVID-19 Health Emergency Response Project is procurement heavy dealing with procurement of COVID-19 supplies and equipment. The global supply chain challenges experienced during the COVID-19 pandemic resulted in long lead times, leading to delay in delivery. This led to under expenditure observed by the auditor since payments can only be made after delivery and inspection.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

483. Failure to Update Imprest Register

Note 3 to the financial statements reflects purchase of goods and services of Kshs.986,444,389. The amount includes domestic travel and subsistence of Kshs.293,082,937 out of which Kshs.40,294,650 issued as imprest was not recorded in the imprest register.

In the circumstances, the effectiveness on controls on issuance and recording of imprest could not be confirmed.

Submission by the Accounting Officer;

The Ministry maintains one imprest register and as at the time of audit the Ministry was in the process of updating the register.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendations;

The Committee reprimands the Accounting Officer for failure to maintain an up-to-date imprest register.

GLOBAL FUND TUBERCULOSIS PROJECT GRANT/CREDIT NO. KEN-T-TNT-2067

REPORT ON THE FINANCIAL STATEMENTS

486. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.775,488,451 and Kshs.694,370,519 respectively, resulting to underfunding of Kshs.81,117,932 or 10% of the budget. Similarly, the Project spent an amount of Kshs.553,841,711 against the approved expenditure budget of Kshs.775,488,451 resulting to an under expenditure of Kshs.221,646,740 or 29% of the budget. The underfunding and underperformance may have affected negatively the planned activities of reducing tuberculosis deaths by 90% and tuberculosis incidence rate by 80%.

Submission by the Accounting Officer;

It is true that for the year ended 30 June 2022 there was 10% underfunding of Kshs.81,117,932. It is also true that the Ministry did not receive the anticipated funding during the year under review, this was attributed to the Global fund cash monitoring of financial absorption of programs to reduce high cash balance at the end of the reporting periods. Thus, resulting in non-disbursement of Kshs 81,117,933 as demonstrated in the table below;

Date	Description	Amount
19/10/2021	**Exchequer Request**	**448,226,282.00**
14/Jan/22	MOH Exchequer Receipt	107,764,833.40
1/Apr/22	MOH Exchequer Receipt	28,520,000.00

26/Apr/22	MOH Exchequer Receipt	319,985,825.70
06/05/2022	**Exchequer Request**	**307,183,919.00**
28/Jun/22	MOH Exchequer Receipt	93,776,000.00

For the year ended 30 June 2022 there was underutilization of budget of 29% of Kshs.221,646,740. Being the first year of the grant implementation, the Ministry of Health implemented programmatic interventions and archived an absorption rate of 71% during the financial year under audit. The variance of 29% is mainly attributed to delays in disbursement by the Global Fund resulting in high pending bills reported at the end of the year.

The Ministry developed mitigation measures to ensure the postponed activities are accelerated and incorporated in year two implementation of the grant. Despite the underutilization, the country achieved treatment success rate of 84% as reported.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

487. Unsupported Pending Bills

Annex 3(a) to the financial statements reflects analysis of pending bills of Kshs.30,555,233 out of which Kshs.20,839,853 relates to commitments of goods and services from various suppliers. However, the amounts were not supported with invoices, purchase orders and details on how the suppliers were engaged. In the circumstances, the accuracy and completeness of pending bills of Kshs.30,555,233 could not be confirmed.

Submission by the Accounting Officer;

The pending bills arose due to a delay in disbursement being received on 30th June 2022. However, these were subsequently paid.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendations;

The Committee recommends that the Auditor General verifies the documentation in subsequent audit.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

488. Suboptimal Use of GeneXpert Machines

Records provided for audit indicated that one hundred and eighty six (186) GeneXpert machines were issued across various health facilities in the country. However, physical verification in six (6) counties in September 2022 revealed inadequate supply of cartridges which caused the machines to produce 238,187 tests against optimal capacity of 714,240 tests resulting to underperformance of 476,053 tests (or 67%). In addition, there was shortage of

Community Health Volunteers (CHVs) to perform contact tracing and there were minimal referrals which led to inefficient use of GeneXpert machines.

In the circumstances, the effective use of GeneXpert machines could not be confirmed.

Submission by the Accounting Officer;

It is true that, during the FY 2021/2022 there was inadequate supply of GeneXpert cartridges that led to suboptimal use of the GeneXpert machines in the country. During this time, there were challenges of procuring the GeneXpert cartridges due to delay signing of SLA that was signed in August 2022 and lack of sufficient funding. However, the Ministry of Health managed to secure additional resources to acquire 10 Months of Stock through the UHC funding. There has been improved networking of both patients and samples to be able to optimize the use of the platforms. Equally, the introduction of active case finding (ACF) strategies as well as Program Quality Efficiency (PQE) at facility level have narrowed the gap of underutilization. The average monthly cartridge consumption ranged from 37,500 to 62,500. Ministry of Health has just concluded a diagnostic network optimization (DNO) involving the HIV and Cancer programs with an aim to optimize the systems and serve the patients better with reduced turnaround time (TAT) to initiation to treatment.

Through the roll out of PHC, the Community health workers are being actively engaged.

Committee Observations and Findings;

The Committee observed that the equipment were acquired before both human and technical capacity was ensured.

Committee Recommendations;

The Committee recommends the Accounting Officer henceforth conducts effective planning before acquisition of equipment.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

489. Unsupported Selection of Drug Resistance TB Patients

Note 4 to the financial statements reflects specialized materials and services of Kshs.5,391,000 out of which Kshs.539,000 relates to insurance cover for seventy-seven (77) DRTB patients. However, there are a total of one thousand five hundred and two (1,502) DRTB patients in various health facilities in the country and Management did not explain and provide details of the criteria used to identify and include the seventy-seven (77) patients in the National Hospital Insurance Fund cover. In addition, these patients did not receive services for nine (9) months from July, 2021 to March, 2022.

In the circumstances, the effectiveness of internal controls of identifying DRTB patients and propriety of insurance expenditure of Kshs.539,000 could not be confirmed.

Submission by the Accounting Officer;

It is true that, during the FY 2021/2022 698 number of Multi drug resistant Tuberculosis patients were diagnosed and enrolled on second line treatment. The enrolment of DRTB patients on NHIF is voluntary for the patients in need of the support as there are patient with existing covers. During

the year, 77 MDR-TB patients diagnosed and put on treatment in the month of July/August 2021 were enrolled to the NHIF cover and monthly premiums paid for 24 months. The Ministry of Health through the Division of National Leprosy Tuberculosis and Lung Health Program was not able to continue submitting to NHIF patient details for enrollment through the NHIF portal as NHIF had disabled the organizations account.

NHIF similarly, did not activate the cover for the paid up patients during the period for the patients to access health services through the cover.

The Ministry of health held discussion with the NHIF representatives and resolved the bottleneck as of July 2023. Currently DRTB patients enrolled under NHIF are being paid for and accessing services.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendations;

The Committee recommends that the Accounting Officer scales up coverage to all drug resistant patients with the roll out of Social Health Insurance Fund.

GLOBAL FUND HIV AIDS PROGRAM GRANT NO. KEN-H-TNT GA 2065

REPORT ON THE FINANCIAL STATEMENTS

491. Unsupported Bank Balance

The statement of financial assets reflects bank balance of Kshs.158,324,015 as disclosed in Note 5.A to the financial statements. However, the bank reconciliation statement for the month of June, 2022 reflects payments in bank statements not yet recorded in cash book amounting to Kshs.612,500 which were not supported by payment vouchers.

In the circumstances, the accuracy and completeness of bank balance of Kshs.158,324,015 could not be confirmed.

Submission by the Accounting Officer;

It is true that the amount of Kshs. 612,500 was not supported by payment vouchers. The Ministry of Health instituted administrative action and managed to recover from the concerned officer.

Committee Observations and Findings;

The Committee noted with concern that an officer would withdraw and 'refund' funds from a public account.

Committee Recommendations;

The Committee reprimands the Accounting Officer for failure to take immediate disciplinary action in line with the human resource policy on the said officer and recommends that the said officer be henceforth barred from accessing public accounts/ funds.

492. Failure to Receive Initial Grant

The funding summary Paragraph 1.7 indicates approved budget of USD.19,420,319 equivalent to Kshs.2,101,252,823 for a duration of three (3) years starting from 01 July, 2021 to 30 June, 2024. Included in the amount is USD.4,680,571 equivalent Kshs.506,431,590 for financial year 2021/2022 as disclosed in the statement of comparison of budget and actual amounts but which was not received.

In the circumstances, the Project may not absorb the entire amount of USD.19,420,319 equivalent to Kshs.2,101,252,823 thereby not achieving the objectives of reducing new HIV, STI and viral hepatitis infections, reducing morbidity and mortality due to HIV, scaling up treatment of STIs and HCV and increasing access to ART treatment.

Submission by the Accounting Officer;

During the period July 2018- June 2021 there was an in- country balance of Ksh. 438,828,963 which was transferred to the current grant(NFM3) as per the Grant regulations regarding in - country balances. Further the Ministry of Health through NASCOP received Kshs. 621,400,000. During that period of NFM2 (2018-2021), the grant absorption rate was 85% as per the programmatic indicators.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

493. Failure to Include Pending Payables in the Grant's Budget

Other important disclosures reflect pending accounts payables of Kshs.7,451,470. The amount includes opening balance of Kshs.29,842,515 being payables from the closed grant KEN-T-TNT 1547. However, there was no evidence of negotiation to include this amount in the budgeting and programmatic planning in grant KEN-T-TNT 2065 being the next grant as required in Paragraph 23 of Global Fund guidelines for grant budgeting, 2019.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer;

It is true, that the opening balances of Ksh 29,842,515 was fully commited at the closure of the grant KEN-T-TNT 1547. However, these were paid in full as pending bills in the next grant between July and December 2021.

On the pending accounts payables of Kshs.7,451,470.which had not been fully committed, we had written a formal request to the National Treasury to make a special request for approval of the same to the donor in the financial year 2021/2022.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendations;

The Committee recommends that Treasury as the principal recipient ensures closure within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

494. Lack of an Asset Register

During the year under review, Management did not provide a fixed asset register but presented an asset verification report which did not include details of dates of purchase and prices. In addition, fixed assets items were aggregated without giving details of the individual asset name, tag number and location.

In the circumstances, the effectiveness of fixed assets internal controls could not be confirmed.

Submission by the Accounting Officer;

It is true that the management did not provide a fixed asset register. However, The State Principal Recipient (PR), The National Treasury, has engaged a consultant to consolidate all assets procured by Global Fund in all facilities in the 47 counties including the National government and hence this is work in progress. Currently the contractor is carrying out asset verification.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendations;

The Committee recommends that the Accounting Officer avails the complete assets register within one (1) month of expiry of the contract.

RESILIENT SUSTAINABLE SYSTEMS FOR HEALTH (RSSH) KEN-T-TNT 2067 - SUB RECEIPT

REPORT ON THE FINANCIAL STATEMENTS

497. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget of Kshs.319,584,334 and actual on comparable basis of Kshs.297,231,093, resulting to underfunding of Kshs.22,353,241 (or 7%) of the budget. Similarly, the Project spent an amount of Kshs.76,461,592 out of the approved expenditure budget of Kshs.319,584,334, resulting in an under expenditure of Kshs.243,122,743 (or 76%) of the budget.

The underfunding and underperformance may have affected the Project's key objectives of building resilient and sustainable systems for health and enhancing the fight against new pandemics.

Submission by the Accounting Officer;

It is true the statement of comparison of budget and actual amounts reflects final receipts budget of Kshs.319,584,334 and actual on comparable basis of Kshs.297,231,093, resulting to underfunding of Kshs.22,353,241 (or 7%) of the budget. Similarly, the Project spent an amount of

Kshs.76,461,592 out of the approved expenditure budget of Kshs.319,584,334, resulting in an under expenditure of Kshs.243,122,743 (or 76%) of the budget.

The underfunding of the project and under expenditure was caused by commencement of the project late in the financial year. Being a new project, the project faced various operationalization challenges such as staffing, financing and implementation of activities.

The first exchequer was received in December 2021.This situation caused us to undertake activities in quarter 3 and 4 of the year in question.

The project by design implements its activities through various stakeholders like County Governments, who only attend to the project activities when available.

The Sub Recipient has since reviewed the implementation plan and reprogrammed activities and funds that were deemed unimplementable during the period.

The reprogramming was towards programmatic activities of which 71% has since been utilized and procurements amounting to approximately USD 6 million submitted to the National Treasury.

Committee Observations and Findings;

The Committee observed that 'operational challenges' should have been foreseen and mitigated against.

Committee Recommendations;

The Committee reprimands the Accounting Officer and recommends that he makes and adheres to work plans, drawn before withdrawal of funds.

GLOBAL FUND MALARIA NEW FUNDING MODEL (NFM) KEN-M-TNT-

1546

REPORT ON THE FINANCIAL STATEMENTS

502. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final receipts budget of Kshs.175,678,920 and actual on comparable basis of Kshs.1,519,678, resulting to underfunding of Kshs.174,159,242 (or 99%) of the budget. Similarly, the Project spent an amount of Kshs.705,685,455 out of the approved expenditure budget of Kshs.175,678,920, resulting in an over expenditure of Kshs.530,006,535 or approximately 302% of the budget. The excess amount was utilized from the opening cash and cash equivalent balance of Kshs.704,165,777.

The budget mismatch was indicative of delay in executing the planned activities and payment to respective suppliers during the grant period.

Submission by the Accounting Officer;

It is true that the project spent an amount of Kshs.705,685,455 out of the approved budget of Kshs.175,678,920 in the financial year 2020/2021. It is good to note that the project activities are cumulative over a period of three years in such a way that if an activity is not done in one financial year, it can be carried forward to the next financial year provided it is within the project period.

The project runs a commercial account and once the money is transferred to the commercial account, the project can continue its activities beyond the financial year. Therefore, closure of financial year does not affect its operations as it is evaluated over a three-year period. This means that if the financial year comes to an end the money in the project account is not returned to the exchequer but it continues to be utilized in the implementation of project activities in the next financial year. In the FY 2019/2020,the cash and cash equivalents carried to FY 2020/2021 was Kshs.704,165,777.This amount related to amounts that had been released for the previous FY but which had not been paid out at the closure of the FY because the activities had started in the previous FY 2019/2020 but had not been completed by end of June 2020.Since the project uses cash basis of accounting which reports expenditure once actually paid, these expenses although relate to activities that started in 2019/2020,they could only be paid and reported in 2020/2021,the year they were completed and paid thus resulting to an expenditure that is more than what had been budgeted for in the FY 2020/2021.

Committee Observations and Findings;

The Committee noted that the submission by the Accounting Officer was unsatisfactory as the three-year period is not a leeway to be lax in earlier years.

Committee Recommendations;

The Committee recommends that the Accounting Officer adheres to annual workplans and ensures annual KPIs/ deliverables are not carried over to subsequent years.

GLOBAL FUND MALARIA NEW FUNDING MODEL(NFM)KEN-M-TNT-2064

REPORT ON THE FINANCIAL STATEMENTS

507. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final receipts budget of Kshs.837,474,120 and actual on comparable basis of Kshs.652,243,566, resulting to underfunding of Kshs.185,230,554 (or 22%) of the budget. Similarly, the Project spent an amount of Kshs.592,101,529 out of the approved expenditure budget of Kshs.837,474,120, resulting in an under expenditure of Kshs.245,372,591 (or 29%) of the budget

The underfunding and underperformance affected the planned project's activities and may have impacted negatively on service delivery.

Submission by the Accounting Officer;

It is true the statement of comparative budget and actual amounts reflects final receipts budget of Kshs.837,474,120 and actual on comparable basis of Kshs.652,243,566, resulting to underfunding of Kshs.185,230,554 (or 22%) of the budget. Similarly, the Project spent an amount of Kshs.592,101,529 out of the approved expenditure budget of Kshs.837,474,120, resulting in an under expenditure of Kshs.245,372,591 (or 29%) of the budget

The issue of under expenditures resulted from non-issuance of exchequer by The National Treasury on time. This may have affected the planning, procurement and execution of projects.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

DANIDA PRIMARY HEALTHCARE (PHC) SUPPORT PROGRAM

REPORT ON THE FINANCIAL STATEMENTS

512. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget of Kshs.433,648,750 and actual on comparable basis of Kshs.325,986,258 resulting to underfunding of Kshs.107,662,492 (or 25%). Similarly, the Project spent an amount of Kshs.324,361,266 out of the approved expenditure budget of Kshs.433,648,750 resulting in an under expenditure of Kshs.109,287,484 (or 25%).

In the circumstances, the Project's key objectives of improving primary health care with focus on reproductive, maternal, new-born, child and adolescent health care may not be achieved.

Submission by the Accounting Officer;

It is true that the statement of comparative budget and actual amounts reflects final receipts budget of Kshs. 433,648,750 and actual on comparable basis of Kshs. 325,986,258, resulting to underfunding of Kshs.107,662,492 (or 25%). Similarly, the Project actual expenditure amounted to Kshs. 324,361,266 out of the approved expenditure budget of Kshs.433,648,750, resulting in an under absorption of Kshs.109,287,484 (or 25%).The project had planned to disburse funds in two tranches to the counties. Once Tranche 1 is disbursed, the Danish Embassy is notified and they in turn release 2nd Tranche to the National treasury in readiness for disbursement. During the year under review there was a delay in disbursement of funds to the counties. DANIDA disburses funds to the counties in tranches and during the year under review there was a delay in passage of the County Government additional allocation bill which replaced the County Allocation Revenue Act (CARA). The Bill was assented on 22nd April 2022 and Gazetted on 29th April, however commencement of bill was on 13th May 2022.The project was able to disburse only one tranche because we had to wait until the publication and commencement of the bill.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

OTHER DONOR FUNDED PROJECTS IMPLEMENTED BY AGENCIES UNDER THE MINISTRY OF HEALTH

KENYA HEALTH SECTOR PROGRAMME SUPPORT III (DANIDA REF. 104. KENYA.810.300 – GRANT) – COUNTY GOVERNMENT OF KISII

REPORT ON THE FINANCIAL STATEMENTS

517. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.134,672,861 and Kshs.67,206,909 respectively resulting to an underfunding of Kshs.67,465,952 or 50% of the budget. The shortfall in revenue by Kshs.67,465,952 or 50% implies that the Programme could not undertake all the planned

activities. Similarly, the Programme had an approved expenditure budget of Kshs.134,672,861 and actual expenditure of Kshs.49,725,445 resulting in an under expenditure of Kshs.84,947,416 or 63% of the budget.

In the circumstances, the underfunding and under-absorption may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer;

In the financial year under review, the Ministry did not receive a budget for Kenya Health Sector Programme Support III. This support was sent directly to the County Government of Kisii and as such the question may be directed to the County for their response.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendations;

The Committee recommends that the Auditor General submits the query to the Senate in the next reporting cycle.

HEALTH SECTOR SUPPORT PROJECT (CREDIT NO.4771-KE) - KENYA MEDICAL SUPPLIES AUTHORITY (KEMSA)

REPORT ON THE FINANCIAL STATEMENTS

520. Unaccounted Funds Transfer

The statement of financial position reflects Kshs. Nil cash and cash equivalents. However, analysis of bank statements for the project bank account revealed that an amount of Kshs.42,299,522 was transferred to another bank account in the same bank on 21 March, 2022. Management has not explained this transfer or provided supporting documents.

In the circumstances, the regularity of transfer of Kshs.42,299,522 could not be confirmed.

Submission by the Accounting Officer;

On January 17, 2022, the National Treasury authorized the closure of both the KHSSP pooled and non-pooled bank accounts. The Ministry of Health requested KEMSA to proceed with the closure via a letter dated January 26, 2022. At the time of closure, the project bank account had a closing balance of Kshs. 42,299,522, consisting of the amount owed to DANIDA of Ksh 38,474,884.00 and Ksh 3,824,637.70 in accrued interest owed to KEMSA. The transfer of funds to KEMSA account number 01136217405103 on March 21, 2022, served to refund both KEMSA and DANIDA the funds owed to them by the project, and it facilitated the closure of the bank project account.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

521. Unsupported Transfer of Accumulated Surplus and Liabilities

The statement of changes in net assets reflects transfer from accumulated surplus to Kenya Medical Supplies Authority (KEMSA) Kshs.3,996,628 and Note 5 to the financial statements reflects transfer of liability of Kshs.38,474,884. However, both transfers were not explained, supported or acknowledged by KEMSA.

In the circumstances, the accuracy and completeness of the transfers could not be confirmed.

Submission by the Accounting Officer;

Upon closure, part of the project bank account closing balance was Kshs. 3,996,628. These funds comprised of surplus funds of Kshs. 3,996,096.35 due to KEMSA and Kshs. 531.70 due to the Ministry of Health. On March 21, 2022, Kshs. 3,996,096.35 was transferred to KEMSA's account (No. 01136217405103) held in Co-operative Bank of Kenya and Kshs. 531.70 was transferred to the Ministry of Health as refund of project savings from the Non-Pooled Account.

Additionally, the project bank account closing balance had a refundable interest amount of Kshs. 38,474,884 due to DANIDA's. These funds were transferred to KEMSA's Cooperative Bank account (No. 01136217405103) upon the project's closure and subsequently remitted to DANIDA from the same account on September 15, 2022.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

522. Delayed Project Closure

The financing agreement indicated Project's effectiveness date was on 21 January, 2014 with expected end date of 31 December, 2016 but extended to 30 June, 2018. However, Management did not provide any evidence of formal request to the International Development Association (IDA) for Project extension beyond 30 June, 2018 or explain failure to close the project which reported a surplus of Kshs.1,651,961 during the year under review.

In the circumstances, the transactions in the project account are without donor's approval.

Submission by the Accounting Officer;

The KHSSP project was extended to 30th June 2018, however, there was a delay in closure because one of the partners DANIDA had not concluded an audit of their fund's contribution. On 21st May 2020, KEMSA sought guidance from the PS Ministry of Health on the project funds held. The Permanent Secretary via letter dated 9th of June 2020 requested KEMSA to refund back an amount of Ksh 289,090,323.48 as part of KHSSP project closing procedures.

This amount was refunded back to Ministry of Health MOHP &S- SWAP Secretariat account on 22nd June 2020. The balance of the funds was transferred to KEMSA Bank account number 01136217405103 awaiting the conclusion of DANIDA audit to determine the funds refundable. The Project bank accounts were closed as per Treasury approval on 17th January 2022.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

EAST AFRICA PUBLIC HEALTH LABORATORY NETWORKING (EAPHLN) PROJECT CREDIT NO.4732 - KE - KENYA MEDICAL SUPPLIES AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

526. Unpaid Retention Money

The statement of financial position reflects trade and other payables from exchange transaction of Kshs.602,712 which, as disclosed in Note 7 to the financial statements relates to unpaid retention money. However, Management has not explained failure to pay the retention money some of which dates back to financial year 2018/2019 or continued disclosure as payable.

In the circumstances, the ownership and obligation of trade and other payables from exchange transaction of Kshs.602,712 could not be confirmed.

Submission by the Accounting Officer;

Trade and other payables amounting to Ksh 602,712 encompass two components: retention funds of Ksh 580,238.21 owed to Anzal Engineering Limited for the construction of the Incinerator shed in Wajir County, and a 3% contractor withholding tax of Ksh 22,474.34 (later remitted to the Kenya Revenue Authority in the subsequent financial year).

An amount totaling Ksh 5,802,379.45 was disbursed to the contractor, as evidenced by the payment voucher and certificate from the Public Works Department.

Due to the project's strict closure timeline, the contractor was unable to lodge a claim within the stipulated project timelines. Consequently, the funds had to be remitted back to the National Treasury, the project's fund custodian. The portion of retention funds totaling Ksh 580,238.21 was included in the refund remitted to the National Treasury on March 22, 2023.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

527. Unexplained Reversal of Interest Expense

The statement of changes in net assets reflects accumulated surplus balance of Kshs.18,240,726 which includes reversal of interest expense amounting to Kshs.11,343,918 that was payable to The National Treasury during the financial year 2020/2021. However, the reversal is not in line with International Public Sector Accounting Standard (IPSAS) 3 which requires all prior year adjustments to be effected through the previous period balances.

In the circumstances, the accuracy and completeness of above balances reflected in the financial statements could not be confirmed as at 30 June, 2022.

Submission by the Accounting Officer;

The sum of Ksh 11,343,918, accrued as interest in the project bank account, was initially recorded as a liability owed to KEMSA in the project's financial statements. At the close of the financial year 2021, KEMSA sought direction from the Principal Secretary (PS)- Ministry of Health

regarding the appropriate treatment of this interest income. In the following financial year, KEMSA received clarification and duly recognized the aforementioned amount as interest income attributable to the project.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

528. Unresolved Prior Year Matters

In the audit report of 2020/2021 financial year, several issues were raised under the Report on Financial Statements, Report on Lawfulness and Effectiveness in Use of Public Resources, and Report on Effectiveness of Internal Controls, Risk Management and Governance. However, the Management has not resolved all the issues.

Submission by the Accounting Officer;

The pending issue in FY 2020/2021 that remained unresolved was the delay in project closure. According to the procedure, approval by the Board of Directors was required through a Board resolution. Subsequently, KEMSA sought and obtained authorization from the National Treasury through the Ministry of Health to close the bank account. The account was closed in March 2023.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

529. Failure to Transfer Bank Balance

The statement of financial position reflects cash and cash equivalent of Kshs.18,843,438 as disclosed in Note 5 to the financial statements. The amount relates to bank balance in relation to a project whose end date was 30 September, 2020 but has not been closed. Failure to close the project contravenes Regulation 74(6)(c) of the Public Finance Management (National Government) Regulations, 2015 which requires an Accounting Officer of a National Government entity to ensure that the assets are handed over within three months from the date of the closure of the project.

In the circumstances, Management is in breach of the law.

Submission by the Accounting Officer;

The EAPHL Project ended on 30th September 2020. KEMSA sought the closeout procedures from the Principal Secretary (PS) - Ministry of Health via a letter dated 10th June 2021 and guidance was provided on 1st November 2021. Closeout procedures included a refund of the project savings to the exchequer and closure of the project bank account. The Authority refunded the project funds on 23rd March 2023 and the project bank account was effectively closed.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

A CASE STUDY ON INTEGRATED DELIVERY OF SELECTED NONCOMMUNICABLE DISEASES IN KENYA (PHGF GRANT NO. TFOA5636)

- MOI TEACHING AND REFERRAL HOSPITAL

REPORT ON THE FINANCIAL STATEMENTS

533. Budgetary Control Analysis

The statement of comparative budget and actual amounts reflects budget and actual receipts from domestic and foreign grants on comparable basis of Kshs.135,915,138 and Kshs.133,585,330 respectively resulting to an underfunding of Kshs.2,329,808 or 2% of the budget. The Project expenditure was limited to the amount realized.

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

Submission by the Accounting Officer;

The underfunding of 2% of the budget was as a result of delay in release of the last tranche of funds from The National Treasury and Economic Planning amounting to $21,699.40. The underfunded amount was therefore captured as a payable towards staff compensation.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

534. Physical Verification of Projects

Three (3) projects and twenty-one (21) procurements with a total contract sum of Kshs.10,010,281, were verified in September, 2022. The verification revealed that, the projects which related to renovation works at various pharmacies were complete and in use. Further, the twenty-one (21) procurements related to delivery and installation of ICT and medical equipment to various medical facilities within Busia and Trans Nzoia counties. However, two (2) machines delivered to Busia County Referral Hospital and one (1) machine delivered to Kitale County Referral Hospital were not in use.

In the circumstances, the unutilized machines may not be providing services to the public.

Submission by the Accounting Officer;

Amongst the close out procedures for the grant was to transfer equipment and assets bought through the grant to the two counties of Busia and Trans Nzoia where the project was implemented. The two counties were therefore mandated to take over the assets including the machines and utilize them to provide services to the public. The machines were not in use at the point of the physical verification since the counties had not assigned a designated area for installation and use of the purchased equipment. The equipment are currently in use in the designated facilities.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendations;

The Committee recommends that the Auditor General confirms status in the next audit cycle.

535. Proceeds from Domestic and Foregin Grants

The statement of receipts and payments reflects an amount of Kshs.56,740,000 for the year and cumulative to date totalling to Kshs.265,061,010 under proceeds from domestic and foreign grants as disclosed in Note 2 to the financial statements. Although the World Bank had extended the Project end date of the Grant to 31 January, 2022, a balance of Kshs.2,318,966 as disclosed in Annex 3B to the financial statements had not been disbursed by The National Treasury as at the time of audit in October, 2022. In addition, the Management of the Project had not started the process of project closure.

In the circumstances, delayed disbursement by The National Treasury may have delayed completion of planned Project activities which may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer;

Follow up on the undisbursed funds was done as indicated in the requests to the National Treasury.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

536. Failure to Report Use of Direct Procurement to Public Procurement and Regulatory Authority

The statement of receipts and payments reflects an amount of Kshs.58,940,151 under purchase of goods and services which in turn includes other operating payments amount of Kshs.4,035,207 as disclosed in Note 6 to the financial statements. Included in the amount of Kshs.4,035,207 are payments totaling to Kshs.2,884,000 in respect to consultancy services on how to implement the costing components of the study protocol in order to determine the cost effectiveness of the primary integrated model of the noncommunicable diseases.

Examination of the documents provided for audit revealed that the supply chain department requested for approval from the Chief Executive Officer to use direct procurement which was approved and tender awarded at a Contract sum of Kshs.2,884,000.

However, the procuring entity did not report the details of the direct procurement to Public Procurement and Regulatory Authority within fourteen days after the award of the tender contrary to Regulation 90(1)(b) of the Public Procurement and Asset Disposal Regulations, 2020. In addition, there was no evidence of negotiation between the procuring entity and the tenderer for the direct procurement as required by Regulation 90(1)(d) of the Public Procurement and Asset Disposal Regulations, 2020.

In the circumstances, the Project Management breached the law.

Submission by the Accounting Officer;

Management acknowledges that the details of Direct Procurement was not reported to the Public Procurement Regulatory Authority. However, we are currently reporting to the Public Procurement Regulatory Authority as is required. The process was initiated through a competitive process that was unresponsive which led to the procuring entity opting for direct procurement to ascertain attainment of project objectives in line with the world bank regulations for IPF borrowers section 7.39 (c), (d); stating that an individual consultant maybe selected on direct selection basis with due justification under circumstances where there is an Urgent situation or when an individual consultant has relevant experience and qualifications of exceptional worth to the assignment. This is also in line with the PPAD Act of 2015, section 103.

Management also acknowledges that the negotiation process for this procurement was not done as required by regulation 58, section 2 of the Public Procurement & Disposal Act 2006. However, we currently include all the negotiation process for all Direct Procurements as required. However, the procurement was within the approved budget and the prevailing market rates guided by United Nations consultancy rates guidelines. This was also reported to World Bank via the STEP procurement portal as per the donor guidelines.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendations;

The Committee reprimands the Accounting Officer for failure to adhere to regulation 90 (1)(d) of the Procurement Regulations.

537. Failure to Adhere to Executive Order No. 2 of 2018

The statement of receipts and payments reflects total payments amounting to Kshs.133,585,330. The amount includes Kshs.58,940,151 in respect to purchase of goods and services as disclosed in Note 6 to the financial statements. However, review of the procurement records revealed that the Management did not publish a complete information of all tenders awarded, a separate comprehensive list of all registered suppliers, contractors and consultants in the various specific categories of goods, works and services as required by Presidential Executive Order No. 2 of 2018.

In the circumstance, the Project Management was in breach of the Executive Order.

Submission by the Accounting Officer;

The management acknowledges that the list of the registered suppliers, contractors and Consultants had not been published at the time of audit, however we now comply to the executive order No. 2 of 2018.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendations;

The Committee reprimands the Accounting Officer for failure to adhere to Executive Order No. 2 of 2018.

538. Non-payment of Audit Fees

As reported previously, Annex 3A reflects nil pending payables and therefore excludes external audit fees provided for under parts 3.01 and 3.02 of Article III of the subsidiary grant agreement signed on 27 February, 2018. Although the Management has explained through undated, unsigned Financial Management Implementation Support and Supervision Report – December, 2019 that the item should not be budgeted for since the services will be provided by the Office of the Auditor-General, the validity and legality of this argument could not be confirmed.

In the circumstance, the Project Management is in breach of the financing agreement.

Submission by the Accounting Officer;

It was advised by World Bank that the Audit fee of $16,248.83 be re-budgeted and utilized for other project costs as per the attached evaluation report.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

GLOBAL FUND HIV/AIDS PROJECT GRANT NUMBER KEN-H-TNT-2065

– NATIONAL AIDS CONTROL COUNCIL

REPORT ON THE FINANCIAL STATEMENTS

541. Budgetary Control and Performance

The statement of comparative budget and actual amount reflects final payment budget of Kshs.304,276,734 against actual expenditure of Kshs.99,370,872 resulting to under expenditure of Kshs.204,905,862 (or 68%).

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

Submission by the Accounting Officer;

The Global Fund Grant spans a three-year implementation period (2021-2024). NSDCC operates as a sub-recipient of grants provided by the National Treasury, who acts as the Principal Recipient.

i) The Management acknowledged the under absorption of 68% on the Financial Report submitted to the Auditor General for FY 2021/2023.

ii) During the reporting period, the grant absorption was affected by changes in the model of implementation of training activities from in-person to virtual in line with COVID -19 restrictions, resulting to savings per activity line.

iii) It is further noted that during the reporting period, grant absorption was also affected by funds flow challenge. NSDCC received the funds for the fiscal year 2020-2021 in the second quarter, 21 October 2021.

iv) The grant implementation allows for roll-over of the grant balances that was effected in FY 2022-2023.

v) To address the absorption challenge, The NSDCC embarked on a Rapid Implementation of the rolled-over activities in FY 2022/2023 yielding an absorption rate of 71.56%.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

542. Irregular Tax on Global Funds

The statement of receipts and payments reflects miscellaneous income of Kshs.6,402,480 as disclosed in Note 11.2 to the financial statements out of which an amount of Kshs.249,089 was excise duty charged on Global Funds. However, charging of excise duty is contrary to article 3.5(1) of the Global Fund grant Regulations, 2014 which states that for each program, the Grant funds are made available by the Global Fund for the purposes of implementing respective program activities, and the Grant Agreement and the purchase and/or import of any goods or services using the Grant funds shall be exempt from relevant taxation applicable in the host country, including, but not limited to, (a) customs duties, import duties, taxes or fiscal charges of equal effect levied or otherwise imposed on the health products imported into the host country under the Grant Agreement or any related sub-recipient or supplier contract, and (b) the value added tax levied or otherwise imposed on the purchases of goods and services using Grant funds.

In the circumstances, Management was in breach of Global Fund Regulations, 2014.

Submission by the Accounting Officer;

The excise duty on "other fees" was introduced in 2012 under the Customs & Excise Act Chapter 472 of the Laws of Kenya.

The Finance Act, 2013 clarified the issue of Customs & Excise by defining what 'other fees' entails. However, this clarification faced interpretation challenges on the party to bear the excise duty obligation.

The Finance Act 2021 amended the definition of 'other fees' by deleting the words, "fees or commissions earned in respect of a loan.

The implication of this was that charges by finance institutions that are subjected to excise duty would include; registration fees, account maintenance fees, withdrawal fees, loan application, processing fees, etc. Excise duty applied to other fees charged by these financial institutions at the rate of 20% then.

Following the introduction of excise duty as per the Finance Act 2021 on Bank Transactions, a total amount of Kshs 249,089 was withheld as tax by the Project Bank as interest earned between July 2021 and November 2021. During the same period, the Project Bank also levied Kshs 27,208 as excise duty tax on bank transactions.

Following the flagging of this matter in the FY 2021/22 Global Fund audit, NSDCC management communicated with the Project Bank, and an exemption was granted with effect from November 2021.

The Bank has since resolved the issue as evidenced from their communication.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendations;

The Committee recommends that the Accounting Officer in liaison with the bank obtains tax refunds from the Kenya Revenue Authority, for tax already irregularly remitted.

4.16 VOTE 1019: STATE DEPARTMENT FOR INFRASTRUCTURE

Eng. Joseph M. Mbugua, CBS, the Principal Secretary and Accounting Officer for the State Department for Roads appeared before the Committee on 31st January, 1st & 5th February 2024, accompanied by the following officers:

i.	Eng. Kungu Ndungu	–	Director General, KeNHA
ii.	Eng. Philemon Kandie	–	Director General, KeRRA
iii.	Eng. S. Kinoti	–	Director General, KURA
iv.	Mr. Philip Wachira	–	Senior Chief Finance Officer
v.	Ms. Sophie Mwangashi	–	Deputy Accountant General
vi.	Eng. Henry Gakuru	–	Director Development, KeNHA
vii.	Mr. James Bowen	–	Director Cooperate Services
viii.	Ms. Tungo Aaron	–	Director Liaison Office
ix.	Mr. Obop Michael	–	Acting Director, KeNHA
x.	Eng. Amingh George	–	Deputy Director Construction
xi.	Eng. Onesmus Kemai	–	Deputy Director Construction
xii.	Eng. Nicholas Musuni	–	Chief Superintending Engineer
xiii.	Mr. Mongo Chimwanga	–	Senior Accountant
xiv.	Mr. Haron Koros	–	Accountant
xv.	Mr. Dennis Odoyo	–	Accountant
xvi.	Dr. Eric Maina	–	Accountant
xvii.	Mr. Cyrus Njau	–	Accountant
xviii.	Ms. Getrude Ronoh	–	Finance Officer

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

545. Unsupported Payments on Use of Goods and Services

The statement of receipts and payments reflects use of goods and services expenditure of Kshs. 672,594,265 as disclosed in Note 8 to the financial statements. However, review of records revealed that the following payments did not relate to the expense items where they were accounted for and lacked supporting documents for justification.

(i) Utilities, supplies and services payments of Kshs. 23,719,520 include payments totalling Kshs. 6,426,032 described as journal import that were not supported.

(ii) Communication, supplies and services payments of Kshs. 3,102,724 include an amount of Kshs. 350,000 paid to staff.

(iii) Foreign travel and subsistence amount of Kshs. 1,171,220 includes payments totalling Kshs. 370,000 paid to staff.

(iv) Training payments of Kshs. 366,717,384 include transfer of Kshs. 16,708,187 described as transfer of revenue funds to Horn of Africa Gateway Development Project deposit account whose justification was not provided.

(v) Insurance costs of Kshs. 3,389,760 include unrelated expenditure described as supply of block boards amounting to Kshs. 928,800 and purchase of toners amounting to Kshs.

2,460,960.

(vi) Specialized materials and services expenditure of Kshs. 31,014,184 include Kshs. 879,039 described as journal import whose supporting documents were not provided.

In the circumstances, the accuracy and completeness of the use of goods and services expenditure of Kshs. 672,594,265 could not be confirmed.

Submission by the Accounting Officer

i. For issues no. (i) and (vi), all payments described as Journal Import relate to AIE's paid to the District offices as per the budget approved by Parliament for the Financial Year 2021/2022. The Journal Import relates to uploaded District Expenditure returns into the IFMIS using the Data loader. The returns were availed to the Auditor for review and verification.

ii. For issues no. (ii) and (iii), it is true that Kshs.350,000 and Kshs.370,000 were paid to staff relating to Temporary Imprests erroneously charged under communication, supplies and services. This has since been rectified vide journal reference no. 39921637.

iii. Issue no. (iv), the transfer of Kshs.16,708,187 relates to Development Partner revenue funds from the World Bank for Horn of Africa Gateway Development Project which is budgeted under the Development vote head. This project is implemented by the State Department and the revenue funds are requested from the Development Partner through the National Treasury. The funds are then transferred from the Development Bank Account to the Project Account held by the Central Bank of Kenya and operated by the State Department. The documents relating to these payments have now been presented to the Auditor.

iv. For issue no. (v), it is true that Kshs.928,000 and Kshs.2,460,960 relates to supply of blockboards and purchase of toners respectively were erroneously charged under insurance costs. This has since been rectified vide journal reference no.39921858.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

546. Unsupported Payments on Acquisition of Assets

The statement of receipts and payments reflects acquisition of assets amount of Kshs. 12,433,018,607 as disclosed in Note 11 to the financial statements. However, review of records revealed that the following payments did not relate to the expense items where they were accounted for and lacked supporting documents for justification.

(i) Construction of building expenditure of Kshs. 186,311,102 includes an amount of Kshs. 47,035,513 incurred on purchase of furniture, equipment, stationery and other

items not related to this expenditure item.

(ii) Refurbishment of buildings expenditure of Kshs. 91,021,541 include amounts totalling Kshs. 56,640,147 described as journal import whose supporting documents were not provided for audit.

(iii) Construction of civil works includes an amount of Kshs. 21,643,005 transferred to Kenya Wildlife Services which is a self-reporting entity. The amount should have been reflected as transfers to other government entities. Management did not explain the nature of the payment transfer or the service rendered by KWS. No contract and other supporting documents were provided for audit.

(iv) Purchase of specialized plant, equipment and machinery includes an amount of Kshs. 8,000,000 described as journal import whose supporting documents were not provided.

(v) Rehabilitation and renovation of plant and machinery includes an amount of Kshs. 10,000,000 described as journal import whose support documents were not provided for audit.

In the circumstances, the accuracy and completeness of acquisition of assets amount of Kshs. 12,433,018,607 could not be confirmed.

Submission by the Accounting Officer

For issue no. (i), it is true that Kshs.47,035,513 was incurred in purchase of furniture, equipment, stationery and other items was erroneously charged under construction of buildings. This has since been rectified vide journal reference no.39922109.

For issues no. (ii), (iv) & (v), all payments described as Journal Import relate to AIE's paid to the District offices as per the budget approved by Parliament for the Financial Year 2021/2022. The Journal Import relates to uploaded District Expenditure returns into the IFMIS using the Data loader. The returns were availed to the Auditor for review and verification.

For issue no. (iii), the payment amounting to Kshs.21,643,005 was paid to H. Young & Co EA Ltd and not to Kenya Wildlife Service (KWS). Kenya Wildlife Service is the implementing entity of the Upgrading of Roads to and within Mt. Kenya National Park and Aberdare National Park, of which H. Young & Co EA Ltd was the contractor. The project has since been completed. The project was co-funded by the European Union and the Government of Kenya. The European Union regulations only recognizes the entity in charge of Roads for any financing for road projects. Consequently, the Financing Agreement was signed by the National Treasury with a recognition of the then Ministry of Roads as the paying agent. The Contract was domiciled under the State Department for Roads with KWS as the implementing Agency. Documents relating to the payment have been availed to the Auditor.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

547. Compensation of Employees-Payments outside IPPD

The statement of receipts and payments and Note 7 to the financial statements reflects compensation of employees' amount of Kshs. 1,154,471,942 which includes payment of salaries amounting to Kshs. 10,099,678 which were paid outside IPPD system. Management did not justify the payment of salaries and allowances outside the payroll system.

In the circumstances, the validity of amounts paid outside the IPPD system of Kshs. 10,099,678 could not be confirmed.

Submission by the Accounting Officer

The reasons for the payment being done out of the IPPD are as follows: -

(i) Payment to Officers who had already retired but had pending payments prior to retirement. Basic salary payments were made to officers who had already retired and were yet to be paid because of impending disciplinary cases and arrears upon promotion, which had not been effected while they were still in service and consequently in the payroll.

(ii) Payment to Casuals. Casuals are not allocated personal numbers hence they are not paid through the IPPD system but through the voucher system.

(iii) Payment for transport allowances. Payment for transport allowances paid outside the IPPD were baggage allowances paid to the officers who had retired. In line with the HR Manual, upon retirement of an officer, their accounts are deactivated and therefore any unpaid dues cannot be processed through IPPD. Baggage allowance is only payable after deactivation of the officer from the payroll.

(iv) Payment for last respect for departed officers. These are expenses paid to the next of kin of the deceased officers who are not part of the IPPD system. Copies of payment vouchers and schedules have been presented to the auditor.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee recommends that the Accounting Officer liaises with the State Department for Public Service to configure the IPPD system to allow for capture of all payments due to all cadres of employees.

548. Inaccuracies in Outstanding Imprest Balance

The statement of financial position reflects outstanding imprests and advances balance of Kshs. 3,855,969. However, a review of the bank reconciliation statements as at 30 June, 2022 indicates that payments totalling to Kshs. 44,318,901 were made to staff on 30 June, 2022 but were not reflected as outstanding imprest as at the close of the year. In addition, payments made during the year for both development and recurrent cash books indicated imprests paid to officers totalling to Kshs. 95,316,918 in respect of domestic travel and allowance. However, review of the imprest

schedules revealed that the officers may have been in the field for more days than the work schedules could accommodate and exceeded the working days available in a year.

In the circumstances, the accuracy and completeness of the outstanding imprest balance of Kshs. 3,855,969 could not be confirmed.

Submission by the Accounting Officer

This was occasioned by delay of Exchequer release from the National Treasury. The officers surrendered the imprests fully by the time of reporting on Financial Year 2021/2022. The manual imprest registers and system register including Bank Reconciliation have been availed to the auditor. All imprests were surrendered except the outstanding balances of Kshs.3,855,969. An analysis of the Kshs.3,855,969 is as follows:

S/No.	Particulars	Amount (Kshs)
1.	Un-surrendered Training Imprests	3,441,924
2.	Salary Advance	81,991
3.	District Suspense	332,054
		3,855,969

The Kshs.3,855,969 have since been fully accounted for.

As regarding to the Kshs.44,318,911, imprests paid to staff on 30th June, 2022 and not reflected as outstanding imprests at the close of the year, we would like to state that, the National Treasury circular on end year closing procedures allows a window period of surrendering which ends on 30th September of any particular year. Any imprests surrendered within that window period is deemed to have been surrendered on 30th June of that particular year. The Kshs.44,318,901 was accounted for within the window period ending 30th September 2022 and were therefore technically not outstanding as at 30th June, 2022.

As regards to Kshs. 95,316,918, imprests advanced to officers vary depending on activities. These activities include Monitoring and Evaluation, foreign travel and training. Most of the training is foreign funded in line with the Loan Agreement and Project Appraisal Documents. The amount of the imprest issued is based on the activities to be undertaken and emphasis is not on the amount issued. Some activities included officers from State Corporations such as National Transport and Safety Authority and Engineers Board of Kenya whose capacity building from loan proceeds are implemented by the State Department in form of payments. These officers, since they are not Central Government employees are not defined in the Central Government payment system (IFMIS). Consequently, the State Department cannot be able to be issue imprests to officers outside the payment system. Under the circumstances, officers within the State Department had to take imprests on behalf of those officers not accommodated within the IFMIS. Prior to processing of payments for those officers out of the Central Government system, the State Department receives letters of no objection to train from the World Bank. Letters of no objection from the lender, in this case the World Bank, are also a requirement prior to issuance of any imprest to finance training under foreign funding even for Officers within the State Department Central

Government System. Prior to any reimbursement from the Development Partner, the State Department must account for all the revenue funds spent. The accounting includes a return of all the training and capacity building done against the loan proceeds. The training, as previously stated is foreign funded from loan proceeds with strict accountability mechanisms from both the Development Partner and the GOK. There is therefore little or no room for abuse of the training facility.

As regards the monitoring and evaluation component of the imprests issued, the primary role of the State Department Headquarters is monitoring and evaluation of projects in addition to Policy Formulation. The State Department has a huge portfolio of projects with huge budget outlays under implementation by the Road Agencies. This calls for continuous monitoring and evaluation from the headquarters. Arising from the foregoing, the imprests issued, and the tasks undertaken are in line with the State Department's core mandate and are not excessive. All the imprests for training, monitoring & evaluation were surrendered as required. Surrender vouchers have since been availed to the Auditors.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

549. Unsupported Bank Balances

Note 12A to the financial statements reflects bank balance of Kshs. 240,178,204. However, analysis of the three (3) bank reconciliation statements for recurrent, development and deposits balances for June, 2022 revealed receipts in cash book not recorded in the bank statement amounting to Kshs. 19,273,304,637 described as PS SDINFRA whose nature and supporting documents were not provided.

In the circumstances, the accuracy of the bank balance of Kshs. 240,178,204 could not be confirmed.

Submission by the Accounting Officer

During this period, the Bank Statements were yet to be loaded in the system to enable Auto-reconciliation to be done. However, the same was loaded and Auto-reconciliation was done, and all balances were reconciled to reflect the true position as reported. The receipts described as PS SDINFRA (Principal Secretary, State Department of Infrastructure) have been availed to the Auditor.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

550. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs. 230,588,817,513 and Kshs. 200,570,982,073 respectively resulting to an underfunding of Kshs. 30,017,835,440 or 13% of the budget. Similarly, the State Department spent Kshs. 200,561,818,766 against an approved budget of Kshs. 230,588,817,513 resulting to an under expenditure of Kshs. 30,026,998,747 or 13% of the budget.

The underfunding and under expenditure affected the planned activities of the State Department and impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The State Department had an approved budget of Ksh 230,588,817,513 made up of recurrent and development budgets with absorption levels as shown below

	Vote	Approved Budget	Absorption/ Expenditure	Percentage of Utilization
	Recurrent	74,055,123,186	72,699,931,348	98%
	Development	156,533,694,327	127,871,050,725	82%
	Total	**230,588,817,513**	**200,570,982,073**	**87%**

The State Department absorbed nearly 100% of the recurrent budget at 98% of the voted provision. The State Department under absorbed the Development Budget by 13% mainly due to delay in conclusion of the Financing Agreement and consequent contract finalization for improvement of Kwa Jomvu - Mariakani and Kitale - Morpus Road projects with financing from the KfW of Germany and European Investment Bank. There was a lot of uncertainty and it was hard to predict when the concerned Development partners would consent to signing of the Financing Agreement due to introduction of multiple covenants in the course of loan and grant negotiations. The State Department took the most prudent decision to budget against the loan just in case the loan/grant agreement was signed in the course of the financial year. Despite the under expenditure on the said project, the loan/grant agreement was subsequently signed by the National Treasury leading to contract signing. The road project implementation has since commenced under Kenya National Highways Authority.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

551. Failure to Surrender Temporary Imprest

Note 13 to the financial statements reflects imprests and advances balance of Kshs. 3,855,969 which includes imprests issued on 5 January, 2022 to two officers totalling to Kshs. 3,441,924. The imprest was due for surrender on 1 February, 2022 but had not been accounted for as at the time of the audit in November, 2022 contrary to Section 93 of the Public Finance Management Regulations, 2015.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Imprests related to training for the Roads Secretary and the Chief Engineer, Roads with Financing from the World Bank under Horn of Africa Gateway Development Project (HoAGDP)).The two officers had applied and received the admission letters from the respective training institutions. They had also received No Objection letters from the World Bank to attend the trainings. Imprests to facilitate the trainings were subsequently processed and paid. However, the officers were compelled to re-schedule their training dates due to subsequent Covid-19 wave and abrupt restrictions on travel requirements from the country of training. The officers have since attended their training and surrendered their imprests.

It is also true that the officers were issued more imprests in addition to the outstanding imprests. The outstanding imprests were for training for which they could not attend due to the reasons cited above. The officers had to continue performing other duties as the waited for the Covid travel restrictions to ease. Consequently, they had to be facilitated to perform those duties, some of which included issuance of imprests. It is worth noting that the additional imprests were timely surrendered.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

552. Long Outstanding Deposits and Retentions

The statement of assets and liabilities and Note 14 to the financial statements reflects third party deposits and retentions balance of Kshs.233,616,998 with an opening balance of Kshs.208,979,604.

Information provided indicate that the opening balance of Kshs.208,979,602 includes balances totaling Kshs.180,000,000 that remained unclaimed after the transition period from direct implementation of contracts by the State Department to implementation of road contracts by road agencies between 2010 and 2015. It was not clear why these deposits had not been paid into the Consolidated Fund as required by Section 106 of the Public Finance Management Regulations,

2015 which states that unless otherwise exempted by an Act of Parliament, any deposit which has remained unclaimed for 5 years may, with the approval of the Cabinet Secretary, be paid into Consolidated Fund and thereafter the Accountant-General may refund the deposit to any person entitled thereto, if he or she is satisfied that the claim is authentic.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The additions during the year under review amounted to Kshs.70,312,580.55 out of which Kshs. 45,675,186.20 was paid out, leaving a balance of Kshs.24,637,394.35. This amount relates to retention funds for office refurbishment works and deposits for materials testing and research paid by contractors and Road Agencies for road and material testing as analyzed.

The opening balance of Kshs.208,979,603.80 includes retention funds of approximately Kshs.180 million that remained as residuals during the transition from direct implementation of contracts by the State Department to implementation of road contracts by Road Agencies. During the transition phase from the year 2010 to 2015, retention fund held for the portions retained at the State Department Headquarters were claimed by contractors after clearance by the road Agencies. Overtime, retention claims continued diminishing as the Road Agencies continued with full contract procurement and implementation.

Further, we wish to state that the State Department has since provided an analysis of the Deposit Bank balances as at 30th June 2023 to The National Treasury vide the letter Ref. MOR&T/R/ACD/EXQ/39/19/Vol.6/11 dated 2nd August, 2023 with the view to transferring any unclaimed deposits held for more than 5 years to the Exchequer Account in line with the Public Finance Management Regulations of 2015.

Committee Observations and Findings;

The Committee observed that the Accounting Officer was in breach of section 106 of the PFM Regulations.

Committee Recommendation;

The Committee reprimands the Accounting Officer and directs that the sums held beyond five years be surrendered to the Consolidated Fund as per the law, within one (1) month of adoption of this report.

553. Earnings Below the Statutory Minimum

Review of the Integrated Payroll and Personnel Database (IPPD) for the State Department, revealed that some employees' net payments were below 1/3 of their basic salary. Analysis for the month of February, 2022 indicated that one hundred and eleven (111) officers received less than one third of their basic salaries. This was contrary to Section C.1 (3) of the Human Resource Policies and Procedures Manual for the Public Service, of May, 2016 which states that public officers shall not over-commit their salaries beyond two thirds (2/3) of their basic salaries.
In the circumstances, Management was in breach of the public service policies and procedures.

Submission by the Accounting Officer

Officers who had overcommitted their salaries in the said period was due to the following reasons:

- Tax relief: On 25 March 2020, His Excellency, The President of the Republic of Kenya outlined the tax interventions the Government intended to make to "cushion" the country against the economic effects of the COVID-19, therefore, a reduction in the top Pay-As-You-Earn (PAYE) monthly rate from 30% to 25% and with a 100% relief for low income earners was considered, allowing the Government to channel additional resources to cushion the effected individuals from the impact of the virus. It was during the tax relief period when some officers increased commitments to their salaries, which lead to the over-commitment after the Tax Relief was uplifted;
- Public Service Superannuation Scheme (PSSS): this was one of the reforms in Public Service Pension's Sector, the Government enacted the Public Service Superannuation Scheme (PSSS) Act No. 8 of 2012. The Act commenced as at 1ST January, 2021 where the employees would contribute at the rate of 7.5% of their monthly basic salary graduated at the following rate: 2% in the first year; 5% in the second year and 7.5% in the third year. In this regard, some officers' loans may have been affected because of these changes.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer incrementally ensures all staff are compliant.

554. Failure to Comply with the Approved Staff Establishment

Review of the human resource records indicated that the State Department had an approved establishment of two hundred and thirty-six (236) staff members across all cadres. However, the actual number of staff was six hundred and fifty-eight (658) leading to an over establishment of four hundred and twenty-four (424) staff. This is contrary to Section A.15 of the Human Resource Policies and Procedures Manual for Public Service, May 2016, which states that the functions of Ministerial Human Resource Management Advisory Committees (MHRMAC) entail making recommendations to the Authorized Officer regarding: - inter alia (viii) establishment and complement control.

Management was therefore in breach of the Public Service Policies and Procedures.

Submission by the Accounting Officer

The State Department has an approved establishment of one thousand six hundred and thirty-eight (1638) staff, and it has an in post of Two thousand and sixty eight (2068) staff members. The approved establishment had erroneously omitted some divisions which occasioned the difference and informed the PSC of the same and they are on the process of releasing an amended one.

Committee Observations and Findings;

The Committee observed that other government departments deployed staff to the ministry without regard to the approved establishment.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures compliance with the staff establishment within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

555. Audit Committee and Internal Audit

Review of records revealed that the Audit Committee of the State Department met only twice during the year contrary to Section 179(1) of the Public Finance Management (National Government) Regulations, 2015 which states that the audit committee shall meet at least once in every three months.

In the circumstances, the effectiveness of the audit committee and the internal audit function could not be confirmed.

Submission by the Accounting Officer

Owing to budget constraints for payment of Committee allowances, the State Department was not able to hold the required number of meetings in a financial year. The two meetings were however considered adequate in guiding and advising the State Department. The Internal Audit plans, charter and risk registers were all availed to the Audit team. The submitted documents signified the vibrancy of the Internal Audit function.

Committee Observations and Findings;

The Committee observed that the State Department did not prioritize facilitation of the internal audit function. The sitting allowances cited were negligible and virtual sittings would have been considered.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the Accounting Officer henceforth prioritizes facilitation of the internal audit function.

DONOR FUNDED PROJECTS

EASTERN AFRICA REGIONAL TRANSPORT, TRADE AND DEVELOPMENT FACILITATION PROJECT CR NO. 5638-KE IDA

REPORT ON THE FINANCIAL STATEMENTS

556. Unsupported Prior Year Adjustments

As disclosed under Note 8 to financial statements, the statement of financial assets reflects prior year adjustments balance of Kshs.2,831,556 made up of adjustment for outstanding imprest receivable balance of Kshs.1,336,335 and retention accounts payable balance of Kshs.4,167,891. Management has however not supported the movement in these balances with relevant documentation. In addition, the prior year adjustment movement schedule on Note 8 of the

financial statement shows an adjusted balance brought forward of Kshs.1,780,720 for accounts payable which was not reflected on the statement of financial assets.

In the circumstances, the accuracy of prior year adjustments balance of Kshs.2,831,556 as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The Kshs.1,336,335 was advanced to Kenya Transport Sector Support Project (KTSSP) from Eastern Africa Regional Transport, Trade Facilitation Project (EARTTDFP). The amount of Kshs.4,167,891 was advanced from National Urban Transport Improvement Project (NUTRIP) to Eastern Africa Regional Transport, Trade Facilitation Project (EARTTDFP). KTSSP and NUTRIP have since closed and the matter concluded. We wish to state that all the three projects are funded by World Bank and the borrowing from one project account to another were made to finance payment of salaries to contracted project staff on the same projects.
This matter was tabled at Public Accounts Committee (PAC) and it was resolved.

Committee Observations and Findings;

i) The Committee observed that the matter had been resolved in the report of the PAC FY 2019/20.

ii) The Committee recommends that the matter be marked resolved.

557. Unsupported expenditure

The statement of receipts and payment reflects direct expenditure totaling to Kshs.49,532,918 comprising of compensation of employees amounting to Kshs.6,137,438, training expenses of Kshs.9,645,480 and purchase of three (3) motor vehicles amounting to Kshs.33,750,000. However, there was no approved work plan and budget provided in support of this expenditure. Further there was no evidence that the activities undertaken relates to the project.
The circumstances, the accuracy and validity of the expenditure totaling to Kshs.49,532,918 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The Kshs.33,750,000 relates to purchase of three (3) motor vehicles purchased for the state department for roads. The vehicles were part of the Capacity Building component of the project agreed with the World Bank. A No Objection letter for purchase was issued by the World Bank prior to the procurement. Kshs.6,137,438 relates to compensation of employees for state department for roads, who are technical staff hired to oversee the implementation of the project and paid through the project after concurrence by the World Bank. Attached is the sample of approved payment vouchers.

Kshs.9,645,480 relates to training of employees for state department of roads. Prior to the training, the State Department received letter of No Objection to train from the World Bank. Attached is the sample of approved payment vouchers. With regards to work plan, the State Department had an approved work plan and budget for the said financial year.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

558. Budgetary control and performance

The statement of comparison of budget and actual amounts indicates that the project had budgeted to receive an amount of Kshs.150,000,000 during the year. The project however received a total of Kshs.11,279,289 resulting to underfunding of Kshs.138,720,711 or 92% of the budget. Similarly, the project had budgeted to spend an amount of Kshs.150,000,000 but only spent Kshs.15,782,918 resulting in total under expenditure of Kshs.134,217,082.

In the circumstances, the underfunding and under expenditure affected the planned activities and impacted negatively on service delivery to the public.

Submission by the Accounting Officer

This scenario was brought about because the project was undergoing restructuring and some of the activities that had been earmarked to be implemented were dropped. This process ended in December 2021. This further affected the procurement process of the planned activities within that financial year.

In addition, the Covid 19 pandemic resulted into restricted movement and activities. This led to reduced absorption of funds for goods and services. The state department has upscaled activities that were delayed to consume the earmarked project funds. The increased activities that will take place over the next 6 months will ensure that the project meets the desired outcomes.

Committee Observations and Findings;

The Committee noted the explanation of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer provides a status report within three (3) months of adoption of this report.

559. Undrawn Loan Balances

Article II (2.03) of the financing agreement provides for a charge rate payable by the recipient on undrawn financing balance at 0.5% per annum. Further, review of the funding summary paragraph 1.7 of the annual report indicates that the project started in June 2015 and is expected to end by 31st December 2023. Donor commitment for the project translate to Kshs.1,652,015,000. However, for the seven years the project has been implemented, a total of Kshs.760,659,410 has been drawn from the donor commitment, leaving an undrawn balance of Kshs.891,355,590 for the remaining one year period.

Submission by the Accounting Officer

This scenario was brought about by the project restructuring process that consequently dropped some activities while adopting other tasks that were more realistic and more achievable in respect to attaining the Project Development Objectives. This means that most activities will therefore be implemented in the FY 2022/2023 and the six months up to December 2023. As at 30th June 2023 in line with the restructuring paper, the project had spent Kshs.1,288,802,895.13 leaving an unspent balance of Kshs.648,584,306.55 This unspent balance will be spent within the six months

to 31st December, 2023. In addition, the Covid 19 pandemic resulted into restricted movement and activities. This led to reduced absorption of funds for goods and services. The state department has up scaled activities that were delayed to consume the earmarked project funds. The increased activities that will take place over the next 6 months will ensure that the project meets the desired outcomes.

Committee Observations and Findings;

The Committee noted the explanation of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer provides a status report within three (3) months of adoption of this report, including any penalties incurred.

EAST AFRICA SKILLS FOR TRANSFORMATION AND REGIONAL INTEGRATION PROJECT - IDA 6334-KE

REPORT ON THE FINANCIAL STATEMENTS

563. Lack of Ownership Documents for Motorable Transport Equipment

Annex 2 to the financial statements in respect to summary of fixed assets register reflects an amount of Kshs.69,064,000 relating to five (5) motorable transport equipment. However, the ownership documents were not provided for audit.

In the circumstances, the ownership of the motorable transport equipment valued at Kshs.69,064,000 could not be confirmed.

Submission by the Accounting Officer

The logbooks have now been obtained.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

564. Budgetary Control and Performance

The statement of comparative of budget and actual amounts reflects final receipts budgets of Kshs.420,000,000 and nil actual receipts on comparable basis resulting in underfunding to Kshs.420,000,000 or 100% of the budget. Similarly, the statement reflects final expenditure budget of Kshs.420,000,000 against actual expenditure on comparable basis amount of Kshs.137,623,274 resulting in an under expenditure of Kshs.283,376,726 or 67% of the budget.

The underfunding and under-expenditure may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The approved budget for the year 2021/2022 amounted to Ksh 420,000,000.00. During the financial year 2021/2022, the total funding amounted to Kshs. 196,822,566.00 resulting into an under funding of of Kshs. 283,376,726.

As at 30th June 2022, the project had utilized Ksh 194,438,839.00 and was waiting for reimbursement of the utilized amount. The project reimbursement is based on the verified Disbursement- linked indicators (DLI's) and disbursement-linked results (DLRS) achieved.

It is also worth noting that although the project had utilized 18% of the total project budget, it has managed to utilize 100% of the total advance given as at the time of audit.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

565. Project Implementation - Low Absorption Rate

Section 1.7 of the annual report and financial statements on funding summary indicates that the project duration is 6 years or 72 months from 2018 to 2024, with an approved budget of EUR9,280,000 equivalent to Kshs.1,086,168,320. As at 30 June, 2022, the project had received EUR.1,802,658.68, equivalent to Kshs.196,822,567 or 18% of total budgeted funds, with lapsed project duration of 42 months equivalent to 58% of the total project duration, an indication that the project is behind schedule. Management has not demonstrated how the shortfall will be covered with the remaining timeline of thirty months.

Submission by the Accounting Officer

The financing agreement was signed on 18th December 2018, which is the time the project became effective. The project is anchored under the Ministry of Education. There were start up and coordination challenges at the start of the project leading to delay in first disbursement. During the first two project years 2018-2019 and 2019-2020 the institute did not manage to draw funds with which to conduct project activities. The funds were ultimately received from the world bank and deposited into the project's commercial bank account in May 2020, just a month before the end of the 2019-2020 financial year.

Activities consequently commenced in the year 2020-2021, which was actually the third project year. The foregoing explains the apparent delay in the implementation. During the year 2020/2021, the approved Development Partner budget of Kshs.400,000,000 was not only meant to take care of the planned activities of that year, but also of the previous two years when the funding had not been released.

The activities could not be implemented as planned in this year because of the following listed challenges:

1. COVID-19 Pandemic which affected the project in the following ways:

• Limitation of movement.

A lot of the activities involved travelling across regions locally and internationally and since there was limited movement as a result of country and international lockdowns, curfew and closure of borders, these activities could not be carried out as intended.

• Limitation of congregations/ meetings.

As a result of limited congregations, training activities and meetings were severely affected and this meant that activities which depended on these sessions e.g. training activities, forums and stakeholders' meetings could not be held. The institute's limited ICT infrastructure also affected its ability to conduct such activities online.

2. Delay in obtaining no-objection from the World Bank on procurement of goods and services caused a delay in the implementation of certain activities which required prior clearance from the bank before implementation.

3. Procurement of equipment budgeted for in the financial year under review required a waiver from the treasury before being put-up for open tendering and there was significant delay in obtaining this waiver.

The management finally obtained the waiver in no. 3 above and has already procured some of the equipment in this financial year (2021/2022) resulting into an expenditure total of Kshs.126,000,000.00. A further amount of Kshs.28,000,000,00 is to be spent on the procurement of a simulator which is already at an advanced procurement stage.

An additional Kshs.4,000,000 had also been spent on other project activities in the first quarter of 2021-2022 which is an expenditure conducted after this audit had been concluded.

This means therefore that the current absorption rate has moved upwards to a rate of 80%.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

KENYA TRANSPORT SECTOR SUPPORT PROJECT (IDA CREDIT NO. 4926-KE AND NO. 5410-KE)

568. Project Closure Report

The Project information and overall performance for the year ended 30 June, 2022 indicates that the Project was started on 24 August, 2011 and was to end on 31 December, 2019. However, a project closure report had not been prepared and submitted for audit three years after the closure period of the project.

Submission by the Accounting Officer

Under World Bank guidelines, Implementation Completion and Result Report (ICR) is a standard report which does not include assets and liabilities for the project. Consequently, the ICR report provided was sufficient as a closure report.

The project was successfully closed, and the report was shared with the World Bank and National Treasury.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

HORN OF AFRICA GATEWAY DEVELOPMENT PROJECT CREDIT NUMBER 6768-KE

REPORT ON THE FINANCIAL STATEMENTS

572. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual receipts on comparable basis of Kshs.155,000,000 and Kshs.117,251,593 respectively resulting in an underfunding of Kshs.37,748,407 or 24% of the budget. Similarly, the statement reflects final expenditure budget and actual on comparable basis of Kshs.155,000,000 and Kshs.119,947,614 respectively, resulting in an under expenditure of Kshs.35,052,386 or 23% of the budget.

The underfunding and under-performance affected the planned activities of the Project and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

This was as a result of Covid Pandemic and late approval of No objection. However, the State Department upscalled the budgeted activities in 2022/2023 financial year.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

573. Management of Imprest

As disclosed in Note 5 to the financial statements, the statement of financial assets reflects a balance of Kshs.3,441,923 in relation to outstanding imprest due from two officers that ought to have been surrendered by 28 April, 2022. However, the imprest remained outstanding as at the time of the audit in October, 2022 contrary to Regulation 93(5) of the Public Finance Management

(National Government) Regulations, 2015 which states that a holder of a temporary imprest shall account or surrender the imprest within 7 working days after returning to duty station.

In the circumstances, the Project Management was in breach of the law.

Submission by the Accounting Officer

Imprests related to training for the Roads Secretary and the Chief Engineer, Roads with Financing from the World Bank under Horn of Africa Gateway Development Project (HoAGDP). The two officers had applied and received the admission letters from the respective training institutions. They had also received No Objection letters from the World Bank to attend the trainings. Imprests to facilitate the trainings were subsequently processed and paid. However, the officers were compelled to re-schedule their training dates due to subsequent Covid-19 wave and abrupt restrictions on travel requirements from the country of training. The officers have since attended their training and surrendered their imprests.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

SUPPORT TO ROADS SECTOR POLICY: 10TH EDF RURAL ROADS REHABILITATION PROJECT IN KENYA (AGREEMENT NO.KE/FED/023/-571) – KENYA RURAL ROADS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

577. Lack of HIV/AIDS Awareness by the Contractor

Project inspection carried out for Lot 5 on 14 October, 2022 revealed that the contractor did not carry out H IV/AIDS awareness as provided for by paragraph 25-50-001 (a) of the tender documents. The contractor was required to take steps to make continuous awareness to the workers and the general public about HIV/AIDS via public displays at the project site and on the project vehicles. The contract had a provision of Kshs.720,000 in the Bill of Quantities to cater for the HIV/AIDS awareness.

The Contractor was therefore in breach of the requirements of paragraph 25-50-00 1 (a) of the tender documents.

Submission by the Accounting Officer

The Contractor intermittently undertook HIV awareness and prevention activities on site over the project implementation. The contractor provided HIV awareness banners and stickers. However, the Contractor failed to submit the requisite reports to warrant payment.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents on time, as required by section 9 (i) (e) of the Public Audit Act, 2015.

578. Construction of Kivandini-Kango-Kakalia-Kali Road (Lot 4)

Kenya Rural Roads Authority awarded tender for construction of 15. 9 Kilometers of Kivandini-Kango-Kakalia-Kali Road in Machakos County to a contractor at a contract sum of Kshs.301,251,357 Project inspection carried out on 14 October, 2022 revealed that the drifts constructed along the road lacked demarcation points to indicate width and length of the drifts for the safety of the road users. Road markings were partially done for about 5Kms while road furniture were not done.

It was also noted that the entire stretch of the road lacked speed bumps a round towns and steep sections of the road prompting locals to erect informal bumps thus risking the lives of the road users. At Ikiwe drift, a section which has experienced fatal accidents in the past, there was a protruded stone that the contractor did not up root or carry out any specific works on it to avert future accidents. It was further noted that the contractor was not on site thus casting doubt on whether the remaining works would be completed.

In the circumstances value for money spent in the Project could not be confirmed.

Submission by the Accounting Officer

The contractor was expected to complete the remaining 10.5Km by June 2023. Financial challenges and delayed payments on IPC No. 16 has caused the contractor to intermittently work.

Road furniture and protective works are part of the scope of works and have been instructed to the contractor.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains status in subsequent audit.

579. Construction of Katuaa-Kee-Nunguni Road (Lot 5)

Kenya Rural Roads Authority awarded tender for construction of 20.5 Kilometers of Katuaa-Kee-Nunguni road in Makueni County to a contractor at a contract sum of Kshs.362 ,00'1,255. Project inspection conducted on 13 October, 2022 revealed that only staggered sections of the road had been tarmacked to approximate ten (1 0) Kilometers. Road markings and furniture works had not been done on the tarmacked sections of the road. It was further noted that the contractor was not on-site casting doubt on the completion of the works before the scheduled Project closing date of 9 September, 2023.

In the circumstances, value for money spent in the Project could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that;

i) Edge marker posts on drifts have been erected to indicate and mark dangerous levels during flooding
ii) Road marking works are on-going, 5Kms have been completed to-date
iii) Protection works, road furniture are being undertaken during the defects liability period,

iv) Removal of huge rocks close to the edge of the carriageway was not part of the scope of works given the project implementation was under mainly labour intensive methods of construction. The removal of the rock boulders will require blasting activities. The Authority will plan, budget and take the initiative to remove the rock boulders bordering the road along this section under maintenance operations.

v) The contract works are substantially completed and were taken over in September 2020. The contractor has been slow to complete the ancilliary works (road marking, permanent traffic signs and additional access culverts). The management may consider using a third party to complete these outstanding works for any continued delay beyond June 2024.

Committee Observations and Findings;

The Committee observed that the works had taken inordinately long to conclude.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the Auditor General ascertains status in subsequent audit.

NUNO-MODOGASHE ROAD PROJECT- KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

582. Presentation and Disclosure of the Financial Statements

The financial statements did not include other important project background information and key qualifications for the officials involved in the implementation of the project as required by the Annual Financial Reporting Template for projects (Revised 30 June, 2022). Further, prior year auditor recommendations were not appended to the financial statements under progress on follow-up of prior year auditor's recommendations as required by the Financial Reporting Template.

In the circumstances, the presentation of the financial statements did not comply with the Annual Financial Reporting Template for projects (Revised 30 June, 2022).

Submission by the Accounting Officer

The agency has since revised annual report and financial statements.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

583. Cash and Cash Equivalents

The statement of financial assets reflects nil cash and cash equivalents balance. However, Management did not provide bank statements, bank balance certificate and board of survey certificate to support the balance.

In the circumstances, it was not possible to confirm the accuracy of the nil cash and cash equivalents balance.

Submission by the Accounting Officer

The the Authority maintains one bank account for operation of all exchequer funds for the projects which is in line with the National Treasury's circular on rationalization of bank accounts. Further total receipts from the Parent Ministry are equally confirmed at the end of each financial year.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer seeks exemption from CS National Treasury on projects that receive donor funds directly to contractors, for purposes of GoK counterpart funds, as provided for under section 76(1) of PFM Regulations.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

584. Outstanding Payment of Approved Land Compensation

Review of the contract agreement and a letter Ref. No. NLC/VAL1534/Vol. (15) dated 14 October, 2019 from the National Land Commission to the Management of Kenya National Highways Authority revealed that the Authority had approved payment of land compensation amounting to Kshs.147,594,798 to Project Affected Persons (PAPs). It was, however, noted that as at 30 June, 2022 a balance of Kshs.135,891,795 was outstanding as disclosed under Other Important Disclosures at paragraph 12 of the annual reports. The Management did not provide plans put in place to settle the outstanding debt.

In the circumstances, the delay in payment of the compensation dues may lead to loss of public funds in case of litigations instituted by the Project Affected Persons.

Submission by the Accounting Officer

Pending bills accumulate due to inadequate GoK budgetary provisions coupled with delayed Exchequer releases to facilitate prompt contractual payments. In FY 2022/23 the Authority managed to secure a GoK budgetary provision for the project amounting to Kshs.400,000,000 which will be utilized towards clearing these pending bills.

The project is however complete and the road is open for public use. The Authority will endeavour to allocate adequate budget, subject to provided ceilings in subsequent Financial Years to facilitate settlement of the pending bills.

Committee Observations and Findings;

The Committee observed that it was unfair and inhumane for a road to have been completed and was in use while those whose land was compulsorily acquired were yet to be compensated.

Committee Recommendation;

The Committee recommends that the Accounting Officer prioritizes settlement of land compensation before commencement of projects.

585. Interest on Delayed Payments

Review of summarized payment certificates revealed that the Authority paid a contractor an amount of Kshs.604,563,073 as interest charged on delayed payments. Management did not provide reason for the late payment which resulted in payment of huge interest and thus leading to loss of public funds.

In the circumstances, the value for money amounting to Kshs.604,563,073 could not be confirmed.

Submission by the Accounting Officer

The contractor had billed a cumulative amount of Kshs 604,563,073 as interest on delayed payment. However, upon reconciliation by the Authority, it was determined that only Kshs 82,966,925 was payable as per the reconciliation availed to the auditor during the audit exercise herein attached and marked as Appendix KeNHA/Nuno-Modogashe ii.

Late payment of certificates arose due to inadequate GoK budgetary provisions coupled with late release of Exchequer funds to facilitate prompt payment of certificates.

Committee Observations and Findings;

The Committee observed that;

(i) Kshs. 82,966,925 was still too high a figure to be lost through interest accrual;

(ii) The Committee further observes that government enters into lopsided contracts with punitive clauses on late payments.

Committee Recommendation;

The Committee recommends that the Attorney General reviews all financing agreements and contracts entered into by government with a view of protecting public interest.

586. Payment of Value Added Tax

Review of summarized payment certificates revealed that the Authority paid a contractor a cumulative amount of Kshs.7,362,473,084 for the certified works which included an amount of Kshs.918,294,823 charged as Value Added Tax (VAT) by the contractor for works which were not vatable. However, as at 30 June, 2022, the Authority had recovered Kshs.148,474,743 from the retentions account of the contractor leaving outstanding balance of Kshs.769,820,080. Management did not provide details of measures instituted to ensure full recovery of the outstanding balance.

In the circumstances, it was not possible to confirm value for money held by the contractor.

Submission by the Accounting Officer

The contractor issued a credit note for the billed VAT as per IPC 26 attached and marked as Appendix KeNHA/Nuno-Modogashe iii which was availed to the auditors during the physical verification of documents. Recovery of Kshs 148,474,743 from the withheld retention was meant to settle the overbilling on interest on delayed payment as per the reconciliation availed to the auditors.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents on time, as required by section 9 (i) (e) of the Public Audit Act, 2015.

KENOL-SAGANA-MARUA HIGHWAY IMPROVEMENT PROJECT (P-KE-DBO-037) CREDIT Nos. 5050200000901 AND 2000200004504 – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

588. Lack of a Project Bank Account

The statement of receipts and payment reflects transfer from Government entities amount of Kshs.2,168,858,374 and total payments controlled by the entity of Kshs.2,168,858,374 under the components of purchase of goods and services (Kshs.29,090,675) and acquisition of non-financial assets (Kshs.2,139,767,699). However, review of records revealed that the Kenol-Sagana-Marua Highway Improvement project does not have a project bank account with the Central Bank of Kenya as required by the law. The Management uses the Co-operative Bank of Kenya account which is the account for the Kenya National Highways Authority (KENHA). This makes it very difficult to trace specific transactions (receipts and payments) that relate to amounts controlled by the Project or Government counterpart funds.

Submission by the Accounting Officer

Section 76(1) of the PFM Regulations 2015 provides for opening of a project account for Management of Grants and Donations for purposes of donor or development partner or external financier.

Kenol-Sagana-Marua project uses the Direct Payment Method where the Development Partner does not disburse any cash to the Authority but pays directly to the Contractor/Consultant. The financing agreement did not have a provision for opening a special project account. Although the authority maintains one bank account for the exchequer funds received, the Authority maintains a dynamic accounting system which is able to provide a robust electronic register that provides a detailed analysis of various transactions incurred through the bank account on a project-by-project basis. The authority is therefore able to segregate payments which ensures accuracy of the balances reported in the project financial statements.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer seeks exemption from CS National Treasury on projects that receive donor funds directly to contractors, for purposes of GoK counterpart funds, as provided for under section 76(1) of PFM Regulations.

589. Non-Disclosure of Accounts Payable- Retention

The statement of financial assets reflects a nil balance under payables-retentions and as disclosed in Note 11.5 to the financial statements. However, Notes 12.2, 12.3 and Annex 5 to the financial statements disclosed that during the year under review the accounts payables – retentions account had an opening balance of Kshs.49,834,635 brought forward from financial year 2020/2021 and there was an addition of retentions during the year of Kshs.374,992,286 resulting to a closing balance of Kshs.424,826,921. No explanation was provided for the failure to disclose the accounts payables – retentions balance of Kshs.424,826,921 in the statement of financial assets.

Submission by the Accounting Officer

The retention balance of Kshs. 424,826,921 relates to retention held by the Development Partner and not by the Authority. These amounts have therefore been disclosed under "Other important Disclosures" because the amounts are not held by the Authority.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

590. Pending Bills

Note 12.1 of the financial statements reflects pending accounts payable balance of Kshs.1,360,045,476, as disclosed in Annex 3 to the financial statements which comprises of Kshs.108,751,146 under road construction and Kshs.1,251,294,330 under acquisition of land.

Although Management has committed to liaise with the Ministry and the National Treasury for adequate budgetary allocation and timely exchequer releases for prompt payments in the subsequent financial year, the project is at risk of incurring unqualified significant interest cost and penalties with the continued delay in making payments for invoiced bills.

Submission by the Accounting Officer

The Pending bills are as a result of inadequate GoK budgetary allocations in the current and prior financial years. The Authority shall however endeavor to allocate adequate budget, subject to the provided ceiling, in the subsequent years until the pending bills are fully settled.

An allocation of Kshs.300,000,000 has been provided in the current (FY 2022/2023). Which will be utilized to settle part of the pending bills.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

The Committee further has made general observations and recommendations in the preface of this report.

591. Lack of an Itemized Project Budget

The statement of comparison of budget and actual amounts reflects a final budgeted expenditure of Kshs.6,810,000,000 and actual expenditure of Kshs.8,277,234,749 comprising of purchase of goods and services expenditure of Kshs.33,463,606 and acquisition of non-financial assets expenditure of Kshs.8,277,234,749. However, Management did not provide an itemized budget showing the detailed budget items for which the expenditure was intended.

In the circumstances, the completeness of the budgeted expenditure amount of Kshs.6,810,000,000 could not be confirmed.

Submission by the Accounting Officer

By nature and practice appropriation by The National Assembly to the project is on a specific line by line individual project. This is the form in which the project budgets are uploaded onto IFMIS and availed for expenditure A line by line individual project budget was availed during the audit as correctly indicated. However, for purposes of presentation in the financial statements, the requirement is not to present them per project as in IFMIS but by the nature of expenditure as per the template provided by the Public Sector Accounting Standards Board (PSASB).

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer henceforth goes beyond the templates provided by the Public Sector Accounting Standards Board (PSASB), and avails detailed line item budgets as annexures.

592. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.6,810,000,000 and Kshs.8,310,698,355 respectively resulting to an over-funding of Kshs.1,500,698,355 or 22% of the budget. Similarly, the Project spent Kshs.8,310,698,355 against an approved budget of Kshs 6,810,000,000 resulting to an over-expenditure of Kshs.1,500,698,355 or 22% of the budget. Management has explained that the over-funding and over-expenditure was as a result of funds budgeted for in the prior year being received

and expensed in the current financial year. However, it was not clear why the budgeted receipts and expenditure, although included in the previous year's budget, were not included in the financial year 2021/2022 budget.

In the circumstances, the over-funding and over-expenditure was not budgeted for and thus not supported by way of a budget as required by the Regulations.

Submission by the Accounting Officer

The budget for FY 2020/21 was already captured in the financial statement for FY2020/21 hence re-capturing in the current financial year would lead to overstatement of project budgeted amounts over the financial years. Further the expenditure of Kshs.1,500,000,000 could not be recorded in FY 2020/21, since this would contravene the cash basis of reporting where expenditure is recorded when incurred. The expenditure was incurred in FY 2021/22 hence correct recording of the same.

Committee Observations and Findings;

The Committee noted that under cash basis of accounting the Accounting Officer was required to re-vote outstanding sums.

Committee Recommendation;

The Committee recommends that the Accounting Officer re-votes unutilized budgets as per regulation 117 of the PFM Regulations.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

593. Irregularities in Project Implementation

593.1. Lot 1- Dualling of Kenol-Sagana (A2) Road- 48 Km

The Government of Kenya awarded contract of Kshs.8,496,537,823 to an international Contractor on 05 August, 2020 for the dualling of Kenol-Sagana (A2) road (48km) vide contract No. KeNHA/CS/D/3023/2020 for a period of thirty-six (36) months. The commencement date of the contract was 07 October, 2020 with an expected completion date was 06 October, 2023.

According to the monthly progress report for October, 2022 the percentage of weighted overall work completed (physical progress) stood at 64% against the programmed or planned physical progress of 63%. Further the amount certified to date for the contract was Kshs.6,429,082,437 while the amount paid to date was Kshs.6,004,418,257 (or 71% of the contract sum). In addition, the time elapsed was 24.8 months (69% of the completion period). Based on the analysis, it was noted that the contract was ahead of the programmed or planned physical progress by 0.87%.

However, the audit inspection exercise carried out in the month of November, 2022 revealed that the unit designs and estimates for 29 No. motorcycle (bodaboda) sheds and 5 No. modern market sheds were completed in November, 2021 and submitted to the Project Management. The locations for the market and bodaboda sheds had already been identified but no works on the sheds had commenced.

Further, twenty-four (24) No. of access roads totaling to approximately 23.7 km have been identified for construction. The feeder roads were proposed through stakeholder engagements by the consultant and Management during project implementation. The contractor had been furnished

with instructions for commencement of works on Mitiini-Santamore, Makuyu Girls and Ciumbu centre access roads. However, no works on these roads were observed to have commenced.

In addition, one (1) No. 50 meters foot bridge at Kenol centre (0+123 KM) had not been completed although the geotechnical survey had been completed and the setting out done. It was also noted that the detailed designs and the bills of quantities for the Sagana trauma centre had been completed but the works on the same were yet to commence.

Submission by the Accounting Officer

The progress of works on the project is good and the contractor is working ahead of schedule. Most of the major activities on the main road are nearing completion. The pending works for access roads, the roadside markets, the Sagana Trauma centre and footbridges are programmed to be completed within the time for completion of the project, by 30 June 2024.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a progress report to the Committee within three (3) months of adoption of this report.

593.2. Lot 1- Dualling of Sagana- Marua (A2) Road Section- 36 Km

The Government of Kenya awarded a contract to an International Contractor on 30 July, 2020 for the dualling of Sagana-Marua (A2) road (36km) vide contract No. KeNHA/RD/D3022/2020 for a period of thirty-six (36) months. The commencement date of the contract was 19 October, 2020 with an expected completion date being 18 October, 2023.

According to the quarterly progress report for July to September, 2022 the percentage of weighted overall work completed (physical progress) stood at 59% against the programmed or planned physical progress of 61%. Further the amount certified to date for the contract was Kshs.4,196,928,957 while the amount paid to date was Kshs.3,991,067,773 (or 65% of the contract sum). In addition, the time elapsed was 23.36 months (65% of the completion period). Based on the analysis, it was noted that the contract was behind schedule of the programmed or planned physical progress by 2.69%.

The audit inspection exercise carried out in the month of November 2022, revealed that the construction of 1No. interchange at Marua, construction of 2No. roundabouts at Karatina, construction of market sheds, construction of access roads and the construction of motor-cycle (boda- boda) sheds had all not commenced.

Further, it was noted that there was delayed acquisition of affected land and property on some sections of the road have resulted to delayed relocation of affected water pipelines and power lines affecting progress of works and delay in making payments to the contractor for some IPCs has caused a cash flow challenge resulting in a slow rate of progress of work.

In addition, there were insufficient aggregates especially for construction of DBM and AC layers and frequent breakdowns of Asphalt Concrete mixing plant, with the most recent one having been from 01 September, 2022 to 27 September, 2022.

Submission by the Accounting Officer

This is due to the budgetary constraints. The contractor however still has sufficient sections to work on. The Authority will endeavor to fast track allocation of funds for compensation on these sections.

Regarding the works that are yet to commence, such access roads, the contractor's programme indicates that they will be completed within the time of completion, i.e by 30 June 2024.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a progress report to the Committee within three (3) months of adoption of this report.

NAIROBI OUTERING ROAD IMPROVEMENT PROJECT - KENYA URBAN ROADS AUTHORITY

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

597. Failure to Settle Pending Accounts Payable

Annex 3a to the financial statements reflects Kshs.885,199,462 in respect of pending accounts payables. This was an increase of Kshs.469,659,124 from the balance of Kshs.415,540,338 reported in the previous year.

Clauses 14.7.1(b), 14.8.2 and 14.8.3 of the Project contract between the Construction Company and Kenya Urban Roads Authority provides specific conditions regarding delayed payment to the contractor. Clause 14.8.1 states that the Contractor shall be entitled to receive financial charges compounded monthly on the amount unpaid during the period of delay. Clause 14.8.2 states that the charge as result of delayed payment shall be calculated at the annual rate of three percentage points above the discount of the central bank in the country of the currency of payment, or if not available, the interbank offered rate, and shall be paid in such currency. Clause 14.8.3 states that the Contractor shall be entitled to this payment without formal notice or certification, and without prejudice to any other right or remedy.

In the circumstances, the Project was at risk of incurring additional cost in form of interest and penalties for failure to settle the pending bills.

Submission by the Accounting Officer

The pending bills under the project were due to exhaustion of the allocated budget for the project in financial year ended 30 June, 2022 and consequently lack of additional resources from The National Treasury. The pending bills are being given first consideration for funding under the current Financial Year's budget.

The Authority is in communication with the parent Ministry and the National Treasury for funding to clear the outstanding bills. The bills will be settled as exchequer funding is received.

Committee Observations and Findings;

The Committee observed that government enters into lopsided contracts with punitive clauses on late payments. For instance, clause 14.8.2 of this contract provided for interest charged at three percentage points above the CBK rate, while clause 14.8.3 gave the contractor entitlement to this interest without recourse.

Committee Recommendation;

The Committee recommends that the Attorney General reviews all financing agreements and contracts entered into by government with a view of protecting public interest.

UPGRADING OF KIBWEZI-MUTOMO-KITUI ROAD PROJECT- KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON FINANCIAL STATEMENTS

600. Unsupported Expenditure

The statement of receipts and payments and Note 4 to the financial statements reflects an expenditure of Kshs. 46,932,465 on acquisition of non-financial assets, which was presumably paid by the financier. However, no documentary evidence was provided for audit review to confirm the disbursement of the payments.

Submission by the Accounting Officer

The payment documents were prepared by the Authority and submitted to the Ministry of Roads and Transport (then Ministry of Transport, Infrastructure, Housing, Urban Development & Public Works) for their approval, posting into the Government IFMIS systems and subsequent onward transmission to the National Treasury who subsequently forwarded the payment to the Development Partner, EXIM. All these payment steps were concluded in the financial year under audit, and thus the payment was captured in the Government books for FY 2021/22, hence its recognition in the project financial statements. This payment was also budgeted in the year under audit and the commitment incurred in the Government books.

The Authority has subsequently obtained evidence of disbursement from the Development Partner.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

601. Interest on Delayed Payments

Annex 3 to the financial statements reflects pending bills totaling to Kshs. 3,566,237,990. Review of interim payment certificates relating to the pending bills revealed that the Company which was awarded the contract charged interest on delayed payments amounting to Kshs. 338,775,822.

The interest was levied on the Project after all the committed funds had been received and paid out. This was a cost which could have been avoided had Management made the payments as and when they were due considering that the Project had adequate funding at the time.

In the circumstances, the interest payable charged to the Project is an irregular charge to public funds.

Submission by the Accounting Officer

It is true that the project attracted interest on delayed payments which were occasioned by:

a. The financiers' requirement that the development partner portion can only be settled upon proof that GoK counterpart portion of each IPC has been settled.

b. Inadequate Budgetary allocations as well as delays in release of exchequer funds led to delays in processing GoK counterpart portion and by extension the Development partner portion.

Interest charge is provided for in the contract whenever the payments are delayed and is solely borne by the Exchequer funds.

In FY 2022/23 however, the Authority received a budgetary allocation amounting to Kshs 625,000,000 (AIA Kshs 500,000,000 and Gok Kshs 125,000,000) as evidenced in the attached Printed budget. The budgetary allocations were utilized in settling part of the pending bills. The Authority will subsequently endeavor to allocate adequate budgets to the project to facilitate settlement of the entire pending bills as well as completion of the Project.

Committee Observations and Findings;

The Committee observed that government enters into lopsided contracts with punitive clauses on late payments.

Committee Recommendation;

The Committee recommends that the Attorney General reviews all financing agreements and contracts entered into by government with a view of protecting public interest.

602. Inaccuracy of the Financial Statements

The statement of receipts and payments reflects comparative receipts and payments controlled by the entity amount of Kshs.796,772,220 and Kshs.945,910,929 respectively resulting to a deficit of Kshs.149,138,709. Although Note 7 to the financial statements indicates that Kshs.149,138,709 was used to pay retention monies, it is not clear how the funds were obtained and disbursed.

In the circumstances, it was not possible to confirm the accuracy of the deficit of Kshs.149,138,709.

Submission by the Accounting Officer

The retention amount of Kshs.149,138,709 was retained from the contractor's IPCs, budgeted and funds set aside in the Authority's retention account in the financial year 2019/20 as indicated by the attached FY 2019/20 Financial Statements whose closing cash balance amounted to Kshs.149,138,709.

The funds were released to the Contractor in FY 2020/21 as indicated in FY 2020/21 financial statements and were accounted as acquisition of non-financial assets in the same financial year. This is in line with IPSAS cash accounting which requires recognition of expenditures only when cashflows are incurred.

The retention amount of Kshs.149,138,709 was therefore presented and accounted for in the financial statements in line with the requirements of cash-based accounting and the reporting template issued by the National Treasury.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

603. Delayed Payment to Persons Affected by the Project

Annex 3 to the financial statements reflects pending bills balance of Kshs.3,566,237,990 as at 30 June, 2022 which includes a balance of Kshs.1,643,845,580 for acquisition of land from Project Affected Persons (PAP). Review of the project file revealed complaints by the PAPs and legal cases filed against the Authority due to delayed compensations, as detailed below;

i. A complaint by four (4) PAPs with regard to compensation for parcels of land No. 2331/2332/2386/2387 at Kisasi/Mosa, which had been gazetted by the National Land Commission (NLC) on 28 August, 2020. It was not clear whether the funds for compensation were transferred to the NLC since the four (4) beneficiaries had not been compensated as at the end of the financial year.

ii. Compensation for compulsory acquisition of parcels of land from residents of lkutha village in Kitui County. On 12 January, 2018, NLC through the Kenya Gazette Notice No. 177 of 2018 published its intention to acquire 50 parcels of land in lkutha/Mbitini. Through a letter to KeNHA, the residents complained about delayed payments which had not been paid by the end of 2020/2021 financial year.

iii. A local firm of advocates, acting on behalf of the residents, issued letter to KeNHA and NLC indicating that the parcels of land acquired were valued and awards given to individual proprietors, and that some awards were later revised downwards without any justification. According to the letter, the residents decided to pursue the matter through an advocate since they has not been compensated by the time of this audit.

iv. Five (5) PAPS were to be compensated for their parcels of land. However, due to delays in compensation, the five PAPs issued a 14-days-notice of legal action against the Authority, if the compensation will not have been paid within the 14 days. However, there was no evidence of payment of the compensation, by the time of this audit.

v. Annex 3 on pending bills reflect an amount of Kshs.280,930,790 as compensation to PAPs to date. However, the schedule for beneficiaries was not provided for audit review,

therefore it was not possible to confirm the validity of the payment. In view of disputes between the Authority and PAPs, the Project risks losing funds through award of damages, penalties and interest, which are costs that can be avoided.

In view of disputes between the Authority and PAPs described above, the Project risks losing funds through award of damages, penalties and interest, which are costs which can be avoided.

Submission by the Accounting Officer

The land compensation amounts for the referenced parcels of land remained outstanding due to inadequate budgetary allocation in the current as well as prior financial years. The Authority settled part of the outstanding bills using FY 2022/23 GoK budgetary allocation of Kshs 125,000,000 and also endeavour to allocate adequate budgetary allocation in the next financial year/s to facilitate settlement of the entire pending bills

The amount payable to the Project Affected Persons remains outstanding due to inadequate exchequer budgets. The Authority however replied to the Chairman, Project Affected Persons assuring them of the Authority's commitment to settle the outstanding land compensation. The amounts will be settled upon receipt of exchequer funding.

The schedule of PAPs who were compensated using the amount of Kshs 280,930,790 was availed to the audit team during the audit process.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer prioritizes settlement of land compensation before commencement of projects.

604. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis totalling to Kshs.490,000,000 and Kshs.90,650,930 respectively, resulting to an underfunding of Kshs.399,349,070 or 81% of the budget. Similarly, the Project spent Kshs.90,650,930 against an approved budget of Kshs.490,000,000, resulting to an under expenditure of Kshs.399,349,070 or 81% of the budget.

The underfunding and under performance may have affected the planned activities for the Project and this may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The under absorption of funds in the financial year arose from the exhaustion of the Development Partner funding.

The Authority will however continue to ensure that budgetary controls are adhered to.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

605. Pending Bills

Annex 3 to the financial statements reflects pending bills of Kshs.3,566,237,990 as at 30 June, 2022 which were not settled during the financial year 2021/2022 but were instead have been carried forward to 2022/2023 financial year, not-withstanding the fact that the initial for the project information funding summary shows that all the project committed funds by both the financier and Government of Kenya have been fully received and paid out. Further, the pending bills of Kshs.3,566,237,990 includes an amount of Kshs.1,915,289,734 which relates to 2020/2021 and earlier years.

Failure to settle bills in the year to which they relate affects the budget for the subsequent year on which they form a first charge. This also affects the efficiency with which the project is implemented.

Submission by the Accounting Officer

This was occasioned by inadequate budgetary allocations as well as delays in release of exchequer funds led to delays in processing GoK counterpart portion as well as the development Partner portion.

In FY 2022/23, the Project received a Gok budgetary allocation amounting to Kshs 125,000,000 as evidenced in the attached printed budget. The budgetary allocations were utilized in settling part of the pending bills. The Authority will subsequently endeavor to allocate adequate budgets to the project to facilitate settlement of the entire pending bills as well as completion of the Project.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

606. Variation of Contract without an Approved Budget

Review of sources of funds for the project revealed that the Bank and Government of Kenya committed Kshs. 15,644,154,921 and Kshs. 3,435,361,592 respectively, for the project. These funds had been received and utilized towards the project. Further review of records provided for audit revealed that the Authority amended the project's commercial contract by increasing the contract sum payable to the Contractor from Kshs.18,404,888,139 to Kshs. 21,545,912,343, an increment of Kshs. 3,141,024,204. This amendment of the contract, which was done on 28 April, 2021, was based on an unsigned letter dated 23 April, 2021 from the Permanent Secretary, National Treasury.

In the circumstances, it was not possible to confirm validity of the variation of the contract sum.

Submission by the Accounting Officer

The Project is a multi-year project whose funding is dependent on the annual allocations in line with Government Budgeting cycle.

The contract was varied in FY 2020/21 when project had a GoK budget of Kshs 632,234,719. The project further had a budgetary allocation amounting to Kshs 490,000,000 in the subsequent FY 2021/22 Budget.

Due to the multi-year nature of the Project, the Project's Budgeting process is part of annual Government Budget process, hence may not be possible to avail the entire multi-year Project Budget at the point of signing the contract due to Exchequer constraints.

The letter ref: TNT/RMD/25/214/78/03/KIB.MUTOMO/vol.1(3) was addressed to the Development Partner from the PS National Treasury, with a copy to the Cabinet Secretary (Transport, Infrastructure and Housing, Urban Development and Public Works), PS-Infrastructure and The Director General, KeNHA. The Authority is in receipt of its original copy of the letter which is signed/endorsed by the PS, National Treasury.

The Authority is however committed to completion of the project and will endeavour to allocate adequate funds in the following financial year in order to facilitate its completion and hand over to the employer hence availability for public use.

Committee Observations and Findings;

i) **The Committee observed that the variation was as a result of public demand as evidenced through a letter from the former Senator of the county, and correspondence from National Treasury approving the 20% variation which was less that the threshold provided for by section 139(4)(e) of the Public Procurement and Assets Disposal Act 2015 of 25%.**
ii) **The Committee found that the matter was resolved.**

DUALLING OF MAGONGO ROAD (A109L): PHASE II (FIDIC EPC/TURNKEY BASED)- KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

608. Inaccurate Comparative Balances

The financial statements reflect a comparative Nil opening fund balance in the current financial year while the closing audited fund balance in the 2020/2021 financial year was Kshs.8,690,882.The movement in the balance has neither been explained nor reconciled.

Submission by the Accounting Officer

We wish to clarify that this amount represents retention amount on contractors IPC 4 & 5. As explained during the audit, this amount was received from the Exchequer in FY 2020/21 but was not transferred to the retention account hence reported as a surplus in FY 2020/21. In FY 2021/22

the amount was transferred to the retention account hence reported as Financial Assets (Bank Balances as per Note 5A) as well as Financial Liabilities (Payables – Deposits and Retentions as per Note 6) in accordance with the revised reporting template as issued by Public Sector Accounting Standards Board (PSASB).

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

609. Variance in Disclosed Retention

The interim payment certificate number 8 issued on 1 July, 2021 and paid on 10 June, 2022 indicate the total retention amount to date as Kshs 93,015,748 while the financial statements reflect an amount of Kshs 72,999,502 resulting to the unreconciled variance of Kshs 20,016,246.

Submission by the Accounting Officer

We wish to clarify that Kshs 20,016,246 represent outstanding retention amounts on IPC 6-8 not yet transferred to retention account. These amounts are reported as pending bills in Annex 3 of the Annual Report and Financial Statements.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

610. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs 385,000,000 and Kshs 95,930,985 respectively, resulting to an underfunding of Kshs 287,069,015 or 75% Similarly, Kshs. 95,930,985 was spent no the Project against an approved budget of Kshs 385,000,000 resulting to under expenditure of Kshs. 289,069,015 or 75%.

Submission by the Accounting Officer

As correctly noted, the Authority was able to realize only Kshs 95,930,985 out of the Kshs 385,000,000 budget due to the disruption of contractor's sequence of works as the contractor could not access the right of way to facilitate construction

Further, huge pending bill on land acquisition is attributed to inadequate GoK budget provisions coupled with delayed release of exchequer funds.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

611. Failure to Budget for Pending Bills

Note 12 to the financial statements – other important disclosures and the corresponding analysis at annex 3, reflects pending bills of Kshs. 1,810,729,098. These pending bills are made up of Kshs 17,715,072 relating to consultancy services, Kshs 447,385,527 relating to civil works and Kshs 1,356,927,820 for land compensation.

Submission by the Accounting Officer

In FY 2021/22 the Authority had an initial GoK development budget for the project of Kshs 150,000,000 which was later reduced to Kshs 75,000,000 (50% reduction). However, the Authority only managed to receive Kshs 5,000,000 which was prioritized for payment of land compensation pending bills as this was the main concern for the delay in the progress of works.

In FY 2022/23 the Authority has managed to secure GoK budgetary allocation of Kshs 130,000,000 for the project subject to the current year ceilings to be utilized in reducing these pending bills.

The Authority will endeavor to allocate an adequate budget, subject to provided ceilings in subsequent Financial Years to further reduce the pending bills.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

612. Delay in Completion of Project

As previously reported, the Project commenced on 1 May, 2018 for a period of twenty-four (24) Months ending 1 May, 2020. The contractor was later granted extension of time which revised the expected completion date to 20 August, 2021. However, according to the project implementation briefs of 1 August 2022 the works were still ongoing with an overall progress of approximate 86% and time covered of fifty two (52) months or 131% of the projected time. There was no evidence any further extension of the contract period. Further, according to the contractor's claim No. 14 of 30 June, 2022 the delay attracted prolongation claim of Kshs 2,851,043,577 which is approximately 118% of the initial project contract sum of Kshs 2,420,327,630. The claim is yet to be evaluated by the Management who attribute the delay to inadequate budgetary allocation and

disruption of the contractor's sequence of work arising from the long time taken by the National Land Commission to compensate the Project Affected Persons (PAPs).

Submission by the Accounting Officer

Delay in completion of this project has majorly been occassioned by delays in provision right of way to the contractor. This is due to inadequate GoK budgetary allocations coupled with delays in exchequer releases to facilitate prompt payment for land acquisitions and relocation of services.

The Authority has finalized the evaluation of contractor's interim claim no. 14 and revised completion date to 20th November 2022.

Committee Observations and Findings;

The Committee noted that the Accounting Officer failed to submit current status of the project.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the Auditor General ascertains status in subsequent audit.

KAPCHORWA-SUAM-KITALE AND ELDORET BYPASS ROADS PROJECT (KENYA) ID NO. P-Z1-DBO-183 - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

614. Inaccuracies in the Financial Statement

614.1. Transfers from Government Entities

The statement of receipts and payments reflects transfers from Government entities of Kshs.124,011,058 for the year ended 30 June, 2022. However, the statement of comparison of budget and actual amounts reflects an actual transfer from Government entities amount of Kshs.132,973,110 resulting to unexplained and unreconciled variance of Kshs.8,962,052.

In the circumstances, the accuracy of the transfer from Government entities amount of Kshs.124,011,058 could not be confirmed.

Submission by the Accounting Officer

The statement of receipts and payments reflects transfers from Government entities of Kshs.124,011,058 but the statement of comparison of budget and actual amounts shows KSh.132,973,110. This difference arose because of a misrepresentation of the release of retention of Ksh.8,962,053 for China Wu Yi considered erroneously as part of the actual amounts in the comparison of budget and actual amounts. Therefore the figure of Kshs.124,011,058 is the correct figure. The financial statements were corrected to reflect the correct amount Kshs.124,011,058 on the comparison of budget and actual amounts.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

614.2. Understated Pending Bills

Note 12.1 to the financial statements reflects pending accounts payable balance of Kshs.536,860,151. The balance includes an amount of Kshs.495,142,419 for construction of civil works.

However, Annex 3 to the financial statements is the summary of the fixed assets register. The correct annex to support the pending accounts payable should be Annex 2A to the financial statements.

Further, the status report at page ix of the annual report and financial statements indicates that total amount paid to the contractor under Lot 1 — construction of Eldoret town by-pass road project as at 30 June, 2022 is Kshs.4,340,201,240 against a certified amount of Kshs.4,928,574,206 resulting in pending accounts payable of Kshs.588,372,966. However, review of the analysis of the pending accounts payable provided revealed that pending bills for the Lot 1 contract as at 30 June, 2022 was Kshs.307,597,421 thereby resulting into unexplained variance of Kshs.280,775,545.

In addition, under Lot 2 — upgrading of Kitale-Endebess-Suam (C45), the contractor had been paid a total of Kshs.2,439,470, 196 as at 30 June, 2022, against the certified amount of Kshs.l ,988,265,262 resulting to pending bills of Kshs.451,204,933. However, review of the analysis of the pending accounts payable provided revealed that pending bills for the Lot 2 contract as at 30 June, 2022 was Kshs.263,659,940 thereby resulting to unexplained variance of Kshs. 187,544,993.

This therefore means that the total pending bills amount as per the status report totalled to Kshs.468,320,538 which differs with the balance of pending bills indicated in Note 12.1 to the financial statements of Kshs.495,142,419 by an unexplained variance of Kshs.26,821 ,881.

Submission by the Accounting Officer

Note 12.1, Annex 3 and the status report as pointed out by the auditor was erroneously presented. The error is regretted. We have revised the financial statements to reflect the correct position, The correct annex as noted by the auditor to support the pending accounts payable should be Annex 2A.

We further agree with the auditor's observation that there was a discrepancy in the pending bills description for Lot 1.

The status report for Lot 1 has been updated in the amended financial statements as Kshs.4,720,052,687.00 against a certified amount of Kshs.4,382,611,972.05 resulting in a pending account payable of Kshs. 337,440,714.95

The total pending bills amount as per the status report totalling to Kshs.468,320,538 as provided was erroneous, the status report for Lot 2 has been updated in the amended financial statements) as Kshs.2,783,819,290.00 against a certified amount of Kshs.2,584,399,854.04 resulting in a pending account payable of Kshs. 199,419,435.96. Therefore, the pending bill for Lot 1 and 2

cumulatively can be confirmed as Kshs.536,860,151*(Addition of pending bill for Lot 1 of Ksh 337,440,715 and of pending bill for Lot 2 of Ksh. 199,419,436)*

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

614.3. Deficit for the Year

The statement of receipts and payments reflects a deficit for the year of Kshs.8,401,552 while the statement of financial assets indicates a nil deficit amount thereby resulting in an unexplained variance of Kshs.8,401,552 between the two statements.

In the circumstances, the accuracy of the financial statements could not be confirmed.

Submission by the Accounting Officer

The deficit balance of Kshs. 8,401,552 is the net movement in Retention resulting from the release of retention of Ksh.8,962,053 to China Wu Yi less retention not paid of Ksh.560,500 for China State Construction, copies of the payment vouchers have been availed.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

615. Failure to Maintain a Project Cash book and Account

The statement of receipts and payments indicates an amount of Kshs.124,011,058 received by the Project as transfer from Government entities through the parent Ministry (State Department for Infrastructure). However, the receipts to the Project could not be confirmed to the bank statements and the Project cash book since the Authority does not maintain a project specific bank account and cash book

In the circumstances, the accuracy and completeness of the transfer from Government entities of Kshs.124,011,058 could not be confirmed.

Submission by the Accounting Officer

We wish to clarify that all receipts from exchequer are received in one account. Although the authority maintains one exchequer book, it is possible to extract each individual project showing receipts and payments as and when needed. We also wish to note that separate ledger accounts are

maintained for each project account. We further clarify that exchequer for the Authority is released in tranches relative to the total budget.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer seeks exemption from CS National Treasury on projects that receive donor funds directly to contractors, for purposes of GoK counterpart funds, as provided for under section 76(1) of PFM Regulations.

616. Irregular Re-allocation of Expenditure

The statement of receipts and payments reflects purchase of goods and services amount of Kshs.33,049,633 as disclosed in Note 3 to the financial statements, which includes a printing, advertising and information supplies amount of Kshs.31,261,083. However, review of the payment schedules provided revealed that the amount included expenditures of Kshs.13,641,672 and Kshs.15,687,361 all totalling Kshs.29,329,033 incurred on domestic travel and subsistence and consultancy respectively and had therefore irregularly been included and disclosed as printing, advertising and information supplies. Management did not provide any authority or approval to support the reallocation from the expenditure item to domestic travel and subsistence and consultancy expenditures.

In the circumstances, the regularity of the use of goods and services expenditure of Kshs.29,329,033 could not be confirmed.

Submission by the Accounting Officer

The mix up of expenditure in the use of goods and services was a regrettable error, this arose due to misrepresentation of the figures which didn't tally with the schedules provided. However, we have made the amendments in the revised financial statements on page 12, Note 3 for Printing, advertising and information supplies from Ksh.31,261,083 to the correct figure as pointed by the auditor of Ksh.54,720.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

617. Unsupported Bank Balance

Note 5A to the financial statements reflects retention balance held in a local bank of Kshs.3,576,201 as at 30 June, 2022. However, bank reconciliation statement and bank confirmation certificate were not provided for audit verification.

In the circumstances, the accuracy and completeness of retention bank balance of Kshs.3,576,201 could not be confirmed.

Submission by the Accounting Officer

We wish to note that although the Authority maintains one bank account for funds held as retention funds, the Authority maintains a dynamic accounting system which is able to provide a robust electronic register that provides the following details amongst others, the date when an amount was either retained or paid out, the amounts retained or released, the vendor to whom the amount relates to, and the project to which the amount relates to. The authority is therefore able to segregate the retention funds held for all the projects which ensures accuracy of the balances reported in the project financial statements.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer seeks exemption from CS National Treasury on projects that receive donor funds directly to contractors, for purposes of GoK counterpart funds, as provided for under section 76(1) of PFM Regulations.

618. Pending Bills

Note 12.1 to the financial statements reflects pending accounts payable balance of Kshs.536,860,151 which includes Kshs.495,142,419 for construction of civil works and Kshs.41,717,732 for supply of services. The Note also indicates an opening balance of Kshs.883,093,393 under land compensation and a payment during the year under review of Kshs.883,093,393 and a nil closing balance. However, Management did not provide evidence to support the payment of Kshs.883,093,393. Further, the Project risks incurring additional cost in terms of interest due to non-adherence to the contractual terms and delay in payments.

Failure to clear pending bills in the year to which they relate distorts the budget of the following year as they constitute a first charge on that budget.

Submission by the Accounting Officer

The payment of Ksh.883,093,393 under land compensation during the year under review was a regrettable error. The Financial statements were amended. We wish to clarify that there were no payments for land compensation and the Ksh.883,093,393 is the outstanding balance land compensation.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

619. Lack of Project Detailed Budget

The statement of comparison of budget and actual amounts reflects approved expenditure budget of Kshs.2,835,000,000 and actual total expenditure of Kshs.2,089,417,912. However, Management did not provide an itemized budget showing the detailed budget items for which the expenditure was intended.

In the circumstances, it was not possible to conduct budget performance analysis on budgeted and actual expenditure.

Submission by the Accounting Officer

By nature, and practice, appropriation by The National Assembly to the two projects are on a specific line by line individual program. The budget is a single line item as contained in the printed estimates.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer henceforth goes beyond the PSASB template and avails itemized annexures.

620. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.2,835,000,000 and Kshs.2,081,016,360 respectively resulting to an underfunding of Kshs.753,983,640 or 27% of the budget. Similarly, the project spent Kshs.2,089,417,912 against an approved budget of Kshs.2,835,000,000 resulting to an under expenditure of Kshs.745,582,088 or 26% of the budget.

The underfunding and underperformance affected the planned activities of the Project and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The project experienced slow progress of works affecting funds absorption which was attributed to.

a) The delayed acquisition of the Kenya Railways Corporation land by the Employer for construction of Kitale market.

b) The delayed compensation of the roadside traders in Kitale town by the Employer through the National Land Commission

c) Delayed relocation of services in Kitale town.

d) Delayed commencement of the One Stop Border Post.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

621. Delayed Project Implementation- Lot 2: Upgrading of Kitale-Endebess-Suam (C45) Road Project

The contract for the upgrading of Kitale-Endebess-Suam Road was awarded to a contractor on 17 August, 2017 and the commencement date of the contract was 26 February, 2018 with an expected completion date of 25 February, 2021 hence the contract period was forty-eight (48) months. The contract sum was set at Kshs.4,474,991,403 and the amount certified for payment as at 30 June, 2022 was Kshs.2,783,819,290 and actual amount paid was Kshs.2,439,470,196. Further, review of the June, 2022 progress report provided revealed that the weighted physical progress stood at 80% compared to 52 months or 108% of the contract period elapsed. This implies the contractor is working behind schedule hence the slow progress of the work. Similarly, Management did not provide evidence to confirm whether the contract period for this project has been extended to a further date given that the original contract period was expected to have lapsed on 25 August, 2022 which is an indicator that the contractor might be working without a valid contract. In addition, review of records revealed that under project risks and constraints, it was indicated that there was slow relocation of utilities within the road corridors, which included delays in relocating sewer and water lines and Kenya Power and Lighting Company Limited electricity poles.

In the circumstances, the delay in the project completion may result in additional costs due to cost escalation as a result of inflationary pressures.

Submission by the Accounting Officer

The slow progress of work has been attributed to.

a) Contractor's cash flow related problems

b) The delayed acquisition of the Kenya Railways Corporation land by the Employer for construction of Kitale market.

c) The delayed compensation of the roadside traders in Kitale town by the Employer through the National Land Commission

d) Delayed relocation of services in Kitale town.

e) Delayed commencement of the One Sop Border Post

It should be noted that the responsibility for acquisition of land rest with the National Land commission. Thus, the delays are both attributable to the Employer and the Contractor contrary to the provisions of Sub-Clause 2.1 of the conditions of Contract thereby limiting the Employers right to apply Sub-Clause 8.7 (Delay Damages) as provided in the Contract. Instead, an Amicable settlement option was pursued by the project team as a win-win alternative.

At the moment, the progress of works is about 84% and on sections free from obstructions the Contractor has been able to complete Earthworks and has delivered approximately 85% of pavement.

In addition, the Employer has explicitly expressed in writing dissatisfaction on the Contractor's performance and has informed the Contractor to rectify this situation failure to which the relevant contract provision will be invoked. The Contractor in his response to the Employer's letter reiterated his commitment to upscale his resources in order to compensate on the lost progress. He further committed to the following;

1. Inject additional funds into the project to boost their cashflow,
2. Additional working hours,
3. Improved supply of aggregates.

The Employer has been closely following up on the land acquisition and relocation of services within the construction width to allow works to proceed but the process has been slow due to delays by NLC.The authority shall endeavor to mitigate the prolongation costs occasioned by the delays by ensuring that the works are completed by May 2023

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

MOMBASA PORT AREA ROAD DEVELOPMENT PROJECT - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

624. Inaccuracy in the Financial Statement

The statement of receipts and payments reflects surplus for the year of Kshs. 38,890,330. However, the statement of financial assets reflects a nil fund balance as the surplus has not been recognized as part of the fund balance.

Submission by the Accounting Officer

Kshs 38,890,330 reflected as surplus in the statement of receipts and payments represent retention amount withheld from the project contractors in FY 2021/22 hence a financial liability to the Authority. This amount has been added to Payables – Deposits and Retentions from prior year of Kshs 82,691,214 hence Kshs 121,581,544 as reflected in the Statement of Financial Assets as at 30 June 2022 thereby complying to the revised template issued by Public Sector Accounting Standards Board (PSASB).

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

625. Lack of Project Bank Account and Cash Book

The statement of receipts and payments relects transfer from Government entities through the parent Ministry of Kshs.158,571,686 which was partly paid out in the year under review. The receipts could however not be confirmed since the Authority did not maintain separate bank account and cash book for the project.

In the circumstances, the accuracy and completeness of the transfer from other Government entities of Kshs.158,571,686 could not be confirmed.

Submission by the Accounting Officer

The Authority maintains a single exchequer bank account where all funds received are channelled which is in line with the National Treasury circular on rationalization of bank accounts being operated by entities herein attached and marked Appendix KeNHA/MPARD i. From the single exchequer bank the authority maintains a cash book that provides amongst other details:

- The Project codes
- The Project description and
- The vendor to whom an amount relates to.
- From the cashbook therefore, transactions for a particular project can be filtered through the Project Code and Project Description.
- Further, MPARD Project uses the Direct Payment method whereby the Development Partner disburse funds directly to the contractor/consultant and therefore does not require opening of a Project Bank Account.
- Total receipts from the parent ministry are equally confirmed at the end of each financial year as per the exchequer confirmation which was availed during the audit exercise.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer seeks exemption from CS National Treasury on projects that receive donor funds directly to contractors, for purposes of GoK counterpart funds, as provided for under section 76(1) of PFM Regulations.

626. Unsupported Expenditure on Purchase of Goods and Services

The statement of receipts and payments reflects purchase of goods and services expenditure of Kshs. 12,692,977. As disclosed in Note 3 to the financial statements, the expenditure is mainly in respect to travel and subsistence allowance. However, the expenditure was not supported by a detailed and approved project work plan to confirm whether the activities undertaken were part of the work plan for the year. In addition, the expenditure includes an amount of Kshs. 2,343,000 that was paid to persons not employed by the Authority and was not supported by documentation to evidence receipt of the money by the recipients.

Submission by the Accounting Officer

MPARD project is a multi-year project and its workplan derives from the procurement plan.

The subsistence allowances as correctly observed were meant for Non-KeNHA officers from the Office of the President who were developing an audio-visual production intended for use during the Madaraka Day Celebrations on 1st June 2022. It is important to note that only Kshs 2,197,400 of the amounts was paid to Non-KeNHA staff while the balance was for the KeNHA staff who was paid the amounts on behalf of the Non-KeNHA staff.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

627. Unsupported Expenditure on Acquisition of Non-financial Assets

The statement of receipts and payments reflects acquisition of non-financial assets expenditure of Kshs.7,142,083,276. This expenditure includes expenditure on construction of roads totaling to Kshs.74,488,379 for which the supporting schedule provided did not have details of the payee and the reason for payment.

In the circumstances, the accuracy and validity of the expenditure totaling to Kshs.74,488,379 could not be confirmed.

Submission by the Accounting Officer

The details of the payee are as provided in column E (particulars) while the payments are for certified payment certificates as provided in column C (IPC Nos).

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

628. Nugatory Expenditure

Annex 3 to the financial statement reflects a pending balance of Kshs. 6,223,468,827 which includes Kshs. 866,447,567 relating to interest charged, which arose from delayed payments.

The payment of interest as a result of delayed payments leads to loss of Government funds which could have been avoided.

Submission by the Accounting Officer

Interest on delayed payment arise due to inadequate GoK budgetary provisions coupled with late disbursements of exchequer funds to the Authority to facilitate prompt contractual payments.

In FY 2022/23 the Authority has managed to secure GoK budgetary allocation of Kshs 300,000,000 for the project subject to the current year ceilings to be utilized in reducing the pending bills.

The Authority will endeavour to allocate adequate budget, subject to provided ceilings in subsequent Financial Years to further reduce the pending bills.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

629. Unsupported Bank Balance

Note 5A to the financial statements reflects cash and cash equivalents balance of Kshs. 121,581,544 as at 30 June, 2022. However, since no separate cashbook is maintained for the project, the supporting reconciliation statement provided for audit reflected a cashbook balance of Kshs. 183,962,682 as at 30 June,2022 which made it difficult to isolate the correct balance for the Project.

Submission by the Accounting Officer

Although the Authority maintains one bank account for retention funds, the Authority maintains an accounting system which provides a retention ledger which provides the following details amongst others:

- The date when an amount was either retained or paid out,

- The amounts retained or released,
- The vendor to whom the amount relates to, and
- The project to which the amount relates to

The authority is therefore able to segregate the retention funds held for each project which ensures accuracy of the balances reported in the project financial statements.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer seeks exemption from CS National Treasury on projects that receive donor funds directly to contractors, for purposes of GoK counterpart funds, as provided for under section 76(1) of PFM Regulations.

630. Unsupported Payables- Deposits and Retentions Balance

The statement of financial assets reflects retentions balance of Kshs. 121,581,544 as at 30 June,2022. However, no supporting schedule indicating details of the contractors owed and the respective amounts retained has been provided to support the balance of Kshs.121,581,544.

Submission by the Accounting Officer

A supporting schedule of the retention amount of Kshs 121,581,544 has been availed.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

631. Delay in Project Completion

Review of progress reports for the contract's package 2 and 3 revealed that as at 30June, 2022, package 2 was at 56% completion against 57%- time lapse. Similarly, package 3 was at 93% completion against 138%-time lapse. The delay in completion was attributed to delays in land compensation with Kshs. 3,640,011,232 out of Kshs. 6,223,468,827 as captured at Annex 3 on pending bills still outstanding.

Submission by the Accounting Officer

Construction of package 2 is on course with no expected delay in time for completion. As noted in the progress report, the slack in time by 1% was based on Contractor's Program of Works which is based on completion ahead of time.

Construction of package 3 was substantially completed in March,2022. At the time of Audit, Extension of Time was under review and thus the observation of time lapsed as 138%. Extension

of Time has since been awarded and the only outstanding works in package 3 is Kibundani Interchange which delayed due to land compensation challenge which has been addressed and the progress is at 85% completion.

The undrawn balance of Kshs 5,101,540,612 as at 30 June 2022 represent donor commitment balance whereas Kshs. 6,223,468,827 is fully payable by the GoK. However, the Authority is currently in discussion with the development partner to assist in settling part of the GoK pending bills from the development partners undrawn balance to minimise payment of interest on delayed payments arising out of these pending bills.

The Authority will endeavor to allocate adequate budget, subject to provided ceilings in subsequent Financial Years in order to ensure that all the pending bills are settled as well as projects completion.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

632. Budgetary and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual receipts on comparable basis of Kshs. 9,736,000,000 and Kshs. 7,193,666,583 respectively resulting in an underfunding of Kshs. 2,542,333,417 or 26% of the budget. Similarly, the statement reflects final expenditure budget and actual on comparable basis of Kshs. 9,736,000,000 and Kshs. 7,154,776,253 respectivly, resulting in an under expenditure of Kshs. 2,581,223,747 or 27% of the budget.

Submission by the Accounting Officer

There was low absorption which is as a result of slow progress of works in package 3 - Kibundani Interchange which was delayed due to land compensation challenge.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

633. Lack of Project Detailed Detailed Budget

The statement of comparison of budget and actual amounts reflects a final expenditure budget of Kshs. 9,736,000,000. However, Management did not provide an itemized budget showing the detailed budget items for which the expenditure was intended.

Submission by the Accounting Officer

By nature and practice appropriation by The National Assembly to the project is on a specific line by line individual project. This is the form in which the project budgets are uploaded onto IFMIS and availed for expenditure. A line by line individual project budget was availed during the audit as correctly indicated. However, for purposes of presentation in the financial statements, the requirement is not to present them per project as in IFMIS but by the nature of expenditure as per the template provided by the Public Sector Accounting Standards Board (PSASB).

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer henceforth goes beyond the PSASB template avails detailed itemized budgets as annexures.

MOMBASA-NAIROBI-ADDIS ABABA ROAD CORRIDOR PROJECT PHASE II (MARSABIT-TURBI ROAD) ID NO. P-Z1-DB0-027 – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

637. Pending Bills

As disclosed under Note 12.1 and Annex 3 to the financial statements, the project had outstanding pending bills balance of Kshs.62,165,683 as at 30 June, 2022. Review of the project's records indicate that no bills were settled during the year under review and the entire balance of Kshs.62,165,683 was brought forward from the previous year. The Project therefore runs the risk of incurring significant unquantified interest costs and penalties with the continued delay in settling invoiced bills.

Submission by the Accounting Officer

It is the Authority that contracts service providers to the project and therefore bound by all the provisions of the contract agreement. In the event that the credit is exhausted, it is the Government that remains with the residual responsibility of ensuring the project is delivered to the public.

The Pending bills are as a result of inadequate GoK budgetary allocations in the current and prior financial years. The Authority will however endeavour to ensure that adequate GoK budgets are allocated to the project to facilitate settlement of the outstanding bills.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

638. Project Closure Report

The Project information at section 1.2 of the annual report and financial statements reflects the project end date as 30 November 2017 However, the project closure was not provided for audit, being almost five (5) years after the expiry of the closure period.

Submission by the Accounting Officer

The project closure report has now been availed.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents on time, as required by section 9 (i) (e) of the Public Audit Act, 2015.

MOMBASA-NAIROBI-ADDIS ABABA ROAD CORRIDOR PROJECT PHASE III (TURBI-MOYALE) NO.P-ZI-DB0-095 LOAN NO.21001500255546 - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

642. Unsupported Cash and Cash Equivalent Balance

The Statement of Financial Assets and Note 5 to the Financial Statements reflect a bank balance of Kshs. 50,627,902 for the Retention bank account held at a local bank as at 30th June,2022. However, no bank reconciliation statement was provided in support of the balance. Further, the certificate of bank balance provided reflects a balance of Kshs. 1,042,912,466 as at 30 June, 2022 which is the retention balance of all the projects under the Authority.

Submission by the Accounting Officer

Although the Authority maintains one bank account for retention funds, the Authority operates an accounting system which is able to provide a retention ledger which provides the following details amongst others

- The date when an amount was either retained or paid out,
- The amounts retained or released,
- The vendor to whom the amount relates to, and
- The project to which the amount relates to

The authority is therefore able to segregate the retention funds held for each project which ensures accuracy of the balances reported in the project financial statements. The schedule of retention balance of Kshs 50,627,902 and the retention bank account reconciliation which were provided during the audit exercise

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer seeks exemption from CS National Treasury on projects that receive donor funds directly to contractors, for purposes of GoK counterpart funds, as provided for under section 76(1) of PFM Regulations.

643. Project Closure Report

The project information in the financial statements provided for audit revealed that the project was to end the 11 October, 2015. However, the project closure report was not provided for audit, being more than seven (7) years after the expiry of the closure period.

Submission by the Accounting Officer

The reported final account will be prepared after all the pending bills are settled.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer henceforth provides an interim project execution completion report, albeit showing pending bills, for audit purposes.

644. Pending Bills

Annex 3 to the financial statements reflects pending bills balance of Kshs 17,533,871 as at 30 June 2022. The pending bills relate to consultancy services offered by two (2) firms. The amount owed to one of the firms of Kshs 714,313 has been outstanding since the financial year 2016 out of which Kshs 326,173 relates to interest and penalty incurred. The Balance of Kshs 16,819,558 is indicated to have been a bill incurred in June 2020 and in respect of a different road project. Management has not explained why the bills for the other project have been recognised. The project therefore runs the risk of incurring significant and unquantified interest costs and penalties associated with delays in settling the invoiced bills.

Submission by the Accounting Officer

The pending bills was as a result of;

i. Exhaustion of development partners funds
ii. Inadequate Gok budget in the current as well as prior financial years.

The Turbi-Moyale project was co-financed by GoK and the African Development Bank (ADB) whose credit and financing ended prior to completion of all the project components. Following the exhaustion and lapse of the credit from the Development Partner, the Government took up the responsibility of ensuring the projects are financed in order to facilitate their completion for use by the public.

The amounts relate to one of the components under the financing agreement, i.e. Studies of future transport projects which included feasibility/Environmental and social impact assessment/detailed design studies of transport future projects.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

MOMBASA-MARIAKANI HIGHWAY PROJECT (LOT 1 - MOMBASA - KWA JOMVU) - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

648. Lack of a Project Bank Account

The statement of receipts and payments and Note 1 to the financial statements reflects Kshs.100,000,000 in respect to transfers from other Government entities. However, as previously reported, the amount could not be confirmed as the Authority does not maintain a separate bank account for the project. It was therefore, not clear how the Management determined the receipts attributable to the Project.

Submission by the Accounting Officer

The Authority maintains one Exchequer Account for receiving all exchequer funds from the exchequer pursuant to Section 28 (2) of the PFM act 2012 and Section 95 (1) of the Public Finance (National Government) Regulations, 2015 which requires the maintenance of a single Treasury Account.

Further, the project's financing agreement did not provide for revenue method of payment which would have necessitated opening of a designated project bank account. Revenue method of payment involves the development partner disbursing an advance amount to the Authority to the designated project bank account to enable settling of low value expenses of a project whenever they fall due. This amount is periodically reimbursed once a certain threshold of expenditure is attained.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer seeks exemption from CS National Treasury on projects that receive donor funds directly to contractors, for purposes of GoK counterpart funds, as provided for under section 76(1) of PFM Regulations.

649. Accuracy of the Financial Statements

The statement of financial assets reflects nil amounts under both fund balance brought forward and surplus for the year. However, the statement of receipts and payments reflects Kshs.710,824 and Kshs.15,743,968 as surplus for the year and cumulative surpluses respectively which should have also been included in the statement of financial assets.

Submission by the Accounting Officer

Kshs 710,824 reflected as surplus in the statement of receipts and payments represent retention amount withheld from the project's works contractor in FY 2021/22 hence constitutes a financial liability. This amount has been added to Payables – Deposits and Retentions from prior year of Kshs 15,033,144 hence Kshs 15,743,968 as reflected in the Statement of Financial Assets as at 30 June 2022 thus complies with the revised template issued by Public Sector Accounting Standards Board (PSASB).

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

650. Unsupported Cash and Cash Equivalents

The statements of financial assets and Note 5 to the financial statements reflects a balance of Kshs.15,743,968 for the Retention Bank account held at a local bank as at 30 June, 2022. However, the bank reconciliation statement provided in support of this balance reflects a balance as per the cashbook of Kshs.183,962,682 as at the same date resulting in unexplained variance of Kshs.168,218,714.

Submission by the Accounting Officer

Although the Authority maintains one bank account for retention funds, the Authority operates an accounting system which is able to provide a retention ledger which provides the following details amongst others:

- The date when an amount was either retained or paid out,
- The amounts retained or released,
- The vendor to whom the amount relates to, and
- The project to which the amount relates to

The authority is therefore able to segregate the retention funds held for each project which ensures accuracy of the balances reported in the project financial statements. A schedule of retention balance of Kshs 15,743,968 which was provided during the audit exercise.

It is however important to note that the Authority performed a further analysis of the retention amount for the project and the revised set of financial statements have also been amended accordingly to reflect the new figure of Kshs 12,021,430.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

651. Lack of Project Detailed Budget

The statement of comparison of budget and actual amounts reflects a final expenditure budget of Kshs.1,535,000,000, However, Management did not provide an itemized budget showing the detailed budget items for which the expenditure was intended.

It was therefore not clear how the budget figures in the statement of comparison of budget and actual amounts were arrived at.

Submission by the Accounting Officer

By nature and practice appropriation by The National Assembly to the project is on a specific line by line individual project. This is the form in which the project budgets are uploaded onto IFMIS and availed for expenditure. A line by line individual project budget was availed during the audit. However, for purposes of presentation in the financial statements, the requirement is not to present them per project as in IFMIS but by the nature of expenditure as per the template provided by the Public Sector Accounting Standards Board (PSASB).

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer henceforth avails as annexures, detailed line item budgets to auditors, over and beyond the template provided by PSASB.

652. Delayed Project Completion

Kenya National Highways Authority entered into a 42 months contract for construction of Mombasa-Mariakani Project with Third Engineering Bureau of China in July, 2016 at a contract sum of Ksh.6,016,868,260. The works commenced on 4 February, 2017 with an initial contract period of 30 months and was later extended by 13 months to bring the revised completion date to 3 September, 2022. However, physical verification of the project site, which was carried out in November, 2022 after the lapse of revised completion date, revealed that works were still ongoing with overall progress approximated at 95.10% an indication that little progress was realized in the year under review. Further, there was no evidence that a contract extension period had been approved to warrant the contractor being on site. In the circumstances, implementation of the

Project was behind schedule which may lead to costs escalation and delayed realization of expected benefits of the project.

Submission by the Accounting Officer

The Project's completion has delayed due to the delay in acquisition of Right of Way (RoW) This has been due to the ongoing court cases which have stopped the Authority from accessing some sections of the project road like Kwa Jomvu Interchange for handing over to the Contractor. The cases have also affected the relocation of services.

Once given access, the Authority will endeavour to closely monitor the project to ensure its expedited completion.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a status report within three (3) months of adoption of this report.

653. Lack of Site Access Due to Legal Disputes

A physical verification of the Project carried out in November, 2022 revealed that, works in a section of the road namely, Kwa - Jomvu interchange had stalled since the year 2016 due to two on-going Court cases. The first Court case No.157 of 2015 was filed by a local company which led to stoppage of construction of interchange reinforced earth wall, ramp, the main road and slip road while another Court case No.106 of 2015 was filed by another Investment Company which stopped demolition of a walling structures encroaching on the road reserve.

Submission by the Accounting Officer

The Authority has requested the office of the Solicitor General to intervene and expedite the cases. Further the Authority has engaged the two litigants to try out of court settlements which may be faster to allow works to continue.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a status report within three (3) months of adoption of this report.

654. Pending Bills

Note 12.1 to the financial statements reflects pending bills amounting to Kshs.448,259,325 as at 30 June, 2022 and as analysed in Annex 3. Although the Management has explained that it was liaising with the line Ministry and The National Treasury to secure adequate budgetary allocation and exchequer releases to enable prompt payments of the pending bills, there is a risk of incurring additional significant costs in terms of interest and penalties due to continued delay in settlements of Project obligations.

Submission by the Accounting Officer

This arose due to inadequate budgetary provisions and delays in exchequer releases. In FY 2022/23 the Authority has managed to secure GoK budgetary allocation of Kshs 150,000,000 for the project subject to the current year ceilings to be utilized in reducing these pending bills.

The Authority will endeavour to allocate adequate budget, subject to provided ceilings in subsequent Financial Years to further reduce the pending bills.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

EPC/TURN KEY CONSTRUCTION OF FIVE FOOTBRIDGES AND TMALL FLYOVER ON MOMBASA AND LANGATA ROAD (PROJECT LOAN CREDIT NO. KEN-01001-19 AND KEN-02001-19) – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

659. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.1,510,000,000 and Kshs. 953,936,126 respectively was spent on the project resulting to an underfunding of Kshs. 556,063,874 or 37% . Similarly, Kshs. 953,936,126 was spent on the project against an approved budget of Kshs. 1,510,000,000, resulting to under expenditure of Kshs. 556,063,874 or 37%.

Submission by the Accounting Officer

The implementation of dual carriageway Nairobi Expressway in 2020, the road geometry and cross-section parameters of the Five-foot bridges changed, rendering the design of the footbridges at Mlolongo, Syokimau Estate, and Syokimau Railway Station inapplicable and untenable. The circumstance that resulted in the relocation of the three footbridges to new foot bridges at Galleria, Langata Barracks and Uhuru Gardens which delayed the implementation process. Further to the changes the progress was low due to the fact that services such as power and sewer lines had to be relocated for the construction works to start.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

660. Failure to Prepare Separate Financial Statements for Each project

Records provided for audit indicated that the Authority has two financing agreements. One of the agreements was No. KEN-01001-19 dated 12 November ,2019 with Donor funding EUR 23,250,000 approximately Kshs. 2,812,975,650 for T-mall project design, supply and installation of a steel flyover for vehicles in Nairobi. The other Financing agreement was No. KEN-02001-19 dated 17th January, 2020 with Donor funding and EUR 12,430,000 approximately Kshs.1,503,883,326 for works known as EPC/Turn key construction of five foot bridges in Mombasa and Lang'ata Roads.

However, the two projects described above were combined and accounted for in one set of financial statements, instead of accounting for each project in a separate financial statement.

This is contrary to the provision of Regulation 77 of the Public financial management (National Government) Regulations 2015 requires that the Accounting Officer of a project shall compile and maintain a record showing all receipts, disbursements and actual expenditure on a monthly basis in respect of every project and subproject.

Submission by the Accounting Officer

The project has two different financing agreement being KEN -010101-19 for T-mall Flyover and KEN-02001-19 for Five footbridges. One set of Financial Statement has been prepared for the two Financing agreement since the two loans have the same budget line and IFMIS code and are financed by the same financier.

Further we would like to clarify that the Financing agreement for the two projects does not provide for preparation of separate Financial Statements.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

661. Lack of separate Project bank Accounts

Review of documents provided for audit revealed that Project No. KEN-01001-19 relating to Construction of TMALL Fly over for vehicles and Project No. KEN-02001-19 relating to construction of five-foot bridges have no bank account in Central Bank of Kenya. This is contrary to provisions of Regulation 76 (1) of the Public Finance Management Regulation 2015 states that for the purpose of disbursement of project funds, there shall be opened and maintained a project account for every project at Central Bank of Kenya unless it is exempted by the Cabinet Secretary, in writing.

Submission by the Accounting Officer

Regulation No.76 (1) of the Public Financial Management Act relates to accounting for funds received as donations and grants.

The loan agreement for the project however did not provide for cash transfers to the Authority and opening of a separate project account since the loan amounts are disbursed by the development partner directly to the contractor. The project therefore used the Authority's exchequer account for GoK receipts of exchequer disbursements.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer seeks exemption from CS National Treasury on projects that receive donor funds directly to contractors, for purposes of GoK counterpart funds, as provided for under section 76(1) of PFM Regulations.

IMPROVEMENT OF RURAL ROADS AND MARKET INFRASTRUCTURE IN WESTERN KENYA PROJECT C REDIT NO.BMZ 2007-65 1 23 (KFW) - KENYA RURAL ROADS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

663. Unconfirmed Cash and Cash Equivalents

The statement of financial assets and as disclosed in Note 6 to the financial statements reflects bank balance of Kshs.131,730 ,504 as at 30 June, 2022, comprising of balances for nine (9) bank accounts and two (2) short term deposit accounts. However, fixed deposit certificate and bank balance certificate of Kshs.57, 000 ,000 as at 30 June, 2022 were not provided fo r audit review.

In the circumstance, the accuracy and completeness of bank balance of Kshs131,730,504 Reflected in the statement of financial assets could not be confirmed.

Submission by the Accounting Officer

Auditor comments are noted and wish to clarify that the Fixed deposit of ksh 57,000,000 is composed of two separate amounts of ksh 40,000,000.00 placed on the 12th April 2022 and ksh 17,000,0000 placed on the 28th April 2022 as per Fixed Deposit confirmation from the Bank.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

664. Unsupported Accounts Payables

The statement of financial assets reflects accounts payable balance of Kshs. 13 ,043 ,977 being a decrease of Kshs. 9,375, 092 from Ks hs.22,419,069 as at 30 June, 2021. However, there were no ledgers to support the decreased amount of Kshs.9,375,092.

In the circumstances, the accuracy and completeness of accounts payable balance of Kshs. 13,043, 977 as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

Auditor comments are noted. The agency has provided transaction movements during the period.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

KENYA - SOUTH SUDAN LINK ROAD PROJECT (REF. NO. 2020 62 065 AND BMZ NO.202083939) - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

668. Lack of project Bank Account and Cashbook

The statement of receipts and payments reflects transfer from Government entities through the parent Ministry of Kshs. 2,211,600 which was fully expensed in the year of review. The receipts were however not supported by an approved budget. In addition, the Authority did not maintain separate bank account and Cashbook for the project and as such none of the transactions could be confirmed.

Submission by the Accounting Officer

An approved budget was availed during the audit exercise. Kindly note that the budget for the projects is based on a single line for the entire program.

The Kenya South Sudan Link uses the Direct Payment Method where the Development Partner does not disburse any cash to the Authority but pay directly to the Consultant. Therefore, no separate bank account is required. However, the Authority maintains a single exchequer bank account and a cash book that provides amongst other details:

- The Project codes
- The Project description and
- The vendor to whom an amount relates to.

From this single cashbook therefore, transactions for a particular project can be filtered through the Project Code and Project Description.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer seeks exemption from CS National Treasury on projects that receive donor funds directly to contractors, for purposes of GoK counterpart funds, as provided for under section 76(1) of PFM Regulations.

669. Unsupported Expenditure on Domestic Travel and Subsistence

As disclosed in Note 11.3 to the financial statements of receipts and payments expenditure on domestic travel and subsistence amounting to Kshs. 2,211,600. However, the expenditure was not supported by an approved detailed workplan for the year under review.

Submission by the Accounting Officer

The projects expenditure was fully supported by the procurement plan from approved Consolidated Annual Procurement Plan FY 2021/2022.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

670. Delay in Project Implementation

The project information at Note 1.2 to the financial statements indicates that the project started in 2017 and was expected to end in 2025. According to the funding summary at Note 1.7 total donor and GOK commitments amounted to Kshs. 12,609,334,071 out of which Kshs. 12,604,345,250 was to be received from KFW Frankfurt am Main (KfW). However, as at 30th June 2022, only Kshs. 82,487,630 had been withdrawn despite the project having been in existence for over five years.

Submission by the Accounting Officer

While both the Loan and the Grant were scheduled to expire on December 31, 2021. However, Pursuant to Section 3.2 of Loan Agreement [*Deadline for requesting Disbursements*], upon the request by the Government of Kenya for extension of Loan and Grant Period, KfW extended the disbursement period by an additional period of 72 months (6 years); thereby revising the date of the last disbursement to December 31, 2027. This will enable payments during the implementation of civil works and facilitate achievement of the envisioned project development objectives as well as proper closure.

We note that the commencement of the project was adversely affected by the delays in effectiveness of the financing package initially and later by the outbreak of COVID-19 pandemic.

However, the Consultant has now completed Phase(s) I, II and III of Part A of the services and is finalizing Phase IV - preparation of tender documents and final safeguards documentation. The process of procuring a contractor for civil works is currently on.

Furthermore, the Bank on March, 2021, gave a No – Objection to the procurement plan that envisages completion of civil works in July 2026.

Committee Observations and Findings;

The Committee notes the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a status report within three (3) months of adoption of this report.

671. Pending Bills

Note 12.1 to the financial statements and Annex 3 to the financial statement reflect pending accounts payable balance of Kshs. 6,024,205 as at 30 June, 2022. Review of the financial statements indicate that the entire pending bills balance was contracted during the year under review. The project therefore runs the risk of incurring significant unqualified interests costs and penalties with the continued delay in settling invoiced bills.

Submission by the Accounting Officer

Delay in payments of Kshs. 6,026,205 was as a result of failure to release GoK/Exchequer funds in time to facilitate prompt contractual payments. A part payment of Kshs. 2,500,000 (Equivalent to Euros 22,512.08) has been made in the current financial year.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

672. Budgetary Control and Performance

Note 12.1 to the financial statements and Annex 3 to the financial statement reflect pending accounts payable balance of Kshs. 6,024,205 as at 30 June, 2022. Review of the financial statements indicate that the entire pending bills balance was contracted during the year under review. The project therefore runs the risk of incurring significant unqualified interests costs and penalties with the continued delay in settling invoiced bills.

Submission by the Accounting Officer

The global COVID-19 pandemic that had led to containment measures on movement of people and supplies availability had caused unanticipated overall delays and affected the project implementation and performance due to the non-commencement of field activities. However, the project is at the stage of securing a contractor whereby no objection for prequalified contractors has been issued and currently The Authority is in the process of preparing final bidding documents.

The underperformance therefore was due to the fact that civil works had not commenced.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a status report within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

673. Unapproved variation of Contract Period and amount

The Management entered into contract with an international contractor under Contract No. KENHA/1871/2018 for consultancy services for the design finalization of safeguard documents, procurement support, construction supervision and contract administration of Kenya South Sudan Road Link (Kitale – Morpus Road) on 15th October 2019 with the original expected completion date of 9th July,2025. The contract sum was set at EURO 4,404,560 plus Kshs. 12,392,721.

Review of addendum No. 1 dated 30th July, 2021 on the contract revealed that the original contract sum was varied from EURO 4,404,560 plus Kshs. 12,392,721 to EURO 4,786,485 plus Kshs.19,088,992 thus resulting in variation of EURO 381,925 or 9% and Kshs. 6,696,271 or 54%. Further, the contract expected completion date was also extended by twelve (12) months from 09th July 2025 to 09th July, 2026.

Submission by the Accounting Officer

The request for extension of the contract period by twelve (12) months and the cost variation was affected under Addendum No.1 which was occasioned by:

1. Additional Topographical Survey for the 65km section: In absence of the old survey data or the editable version of Plan and Profile drawings, the Consultant was actually unable to review any design. This request was pursuant to the agreed actions during the Project Launch Workshop held on February 10-14, 2020.

2. Detailed Design of extended end point of the project road by 8km (up to Moruni River Bridge): The bridge is in vulnerable condition and will affect the serviceability of the proposed road section. The costs comprise the additional site investigations and the associated engineering designs. This request was pursuant to the agreed actions during the Project Launch Workshop held on February 10-14, 2020.

3. Procurement Assistance Services: This request was pursuant to the agreed actions during the monthly meeting with KfW held on October 12, 2020, to include the component as part of the services by the Consultant. The services involve providing technical support to KeNHA for all procurements of works and other services as envisioned in the approved Procurement Plan.

4. Communication and Visibility Services: This request was pursuant to the agreed actions during the monthly meeting with KfW held on October 12, 2020, to include the component as part of the services by the Consultant.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General keeps the matter in view.

TIMBOROA-ELDORET ROAD REHABILITATION PROJECT NO. P-KEDBO-019 (LOAN NO. 2100150023344) - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

676. Presentation of the Financial Statements

The financial statements did not contain the following information as required in the Annual Financial Reporting Template, (Revised 30 June, 2022) for projects reporting issued by the Public Sector Accounting Standards Board:

a. Key qualifications for the officials involved in the implementation of the project;

b. Physical progress based on outputs, outcomes, and impacts since project commencement.

c. The absorption rate for each year since the commencement of the project;

d. The implementation challenges and recommended way forward;

e. The heading for Annex 2 on page 18 of the financial statements is incorrectly indicated as Reconciliation of Inter-Entity Transfer instead of Summary of Fixed Assets.

Submission by the Accounting Officer

The draft financial statements submitted for statutory audit on 31 August 2022 inadvertently omitted the information. This was a regrettable error, and the financial statements were subsequently amended to include the information listed under (a-e) of the audit observation. The amended financial statements were submitted to OAG on 02 December 2022, alongside a copy of letter submitting the revised financial statements and a copy of the amended financial statements.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

677. Inaccuracies in the Financial Statements

The schedule on application of funds under project information and overall performance reflects amount received and cumulative amount paid as at 30 June, 2022 of Kshs.5,415,940,409 and

Kshs.5,397,171 ,964 respectively. The audited financial statements for the year ended 30 June 2021 reflects amount received and cumulative amount paid of Kshs.5,399,454,880 and Kshs.5,390,782,291 respectively. However, the statements of receipts and payments for the year ended 30 June, 2022 reflects nil amounts received as loan and transfer from Government entities. Similarly, the statement reflects nil expenditure balance for the year. The movement of Kshs.16,485,529 and in the amount received and the movement in the amount paid of Kshs.6,389,623 during the year ended 30 June, 2022 has not been explained or reconciled.

Submission by the Accounting Officer

The financial statement for the FY 2020/21 under note 1.7 (funding summary) had omitted the interest income and bank charges hence the resulting total receipts under the sources and application of funds were under stated by the accumulative interest income of Kshs 15,695,357 while the total payments understated by the bank charges amount of Kshs 6,389,673. The unutilized cash balance under note 1.7(b) application of funds was therefore understated by Kshs 9,305,684, hence a similar variance between the closing balance under note 1.7(b) and the amount reported under the statement of financial assets which had a closing cash balance of Kshs 17,978,273 against unutilized balance under note 1.7(b) of Kshs 8,672,589.

The above understatement of Kshs 9,305,684 in prior year financial statements has been corrected in the current financial year. Further, a note on prior year adjustments has been introduced in the current year financial statements to explain this adjustment. Please refer to note 9 the financial statements in the attached amended financial statements.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

678. Cash and Cash Equivalents

The statement of assets as disclosed in note 7 to the financial statements reflects bank balance of Kshs.18,768,445 as at 30 June 2022. However, the supporting documents including cashbook, monthly bank reconciliation statements, bank statements and bank balance certificate as at 30 June, 2022 were not provided for audit review. Further, the Management did not explain the failure to surrender the unutilized funds to the National Treasury considering that the project ended in July, 2016.

Submission by the Accounting Officer

The below listed documents were provided to the audit team during the audit exercise and also submitted during responses to the draft audit report;

a. Bank reconciliation statements for the months of July 2021 to June 2022

b. Cashbook for the period 01/07/2021 to 30/06/2022

c. Bank statements for the months of July 2021 to June 2022

d. Certificate of cash balance as at 30/06/2022

The closing cash balance represents interest income earned from the bank deposits and is not supposed to be surrendered to National Treasury but form part of authority's revenue to be budgeted and expended for the final account of the project.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

679. Unsupported Receipts

Note 3 to the financial statement reflects interest income of Kshs.790,172. However, supporting documents including bank statements, cashbook and ledgers were not provided for audit review.

Submission by the Accounting Officer

The below listed information was provided during the audit process and also availed together with the responses to the audit draft report.

a. Schedule of Interest income earned during the financial year

b. Bank statements for the months of July 2021 to June 2022

Cashbook ledger for the period July 2021 to June 2022.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

NAIROBI - THIKA HIGHWAY IMPROVEMENT PROJECT LOT I AND II (CREDIT NO.2100150015544) - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

682. Unsupported and Misstated bank Balances

The statement of financial asset reflects a bank balance of Kshs.11,333,783 which as disclosed at Note 5A to the Financial statements includes a balance of Kshs.4,000,000 held in Central Bank of Kenya for which bank confirmation certificate was not provided for audit. Further, the balance

includes retention account bank balance of Kshs.7,333,783 for which the supporting bank reconciliation statement reflected a cashbook balance of Kshs.183,962,682 resulting in an unreconciled variance of Kshs.176,628,899.

Submission by the Accounting Officer

On Kshs.4,000,000 the Authority has requested the Parent Ministry for the Central Bank balance confirmation certificate for Kshs.4,000,000

On the Kshs. 7,333,78, the analysis for the retention amount was provided during the audit.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

683. Unsupported Pending Bills

Note 12 to the financial statements reflects a pending bills balance of Kshs.428,623,554 in respect of acquisition of land. However, detailed analysis of the pending bills including the names of the payees and the reasons for non-payment were not provided. Further, the entire balance of Kshs.428,623,554 was brought from the prior year and the project's indicated that no bill was settled during the financial year 2021/2022.

Submission by the Accounting Officer

This is due to budgetary ceiling constraints that resulted in NIL allocation in the financial year under consideration. An amount of Kshs. 45,000,000 has been allocated in the current financial year (2022/2023).

The bills are duly supported by schedules as availed during the audit and shown in Annex 3 of the financial statements

The Authority is liaising with the Line Ministry and National Treasury to ensure sufficient budget allocation to enable settlement of the pending bills

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

684. Project Closure Report

As provided under the Project information and Overall Performance section of the Annual Report and Financial Statements, the project was to end on 22 July 2015. However, as previously reported the project closure report was not provided for audit, being more than seven (7) years after the lapse of the closure period.

Submission by the Accounting Officer

The projects Inspection and acceptance certificates are hereby attached.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer henceforth provides a project execution completion report, albeit showing pending bills, for audit purposes.

ROADS 2000 PHASE TWO PROJECT (AFD CREDIT NO. CKE 101 201 B, CREDIT NO. CKE 1 04601J AND CREDIT NO. CKE 1 09401 M) - KENYA RURAL ROADS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

688. Un-supported Accounts Payable-Retention

The statement of financial assets reflects accounts payable balance of Kshs.61,085,161. However, Note 1 0 to the financial statements reflects accounts payable (retention/contractors owed) balance of Kshs.61,272, 662 which differs with the balance of Kshs.61 ,085, 161 by an unexplained variance of Kshs.187,501 Further, the movement from the brought forward accounts payable balance of Kshs.96,981 ,429 to the carried forward amount of Kshs.61,272,662 has not been supported or reconciled. In addition, the current retentions have not been matched with the bills payments amounting to Kshs.136,651 ,0 94 as reflected at Note 6 to the financial statements.

In the circumstances, the existence and accuracy of the accounts payable balance of Kshs.61,085, 161 could not be confirmed.

Submission by the Accounting Officer

Support schedule indicating movements in payables has been provided. Bill payment of ksh 136,651,094 represents the amount of roadworks expenditure relating to the current period.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee recommends that the mater is resolved.

689. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on a comparable basis of Kshs.421,000,000 and Kshs.15,780,653 respectively resulting in an underfunding of Kshs.405,2 1 9 ,347 or 96% of the budget. Similarly, the Project expended

Kshs.190,855,743 against an approved budget of Kshs.421,000,000 resulting to an under expenditure of Kshs.230, 1 44,257 or 55% of the budget.

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

Submission by the Accounting Officer

This is as a result of inadequate budgetary allocations.

Committee Observations and Findings;

The Committee observed that the explanation was unsatisfactory as the underperformance was as a result of the failure of the state department to certify works and absorb the budget.

Committee Recommendation;

The Committee reprimands the Accounting Officer for this underperformance and recommends that he henceforth ensures timely certification of works.

690. Unresolved Prior Year Audit Matters

In the audit report of the previous year, several issues were raised. However, although the Management has indicated that all the prior year issues were resolved, no evidence has been provided to support this assertion.

In the circumstances, the matters remain un-resolved.

Submission by the Accounting Officer

The state department is awaiting the Committee recommendations.

Committee Observations and Findings;

The Committee noted that its report for FY 2020/21 had since been adopted by the House.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a report on implementation of its recommendations within three (3) months of adoption of this report.

MULTINATIONAL ARUSHA-HOLILI/TAVETA-VOI ROAD CORRIDOR DEVELOPMENT PROJECT PHASE I – LOAN NO.2100150028894 – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

694. Un-supported Nil Cash and Cash Balances

The statement of financial assets reflects a Nil bank balance as at 30 June, 2022. However, the cash and bank balances in respect of several projects were held in one account maintained by the Authority and which had a balance of Kshs 5,305,453,396 as at 30 June 2022. However, the breakdown of cashbook to show cash balances attributable to individual projects were not provided for audit review thus the Nil balance held in the account could not be confirmed. In addition, there

was no separate cashbooks maintained to record cash received for the project and payments against the project funds over the project implementation period. As a result, it was not possible to confirm total cash receipts and payments in respect of the project.

Submission by the Accounting Officer

The Project's Audited Financial Statements for the prior year (FY 2020/21) indicate a Nil closing cash balance for the project, hence a Nil opening balance in the current financial year under audit.

In the current financial year under audit, the project did not receive any budgetary allocation, hence no cash was received for the benefit of the Project. This is indicated in the attached current year budget (FY 2021/22) which excluded the Project in the budgetary allocation.

It is true that the Authority maintained one bank account to receive exchequer funds that are remitted in bulk against the annual Budget from the National Treasury. This is in line with section 28 (2) of the PFM act 2012 and Section 95 (1) of the Public Finance (National Government) Regulations, 2015 requires the maintenance of a single Treasury Account, hence the Authority maintained one Exchequer Account for receiving all exchequer funds from the exchequer. Further, the loan agreement for the project did not provide for the opening of a designated project account, hence the project has been using the single Account as required by Section 28 (2) of the PFM Act 2012 and Section 95 (1) of the Public Finance (National Government) Regulations, 2015.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer seeks exemption from CS National Treasury on projects that receive donor funds directly to contractors, for purposes of GoK counterpart funds, as provided for under section 76(1) of PFM Regulations.

695. Pending Bills

695.1. Long Outstanding Payables - Unbudgeted for Pending Bills

The pending bills balance included Kshs 13,985,986 in respect of outstanding land compensation to various Project Affected Persons (PAPs). The amount ought to have been settled before the project commenced as per the conditions set out in the loan agreement. Further, pending bills amounting to Kshs 11,037,513 relating to consultancy services billed in 2018, were still outstanding as at the end of the Year. Management explanation that the non-payment of the bills was due to lapse of the Financing agreement prior to conclusion of all the Project Components. Management's explanation for not making budgetary provision to cover the bills over the last four years was not justifiable.

In the circumstances, the project is at risk of incurring significant interest costs and penalties with their continued delay in payment.

Submission by the Accounting Officer

The Project had outstanding bills amounting to Kshs 25,023,499 which includes consultancy services of Kshs 11,037,513 and land compensation of Kshs 13,985,986 as at 30 June 2022. This was a result of Insufficient GoK budgetary allocations in financial year under audit as well as prior

financial years meant that the Authority could not settle the outstanding land compensation as well as the outstanding consultancy fees.

The Authority has, however, been closely liaising with the parent ministry and the National Treasury to ensure provision of adequate budgets to settle the outstanding bills. This culminated in a GoK budgetary allocation of Kshs 6,255,875 in the revised FY 2022/23 budget which was utilized to settle part of the outstanding bills.

The Authority will endeavor to ensure that sufficient budgets are allocated to the project to facilitate settlement of the outstanding bills.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

695.2. Ineligible Pending Bills

The pending bills balance includes Kshs 7,343,038 which was due to Government institutions comprising Kenya Prisons and Deputy Commissioner -Taveta for land compensation under Project affected Persons (PAPs). However, there was no record of land acquired or structures moved or demolished in the parcels to pave way for the road construction and instead, a restitution was done

In the circumstances, the accuracy and authenticity of the pending bills balance of Kshs 25,023,499 could not be confirmed.

Submission by the Accounting Officer

The outstanding compensation amounting to Kshs 7,343,038 were valued by the National Land Commission and submitted the Payment Schedule to the Authority for settlement. NLC's letter Ref: VAL. 1358 dated 1st April 2015 submitting a payment schedule to the Authority has been availed. The Payment Schedule includes the following beneficiaries;

Ref. No.	Registered Owner	Amounts Payable	Amount Awarded (Payable)
Mboghoni B/49	Kenya Prisons	5,001,350	5,001,350
Mboghoni B/54	Deputy Commisioner -Taveta	748,650	748,650
Mboghoni B/54	Deputy Commisioner -Taveta	1,143,560	1,143,560
Mboghoni B/56	Deputy Commisioner -Taveta	449,478	449,478

	Total	**7,343,038**	**7,343,038**

The Authority has not made any payment/restitution in respect of the Project Affected Person, hence the amounts remain outstanding.

The Authority has also not received communication from the National Land commission indicating that the Project Affected persons are not to be compensated. In the event that the commission communicates to the Authority revoking the awards, the amounts will be written off from the Authority's books of Accounts

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer liaises with the National Land Commision and resolves the matter within three (3) months of adoption of this report.

696. Absorption of Project Funds

As disclosed under Note 1.2 of the project information, the Project was earmarked to close on 31 December, 2019. However, Note 1.7 of funding summary indicates that the Donor had made commitment to of UA 75,000,000 which is equivalent to Kshs 10,660,050,000 as at 30 June, 2022. However, actual drawdowns during the project life amounted to UA 54,459,635 equivalent to Kshs 7,740,565,739 leaving out Kshs 2,919,484,261 undrawn. The credit thus lapsed without being fully utilized and the Project's planned deliverables earmarked for completion using the funding may not have been realized.

In addition, Management did not provide the Project Closure report for audit review, being more than three (3) years after the expiry of the Project.

Submission by the Accounting Officer

This was a result of the competitive procurement process which resulted in lower bids hence lower project costs.

This is due to the fact that all the planned project components were successfully implemented, handed over to the employer and the road project opened for public use.

Committee Observations and Findings;

i) The Committee noted that the agency made savings.
ii) The Committee found that the matter was resolved.

PORT REITZ/MOI INTERNATIONAL AIRPORT ACCESS (C110) ROAD (FIDIC EPC/TURNKEY BASED) PROJECT - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

700. Unsupported Cash and Cash Equivalents

The statement of financial assets reflects nil cash and cash equivalents balance. However, Management did not provide bank statements, bank balance certificate and board of survey certificate to support the balance.

In the circumstances, it was not possible to confirm the accuracy of the nil cash and cash equivalents balance.

Submission by the Accounting Officer

The Authority maintains a single exchequer bank account where all funds received are channelled which is in line with the National Treasury circular on rationalization of bank accounts being operated by entities. From the single exchequer bank the authority maintains a cash book that provides amongst other details:

- The Project codes
- The Project description and
- The vendor to whom an amount relates to.

From this single cashbook therefore, transactions for a particular project can be filtered through the Project Code and Project Description which ensures accuracy of the balances reported in the project financial statements.

Further, total receipts from the parent ministry are equally confirmed at the end of each financial year as per the exchequer confirmation which was availed during the audit exercise.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

701. Unbudgeted for and Unsupported Pending Bills

Note 12 to the financial statements reflects pending accounts payable balance of Kshs. 822,548,139 as at 30 June, 2022. The Balance is made up of previous year's pending accounts payable of Kshs. 29,624,000 and additions of Kshs. 792,924,139 during the year under review. However, Management did not provide documents to support the additions of Kshs. 792,924,139. In addition, an accounts payable register was not maintained as required by the National Treasury Circular No. 5/2020 of 25 February,2020 which requires accounts payable balances in the financial statements to be supported with accounts payable register as per the format prescribed in the circular.

Submission by the Accounting Officer

As indicated in Statement of Comparison of Budget and Actuals Amounts for the Year Ended 30 June 2022, the Authority had budgeted for Kshs 30,000,000 which was to be utilized to settle pending bill of Kshs 29,624,000. However, this had to be adjusted during the budget revision in FY 2021/22 as the National Land Commission (NLC) had not provided correct valuation details for the additional land acquired of 0.0047 Ha. The Authority continues to liaise with the NLC to ensure this matter is resolved.

The additional pending bill of Kshs 792,924,139 relates to the contractor's final payment which was received during FY 2021/22. Further, accounts payable balance is supported by Annex 3 of the Annual Report and Financial Statements in compliance with the 2022 revised reporting template provided by Public Sector Accounting Standards Board (PSASB).

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

EAST AFRICA TRADE AND TRANSPORT FACILITATION PROJECT (IDA CREDIT NO.4148-KE) - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

704. Inaccuracies in the Financial Statements

The statement of receipts and payments reflects a deficit of Kshs 9,826,146 for the year under review. However, the statement of financial assets shows a surplus for the year of Kshs 510,978 for the same period resulting in unexplained difference of Kshs 10,337,124.

In the circumstances, the accuracy of the financial statements could not be confirmed.

Submission by the Accounting Officer

The deficit recorded in the financial year amounting to Kshs 9,826,146 is a summation of interest earned amounting to Kshs. 510,978 less retention money paid of Kshs. 10,337,124.

Please note that the Reporting Template issued by the PSASB requires interest income earned during the period to be reported as period surplus whereas any payments made including release of retention money to be recognized as a deficit. The summation of the individual surpluses and deficits result to a net surplus or net deficit. The two figures of Kshs. 510,978 and Kshs. 10,337,124 were correctly recorded in line with reporting template.

The Accounting and disclosure of the above items are therefore consistent with the Projects reporting template issued by the National Treasury through the PSASB.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

705. Unsupported Cash and Cash Equivalents

The statement of financial assets and note 8 to the financial statements, cash and cash equivalents balance of Kshs 33,149,666 includes an unsupported retention account balance of Kshs 21,012,749

In the circumstance, the accuracy of cash & cash equivalents as at 30 June 2022 could not be confirmed.

Submission by the Accounting Officer

The retention amounts of Kshs 21,012,749 is fully supported by the schedule of retention balance, bank reconciliation and statement of bank balance confirmation from the bank.

It is the lender's policy that retention money retained but yet to be released to the contractor should remain in the project bank account which therefore forms part of the cash and cash equivalents until released to the individual contractor.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

706. Pending Bills

The project's total donor and counterpart commitment amount to Kshs 4,712,287,134 as indicated on the statement of sources of funding. Further, as per the application of funds statement all the committed funds have been received and paid out except an amount of Kshs 33,149,666 which includes Kshs 21,012,749 relating to retention leaving a balance of Kshs 12,136,917 for settlement of pending bills. The reported pending bill as per note 12.1 of the financial statements is Kshs 43,964,093 which is more than Kshs12,136,917 available cash for settlement of pending bills

The origin of the pending bill has not been explained since the project has been fully funded.

Note 12.1 and Annex 3 to the financial statements reflects pending accounts payable in respect of road contractors totalling Kshs 43,964,093 as at 30 June 2022.

In the circumstances, the Project therefore runs the risk of incurring significant unquantified interest costs and penalties with the continued delay in settling invoiced bills.

Submission by the Accounting Officer

This situation arose due to:

i. The exhaustion and subsequent lapse of Development Partner financing counterpart funds prior to completion of all the project components
ii. Inadequate GoK counterpart budgetary provisions in the current as well as prior financial years.

In the event that the credit is exhausted, it is the Government that remains with the residual responsibility of ensuring the project is delivered to the public hence payment of the full values of approved IPCs/ fee notes. Pending bills are as a result of inadequate budgetary allocations. The project will therefore be fully funded once the Government budgets and releases all the funds relating to the project outstanding amounts.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

707. Project Closure Report

The Project information at Section 1.2 of the annual report and financial statements indicate that the project ended on 30 October, 2015. However, the project closure report was not provided for audit, being almost seven (7) years after the expiry of the closure period.

Submission by the Accounting Officer

Preparation of the report is in progress.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer henceforth provides a project execution completion report, albeit showing pending bills, for audit purposes.

SIRARI CORRIDOR ACCESSIBILITY AND ROAD SAFETY IMPROVEMENT PROJECT: ISEBANIA-KISII-AHERO – (A1) ROAD REHABILITATION - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

710. Accuracy of the Financial Statements

The statement of receipts and payments reflect an amount of Kshs. 24,654,959 in respect of acquisition of non-financial assets payments controlled by the entity. However, there is no commensurate receipt to cover the payment and funding of these payments has not been explained as the project appears to only hold a retention account and hold no cashbook for the project.

Submission by the Accounting Officer

The Authority maintains one retention account for all its projects which is in line with the National Treasury's circular on rationalization of bank accounts. Further, the Authority maintains a project bank account as per the provisions of the loan agreement for the purposes of receiving and making payments for Training of Women, Youth and Persons with Disability component of the loan.

The certificates of bank balances for these accounts were availed during the exercise as well as schedules supporting the balances.

The State Department further disagrees with the observation that the Management did not maintain a deposit register. Through its accounting system Sage Pastel evolution, a robust electronic register is maintained that provides amongst other details:

- The date when an amount was either retained or paid out
- The amount involved
- The vendor to whom the amount relates to and

The payment voucher vide which the retention or release thereof was made.

Upon further reconciliation of the deposits account, the Authority has amended other important disclosures in the financial statements to reflect the correct changes in accounts payable retentions controlled by third parties

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

711. Authenticity of Land Payments

Annex 3A to financial statements shows analysis of pending bills of land compensation balance of Kshs.537,676,282 as at 30 June, 2022 in respect of outstanding amount of land compensation. However, supporting documents such as the compensation schedule sent to KENHA by National Land Commission to make payment is not supported by searches and land valuation reports and identification criteria for project affected persons.

Submission by the Accounting Officer

Land searches and valuations are mandates of the National Land Commission (NLC) in adherence to the Land Act, 2012 hence documents that relates to searches and valuations are in custody of NLC.

The Authority shall continue to adhere with the relevant laws and regulations to promote and enforce transparency, effective management and accountability in its operations.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

712. Unsupported Transfer from Government Entities

The statement of receipts and payments reflects receipts (Transfer from Government entities) of Kshs.2,328,376 and as analyzed in Note 11.1. However, no exchequer notifications were provided for audit review to confirm the completeness of the receipts.

Submission by the Accounting Officer

All exchequer funds received are channeled to a single exchequer bank account which is in line with provisions of the PFM Act of a Treasury Single Account. Further total receipts from the Parent Ministry are equally confirmed at the end of each financial year.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

713. Irregular Payment of Imprest and Air Ticket to interns

Statement of assets and liabilities reflects purchase of goods and services of Kshs.609,100.00 in respect of payment of per diem which includes per-diem paid to interns amounting to Kshs.309,000.00. No policy guide was provided for the rates governing the payment of the periderms for the interns

In addition, examination of surrender documents revealed that the above-mentioned interns travelled by air, however no expenditure for air tickets was disclosed in the financial statements. Approval of the air tickets was not provided for audit review to confirm whether they qualified for the air transport category.

In the circumstances, it was not possible to confirm the completeness and validity of the use of goods and services of Kshs.609,000.

Submission by the Accounting Officer

The Authority guided by the Salaries & Remuneration Commission pays per diems to interns travelling on official duties using the lowest grade rates.

Further, the Authority's policy on travelling by air is non-discriminatory such that when required to travel by air, all members of staff are governed by the Government policy on class of travel. Air tickets costs are included in the internal memo requests to incur expenditure on official duties which are pre-approved by the Director General. Approved internal memos are attached to payment vouchers which were availed for audit.

We further note your observation on expenditure on air tickets and would wish to respond that as at 30th June 2022, we had not received the invoices for these services hence could not disclose the related expenditure.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents on time, as required by section 9 (i) (e) of the Public Audit Act, 2015.

714. Irregularities in Acquisition of Non- Financial Assets

The statement of receipts and payments and Note 5 to the financial statements reflects acquisition of non-financial assets current year and cumulative amount of Kshs.1,917,603,641 and Kshs.20,052,965,638, respectively. Review of project records revealed that three contractors issued suspension of work notices due to pending payments amounting to Kshs.2,048,366,971. An interview with the Project Engineer and physical verification in the month of November, 2022 revealed that the works had already been suspended and no works were currently going on. However, there was no evidence to confirm the actual dates when the works were suspended.

In addition, the financing agreement indicated that there were other components to the road construction. However, no contract agreements for these components were provided for audit review.

Further, Note 5 to the financial statements disclose purchase of equipment and machinery of Kshs. 62,684,459. However documents supporting the payments such as contract documents, payment vouchers, delivery notes, store receipt vouchers and store issue vouchers were not provided for audit review. In addition, there was no evidence provided to confirm that staff were trained on the use of the equipment.

Moreover, the contract that was implemented by an engineering company expired on 03 January 2022. An application requesting for no objection was raised. However, no signed approval for this request was provided for audit review.

Submission by the Accounting Officer

This was occasioned by slow payment of the GoK portion to the contractor due to inadequate budgetary provisions and release of exchequer funds.

We however disagree with the observation that during the year under review, the management invalidly paid Kshs 283,930,756 for research studies, project preparation, design and supervision. These were valid payments for consultancy services and monthly progress reports no. 68 & 59 for 30th June 2022 for Lot 1 and Lot 2 respectively were availed during the physical verification of documents. These reports can be provided in soft copies in a flash drive for further verification.

Further, we would wish to confirm that contracts documents for the other components are available and can be provided in soft copies in a flash drive as well.

An interim extension of time for six months was granted to the contractor as per the attached internal memo revising the project completion date from 3rd January 2022 to 3rd July 2022. The Authority has as well sought for a no objection from the development partner for further extension of the contract period which is still under review by the development partner.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

715. Accounts Payable- Retention

The statement of financial assets and as disclosed in Note 7 to the financial statements reflects retention monies balance of Kshs.47,380,885 in the year under review. However, the Management did not maintain a deposit register, in respect of the project. Further, retentions Kshs.443,798,918 reflected under Note 12(2) to the financial statements had no supporting analysis.

In the circumstances, it was not possible to confirm the accuracy and completeness of the retentions reflected in the financial statements.

Submission by the Accounting Officer

Although the Authority maintains one bank account for retention funds, the Authority operates an accounting system which is able to provide a retention ledger which provides the following details amongst others:

- The date when an amount was either retained or paid out,
- The amounts retained or released,
- The vendor to whom the amount relates to, and
- The project to which the amount relates to

The authority is therefore able to segregate the retention funds held for each project which ensures accuracy of the balances reported in the project financial statements.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

716. Fund Balance Brought Forward

The statement of financial assets reflects a Fund balance brought forward of Kshs. 27,771,750 which as disclosed in Note 8 to the financial statements has been described as bank accounts. The Management did not explain the purpose for these funds which were held in the local bank account and not used in any way for a period of over three years. Holding the funds in the bank account may have resulted in avoided bank charges, and denied the project interest income which could have been earned had these funds been invested in interest earning financial institute.

Submission by the Accounting Officer

These funds were meant for Training of Women, Youth and Persons with Disability (PWD) contractors which was a component under the loan whose procurement was delayed due to the effects of Covid-19. The Authority however finalized procurement for the component and in FY 2022/23 has managed to train participants in Module 1 and 2 of the training as per signed MoU between the Authority and the training institution. Payment to the training institution has also been made in FY 2022/23 hence movement of funds from the account.

It's however important to note that this account has not incurred any bank charges as evidenced in the availed bank statement and the certificate of bank availed for verification.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

717. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs. 3,100,000,000 and Kshs. 1,895,277,058 respectively, resulting to an underfunding of Kshs. 1,204,722,942 or 39%. Similarly, Kshs. 1,918,212,741 was spent on the Project against an approved budget of Kshs.3,100,000,000 resulting to an under expenditure of Kshs. 1,181,787,259 or 38%.

Submission by the Accounting Officer

The Authority was only able to realize Kshs 1,895,277,058 out of the budgeted amount of Kshs 3,100,000,000 for the project during FY 2021/22. This was due to inadequate exchequer release to enable payment for land compensation for the contractor to access right of way.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

718. Payment of Pending Bills not Forming First Charge

Note 12 to the financial statements reflects pending bill of Kshs. 2,623,642,869 as at 30 June, 2022, which were not settled during the financial year 2021/2022 but were instead carried forward to 2022/2. Included in the balance are pending bills of Kshs. 1,781,929,830 which relates to 2020/2021 and earlier financial years. Further interest charges on late payment was Kshs.79,280,825 and Kshs.68,080,610 for IPC 48 and IPC 31 respectively totaling to Kssh.147,461,535.

Submission by the Accounting Officer

This arose due to inadequate budgetary provisions and delays in exchequer releases. In FY 2022/23 the Authority has managed to secure development budgetary provision of Kshs 580,000,000 for the project to be used to settle pending bills.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

MOMBASA-NAIROBI-ADDIS ABABA ROAD CORRIDOR DEVELOPMENT PROJECT: (ISIOLO/MERILLE/MOYALE ROAD)

REPORT ON THE FINANCIAL STATEMENTS

722. Unsupported Cash and Cash Equivalent Balance

As reported in the previous financial year, the statement of financial assets and liabilities reflects Kshs 18,682,650 in respect of cash and cash equivalents held at Cooperative Bank of Kenya account No.01141160979900 which was not supported with bank statements confirming transfer of the funds from project bank account to KeNHA main account on 16 October 2014 after completion of the project.

Consequently, it has not been possible to confirm that the cash and cash equivalent balance of Kshs 18,682,650 as at 30 June 2022 is fairly stated.

Submission by the Accounting Officer

The bank statement (for the month October 2014) confirming funds transfer from the project account in the State department of Infrastructure to Co-operative account was availed to the audit team.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

NORTHERN CORRIDOR REHABILITATION PROGRAMME PHASE III - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

726. Unsupported Cash and Cash Equivalents

As reported in the previous financial year, the statement of financial assets and liabilities reflects The statement of financial assets reflects a cash balance of Nil. However, the Management did not provide bank statements, bank balance certificate and board of survey certificate to support the balances.

In the circumstance it was not possible to confirm the accuracy of the nil cash and cash equivalent balance.

Submission by the Accounting Officer

The Project's Audited Financial Statements for the prior year (FY 2020/21) indicate a Nil closing cash balance for the project. In the current financial year under audit, the project did not receive any budgetary allocation, hence no cash was received for the benefit of the Project. A copy of prior year audited financial statements indicating a Nil balance, and a copy of current year budget indicating zero allocation to the Project have been availed.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

727. Budgetary Control and Performance

The statement of comparison of budget and actual amounts revealed that the project did not have any budgetary provisions for both revenue and expenditure despite the outstanding bills. Project Management has not explained why the budget was not in place to cater for outstanding pending bills.

Submission by the Accounting Officer

This situation arose from inadequate budgetary ceilings from the National Treasury hence lack of allocation for the project.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

728. Project Closure Report

As disclosed under Paragraph 1.2 of the project information and overall performance, the project commenced on 26 November 2010 with a closure date of 31 October, 2015. It was however noted that the project closure report has not been presented for audit review, 7 (seven) years after the closure date.

Submission by the Accounting Officer

The Project's final completion reports were availed during the audit of prior and current financial years.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.
ii) The Committee found that the matter was resolved.

729. Pending Bills

Note 12.1 to the financial statements reflects pending bills balance of Kshs 4,101,454 as at 30 June, 2022. Management attributes the non-payment to the consultant's failure to pay withholding taxes and provide compliance certificates. However, there was not evidence to prove that the Management requested the consultant for the required information and whether adequate budgetary allocation was sought from the National Treasury for settlement of the bills in the subsequent financial year considering that the project was expected to end on 13 August, 2015 contrary to the National Treasury Circular No. 10/2020 of 16 June 2020 which requires pending bills to be settled during the 1st Quarter of the subsequent year. In the circumstances, Management is in breach of the law.

Submission by the Accounting Officer

Prior to lapse of the financing agreement, it was a requirement under the National Treasury's circular No. 15/2019) that consultants and contractors should pay Withholding taxes and provide tax compliance certificates prior to processing of payments payable directly by Development Partners. This circular was brought to the attention of all the vendors vide the attached memo. The consultant however did not provide the documents required under the circular.

Following the lapse of the financing agreement however, the above outstanding bills became payable by the Government of Kenya The amount however remains outstanding due to insufficient GoK budgetary ceiling from the National Treasury. The Authority will however endeavour to allocate adequate budgetary provision in subsequent financial year to facilitate settlement of the pending bills.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

KENYA TRANSPORT SECTOR SUPPORT PROJECT (CREDIT NO.4926 KE AND NO.5410 KE) - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

731. Inaccuracies in the Financial Statements

The statement of receipts and payments reflects deficit for the year of Kshs 184,934,985. However, the statement of financial assets reflects a surplus for the year of Kshs.325,548 resulting in unexplained variance of Kshs 185,260,533. In the circumstances, the accuracy of the financial statements could not be confirmed.

Submission by the Accounting Officer

The deficit recorded in the financial year amounting to Kshs 184,934,985 is made up of two items namely interest income less retention money released (Kshs. 325,548 less Kshs. 185,260,5633) hence the deficit of Kshs. 184,934,985. This was clarified during the audit exercise hence all figures were explained.

The reduction in retention amounts of Kshs 185,260,533 in the current year subsequently led to reduction in the Financial Liabilities (Payables Retentions) from Kshs 944,294,792 in FY 2020/21 to Kshs 759,034,258 in FY 2021/2022 . The movement in retention is as indicated in note No. 09 of the financial statements.

The Accounting and disclosure of the above items are therefore consistent with the Projects reporting template issued by the National Treasury, hence the accuracy of the Financial Statements.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

732. Comingling of Project Funds

The statement of financial assets and Note 7 to the financial statements reflects cash equivalents balances of Kshs. 769,681,605. However, two bank confirmation certificate attached in support of cash and Cash equivalents balance relate to the Authority's bank accounts holding balances totalling to Kshs. 1,071,589,264. The relationship and balances in these bank accounts with the project has not been explained. This amount to comingling of projects funds.

In the circumstances, the accuracy of the cash and cash equivalents balance of Kshs 769,681,605 could not be confirmed.

Submission by the Accounting Officer

This is a new observation introduced in the final audit report but was not contained in the Management letter and Draft Report. It is also not clear how the auditor arrived at the reported amount of Kshs 1,071,589,264.

The closing cash balance amounting to Kshs 769,681,605 are held in the following bank accounts:

KTSSP NCBA KSHS A/C 1-110-001524	KSHS 7,732,592
KTSSP NCBA USD A/C 1-001-936677	KSHS 2,914,755
NBK short term deposit account	KSHS 700,000,000
NBK retention Bank account	KSHS 59,034,258
TOTAL	**KSHS 769,681,605**

The balance of Kshs 769,681,605 is accurate.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer seeks exemption from CS National Treasury on projects that receive donor funds directly to contractors, for purposes of GoK counterpart funds, as provided for under section 76(1) of PFM Regulations.

733. Delay in Project Implementation

As previously reported the financing agreement indicates that the Project lifespan was 23rd May, 2021 to 31st December, 2018. Paragraph 1.7 of the financial statements on funding summary reflects an approved budget of donor funds of Kshs. 29,495,071,705 all of which has been received. In addition, paragraph1.8 of the financial statements on summary of overall project performance revealed that, as at 30 June 2022 actual payments totalled to Kshs. 2,743,477,906 out of the budget

of Kshs. 3,312,559,529 or 83% performance. Further, four (4) road projects were not completed while three (3) projects had their contracts terminated.

In the circumstances, the delayed contract execution impacts negatively on the project costs and the attainment of the objectives of the project.

Submission by the Accounting Officer

This situation arose from cash flow constraints on the part of the contractors and supervision consultants as a result of inadequate budgetary allocations due to low exchequer ceilings in the current as well as prior financial years. The Authority will however endeavour to allocate adequate budgets in the subsequent financial year in order to facilitate completion of the remaining milestones for the road projects subject to budget ceilings.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

734. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.3,312,559,529 and Kshs.2,558,542,921 respectively resulting to an under-funding of Kshs.754,016,608 or23% of the budget. Similarly, the Project spent Kshs. 2,743,477,906 against an approved budget of Kshs.3,312,559,529 resulting to an under-expenditure of Kshs.569,081,623 or 17% of the budget. Management did not provide an itemized budget showing the detailed budget items for which the expenditure was intended.

It was therefore not clear how the budget figures in the statement of comparison of budget and actual amounts were arrived at.

The underfunding and under expenditure affected the planned activities of the project and impacted negatively on service delivery to the public.

Submission by the Accounting Officer

This was as a result of unrealized cash disbursements from the Exchequer.

The Authority will continue to ensure that budgetary controls are adhered to.

By nature & practise, appropriation by the National Assembly to the project is on an individual Project line basis. This is the form in which the project budget is uploaded into IFMIS & availed for expenditure. The project's reporting template however requires the presentation of expenditure grouped per nature of expenditure, against the Project's total budget.

The statement of comparison of budget and actual amounts has therefore correctly indicated the Project's correct budget amounts as appropriated by the National Assembly against the various expenditure categories as required by the Project's reporting template.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

735. Pending Bills

Note 12 and Annex 3 to the financial statements reflects pending bills amounting to Kshs.5,621,824,796 as at 30 June, 2022. Review of records revealed several issues as indicated below:

735.1. Unsupported Pending Bills

Included in the pending bills balance are pending payments in respect of supervision services pending payments of Kshs.293,026,448 which include unexplained and unsupported negative movements of Kshs.29,227,892. Annex 3 reflects opening balance for supervision services of Kshs.282,934,200 while documents cast to the closing balance of Kshs.293,026,448 upon taking into account the payments to date. The recomputed amount of opening balance should have been Kshs.332,633,449 resulting to an unexplained variance of Kshs.49,699,249.

Further, included in the pending bills balance are pending payments of Kshs.876,649,634 due to a contractor arising out of the determination of High Court, case No. HCC075 of 2018. Annex 3 to the financial statements reflects original amount of the pending bill as Kshs.1,276,649,634. However, the accounting records provided for audit indicated that the original balance payable for this bill was Kshs.1,291,376,941 resulting to an unexplained variance of Kshs.14,727,307.

In addition, Annex 3 to the financial statements reflects total original pending bills amount of Kshs 11,042,079,990 which includes an amount of Kshs.3,372,323,314 being the original amount payable to a contractor in respect to awards granted by the Dispute Resolution Board. However, review of records maintained by the legal department revealed that the original amount payable to the contractor was Kshs.3,804,526,291 resulting in an unexplained difference of Kshs.432,202,977.

Submission by the Accounting Officer

The negative movement of Kshs 29,227,892 was an unfortunate erroneous entry in the initial draft financial statements, but the error was corrected in the revised financial statements adopted by the auditor in issuing the audit opinion.

The financial statements were amended to indicate additions in the financial year 2021/22 of Kshs 323,693,787 under supervision services. The opening balances on the other hand amounted to Kshs 322,254,340 and payments amounting to Kshs 352,921,679 were made during the year resulting in closing balance of Kshs 293,026,448.

The variance of Kshs 49,699,249 was a regrettable error in the initial draft financial statements which was corrected by amending the original total fee note amounts of Kshs 332,633,449 as noted in the audit observation. The reported outstanding bills are therefore correct.

On the audit observation that the original pending bill recorded arising from the High Court determination on case no. HCC075 of 2018 was recorded as Kshs. 1,276,649,634 instead of Kshs.1,291,376,941, the financial statements have an adjusted and correct original award of Kshs 1,261,922,327 (USD 5,918,829.55 @ 102.0735 and Kshs 684,766,679.11 Less Kshs 27,000,000 over-casted under DB No. 03).

The amount of Kshs. 3,372,323,314 that was indicated as the original amount payable to the Contractor in respect of awards granted by the Dispute Resolution Board in the draft project financial statements submitted for audit on 30th August 2022 had a regrettable overcasting error. The financial records were however subsequently amended to reflect the correct figure of Kshs 3,777,526,186 (Kshs 3,804,526,291 Less Kshs 27,000,000 overcast in DB Decision No. 03) as noted during the audit.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.
ii) The Committee found that the matter was resolved.

735.2. Unexplained Land Compensation valuation difference

Included in the pending bills is a balance of Kshs.823,379,197 in relation to land compensation which reduced by Kshs.345,387,044 from Kshs.1,168,766,241 in the 2020/2021 financial. Review of records provided revealed that the National Land Commission revalued an initial land compensation award to a brokerage firm from Kshs.596,221,387 to Kshs.148,217,710, vide a letter reference No. NLC/FIN/53/1 dated 5 January, 2022, thereby reducing the valuation by Kshs.448,003,677. However, this reduction differs with the year-to-year movement reported in the financial statements of Kshs.345,387,044 by Kshs.102,616,633. Management did not provide an explanation for the difference. The project runs the risk of incurring significant and unquantified interest costs and penalties.

In the circumstance, the accuracy of the pending bills balance of Kshs 5,621,824,796 could not be confirmed.

Submission by the Accounting Officer

The draft financial statements submitted for statutory audit on 30th August 2022 indicated an erronous reduction of Kshs 345,387,044 instead of Kshs 448,003,677. This was a regrettable error following which we amended our records to indicate a correct movement of Kshs 448,003,677, hence the closing land compensation amount of Kshs. 720,762,564. This has subsequently led to the amendment of the financial statements. The Kshs.720,762,564 amount is made up of the following;

i.Opening balance from FY 2020/21 of Kshs 1,168,766,241

ii.Less downward revaluation of Kshs 448,003,677

iii.Closing balance as at 30th June 2022- Kshs 720,762,564:

The amount of pending bills reported in the revised financial statements are now correct and duly supported.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.
ii) The Committee found that the matter was resolved.

735.3. Nugatory Expenditure

Included in the pending bills balance of Kshs.5,621,824,796 as recorded under Annex 3 to the financial statements is Kshs.419,930,283 relating to interest charged, which arose from delayed payments.

The payment of interest on defrayment of delayed payments leads to loss of Government funds which could have been avoided.

Submission by the Accounting Officer

The unfortunate situation was a result of:

i. Exhaustion of Development Partner funds and subsequent lapse of credit agreement prior to completion of all the project components
ii. Insufficient exchequer budgets in the current as well as prior financial years arising from low budgetary ceilings

The Authority will however endeavor to provide adequate budgetary provisions in subsequent financial years subject to allocated ceilings to facilitate settlement of the entire pending bill.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department, leading to the cited charges of interest.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

736. Project Closure Report

The financing agreement for the Project revealed that the Project was to end on the 31 December, 2018. However, as previously reported, the Project closure report was not provided for audit review, being more than three and a half (3½) years since the Project closing date. In the circumstances, management was in breach of the covenants.

Submission by the Accounting Officer

The project closure report will be prepared upon completion of the ongoing for (4) road projects.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the closure reports are availed within three (3) months of completion of the projects.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

737. Irregular Purchase of Goods and Services

The statement of receipts and payments reflects purchase of goods and services of Kshs.16,989,450. As disclosed at Note 4, the amount comprises of domestic travel and subsistence. However, a detailed work plan to confirm that the activities paid for related to the project was not provided for audit purposes.

In the circumstances, the validity of the expenditure could not be confirmed.

Submission by the Accounting Officer

The amount of Kshs 16,989,450 relates to grouped expenditure item; purchase of goods and services. These amounts were expended on the basis of the annual Project Budget as appropriated by the National Assembly and the annual approved procurement plan.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

MERILLE – MARSABIT ROAD REHABILITATION PROJECT (KE/001/09) LOAN AGREEMENT NO. KE/FED/2009/021-655 - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

740. Unsupported Cash and Bank Balances

The statement of financial assets reflects a NIL bank balance as at 30 June 2022. However, the cash and bank balances in respect of the project were commingled in one account maintained by the Authority for all projects, and which had a balance of Kshs. 5,305,453,396 as at 30th June,2022. Therefore, cash balances attributed to individual projects held in the account could not be confirmed. In addition, there was no separate cashbooks maintained to record cash received for the project and payments against the project funds over the project implementation period. As a result, it was not possible to confirm total cash receipts and payments in respect of the project.

Submission by the Accounting Officer

As correctly observed, the project had a budget of Kshs. 200,000,000 for the financial year 2021/2022 of which the full amount was received from the counterpart GoK thereby giving a NIL bank balance.

Merille Marsbit project uses the Direct Payment Method where the Development Partner does not disburse any cash to the Authority but pay directly to the Contractor/Consultant. Therefore, no separate bank account is required. However, the Authority maintains a single exchequer bank account and a cash book that provides amongst other details:

- The Project codes
- The Project description and
- The vendor to whom an amount relates to.

From this single cashbook therefore, transactions for a particular project can be filtered through the Project Code and Project Description.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer seeks exemption from CS National Treasury on projects that receive donor funds directly to contractors, for purposes of GoK counterpart funds, as provided for under section 76(1) of PFM Regulations.

741. Pending Bills

The statement of receipt and payments for the year ended 30th June 2022 reflects acquisition of non-financial assets of Kshs. 200,000,000. Review of expenditure ledger revealed payments to Kshs. 198,407,500 which was paid to a contractor to settle pending bills in respect of civil works.

However, the amount paid exceeded Kshs. 139,890,445 disclosed as pending bills for the contractor in the prior financial years 2019/2020 and 2020/2021. The variance of Kshs. 58,433,239 between the paid amount and the previously disclosed amount was not explained.

In addition, the reported pending bills as at 30 June 2021 and as at 1 July, 2022 as per the certified financial statements amounted to Kshs. 141,566,761 while the brought forward balance as on Note 12.1 of the financial statements was Kshs. 292,165,074. However, Management did not provide documents in support of additional pending bills amounting to Kshs. 150,598,313 and part of which was also paid for in the year under review.

Submission by the Accounting Officer

The ledger provided during the Audit exercise was amounting to Kshs. 200,000,000. The difference between the reported amount and the amount purported to be in the ledger is Kshs. 1,592,500. The amount was in respect to the consultant M/S H.P Gauff Ingenieure FN 05A.

The Pending bills for Financial years 2019/2020 and 2020/2021 was Kshs. 141,561,761. However, in the year of audit an amount of Kshs. 9,585,358.22 and Kshs. 141,012,958.92 for

IPC 46 and IPC 47 respectively meant to have been paid by the Development Partner was not settled and therefore reverted back to GoK for settlement.

This is explained in note 11.6 (Prior year adjustments) of our Financial statement and also a restated analysis of pending bills for the Financial year 2020/2021 to Kshs. 292,165,074. The amount of Kshs. 5,608,955 was a component of WHT outstanding on IPC 47. This has since been paid in the current financial year. From the reverting amount of Kshs. 150,598,317 an amount of Kshs.64,042,195 was paid being Kshs. 9,585,358 and Kshs.54,456,836 for IPC 46 and 47 respectively.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

742. Inconsistent Project Finance Information

The funding summary for the project during the year 2020/2021 reflected that the total funding commitment by the Donor and Government of Kenya counterpart amounted to Kshs. 14,542,488,241 out of which an amount Kshs.14,460,676,495 had been received leaving an outstanding balance of Kshs. 63,811,750. However, during the year under review, the total reported donor commitment increased to Kshs. 14,742,488,241 and the received amount increased to Kshs. 14,510,078,182 resulting to an outstanding balance of Kshs. 232,410,060.

The Management did not provide explanation or documentation to support the increased commitment by the Donor since the project closed on 26 May, 2017.

Submission by the Accounting Officer

The undrawn amount as at 1st July 2021 was Kshs.81,811,746 this compared to the undrawn amount as at 30th June,2022 of Kshs. 232,410,060 giving us a variance of Kshs. 150,598,314. This is explained by the IPCs that reverted to Counterpart GoK for settlement.

There was no increment on the commitment amount on the Donor portion, however, the Counterpart Gok funding commitment increases yearly depending on the amount received in a particular year provided the contract sum of a particular project is not exceeded.

Gok commitment can only be reported upon appropriation through the Annual Budget.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

NAIROBI SOUTHERN BYPASS ROAD PROJECT – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

747. Pending Bills

According to other important disclosures at Note 12.5 to the financial statements, the project had pending bills of Kshs.3,623,386,920. The Project end date was 30 June,2016 and the approved funding was Kshs.21,732,540,110 all of which has been received and spent as at 30th June, 2022. It was not clear and when these pending bills would be paid, considering that all the budgeted funding for the project had been received and utilized in full, as at 30th June 2022. As previously reported, the delayed payment of the pending bills amounted to breach of the Public Finance Management Act and regulations as well as the loan covenants. Further, the delayed payment of the pending bills may result in significant penalties and interest.

Penalties and interest are costs which could have been avoided had management paid the pending bills without delay.

Submission by the Accounting Officer

Pending bills are as a result of inadequate or reductions in budgetary allocations and or exchequer receipts to the Authority. The project will therefore be fully funded once the Government budgets and releases all the funds relating to the project outstanding amounts.

The Authority shall endeavor to allocate adequate budget, subject to the provided ceiling, in the subsequent years until the pending bills are fully settled.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

NAIROBI - THIKA HIGHWAY IMPROVEMENT PROJECT LOT 3 GOVERNMENT CONCESSIONAL LOAN AGREEMENT NO. (2009) 39 TOTAL NO. (290) - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

752. Unsupported Pending Bills

Note 12.1 and Annex 3 to the financial statements reflects pending bills payable in respect of road contractors totaling Kshs. 674,721,327 which was contracted on 30 June, 2022. The Management indicated that this relates to interest charged on delayed settlement of the final payment certificates due to low Government of Kenya (GoK) development budget ceiling. However, the Final payment certificate of which the interest is paid has not been provided for audit verification.

Further, the donor commitment and Government of Kenya (GoK) counterpart funding totaling Kshs. 9,469,797,897 was fully received and paid out for this project which was completed and handed over to the GoK in 2014.

Submission by the Accounting Officer

It is true that during the year under review, an amount of Kshs. 116,274,10 was paid. This amount relates final balance amount for the Final Statement certified in June, 2020.This was shared during the audit for verification.

It is true the pending bill of Kshs. 674,721,327 was first reported in the financial statements in the financial year 2021/2022. This is because the same relates to interest on delayed payments which can only be determined and computed after final settlement of all the pending bills which was in the reporting financial year 2021/2022 hence the same could not be disclosed in the financial year 2020/2021. This IPC was also submitted and approved in the financial year under audit hence it could not have been accounted for in the previous financial year.

During the audit, the certificate for the pending bill of Kshs. 674,721,327 was availed for audit and the same has a tabulation of the computations and the basis of the computations.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.
ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

753. Unsupported Budget

The statement of budget and actual amounts indicates a final budget of Kshs. 247,500,000. However, the disclosed amount of pending bills as at 30th June, 2021 was Kshs. 116,274,109 which was paid fully during the year under review. The approved project work plans in support of the budget were not provided for audit verification. The project was completed and handed over in 2014.

Submission by the Accounting Officer

The Statement at Completion and the Final Statement which were part of pending bills as at 30th June, the basis for the Approved budgets for the financial years 2020/2021 and 2021/2022. The budget extract indicating the project was availed.

Due to Exchequer constraints, the amounts could not be settled in full when they were incurred. As provided in the contract, Interest of Kshs. 674,721,327 could not be ascertained nor disclosed until the final balance for the Statement at Completion and the Final Statement was paid being August, 2021.

In addition, the Invoice for the interest was submitted in May, 2022 and hence its disclosure in the financial statements for the year 2021/2022.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

NATIONAL URBAN TRANSPORT IMPROVEMENT PROJECT - IDA CREDIT NO.5140-KE - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

756. Inaccuracies in the Financial Statements

The statement of receipts and payments reflects a deficit for the year of Kshs.776,768,973. However, the statement of financial assets indicates a surplus of Kshs.130,396 resulting in an unexplained and unreconciled variance of Kshs.776,899,369.

Further, the statement of receipts and payments reflects comparative surplus of Kshs.291,744,934 for the period ended 30 June 2021 but the audited financial statements for 2020/2021 reflects a surplus of Kshs.291, 742,375 resulting in an unexplained variance of Kshs.2,559.

Further, Note 11 to the financial statements reflects opening deposits and retentions of Kshs.808,675,675 as at 1 July 2020 and closing deposits and retentions of as at 30 June 2021 instead of 1 July, 2021 and 30 June, 2022 respectively.

In addition, the summary of fixed assets at Annex 4 to the financial statements reflects closing fixed assets cost balance of Kshs.23,631,953,730. However, recomputation of the balance reflects Kshs.26,747,030,989 resulting in unexplained difference of 3,115,077,259.

Note 12.1 on pending accounts payable reflects an opening balance of Kshs.200,095 under supply of services. However, the audited financial statements reflect a nil closing balance for the same item.

In the circumstances, the accuracy of the financial statements could not be confirmed.

Submission by the Accounting Officer

The deficit of Ksh.776,768,973 as shown in the Statement of Receipts and Payments represents the surplus for the year net of payables for the year (Kshs. 130,396 less Kshs. 776,899,369).

We agree with the auditor's observation that there was an unexplained variance of Kshs.2,559 as shown in our draft project financial statements submitted for statutory audit on 30th August 2022.

The regrettable difference of Kshs. 2,559 as noted by the auditor was a transposition error of the totals of the net surplus for the year 2020/2021 as Kshs. 291,744,934 instead of the correct figure of Kshs. 291,742,375. This has since been corrected in the amended financial statements.

There was a mix up of dates on opening and closing balances of retentions in our draft financial statements submitted for audit on 31st August 2022. This was a regrettable typing error in Note

11 as noted by the auditor. This error has since been corrected in the amended project financial statements.

The closing fixed assets cost balance of Kshs. 23,631,953,730 was a regrettable error. The difference of Ksh.3,115,077,259 as noted by the auditor comprises of:

i. Additions for works for the year - Ksh.2,880,635,235; and

ii. Additions for land compensations for the year - Ksh. 234,442,024

The opening balance of Kshs.200,095 as noted by the auditor under supply of services was a regrettable typing error. The financial statements were amended on page 14 note 11(Previously note 12.1) to reflect a nil closing balance as correctly pointed by the auditor.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

757. Transfer from Government Entities

The statement of receipts and payments reflects transfer from Government entities through the parent Ministry of Kshs. 2,338,177,890 which was fully expensed in the year review. The receipts could however not be confirmed since the Authority did not maintain separate bank account and cashbook for projects.

Submission by the Accounting Officer

The Authority maintains one exchequer bank account to receive and pay out exchequer funds that are remitted in tranches against the Authority's annual Budget from the National Treasury through the line ministry. Although the authority maintains one bank account for the exchequer funds received and payments thereof, the Authority maintains a dynamic accounting system through which detailed analysis of each project various transactions processed through the bank account can be extracted. The authority is therefore able to segregate receipts and payments on a project – by - project basis which ensures accuracy of the balances reported in the project financial statements.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

758. Unsupported Bank Balance

The statement of financial assets reflects a bank balance of Kshs.39,888,522 as at 30 June, 2022. Included in this balance is an amount of Kshs.31, 776,307 held at a local bank for which no cashbook, bank reconciliation and bank confirmation certificate were provided for audit verification. In addition the bank balance includes Ksh.8,112,215 for KCB bank account for which the bank confirmation certificate was not provided. In the circumstances, the accuracy and completeness of bank balance of Kshs.39,888,522 could not be confirmed.

Submission by the Accounting Officer

The Authority maintains one bank account for all the retention money withheld from all the projects. The Kshs. 31,776,307 recorded in the project financial statements represents the retention withheld from Nairobi Water and Sewerage Company for relocation of their water and sewage infrastructure. A copy of the certificate of balance from KCB Bank Ltd supporting the bank balance of Kshs. 8,112,215 was provided during the audit exercise.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

759. Unsupported Retentions

The statement of financial assets and Note 10 to the financial statements reflect retention balance of Kshs.31 , 776,307 as at 30 June, 2022. However, this balance was not supported by a schedule showing the payees and the retention balance due to each of the payees. Further review of the retention movement during the year indicates that a retention amount of Kshs.867,686,035 was released to a contractor. It is however not clear why this balance was released to the contractor before completion of the works.

In the circumstances, the accuracy and regularity of the payment of Kshs.867,686,035 could not be confirmed.

Submission by the Accounting Officer

The retention balance of Kshs.31, 776,307 is the total amount of retention for Nairobi Water and Sewerage Company supported by the payment vouchers.

Retention balance of Kshs. 867,686,035 was released to the contractor, M/s China Wu Yi Co. Ltd with a retention money bank guarantee as a substitute as provided for in the contract.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

760. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects a final expenditure budget of Kshs.2,629,312,384. However, Management did not provide an itemized budget showing the detailed budget items for which the expenditure was intended. In addition, the statement reflects a final expenditure budget of Kshs.2,629,312,384 against actual expenditure of 3,115,107,452 resulting to an over-expenditure of Kshs.485,795,068 for which no authority was provided for audit purposes.

Submission by the Accounting Officer

By nature and practice, appropriation by the national assembly to the project is on a specific line by line basis. This is the form in which the project budgets are uploaded into IFMIS and funds disbursed for expenditure.

The reported over-expenditure of Kshs. 485,795,068 resulted from the configuration of the financial statement reporting template which requires release of retention money to be treated as an expenditure. The reported over expenditure of Kshs. 485,795,068 is part of the Kshs. 867,686,035 retention money released on the strength of retention money bank guarantee.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

761. Pending Bills

Note 12.1 and Annex 3 to the financial statements reflects pending accounts payables totalling Kshs.5,834,320,191 which comprises of Kshs.3,295,473,099 for construction of civil works, Kshs.2,466,365,853 for land compensation and Kshs.72,481 ,239 for supply of services that remained unpaid as at 30 June, 2022. Although Management has committed to liaise with the line Ministry and the National Treasury for timely provision of sufficient budgetary allocations to pay the debts in the subsequent financial year, the Project is at risk of incurring significant unquantified interest costs and penalties due to failure to pay invoiced bills.

Failure to settle bills during the year in which they relate adversely affect the provisions of the subsequent year to which they have to be the first charge.

Submission by the Accounting Officer

The accumulated pending bill amounting to Kshs. 5,834,320,191 was as a result of budget constraints in the current and prior financial years. The Authority is continuously liaising with

the parent ministry and the National Treasury to ensure adequate GoK budgetary allocations to facilitate settlement of the entire pending bill.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

762. Cancellation of Financing Agreement

The project was co-financed by the World Bank (IDA) 80% and the Government of Kenya (GoK) 20% up to 31st December 2018. The financing agreement was however cancelled in December 2018 and thus since January 2019 the project became a government of Kenya funded project, 100%. The funding summary at Note 1.7 of the financial statements indicate that as at the time of cancellation, an amount of Kshs.23,837,436,577 had been drawn.

It is not clear the circumstances under which the Bank withdrew from the project and how the financing agreement was terminated.

In the circumstances the overall objectives of the project may not be met therefore denying the public the expected benefits from the project.

Submission by the Accounting Officer

The Credit Agreement was cancelled on 31st December 2018 at the request of the National Treasury hence the Project fully reverted to the Government of Kenya.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents on time, as required by section 9 (i) (e) of the Public Audit Act, 2015.

763. Delay in Project Completion

Management entered into a contract agreement dated 02 August, 2016 between Kenya National Highways Authority and a contractor for the rehabilitation and capacity enhancement of James Gichuru Junction – Rironi (A104) at a contract sum of Kshs. 16,366,586,563 (inclusive of taxes) for a period of thirty-six (36) months plus twelve (12) months defects liability period.

Through addendum No. 3, the contract sum was varied by Kshs.4,048,208,434 or 24.7% to a new contract sum of Kshs.20,414,794,998 vide a revised bill of quantities arising from additional activities (Gitaru full cloverleaf interchange, reconstruction of major bridges instead of widening, Rironi bridge changed from 1 span to 2 span and introduction of retaining walls in line with urban

road design philosophy. In addition, through addendum No.5 upon approval of extension of time request by the contractor, the contract end date was revised to November, 2023 inclusive of the defect liability period. By 30 June, 2022, the overall project progress was at 72% against a planned progress of 82.71% indicating that the project was behind schedule. Overall construction time that had elapsed was at 92.22% against an overall project progress of 72% indicating slow progress of implementation that may call for further extension of time.

Further, physical verification conducted in the month of September, 2022, revealed that no works were ongoing as the contractor had suspended work from March, 2022 citing lack of payments. The funding challenge was further evident by addendum No. 4, clause 14.9 of the contract that was effected to facilitate release of retention money to the contractor against a bank guarantee in a bid to release funds to the project.

Review of records revealed that as at 30 June, 2022, the National Urban Transport Improvement Project had accrued a total of Kshs.230,382,944 as interest due to delayed payment of interim payment certificate No.42 dated 23 May, 2022.

Delay in completion of the road project will lead to increase in avoidable costs of interest and penalties on delayed payments as well as deny the public the benefits that would have accrued from the completion of the project in time.

In the circumstances, value for money could not be established for the expenditure of Kshs.23,797,548,056 spent on the Project to date

Submission by the Accounting Officer

The delay in Project completion is attributed to the increase in the project sum due to redesigning and reconstruction of major bridges, delay in land acquisition and cancellation of the financing agreement prior to conclusion of all the project components hence inadequate resources from the government of Kenya now the sole financier of the project. In addition, delays have been caused by inadequate budgets over the project implementation period.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents on time, as required by section 9 (i) (e) of the Public Audit Act, 2015.

NORTHERN CORRIDOR TRANSPORT IMPROVEMENT PROJECT IDA CREDIT NO.3930-KE & No.4571-KE - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

766. Inaccuracies in the Financial Statements

The statement of receipts and payments reflects a deficit of Kshs.9,702,270 for the year ended 30 June, 2022. However, the statement of financial assets reflects a surplus of Kshs.2,496,331 for the same period resulting in unexplained difference of Kshs.12,198,601.

In the circumstances, the accuracy of the financial statements could not be confirmed.

Submission by the Accounting Officer

This was attributed to the following:-

i. The Project Bank account has earned interest of Kshs.2,496,331 during the reporting year and,

ii. A retention amount of Kshs.12,198,601 was refunded to the contractor having been withheld in the prior years as reported in the statement of financial assets for the prior year.

The reporting template requires that the amounts retained or released be reported as financial liabilities and bank account interest earned as incomes. The deficit/ surplus will be the income less expenses/ liabilities incurred during the period.

For this project, the deficit of Kshs. 9,702,270 was arrived at as follows: -

Income (Kshs. 2,496,331) less liabilities for the year (Kshs. 12,198,601). Please note that this project was completed more than 10 years ago hence there were no further activities with a financial implication.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

767. Unsupported Bank Balances

The statement of financial assets reflects bank balance of Kshs.59,353,586 as at 30 June, 2022. However, and as reported in 2021/2022, the opening balance of Kshs.69,055,856 was not supported with bank reconciliation statement and bank confirmation certificate.

In the circumstances, the accuracy of bank balance of Kshs.59,353,586 as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

Management availed the letter from NCBA Bank confirming the bank balance for the KeNHA-NCTIP as at 30th June 2022 to have been Kshs. 59,353,582.25. The bank reconciliation statement for the same account was provided indicating the actual bank balance of Kshs.59,353,582.25.

The opening bank balance for FY 2021/2022 as at 1st July 2021 was Kshs. 69,055,856. The above was the closing balance for FY 2020/2021 which was audited and confirmed to comprise of:-

i. Bank balance at NCBA – Kshs. 56,857,255

ii. Bank balance at NBK Retention -Kshs. 12,198,601

iii. Project bank balance as at 30/06/21-Kshs. 69,055,856.

The above closing project bank balance as at 30th June 2021 of Kshs. 69,055,856 was verified during the audit exercise for FY 2020/2021. Further note that the difference of Kshs. 2,496,331 between the opening project bank balance and closing project bank balance of Kshs. 56,857,255 and Kshs. 59,353,582.25 was the total net interest earned during the financial year under review whereas the Kshs. 12,198,601 retention money shown at the close of FY 2020/2021 did not appear in at the close of FY 2021/2022 since it was released to the contractor during the year under review.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer seeks exemption from CS National Treasury on projects that receive donor funds directly to contractors, for purposes of GoK counterpart funds, as provided for under section 76(1) of PFM Regulations.

768. Unsupported Pending Bills

Note 12.1 and Annex 2 to the financial statements reflects pending accounts payable in respect of road contractors totalling Kshs.3,597,877,130 as at 30 June,2022. Annex 2 of the financial statements clearly shows that a total of

Kshs.3,589,974,572 were contracted on 28 and 30 June 2022 which was six and a half years after the project timelines. Further the financial statements for the year ended 30 June 2021 did not disclose any pending bills at that point even though a pending bill of Kshs.7,902,558 is reflected as the opening balance as at 1 July, 2021. No documentation have been provided in support of the above pending bills. Review of the project's records indicate that no bill was settled during the year and the project therefore runs the risk of incurring significant unquantified interest costs and penalties with the continued delay in settling invoiced bills.

Submission by the Accounting Officer

The above amounts of Kshs. 3,597,877,130 were under dispute resolution mechanisms in the prior financial years hence reported under contingent liabilities. However upon their

crystallization following a court award in FY 2021/2022, they transited from contingent liabilities to actual confirmed liabilities hence recognition in the project financial statements for year ended 30th June 2022.

This matter had not been adjudicated and awarded as at the time of reporting for the year ended 30 June 2021.

The awards are supported by the three (3) Dispute Board awards of Kshs. 3,589,974,572 and IPC of Kshs. 7,902,558 shared during the audit for the current financial year.

We disagree with the audit observation that the pending bill amount of Kshs 7,902,558 was not reported in the prior year`s project financial statements. This pending bill was actually included in the project financial statements for FY 2020/2021

A copy of the audited project financial statement for the previous FY 2020/2021 has been availed. No bill was settled due to lack of project line budget provision in FY 2021/2022 due to constrained budget ceilings.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

769. Project Closure Report

The Project information at Section 1.2 of the annual report and financial statements reflects the project end date of 30 December, 2015. However, the project closure report was not provided for audit, being almost seven (7) years after the expiry of the closure period.

Submission by the Accounting Officer

Please note that the project was administered under FIDIC Conditions of Contract. As per FIDIC conditions of Contract, a final account shall only be prepared upon both parties to the contract settling all outstanding matters. Please note that the government is yet to settle all project pending bills including claims thereof. The project bank account at NCBA Bank was closed during the FY 2022/2023.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer henceforth provides an interim project execution completion report, albeit showing pending bills, for audit purposes.

REGIONAL MOMBASA PORT ACCESS ROAD PROJECT (LOAN NO.27459, CREDIT NO.84010 AND GRANT NO.202061919) - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

773. Unsupported Budget Amounts

The statement of comparative budget and actual amounts reflects Kshs 17,000,000 and Kshs 603,870,000 as the budget for purchase of goods and services and acquisition of non-financial assets respectively. However, these two amounts are not in agreement with the approved project budget under the budget line items of purchase of goods and services and acquisition of non-financial assets.

Submission by the Accounting Officer

By nature and practice, appropriation by The National Assembly to the project is on a specific line by line individual project. This is the form in which the project budgets are uploaded onto IFMIS and availed for expenditure. A line by line individual project budget was availed during the audit. However, for purposes of presentation in the financial statements, the requirement is not to present them per project as in IFMIS but by the nature of expenditure as per the template provided by the Public Sector Accounting Standards Board (PSASB).

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

774. Ineligible Expenditure

The statement of receipt and payments reflects purchase of goods and services amount of Kshs. 16,148,099, as disclosed in Note 4 to the financial statement which includes Kshs. 15,609,099 in respect to domestic travel and subsistence.

Included under domestic travel and subsistence expenditure of Kshs 15,609,099 are payments in respect to per diems for tracer studies and shooting of documentary Kshs 700,696 collection and issue of awards Kshs. 7,236,609, shortlisting of applicants for vocational training Kshs 361,200, cabinet secretary visit to Mombasa Kshs 386,400 and AfDB Mission Kshs 229,585. It was not demonstrated how these expenditures relate to the project and why the amounts were charged yet the road construction had not started.

Submission by the Accounting Officer

These were project operating expenses relating to project publicity, community engagement and oversight activities by the Cabinet Secretary.

Committee Observations and Findings;

The Committee observed that the expenses were not core to expected deliverables of the project.

Committee Recommendation;

The Committee reprimands the Accounting Officer.

775. Delay in Project Implementation

As previously reported, Note 1.7 to the annual report and financial statements on funding reflects the Project implementation period as 41 months commencing August, 2017 to December 2020. The total Project commitment from Development Partners and counterpart funding from the Government of Kenya amount to Kshs 18,112,866,000. However, as at 30 June, 2022 an amount of Kshs 480,201,992 (2.7%) had been drawn leaving a balance of Kshs 17,632,664,008 as undrawn balance.

Submission by the Accounting Officer

Delay in Project implementation has been due to prolonged procurement process for the works contractor occasioned by stringent requirements by the financier. The Authority has however finalized the procurement process and civil works contract signed and expects works to commence in FY 2022/23

Once the works commence, the Authority shall endeavour to closely monitor the Project through site meetings in an effort to enable speedy delivery of the project. Further, the Authority through the Parent Ministry initiated the process of extension of the credit agreement which was granted up to 31st December 2025.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

776. Pending Bills

Note 12.1 to the financial statements reflects pending accounts payable in respect to land compensation totaling Kshs 82,589,339 as at 30 June, 2022 out of which bills totaling to Kshs 15,028,891 were carried forward from the previous financial year. The Project therefore runs the risk of incurring significant unquantified interest costs and penalties with the continued delay in settling invoiced bills.

Submission by the Accounting Officer

This arose due to inadequate GoK budgetary provisions and delays in exchequer releases.

In FY 2022/23 the Authority has managed to secure GoK allocation of Kshs 30,000,000 for the project subject to the current year ceilings to be utilized in reducing these pending bills.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

777. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs. 620,870,000 and Kshs. 16,148,099 respectively resulting to underfunding of Kshs. 604,721,901 or 97 % of the budget. Similarly, the project spent Kshs. 16,148,099 against approved budget of Kshs. 604,721,901 resuting to a under expenditure of Kshs. 604,721,901 or 97% of the budget.

Submission by the Accounting Officer

As above.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

779. Non-Maintenance of Project Cash book

The Authority does not maintain a project cashbook which increases the risk of comingling of funds. It is therefore not clear how funds earmarked for specific projects are accounted for in the absence of a project cashbook.

Submission by the Accounting Officer

Through the Authority's accounting system Sage Pastel evolution, one cashbook for GoK development funds is maintained that provides amongst other details:

- The Project codes
- The Project description and
- The vendor to whom an amount relates to

From this single cashbook therefore, transactions for a particular project can be filtered through the Project Code and Project Description. Further, the Authority maintains one cashbook in line with the National Treasury's circular on rationalization of bank accounts by MDAs.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

UPGRADING OF "GILGIL MACHINERY" ROAD PROJECT - KENYA RURAL ROADS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

781. Unsupported Bank Balance

The statement of financial assets reflects a bank balance of Kshs.13,984,599 as at 30 June, 2022. Included in this balance is Kshs.11,549,100 being retention monies held at a local commercial bank. However, the bank reconciliation statement for June, 2022 provided for audit review includes a balance of Kshs.2,516,634,138 described as due to other projects. Although Management explained that the Project does not maintain its own retention account and that the bank account used for retention monies is a commingled account with deposits from other projects, the support for Kshs.2,516,634,138 was not provided for audit review.

In the circumstances, the accuracy and completeness of the bank balance of Kshs.13,984,599 could not be confirmed.

Submission by the Accounting Officer

A copy of the bank reconciliation for the retention account has been availed.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

782. Delay in the Disbursement of the Government Counterpart Funding

The statement of receipts and payments reflects a loan amount from the Arab Bank for Economic Development in Africa (BADEA) of Kshs.414,210,668 and Kshs.50,000,000 as counterpart funding from the Government of Kenya. The total cumulative counterpart funding from the Government of Kenya as at 30 June, 2022 stood at Kshs.137,500,000. This represents 34% of the total counterpart financing projection of Kshs.400,000,000. With the expected closing date of the project set at 30 July, 2024, it is doubtful that the counterpart financing balance of Kshs.262,500,000 or 66% will be disbursed to the project activities before closure date.

Failure to finance the project activities as planned may affect the operations of the Project resulting to delayed implementation and the likelihood of pending bills.

Submission by the Accounting Officer

During the period under review budgetary constraints limit the amount of remittances to the projects.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

783. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.800,000,000 and Kshs.464,210,668 respectively resulting to an underfunding of Kshs.335,789,332 or 42% of the budgeted receipts.

Similarly, the Project spent Kshs.463,400,144 against an approved budget of Kshs.800,000,000 resulting to an underexpenditure of Kshs.336,599,856 or 42% of the budget.

The underfunding and underperformance affected the planned activities of the Project and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

This was due to inadequate budgetary allocations.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

784. Pending Bills

Note 12.1 and Annex 3 to the financial statements reflects pending bills totalling to Kshs.145,613,575 as at 30 June, 2022 which comprise of withholding tax due of Kshs.5,899,717 and balances due for various payment certificates of Kshs.139,713,858. Management has indicated that the non-payment of the pending bills is due to inadequate budgetary provision in the year under review.

Failure to settle bills during the year in which they relate adversely affects the provisions of the subsequent year to which they have to be the first charge.

Submission by the Accounting Officer

This was due to inadequate budgetary allocations.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

785. Delayed Completion of Road Project

The contract for upgrading to bitumen standard of Gilgil-Machinery Road, contract No. RWC369 was awarded on 6 February, 2019 and the contract agreement signed on 3 April, 2019 at a contract sum of Kshs.1,476,491,036 and for a contract period of 24 months. Further, the notice of commencement of the works was dated 4 April, 2019 setting the date of commencement to 4 May, 2019 and an initial date of completion of 4 May, 2021. However, due to delays in implementation of the contract, the employer awarded a 14-month extension of time to the contractor, with the revised date of completion set at 12 July, 2022.

Audit inspection carried out in the month of July, 2022 revealed that the road works were still in progress and the estimated overall achieved physical progress for permanent works was at 72% against a projected revised programme of 71% of the expected output. Review of the monthly progress report (MPR No. 39) for August, 2022 indicates that the contractor had applied for a further extension of time as a result of delay in payments of certified works, which is under evaluation.

The delayed implementation of the project works will affect service delivery to the users of the road in Nakuru and Nyandarua Counties.

Submission by the Accounting Officer

Delayed Tax exemption was on the key factors that delayed the project commencement.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails to the Committee a status report within three (3) months of adoption of this report.

786. Consultancy Services Offered without a Valid Contract

The Project Management entered into a contract reference KeRRA/BADEA/001/16, with a Consultant on 18 January, 2018 for the design review and construction supervision of the Gilgil-

Machinery Road project for a contract period of thirty-one (31) months (design review – three (3) months and construction supervision – twenty-eight (28) months) at a contract sum of US Dollars 1,244,550 exclusive of VAT.

Review of the contract agreement revealed that the contract period for the consultancy had expired on 18 August, 2020 and the contract had not been renewed or extended. Although Management explained that approval for the extension of the consultancy contract was in progress, the approval had not been obtained as at 30 June, 2022 yet consultancies were still ongoing.

This is contrary to Section 139 (2) (a) of the Public Procurement and Asset Disposal Act, 2015. Further, Part III of the contract agreement for the consultancy services for design review and construction supervision with the consultant on special conditions of contract, paragraph 13.1 and 14.1 provides for the commencement of services and expiry of the contract.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The contract has since been renewed to June 2024.

Committee Observations and Findings;

The Committee noted that the contract was belatedly renewed.

Committee Recommendation;

The Committee reprimands the Accounting Officer for the lapse of time in contract renewal, and recommends that he avails a status report on the project to the Committee within three (3) months of adoption of this report.

NAIROBI WESTERN BYPASS – KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

788. Unverified Land Compensation

The Statement of receipts and payments and Note 4 of the financial statements indicate that Kshs. 73,983,440 was paid to the Commissioner of land to cater for land compensation.

The payments were made on the strength of schedules attached to payment vouchers. However, no evidence of determination of acreage, boundaries, ownership and value was provided for audit verification. This is contrary to Section 119 of the Land Act, 2012 which provides that compensation shall be made only upon the exercise of due diligence which shall include verification of final survey and the determination of acreage, boundaries, ownership and value.

Submission by the Accounting Officer

The acreage and boundaries was indicated in the land acquisition drawings and schedule that was forwarded with approval letter Ref.: MoTIHUD/I/35.08/Vol. dated 4th November, 2019 from the Cabinet Secretary (Ministry of Transport, Infrastructure, Housing, Urban Development & Public Works) to the Ag. CEO (NLC). The ownership and valuation of the acquired parcels is determined by NLC as provided in section 107(1) of the Land Act.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

789. Unsupported Receipts and Payments

The statement of receipts and Payments reflects transfers from government entities amounting to Khs. 74,973,580 as disclosed in Note 1 to the financial statements, all of which were received during quarter four (4). However, the project Management did not provide supporting documents indicating the specific dates on which these receipts were received, but instead provided an exchequer confirmation of the entire amount issued to Kenya National Highways Authority (KeNHA), amounting to Kshs. 58,719,787,682.

This is contrary to Regulation 76 of the Public Financial Management (National Government) Regulations, 2015 which provides for the purpose of disbursement of project fund, there shall be opened and maintained a project account for every project at Central Bank of Kenya, unless it is exempted by the Cabinet Secretary , in writing , into which all funds shall be kept and such an account shall be know by the name of the project for which it is opened and each project shall maintain on one bank account.

Submission by the Accounting Officer

Regulation 76 of the National Regulation 2015 is on Grants and Loans received from the Development Partners.

The Nairobi Western bypass uses the Direct Payment Method where the Partner do not disburse any cash hence no account is required. This is also not specified in the financing agreement.

Direct payment vouchers totalling to Ksh. 5,139,307,587 was availed during the audit exercise.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

790. Unimplemented Road interchanges and Service lanes

Audit review of records provided for audit revealed that the road project commenced in April, 2019 and covers a distance of approximately 16.7 Km. The project entailed construction of a dual carriage way, two (2) lanes each direction seven (7) metres wide. The information further indicated that there were six interchanges to be implemented at six shopping centers along the road, all of

which the evidently not done. According to Variation of Contract Ref: KeNHA/RD/EPC/2074/2017, Addendum No. 2, dated 14 January , 2022, the management provided justification for lack of implementation for the interchanges referred above, as detailed below;

i. Omission of the first interchange was formed by the necessity to contain the cost of the project within the contract sum, and the savings made would be channeled to cover the cost of additional 1.384m of reinforced earth retaining walls and part of the 725m additional gravity retaining walls along alignment.

ii. Construction of the second interchange ramps and slip roads were to be limited to available space due to difficulty in acquisition of land and need to reduce the cost of interchange.

iii. The tunnel initially proposed to connect two overpasses at the third interchange was omitted in order to avoid the cost of project going over the budget instead an additional crossing at the site was constructed, instead on one (1No.) of crossing proposed at the preliminary design.

iv. In order to contain the cost of the project within the contract sum, the scope in fourth interchange was scaled down in the interim, so as to free financial resources to cater for additional works including box under-passes and other necessary enhancements. Considering that the land for the interchange was still not available, the construction works were to be done in stages, the first being an at-grade round about to cater for the current traffic.

v. The fifth junction, which was initially meant to be a simple underpass, was now to be completed as a diamond type interchange, due to the high cost of acquiring the land.

Submission by the Accounting Officer

Not all interchanges were done in order to accommodate costs arising from additional work that the contractor undertook and the lack of land space. The decision to omit two interchanges, to be completed by stage construction, was reached by mutual agreement after a meeting with the Employer in September 2021.

Project being an EPC the contract sum is fixed and the contractor is responsible for design and construction works.

Committee Observations and Findings;

The Committee noted that the submission by the Accounting Officer was unsatisfactory, and pointed to lack of proper planning and foresight.

Committee Recommendation;

The Committee reprimands the Accounting Officer.

791. Pending Bills

Note 12 to the financial statements, the project had pending bills ok Kshs. 3,926,892,951. The project end date was 30th June, 2022 however, it was not clear how and when these pending bills would be paid since the delayed payment of the pending bills may result in significant penalties and interests.

Submission by the Accounting Officer

The project is being executed over a period of 39 months (3 ¼ years). The government allocates the total cost of the project over the number of years the project is implemented. During the FY 2021/2022, the amount allocated was fully utilized as planned.

The pending bill amounting to Kshs. 4,016,057,655 (Kshs. 3,926,892,951 FY 2020/2021) was as a result of budget constraints and reduction of GoK budget allocation by Kshs. 137,500,000 in the reporting financial year (2021/2022). An amount of Kshs. 2,569,653,793.29 in the first quarter of the current FY 2022/2023.

An allocation of Kshs. 5,400,000,000 (AIA Kshs. 5,230,000,000 and GoK Kshs. 170,000,000) is provided in the current FY 2022/2023.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

792. Corporate Social Responsibility Activities outside the Affected Road Locality

The project environmental and sustainability report section indicate that the Chinese Suppliers (China Road & Bridge Corporation) has been involved in various Community Social Responsibility (CSR) activities geared towards providing residents through water kiosks, improvement of access roads and enhancing learning and playing environment in schools along the project. There was a total of nine CSR activities carried out by the project which were undertaken outside the locality of the road.

However, correspondences and documents in support of initiation and public participation on the said CSR activities including quantity and amount spent on the activity have not been provided for audit verification. The activities were undertaken far from the locality in which the project was being implemented contrary to the environmental and sustainability reporting sub paragraph 3.5 which indicate that the activities are geared towards benefiting the local residents.

Submission by the Accounting Officer

The contractor obtains most of his subgrade material and hard fill from Karai. That area is thus considered a project area and deserving of CSR activities as without the subgrade material road pavement would not be placed. The same to KFS because the asphalt mixing plant is located on forest land. Ndurarua is located within the project road, off the Lower Kabete interchange, between Ramps A and B.

At Rungiiri, the Contractor sources his water for construction from Rungiiri Dam. That area is off Gitaru 1 interchange at WK 0+825 and therefore benefits the locals.

In addition, a wall was erected at Kihara School. Erecting a wall for a school does not directly 'benefit' the local residents but reduces their burden in developing the school and keeps the school community safe

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents on time, as required by section 9 (i) (e) of the Public Audit Act, 2015.

ARUSHA-NAMANGA-ATHI RIVER ROAD DEVELOPMENT PROJECT NO. P-Z1-DB0-040 - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

794. Unconfirmed Transfers from Government Entities

The statement of receipts and payment reflects transfer from Government entities through the parent Ministry of Kshs. 72,258,398 which was fully expensed in the year under review. The receipts could however not be confirmed as the Authority did not maintain a separate bank account and cashbook for the project.

Submission by the Accounting Officer

Prior to the lapse of it's financing agreement, the Multinational Athi River – Namanga – Arusha Road Project used the Direct Payment Method where the Development Partner did not disburse any cash to the Authority but paid directly to the Contractor and Consultant. The financing agreement did not have a provision for opening a special project account. Although the authority maintains one bank account for the exchequer funds received, the Authority maintains a dynamic accounting system which is able to provide a robust electronic register that provides a detailed analysis of various transactions incurred through the bank account on a project-by-project basis. The authority is therefore able to segregate payments which ensures accuracy of the balances reported in the project financial statements.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

795. Pending Bills

Note 12 and Annex 3 to the financial statements reflects pending bills balance in respect of road construction amounting to Kshs 83,344,955 as at 30 June 2022. Review of the project's records indicate that the entire balance of Kshs 83,344,955 was brought forward from the previous year. The project therefore runs the risk of incurring significant interest costs and penalties with the continued delay in settling the bills.

Submission by the Accounting Officer

This was a result of Exhaustion of Development Partner funds and subsequent lapse of credit agreement prior to completion of the project and Insufficient exchequer budgets in the current as well as prior financial years.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

EASTERN AFRICA REGIONAL TRANSPORT, TRADE AND DEVELOPMENT FACILITATION PROJECT (IDA CR-5638) - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

800. Inaccuracies in the Financial Statements

The statement of financial assets reflects a fund balance brought forward of Kshs.200,585,306 which differs with the prior year audited carried forward balance of Kshs.181,737,287 resulting to an unreconciled and unexplained variance of Kshs.18,848,019. Further, the statement of receipts and payments reflects a deficit of Kshs. 155,922,439 in the year under review while the statement of financial assets reflects a deficit of Kshs.22,367,577 resulting to an unreconciled variance of Kshs.133,554,862.

In the circumstances, the accuracy and completeness of the financial statements for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The brought forward figure of Kshs. 200,585,306 was correctly stated. The alleged variance of Kshs. 18,848,019 was a result of retention transferred from the authority's retention account to the project account as required by the development partner. This amount that had been accounted under financial liabilities has therefore been reclassified to fund balances in the current financial year. The difference of Kshs. 133,554,862 is the retention released to the contractors for the financial year under review.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

801. Unconfirmed Cash and Cash Equivalents Balance

The statements of financial assets disclosed in note 7 to the financial statements reflects cash and cash equivalent balance of Kshs.311,210,876. Included in this balance is an amount of Ksh 178,217,730 held in a local bank account whose bank certificate reflects a closing balance of Ksh.25,634,574 as at 30 June 2022 resulting to an unexplained and unreconciled variance of Ksh.152,583,156.

Further, the cash and cash equivalents balance includes an amount of Kshs.132,993,147 in respect of retention monies, similarly held in a local bank. However, the cash book, bank reconciliation statements and bank confirmation certificates in respect of the balance were not provided for audit review.

In the circumstances, the accuracy and completeness of the cash and cash equivalents balance of Kshs.311,210,876 as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The difference of Kshs. 142,583,155.601 is as a result of unpresented cheque no.6562 for Kshs. 142,583,155.60.

Although the Authority maintains one bank account for funds held as retention funds, the Authority maintains a dynamic accounting system which has capacity to generate a robust electronic register that provides the following details amongst others: -

a) The date when an amount was either retained or paid out,

b) The amounts retained or released,

c) The vendor to whom the amount relates to, and

d) The project to which the amount relates to.

The authority maintains one bank account for all the retention money withheld from all the projects. The Kshs. 132,993,147 reported in Note 7 of the financial statements represents only the retention portion of this project.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer seeks exemption from CS National Treasury on projects that receive donor funds directly to contractors, for purposes of GoK counterpart funds, as provided for under section 76(1) of PFM Regulations.

802. Unreconciled Balances on Special Deposit Accounts

The Project's special account statement reflects USD 4,046,000 equivalent to Kshs.460,787,056, which was withdrawn from the special account and transferred to the project bank account during the year under review. However, the statement of receipts and payments reflects transfers from external development partner to the project amounting to Kshs.460,356,451, resulting to an unexplained and unreconciled difference of Kshs.430,605.

In the absence of reconciliation of the variance of Kshs.430,605, it was not possible to confirm the accuracy of the balance of Kshs.460,356,451 reflected in the financial statements.

Submission by the Accounting Officer

Transfers from external development partner to the project special account operated by the National Treasury at the Central Bank of Kenya were received on diverse dates at varrying ruling exchange rates as indicated below: -

a) 12/10/2021 USD 1,303,207.70 received as Kshs.143,574,392.30

(exchange rate was Kshs. 110.17/USD)

b) 28/3/2022 USD 1,439,331.19 received as Kshs.164,198,902.15

(exchange rate was Kshs. 114.08/USD)

c) 28/6/2022 USD 1,303,461.10 received as Kshs. 152,583,156.35 *(exchange rate was Kshs. 117.06/USD)*

Total receipts from the 3No. tranches was Kshs. 460,356,450.80

Therefore, the figure of Kshs.460,356,451 in the statement of receipts and payments is correct as confirmed by remittance advises from the National Treasury.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

803. Presentation and Disclosure of the Financial Statements

Section 1.3 on page v which reflects the project overview has omitted information relating to achievements on strategic goals, current situation which the project was formed to intervene

and the project duration. In addition Section 1.7 on page vii which relates to funding summary has omitted information relating to the project duration.

Further the summary of overall project performance section of the report includes incomplete information on the upgrading of Lodwar and the revised contract sum for the bid is not indicated. In addition, detailed information on upgrade of Lokichar - Loichamatak Lot 4, is not included in the summary of overall project performance.

In the circumstances, it was not possible to confirm that the financial statements were presented in the format prescribed by the Public Sector Accounting Standards Board.

Submission by the Accounting Officer

The Financial statements were amended on page v (appendix iv) and the project overview now has the information relating to achievements on strategic goals, current situation that the project was formed to intervene and project duration.

The Financial statements were amended and the funding summary now has information relating to the project duration.

The Financial statements summary of overall Project Performance section of the report were amended on page xi (appendix iv) to include information on the upgrading of Lokichar - Loichangamatak -Lodwar. it is worth noting that there was no revised contract sum for this particular project.

The Financial statements were amended to include the detailed information on upgrade of Lokichar – Loichagamatak on pages xi and xii in the amended financial statements.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

804. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis totaling to Kshs. and Kshs.9,766,284,766 respectively, resulting to an underfunding of Kshs.2,738,103,221 or 22% of the budget.

Similarly, the Project spent Kshs.9,922,207,205 against an approved budget of Kshs. 12,504,387,987 resulting to an under expenditure of Kshs.2,582, 180,782 or 21% of the budget.

The underfunding and under-performance may have affected implementation of the planned activities, and this may have impacted.

Submission by the Accounting Officer

The under absorption/ spending of budgeted resources was as a result of delayed approval of submitted addendums which prevented payments to the Contractor for work done under the Lodwar - Lokitaung project hence under absorption of the development partner portion of the budget.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

805. Pending Bills

Other important disclosures under paragraph 1 to the financial statements reflects pending bills totaling Kshs.453,148,451 as at 30 June, 2022 which were not settled during the financial year 2021/2022 but were instead carried forward to 2022/2023. This figure of Kshs. 453,148,451 varies with recalculated amount of Kshs.452,413,937 by Kshs.734,514. Further, the pending bills in the year under review of Kshs.453,148,451 were not supported with respective schedule therefore could not be reconciled to the pending bills totalling to Kshs.l in the financial year 2020/2021 with an original amount of Kshs.7,654,282,422.

Failure to settle bills in the year to which they relate affects the budgetary provisions for the subsequent year to which they form a first charge, and also efficiency with which the project is implemented.

Submission by the Accounting Officer

This was as a result of GoK budget constraints in the financial year. However, In FY 2022/23 the Authority managed to secure a GoK budgetary provision for the project amounting to Kshs. 930,000,000 as per the printed estimates extract for FY 2022/23.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

806. Delay in Implementing Part of the Financing Agreement

Review of the project information and overall performance revealed that one of the objectives of the project was the provision of a

One Stop Boarder Post (OSBP) between Kenya and Sudan to enhance business opportunities. However, audit review of documents provided revealed that an OSBP had not been constructed

at Nadapal. No explanation was provided for not implementing the OSBP, considering that the Project Agreement lapses in 2023.

Based on the circumstances described above, the project may not be completed within the scheduled project timelines.

Submission by the Accounting Officer

One Stop Boarder Post at Nakodok was to be implemented by Kenya Revenue Authority (KRA) who are one of the beneficiaries under the financing agreement.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents on time, as required by section 9 (i) (e) of the Public Audit Act, 2015.

807. Unresolved Prior Year Matters

In the audit report of the previous year, several issues were raised. However, the Management has not indicated how each of the issues raised in the previous year Auditor-General's report, was resolved, including the provision of information required under the prescribed reporting format.

Under the circumstances, it was not possible to confirm that the financial statements disclosed the implementation status of the prior year audit recommendations.

Submission by the Accounting Officer

Awaiting PAC report for FY 2020/21.

Committee Observations and Findings;

The Committee observed that its FY 2020/21 report had since been adopted by the House.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails status report of implementation of the Committee's recommendations within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

808. Irregularities in Project Implementation

The statement of performance against the project's predetermined objectives reflects projects currently under execution under six (6) contracts. Review of records provided for audit revealed the following;

808.1. Upgrading of Lodwar - Lokitaung Junction Road (80Km)

The Management awarded the contract to an international contractor and an international consultant at a total sum of and

(Kshs.568,958,975 and Euro. 1,589,113 - exchange rate Kshs.125) respectively. The commencement date was 15 August, 2017 for a period of thirty-six (36) months to 14 August, 2020, with defects liability period of 12 months. The works contract sum was varied from Kshs.8,334,773,795, with an increment of Kshs.2,126,856,197 or 26%, to Kshs.10,461 In addition, there was an extension of time to 31 January, 2022 representing 47.2% increase in contract period inclusive of defects notification period.

This contravened Section 139(4)(e) of the Public Procurement and Disposal Act, 2015, which provides that the cumulative value of all contract variations should not result in an increment of more than 25% of original contract price. Further, the contractor was paid the balance of 50% of his retention money against a retention guarantee, despite not having constructed a One Stop Boarder Post (OSBP) between Kenya and Sudan, which was part of the scope provided for under the Construction Agreement. The project was yet to be completed at the time of the audit.

In view of the issues described above in relation to the project implementation, the Project Management is in breach of the law.

Submission by the Accounting Officer

The subject project was implemented through World Bank funding and its procurement was undertaken in accordance with the Bank's Procurement Regulations which requires a No Objection for any Contract amendment which was sought by KeNHA. The necessary approvals were obtained from the Bank prior to processing the variation.

The One Stop Boarder Post at Nakodok had nothing to do with the Upgrading of Lodwar – Lokitaung Junction since it was to be implemented by Kenya Revenue Authority (KRA) who were not a party to the road project.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

808.2. Upgrading of Lokitaung Junction - Kalobeyei River Road (80Km)

The Project was awarded to an International Construction Corporation (works) and a local consultant at a contract sum of Kshs.8,454,759,874 and Kshs.854,625,389 and - exchange rate Kshs.102), respectively.

The project, commenced on 1 August, 2017, for a period of thirty-six months ending 31 July, 2020, with twelve-months defects liability period. The work's sum for this project was varied from the initial amount of Kshs.8,454,759,874 to Kshs.9,799,110,192, comprising an increment of

Kshs.1,344,350,318 or 16% of the initial contract sum. However, no details were provided in relation to the additional scope of work.

In addition, Kshs.l,599,184 was drawn from the project's contingency fund to compensate five (5) persons affected by the Project (PAPs).

However, the compensation was for Lodwar - Lokitaung PAPs and not Lokitaung - Kalobeyei River PAPs. A list from the National Lands Commission in support of this payment was not provided for audit review and no explanation was given for the irregular payment.

Further an amount of Kshs.2,046,690 was incurred on compensation of six (6) new PAPs, who were already compensated. However, the Management did not explain how the PAPs were identified for the second payment and whether it was a case of double payment.

Again, there was modification of scope of consultancy services to include design and supervision of social economic infrastructure in Turkana and West Pokot whose variation was included in addendum No.2 to the consultancy contract. However, this addendum to the contract including the amount of variation and timeline was not provided for audit review.

Submission by the Accounting Officer

The Contract price was revised under addendum No. 2, a copy of which was provided to the auditors, which was approved by the World Bank from Kshs. 8,454,759,874 to Kshs. 9,799,110,192 an increment of Kshs. 1,344,350,318 (15.90%). This was occasioned by the project cost appraisal done on the project due to variations of works resulting from increased quantities and adjustments for changes in cost due to escalation of applicable indices in accordance with Sub-Clause 13.8 [Adjustments for Changes in Cost] of the Conditions of Contract.

This section was completed and handed over before any budgetary allocations were available from GoK counterpart funds for the 5 persons affected by the project (PAPs) in this schedule. To avoid any complaints on noncompensation being escalated to the World Bank (Which would Instantly go against guidelines in OP.4.10, OP 4.122, Currently ESS5 and ESS 7 on Loan conditions necessary for safeguarding of Project Affected Persons, the approval was granted to ensure the project did not contravene any of the World Bank's Guidelines, or infringe on human rights through displacement devoid of compensation as per the Land Act 2012. (If this happened, the whole project funding would be suspended by the bank).

If the funds were sent to NLC and due to the delay in NLC processes and the Vulnerable PAPs relocated without these funds, then the project would be in contravention of the Loan safeguards conditions highlighted above.

The NLC schedules received by the Authority which were initially shared with the Authority.

As it can be observed, none of the 6 new PAPs had been compensated before. The project design confirmed their structures had not been captured by the NLC in the initial 2019 site inspection and for purposes of follow up, that's why they were labelled as "new" PAPs in 2021 to avoid them being disenfranchised by the resettlement and compensation process, and thus making them Vulnerable which would trigger a complaint to the World Bank.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

808.3. Upgrading of Kalobeiyei River - NadapaI/Nakodok Road Project

A contract for works was awarded to China Railway No.5 Engineering Group Co. Limited at a contract sum of Kshs.7,865,031,057, which was later revised to Kshs.9,819,160,609. The contract for supervision was awarded to Intercontinental Consultants & Technocrats Pvt Ltd in joint venture with CAS Consultants Ltd at a contract sum of Kshs.7,116,386,658. The contract commenced on 11 July 2017 for 36 months ending10 July, 2020, with a defect liability period of 12 months. An extension of time was granted revising the completion date to 30 September 2021. However, anomalies were observed in the implementation of the project, as detailed below.

i. The project was at 93% physical progress against 105% of time lapse. There was no evidence that the employer charged liquidated damages to the contractor even though the contractor had not discharged his contractual responsibility.
ii. No valid performance guarantee was provided by the contractor as provided for in the construction contract.
iii. The consultant provided his performance guarantee from an Insurance Company from India. It is not clear the circumstances under which Management exposed the Authority to this risk of having a guarantee which could not be authenticated.
iv. The contractor has raised a claim of Kshs.77,988,334 as interest on delayed payment, which the Authority declined to honor and make payment, which points to lack of prudent financial management in relation to the project.
v. The project was revised from 88km to 77km, whereby the distance from Nadapal to Nakodok was truncated. However, there was no proportionate reduction of the contract sum, but on the contrary the contract sum increased from ,057 to Kshs.9,819, 160,608.
vi. vi. A total of 141 Project Affected Persons were irregularly compensated at a cost of Kshs.50,895,710. However, this compensation was done by the contractor through instruction from the Authority, contrary to the normal process where the National Land Commission (NLC) is the entity mandated to carry out land compensation. It was not clear, and Management did not explain why the compensation was not carried out by the National Land Commission. No evidence was provided to show the compensation was approved by NLC.

In view of the anomalies described above, it was not possible to confirm that value for money was realized in the implementation of the Project.

In the circumstances, the Project Management was in breach of the law.

Submission by the Accounting Officer

The works are substantially complete and were taken over by the Employer on 10th April 2022 and are under the Defects Notification Period and further clarify as follows.

The contractor has provided a valid performance guarantee in accordance with the Contract as per copy of performance bond.

The first Consultant's Performance guarantee was from Oriental Insurance Company from India which were endorsed by a local insurance company, M/s CIC General Insurance Ltd. The claim on interest on delayed payment is supposed to be paid by the Government of Kenya but there have been delays due to the Government's budgetary constraints. Management will however endeavour to allocate resources and pay the interest on delayed payment in full.

The contract sum had not been increased from Kshs.7,865,031,057 to Kshs.9,819,160,608 as stated. The revision of the Contract sum and scope which has been incorporated under Addendum No. 3 and forwarded to the World bank for clearance comprising of the following;

i. The revision in the scope of works from Kalobeiyei River - Nakodok (88.0 km) to Kalobeiyei River – Nadapal (77.2 km).

ii. Extension of Time for Completion by One Hundred and Ninety-Two (192) Calendar Days without any additional cost to the Employer. The aforesaid Addendum revises the Completion Date for the works from September 30, 2021, to April 10, 2022, plus 12 months Defects Notification Period starting from April 11, 2022, and ending on 10 April 2023

iii. Reduction of Ksh 324,419,402.77 to be excluded from the Contract Price; thereby revising the accepted contract amount to Ksh.7,540,611,654.38 which translates to 4.12% reduction.

There were no irregularities in the payment for land compensation by the project contractor. This was in the interest of forestalling potential claims occasioned by presence of Project Affected Persons (PAPs) on the critical sections of the road due to the delays in remittance of funds by NLC that had already been transferred by KeNHA. This ensures that the contractor obtains right of way to enable fast tracking & completion of the works within time for completion. Further please note that payments to the affected PAPs were guided by compensation schedules issued by NLC.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

808.4. Upgrading of Lokichar - Loichangamatak (40Km)

The works contract for the upgrading of Lokichar - Loichangamatak (Al) road was awarded to an international construction Engineering Limited on 10 July, 2017 for a period of 30 months ending 9 January, 2020 and later revised to 9 April, 2021. The contract sum was 125.

The Management approved an irregular payment of Kshs.30,452,484 to be utilized by Resident Engineer to compensate the Project Affected Persons (PAPs), contrary to the normal process where the National Land Commission is the entity mandated to carry out

land compensation. There was no documentation to demonstrate that the PAPs compensation was sanctioned by NLC.

In addition, according to the works contract the contractor was to provide seven (7) type Il houses for accommodation of the engineer's senior staff, at a cost of Kshs.4,510,000 each. In August, 2020 the Authority instructed the contractor to add 2 more houses that were not provided for in the contract, to accommodate KeNHA staff members. Further, the Authority's staff members were issued with imprest to cater for accommodation and other expenses.

In view of the anomalies described above, it was not possible to confirm the validity of the above funds paid to the PAPs by the resident engineer and the expenditure of Kshs.9,188,000, comprising the cost of two (2) houses together with imprest issued for accommodation.

Submission by the Accounting Officer

The approval for Payment for land compensation was in the interest of forestalling potential claims occasioned by presence of Project Affected Persons (PAPs) on the critical sections of the road due to the delays in remittance of funds by NLC. This ensures that the contractor obtains right of way to enable fast tracking & completion of the works within time for completion.

We wish to clarify that the referenced contract: Lokichar – Loichangamatak (A1) Road was awarded to China State Construction Engineering Ltd on 2nd October 2019 for a period of 30 months ending 2nd December 2022 at contract sum of Kshs. 5,800,819,125. No amendments have been to this contract completion date as per your observations.

Regarding the provision of accommodation for Engineer's Senior staff, we clarify that there are no additional houses instructed and the Contractor is only providing for seven houses as per the Contract.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

808.5. Upgrading of Loichangamatak - Lodwar (50km)

The project was awarded to an international Engineering Company Limited for works and Engineering Company Limited in Joint Venture for consultancy at a contract sum of and and USD at exchange rate of Kshs.102 respectively.

Documents provided for audit review revealed that the project was 99.8% complete while the progress reports for the project revealed that the project was at defect and liability period. However, the snag list was not provided for audit review.

Further, the financial statements reflect a donation of 20 trucks of sand material and gravel for renovation of the Governor's office. However, it was not clear the circumstances under which project funds were used to renovate the Governor's office considering that the County's budget has an allocation for such expenses and that Corporate Social Responsibility (CSR) activities are supposed to benefit the local community.

In view of the anomalies described above, it was not possible to confirm that value for money was realized in the implementation of the Project.

Submission by the Accounting Officer

We confirm that the project is at 99.8% complete, under Defect Notification Period and a copy of the snag list has been availed.

The material in question that was dumped at the Governor's office is the spoil from the road and was the Contractor's CSR which is not paid under the Contract.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

MOMBASA GATE BRIDGE CONSTRUCTION PROJECT (I) LOAN AGREEMENT NO.KE-P34 - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

811. Inaccuracy of the Cumulative Receipts

The statement of receipts and payments and Note 1 to the financial statements, reflects prior year receipts and payments made by third parties balance of Kshs. 4,422,361. However, additional information indicates that the quarter three (3) receipts for the 2020/2021 financial year were understated by Kshs.31,500. The prior year adjustment to correct the understatement has not been affected. As a result, the accuracy of the cumulative amount of Kshs. 12,246,513 on transfer from Government entities could not be confirmed.

Submission by the Accounting Officer

The Government makes budgetary allocation on annual basis to finance the project operating costs as well as the right of way. The exchequer amount budgeted and received by the project since inception amounting to Kshs 12,246,573.00 has been disclosed under the funding summary, further all exchequer funds are received in lumpsum and channeled to a single exchequer bank account which is in line with provisions of the PFM Act of a Treasury single Account.

The exchequer confirmation for all exchequer received in the financial year was availed to the auditors during the audit exercise.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

812. Unsupported Transfer from Government Entities

The statement of receipts and payments and Note 1 to the financial statements indicate that transfers from Government entities amounting to Kshs. 7,824,152 was made during the year under review. However, the quarterly exchequer requisitions, exchequer receipts, cash book and bank statements confirming the receipts, were not provide for audit review. As a result, the completeness and accuracy of receipts from other Government entities totaling to Kshs. 7,824,152 could not be confirmed.

Submission by the Accounting Officer

The Authority does not maintain a separate bank account but maintains one development Exchequer bank account for all the Authority`s programmes funded by GoK Exchequer.

This is in line with the National Treasury advisory to State corporations to maintain and operate rationalized and optimized bank accounts. The quarterly exchequer requisitions, receipts, cashbook and bank statements were all availed during the audit process.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

813. Failure to Open a separate Bank Account for the Project

The statement of financial assets reflects a nil balance in respect of cash and cash equivalents. However, the certificate of bank balance reflects a balance of Kshs, 5,305,453,396 for all the projects under implementation by KeNHA. A breakdown of the project's specific balance for Mombasa Gate Bridge Construction Project (I) included in the amount has not been provided. In addition, the cashbook, board of survey report and bank reconciliation statement in respect of this project was not provided for audit review.

Submission by the Accounting Officer

The Authority receives exchequer amounts in lumpsum in line with Sec 28(2) of PFM act of 2012 requiring maintenance of a single treasury account. In the FY under audit however, the project received an amount of Kshs 7,824,152 and expended in full hence a Nil Cash balance as at end of the year. The Authority will continue to provide Financial statement that give a and fair view of the financial affairs of the project.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer seeks exemption from CS National Treasury on projects that receive donor funds directly to contractors, for purposes of GoK counterpart funds, as provided for under section 76(1) of PFM Regulations.

814. Unsupported Payments on Goods and Services

The statement of receipts and payments reflects amount of Kshs. 7,824,152 under purchase of goods services. This amount relates to domestic travel and subsistence expenses during the year. However, supporting ledger, project trial balance and payment vouchers were not provided for audit verification.

Submission by the Accounting Officer

The authority maintains a robust imprest register for all staff within the financial reporting system. The authority is therefore able to identify all imprest issued and surrendered. However, all this was availed to the auditor during the audit exercise therefore all imprest issued during the financial year were surrendered and surrendered documents availed.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

815. Ineligible Expenditure

The statement of receipts and payments and Note 3 to the financial statements indicate that an amount of Kshs. 7,824,152 was paid in respect of goods and services. Included in this amount is a payment of of Kshs. 1,834,850 in respect of domestic travel and subsistence. Review of the documents in support of the expenditure revealed that the payment relates to Mombasa Port Area Development Project (MPARD). However, the expenditure was not in the project approved budget.

Submission by the Accounting Officer

The survey team were to serve notices as per section 120(3) of land act to the Paps within Mombasa County of which the affected areas were within the round about that inter links MPARD and Mombasa Gate Bridge thus some of the Paps were at the boundary of the two projects. It was however right to source funds from Mombasa Gate Bridge as part of the activity involved survey of it.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

816. Delayed Commencement of Project

The Government of Kenya through the Cabinet Secretary for finance entered into a loan agreement with the Japan International Cooperation Agency (JICA) for construction of Mombasa Gate Bridge on 5 December, 2019. The project agreement states in part that "The final disbursement under the loan agreement shall be made within the period from the effective date of the Loan Agreement to the same day and month nine (9) years after the effective date of the Loan Agreement". The project is expected to be completed by June 2027.

The consultant was paid 15% of the contract sum equivalent to Kshs.938,218,013 on 18 March, 2022 as per the contract agreement. However, the consultant has not completed the Draft Detailed Design Documents and Draft Bidding Documents covered under item 1 of the scope of consultancy services.

Submission by the Accounting Officer

As captured in the Minutes of Discussion signed on 17th April 2019 between MoTIHUD & PW and JICA, the Detailed Design for the Mombasa Gate Bridge was to be undertaken by a Consultant appointed by JICA and paid for through grant. Although the Consultant procured under KeNHA to undertake among other duties, Tender Assistance and Construction Supervision was procured in August 2021 and an Advance payment made, commencement to

the Consultant could not have been issued since, as stipulated in the Consultant's Contract *sub-clause 2.3.1*, commencement of the services will be upon issuance of Draft Bidding Documents to the Consultant. The authority has however not received the draft bidding documents from JICA with no objection after the consultant submission. Delay in completion of the Detailed Design was occasioned by the effects of COVID-19. Most of the team who were from Japan were forced to go back to their native land and quarantined. This significantly consumed most of their time and derailed the project design. The Authority will continue to provide financial statements that give a fair view of the financial affairs of the project.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

817. Failure to Maintain an Imprest Register

Review of payments records revealed that Management issued out several imprests to project management issued out several imprests to project management staff. However, the imprest register was not maintained contrary to the provisions of regulation 93 (4) of Public Finance Management (National Government) Regulations, 2015 on issuance and surrender of imprests which requires that before issuing temporary imprests the Accounting Officer shall ensure that the applicant has been recorded in the imprest register including the amount applied.

Submission by the Accounting Officer

The authority maintains a robust imprest register for all staff within the financial reporting system. The authority is therefore able to identify all imprest issued and surrendered. However, all this were availed to the auditor during the audit exercise therefore all imprest issued during the financial year were surrendered and surrendered documents availed.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

BAGAMOYO-HOROHORO LUNGA LUNGA-MALINDI ROAD PROJECT (PHASE I) ID NO: PZI-DBO-129 - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

820. Lack of Project Bank Account and Cashbook

The statement of receipts and payments relects transfer from Government entities through the parent Ministry of Kshs. 51,021 ,266 which was fully expensed in the year review. The receipts could however not be confirmed since the Authority did not maintain separate bank account and cashbook for projects In the circumstances, the accuracy and completeness of the transfer from other Government entities of Kshs.51 ,021 ,266 could not be confirmed.

Submission by the Accounting Officer

The Authority does not maintain a separate bank account but maintains one development Exchequer bank account for all the Authority`s programmed funded by GoK Exchequer. This is in line with PFM Act on maintenance of a single treasury account and the National Treasury advisory to State corporations to maintain and operate rationalized and optimized bank accounts.

Committee Observations and Findings;

The Committee noted the explanation by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer seeks exemption from CS National Treasury on projects that receive donor funds directly to contractors, for purposes of GoK counterpart funds, as provided for under section 76(1) of PFM Regulations.

821. Purchase of Goods and Services

The statement of receipts and payments reflects payments totalling to Kshs.51 ,021 ,266 under purchase of goods and services. The following anomalies were noted.

821.1. Lack of Project detailed Budget

The statement of comparison of budget and actual amounts reflects a final expenditure budget of Kshs. 1,555,000,000 and actual expenditure of Kshs. 1,410,098,820. The statement of receipts and payments indicated that the total expenditure of Kshs. 1,410,098,820 comprised of kshs. 58,884,643 relating to purchase of goods and services and Kshs. 1,351,214,177 relating to acquisition of non-financial assets. However, Management did not provide itemized budget showing the detailed budget items for which the expenditure was intended.

Submission by the Accounting Officer

By nature, & practise appropriation by the National Assembly to the project is on a specific line by line individual project. This is the form in which the project budget is uploaded into IFMIS & availed for expenditure. However, for purpose of presentation in the Financial Statement the requirement is not to present per project as in IFMIS but by the nature of expenditure.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

821.2. Unsupported Expenditure

The Statement of receipts and payment reflects purchase of goods and services expenditure of Kshs 51,021,266. As disclosed at Note 3 to the financial statements, the expenditure is mainly in respect to domestic travel and subsistence. However, this expenditure was not supported by a detailed and approved work plan for the financial year ended 30 June 2022.

Submission by the Accounting Officer

All expenditure in respect to domestic travel and subsistence are pre-authorized by Director General. Payments vouchers relating to these expenses with their approvals were availed during the audit exercise.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

821.3. Irregular and Unjustified Payments

During the year under review, the project made payments totalling to Kshs 20,489,359 to East Africa Community Secretariat being remittance for logistics resources for project implemented within the East Africa Community. There was no explanation, justification or support to show how this cost was allocated to the project. The amount was not supported by any work plan or budget.

Further, included in these payments is Kshs 13,946,712 relating to payments of arrears for the Financial years 2016/2017 and 2018/2019 which do not relate to the project while the project financing agreements was signed by the government of Kenya and Development partner on 20 June, 2020. Management did not explain how the payments in arrears of Kshs 13,946,712 arose since the project financing agreement was signed in June, 2020. Further, the amount paid was not disclosed in the project financial statements for 2020/2021 as pending bills.

Submission by the Accounting Officer

The Bagamoyo-Lunga Lunga-Malindi Phase 1 Road Project is a Multinational project being financed by the AfDB under the East Africa Community Multimodal roads projects. The planning, financing and implementation of these projects are co-ordinated by the East Africa

Community Secretariat. To facilitate the co-ordination of these multinational projects, the EAC parties' states through the sectorial council ratified and directed all parties' states to be contributing towards the logistical resources.

In the FY 2016/17 – FY 2019/20 the Bagamoyo-Lunga Lunga-Malindi Phase 1 Road Project was at planning stage under the co-ordination of the EAC Multimodal road projects secretariat. The fee notes relating to the cordination costs for this planning phase were subsequently submitted and approved for payment in the current financial year under audit.

The bill was received in FY 2021/22 hence could not have been accounted for in the previous financial year.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee recommends that the matter be resolved.

821.4. Domestic Travel and Subsistence Misallocation of Expenditure

Included under domestic travel and subsistence expenditure of Kshs 51,021,266 as disclosed at Note 3 to the financial statement is an expenditure of Kshs 7,860,300 paid to a firm in respect of consultancy services for documentary shooting which was however reported under domestic travel and subsistence.

Submission by the Accounting Officer

The Agency has reclassified this expenditure from domestic travel to Communication, Services & Supplies as per the amended Financial Statement . However, its important to note that the amount is Kshs 7,998,200 and not Kshs 7,860,300 as indicated by the auditor.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

822. Accuracy of Accumulated Project Costs

The statement of receipts and payments reflects accumulated payments amounting to Kshs 78,634,198 in respect of purchase of goods and services. However, the amount included payments amounting to Kshs 19,749,555 in respect of payments made in financial year 2020/2021 yet the project contract was signed om 5 November, 2021.

Submission by the Accounting Officer

The loan agreements for the project were signed on 10th June 2020, Kshs 19,749,555 for FY 2020/21 and Kshs 7,863,377 for FY 2021/22 were payments made to the training of youths through a No objection from the bank to the Institutions which is a component of the Loan.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

823. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual receipts on comparable basis of Kshs 1,555,000,000 and Kshs 1,410,098,820 respectively resulting in an underfunding of Kshs 144,901,180 or 91% of budget. Similarly, the statement reflects final expenditure budget and actual on comparable basis of Kshs 1,555,000,000 and Kshs 1,410,098,820 respectively, resulting in an under expenditure of Kshs 144,901,180 or 91% of the budget.

The underfunding and under performance affected the planned activities and may have impacted negatively on services delivery to the public.

Submission by the Accounting Officer

Under-expenditure was mainly affected by lengthy process of getting a no objection from the financier, legal opinion from the solicitor General and concurrence from the National Treasury as well as the Covid-19 pandemic this significantly affected the progress of the project thus affecting Budget performance.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

824. Slow Project Implementation- Lot 1

The contract agreement for Multinational Bagamoyo Horohoro/Lunga Lunga Malindi Road Project Phase one project with contract number is KENHA/RD/D/3567/2022 was signed on 18/03/2022 between Hunan Road and Bridge Construction Group Company Ltd and Kenya National Highway Authority. The contract period according to the contract agreement was 48 Months, of which 36 Months are for construction period and 12 Months for defect notification period. Further, the loan agreement between the Republic of Kenya and the Africa Development Bank was signed on 10/06/2020. According to section 4.07 of the agreement the closing date for the loan is 31 December 2025.

Review of the project documentation review that as at 30th June 2022, the contractor had been paid advance payments/Mobilization totalling to Kshs.585,332,008. However, and despite the advance payment made, the contractor had not been given commencement instructions to start work.

Submission by the Accounting Officer

The consultant is currently mapping out utilities needed for relocation e.g. powerlines, water and sewerage line to give right of way before commencement of the project by the contractor. NLC is also finalizing on the awards before issuing Paps. The Authority awaits final completion from the Consultant report on mapping and NLC Paps findings in order to issue instructions for the commencement of the project. Upon commencement, the authority will review the project implementation program in order to ensure that the project is implemented within the set timelines. The issuance of order to commence without clearance of road would result in escalated cost due to contract delays and claims by the contractor.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a status report to the Committee within three (3) months of adoption of this report.

MOMBASA SPECIAL ECONOMIC ZONE DEVELOPMENT PROJECT (I) - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

828. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual comparable basis of Kshs 150,000,000 and Kshs. 73,973,910 respectively resulting to an underfunding of Kshs. 76,026,090 or 51%. Similarly, Kshs. 73,973,910 was spent on the project against an approved budget of Kshs. 150,00,000, resulting to an under expenditure of Kshs. 76,026,090 or 51%.

Submission by the Accounting Officer

Detailed Design and draft bidding documents for Mombasa Special Economic Zone Development Project (I) was to be undertaken by a Consultant appointed by JICA and paid for through a grant. Although the Consultant procured under KeNHA to undertake among other duties, Tender Assistance and Construction Supervision was procured in August 2021 and an Advance payment made, commencement to the Consultant could not have been issued since, as stipulated in the Consultant's Contract *sub-clause 2.3.1*, commencement of the services will be upon issuance of Draft Bidding Documents to the Tender Assistance and Construction Supervision Consultant. Further, there was a delay in completion of the Detailed Design occasioned by the effects of COVID-19.

The Authority received the draft bidding documents from JICA and a committee for Technical Inspection has been proposed to finalize the inspection before issuance of the final design documents to the Supervision Consultant.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

HORN OF AFRICA GATEWAY DEVELOPMENT PROJECT LOAN NO.6768-KE - KENYA NATIONAL HIGHWAYS AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

831. Inaccuracies in the Financial Statements

Review of the project's financial statements revealed the following inaccuracies;

i. Paragraph 1.7 of the financial statements on funding summary reflects an approved budget of Euro 573,700,000 equivalent to Kshs.73,232,977,110. However, an amount of Kshs.55,099,103 appearing in the same paragraph has not been identified to any of the funding sources mentioned. Further, section A on source of funds reflects donor commitment (approved budget) as USD 573,700,000 thereby misstating the currency denomination for the Project and therefore implying that the donor commitment has been reflected in both Euros and US Dollars.
ii. Note 2 to the financial statements shows loan received from bilateral donors (IDA) of Euro 29,892,254 whereas paragraph 1.7 B of the financial statements on application of funds reflects amounts received to date (30 June 2022) of USD 31,596,438. This therefore results to a lack of consistency in currency reporting.
iii. The statement of receipts and payments reflects miscellaneous receipts of Kshs.27,134,920. However, the ledger and support schedule provided reflect an amount of Kshs.27,724,596 resulting in an unexplained difference of Kshs.589,676.
iv. The statement of receipts and payments reflects miscellaneous receipts of Kshs.27,134,920. However, the ledger and support schedule provided reflect an amount of Kshs.27,724,596 resulting in an unexplained difference of Kshs.589,676.
v. Note 8 to the financial statements on special deposit account disclosure reflects a total amount withdrawn from the special deposit account Kshs.69,044,470 while the statement of receipts and payments reflects receipts from external development partner of Kshs.905,096,500. The resultant variance of Kshs.836,052,030 has not been explained Further review of the special account statement had an opening balance of Euro 8,450,000,deposits of Euro 556,719 a withdrawal balance of Euro 2,006,719, however all these amounts have not been disclosed in the financial statements.
vi. Note 12 to the financial statements on other important disclosures reflects project information as paragraph 1 instead of paragraph 4.
vii. Annex 1 to the financial statements on variance explanations reflects Kshs.80,971,344, Kshs.2,761,868,804 and Kshs. 27,724,596 as actual receipts under transfers from Government entities, transfer from external development partner and miscellaneous receipts respectively. However, the statement of receipts and payments reflects

Kshs.83,724,201, Kshs. 3,226,868,804 and Kshs. 27,134,920 as actual receipts under transfers from Government entities, transfer from external development partner and miscellaneous receipts respectively. The resultant differences of Kshs.2,752,857, Kshs.465,000,000 and Kshs. 589,676 respectively have not been explained.

Further, the annex reflects Kshs.108,181,235, Kshs. nil, and Kshs.2,821,048,211 as actual payments under purchase of goods and services, research studies & design and miscellaneous charges respectively. However, the statement of receipts and payments reflects Kshs. 110,934,092, Kshs. 2,380,951,711 and Kshs. 54,720 for the same item respectively. The resultant differences of Kshs. 2,752,857, Kshs. 2,380,951,711 and Kshs. 2,820,993,491 respectively have not been explained

viii. The period at Note 12.3 (d) to the financial statements on purpose and use of external assistance is reflected as 2021/2021 instead of 2021/2022.

In the circumstances, the accuracy of the financial statements could not be confirmed.

Submission by the Accounting Officer

i. The amount of Kshs.55,099,103 appearing in paragraph 1.7 of the draft financial statements submitted for audit on 31st August 2022 was a regrettable error on our part. The financial statements were amended on page vii to show the correct budget of Ksh.143,823,304 identified as funding from the Government of Kenya (GOK) instead of Kshs.55,099,103. Further, the financial statements were amended on page vii, section A on source of funds to reflect the donor commitment (approved budget) as EURO 573,700,000 and not USD 573,700,000.

ii. Lack of consistency in currency reporting was a result of an oversight on our part. The error is regretted, and the financial statements were amended on page vii to reflect the correct currency as EURO 31,596,438 and not USD 31,596,438.

iii. The miscellaneous receipts of Kshs.27,134,920 as reflected in the Receipts of Payments is the correct figure, however, the supporting schedule amounting to Ksh.27,724,596 was erroneously presented. The unfortunate situation arose from a misrepresentation of a withholding tax on interest of Ksh 586,676 as a bank charge.

iv. The difference between the fund balance brought forward of Kshs.202,030,967 and the audited financial statements for 2020/2021 of Kshs.180,875,330 as noted by the auditor is Kshs.21,155,637 which relates to the retention money transferred back to the project account in the financial year under review and is supported by the schedule.

v. The variance of Kshs. 836,052,030 between the special deposit account disclosure and the special deposit account in Note 8 in our draft financial statements submitted for audit on 31st August 2022 arose due to a regrettable error whereby we indicated the currency as Kshs. instead of Euros. The financial statements were amended in page 15 Note 8 to show the correct withdrawal of Euro 7,000,000 which is equivalent to Ksh 905,096,500 as reflected in the statement of Receipts and Payments, the Kshs. 69,044,470 was the total amount deposited in the financial year which was equivalent to Euro 556,719 at the spot exchange rate. We further agree with the auditor's

observation that the amounts had not been disclosed in Note 8 of the draft project financial statements submitted for audit on 31st August 2022.

The amounts pointed by the auditor as disclosed in note 8 was erroneously presented in Kenya Shillings as opposed to Euros. However, the financial statements were amended (Page 15, Note 8) have been restated in the currency of the loan to reflect: -

- The opening balance of EURO 8,450,000,
- The Deposit of Euro 556,719 during the year,
- A withdrawal of Euro 7,000,000 (which was deposited in the Project account), and
- A closing balance of Euro 2,006,719

vi. The project information reflected on page 18 of the 1st draft project financial statements was a regrettable typing error. The financial statements were amended on page 19 to correctly read note.

vii. This was a regrettable misrepresentation of figures. However, Annex 1 of the financial statements has been amended on page 22 to reflect the amounts of Kshs. 83,724,201, Kshs. 3,226,868,804 and Kshs. 27,134,920 as actual receipts under transfers from Government entities, transfer from external development partner and miscellaneous receipts respectively as correctly pointed by the auditor. The amounts reflected on *annex 1* of our draft project financial statements submitted for audit on 31st August 2022, as pointed by the auditor, was a regrettable error of misrepresentation of figures. Annex 1 of the revised project financial statements has been amended on *page 22* to reflect the amounts of Kshs.110,934,092, Kshs. 2,380,951,711 and Kshs. 54,720 for actual payments under purchase of goods and services, research studies & design and miscellaneous payments respectively as correctly pointed by the auditor.

viii. This was a regrettable typing error on our draft project financial statements submitted for audit on 31st August 2022. The period at Note 12.3 (d) to the revised project financial statements on purpose and use of external assistance page 18 was corrected to read 2021/2022.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

832. Purchase of Goods and Services

The statement of receipts and payments reflects purchase of goods and services of Kshs.110,934,092. As disclosed at Note 4 to the financial statements, the amount comprises of

domestic travel expenses of Kshs.79,035,786, printing and advertising of Kshs.2,063,175, , hospitality expenses of Kshs.4,029,238, communication supplies of Kshs.9,389,056 and training cost of Kshs.16,416,837. However, a detailed work plan to confirm that the activities paid for related to the Project was not provided for audit review Further, expenditure totalling to Kshs,4,632,411 was described as relating to the previous North Eastern Transport Improvement Project (NETRIP).

In the circumstances, the accuracy and validity of the purchase of goods and services expenditure of Kshs.110,934,092 could not be confirmed.

Submission by the Accounting Officer

The Horn of Africa project is a multiyear project, and all activities are project related and there is no separate line budget for each activity. Please note that note that the national government budget mechanisms are program based where budgets are allocated on project by project as opposed to activity by activity within projects.

Activities are approved on case by case basis based on their significance subject to budget provisions. The case by case approvals form the basis of incurring expenditure hence forms an important ingredient to documents supporting payments made.

The project initially started as North Eastern Transport Improvement Project (NETIP) which later on changed name to Horn of Africa Gateway Development Project (HoAGDP) upon evolving to a regional project to be implemented in Kenya and Ethiopia. We further wish to clarify that the description of the project was not NETRIP as pointed by the auditor but NETIP.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

833. Lack of an Itemized Expenditure Budget

The statement of comparison of budget and actual amounts indicates that the Project budgeted to receive Kshs. 150,000,000 and as Government of Kenya counterpart funds and loan from external development partners respectively for the implementation of Horn of Africa Gateway Development (HoAGDP) Project. The statement further indicates that Kshs. 110,934,092 and , 711 were spent on purchase of goods and services and acquisition of non-financial assets respectively. However, the project expenditure budget was not provided.

In the circumstances, it was not possible to confirm the budget from which the expenditure was incurred.

Submission by the Accounting Officer

By nature and practice, appropriation by the National Assembly to the project is on a specific line by line individual project. This is the form in which the project budgets are uploaded onto

IFMIS and availed for expenditure. However, for purposes of presentation in the financial statements, the requirement is not to present them per project as in IFMIS but by the nature of expenditure.

The project budget for the project was Kshs. 150,000,000 and Kshs. 4,656,000,000 as GoK funds and loan from external development partners respectively. The amounts paid of Kshs. 110,934,092 and Kshs.2,380,951,711 spent on purchase of goods and services and acquisition of non-financial assets respectively were funded by the above quoted project budgets.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer henceforth avails an itemized and detailed budget to the auditors as annexures, above and beyond the template provided by PSASB.

834. Budgetary Conbtrol and Performance

The statement of comparison of budget and actual amounts reflects total budgeted receipts of against actual receipts of Kshs.3,337,727,925 thereby resulting in an under-collection of Kshs. 1468,272,075 or 30.5% of the budgeted receipts. Further, the statement reflects total budgeted expenditure of against actual payments of Kshs.2,491 resulting in an under-expenditure of Kshs.2,314,059,477 or 48% of the budgeted expenditure.

The under-collection of receipts and underexpenditure is an indication that the Project may not have achieved the planned objectives.

Submission by the Accounting Officer

Planned Milestones for Design Review delayed due to the sensitive security situation along the project area, especially for Wajir – Kotulo – Elwak where security threats were high. Additionally, there were delays in the procurement process due to inability to access project execution areas due to the same security risks.

The procurement process for Isiolo - Kulamawe and Kulamawe - Modogashe sections were completed in this financial year and advance payments made to the contractor.

Once the security risks are fully addressed, the contractors on the projects will be requested to expedite their pace of project execution so as to recover lost time.

Committee Observations and Findings;

The Committee observed that pending bills and delays in project implementation due to inadequate budgetary support was a major issue in the state department.

Committee Recommendation;

The Committee recommends that the state department does not commit to new projects until ongoing ones are completed.

835. Delayed Project Milestones

Review of the project information as presented in the financial statements and the project activities implementation status as at 30 June, 2022 revealed that although the project financing agreement was signed in October, 2020, construction works for the road sections had not started with some sections at the design stage while others were either at contractor's procurement stage or works contracted but not started.

In the circumstances, the general and specific objectives, outcome and performance of the project may not be timely realized which will impact negatively on service delivery to the public.

Submission by the Accounting Officer

The main delay factor has been procurement process which has since been addressed in conjunction with the development partners. It is worth noting that most of the road sections along the Isiolo - Mandera corridor are at an advanced stage of procurement. Additionally, it is worth noting that so far two projects along the corridor have since commenced.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

836. Lack of a Fixed Assets Register

Annex 3 to the financial statements — summary of fixed assets, reflects a balance of as the closing cost of the road asset. However, contrary to Regulation 143(1) of the Public Finance Management (National Government) Regulations, 2015, the Project's Management did not maintain a register of assets.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

the Fixed Assets Register which is maintained by the authority has all the information pertaining to the project. It is worth to note that Annex 3 of the financial statement, has all the information required under the project reporting template as provided by PSASB.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

4.17 VOTE 1092: STATE DEPARTMENT FOR TRANSPORT

Mr. Mohamed Daghar, the Principal Secretary and Accounting Officer for State Department for Transport, appeared before the Committee on 14th May 2024, accompanied by the following officers:

i.	Mr. James W. Thuita	_	Senior Deputy Accountant General
ii.	CPA. Odongo Kennedy	_	Deputy Head of Accounting Unit
iii.	Ms. Anne Maina	_	Accountant
iv.	Mr. Benard L. Owuor	_	Principal Finance Officer
v.	Ms. Priscal Ochanda	_	Principal Accountant
vi.	Mr. Jacob Sisey	_	Director NTSA

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

839. Unsupported Adjustments

Review of the financial statements of the State Department revealed adjustments that were passed comprising of Kshs.3,622,824 under exchequer receipts, Kshs.687,230 under use of goods and services, Kshs.2,935,594 under acquisition of assets, Kshs.4,391,429 under accounts receivables and Kshs.2,671,623. However, Management did not provide evidence to support the adjustments including the authorization and explanation of the nature of the adjustments.

In the circumstances, the validity of the adjustments made and the accuracy of the financial statements could not be confirmed.

Submission by the Accounting Officer;

It is true that Management submitted financial statements on 30 September 2022 and that the Financial Statements were revised and another set submitted on 14 December 2022. The revision of the financial statement was advised by the observations of the Auditor as captured in the Management Letter on Regularity Audit performed for the year ended 30th June 2022. The adjustments made entailed capturing in the IFMIS the omissions of the Exchequer receipts and performing the required reconciliations in the IFMIS.

Committee Observations and Findings

The Committee observed that the reconciliations had since been done.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to ensure that reconciliations are done in time and the complete financial statements submitted to the Auditor General in time as provided for in Article 229 (4)(h), and section 81(4)(a) of the Public Finance Management 2012.

840. Unexplained Variances

840.1. Cash and Cash Equivalents Balance

The statement of assets and liabilities reflects cash and cash equivalents balance of Kshs.54,735,614 as disclosed in Note 9A to the financial statements. However, the bank reconciliation statements for the recurrent, development and deposit bank accounts, for the month of June, 2022, indicated total cash and cash equivalents balance of Kshs.54,755,450 resulting to an unexplained variance of Kshs.19,837. In the circumstances, the accuracy and completeness of the cash and cash equivalents of Kshs.54,735,614 as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer;

It is true that the statement of assets and liabilities reflects a cash and cash equivalents balance of Kshs.54,735,614 as disclosed in Note 9A to the Revised Financial Statements. Similarly the bank reconciliations for the recurrent, development and deposit bank accounts reconciles the cash book balances to the bank balances with no discrepancies as evidenced by the attached IFMIS bank reconciliations to the Financial Report.

Committee Observations and Findings

The Committee observed that the reconciliations had since been done.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to ensure that reconciliations are done in time and the complete financial statements submitted to the Auditor General in time as provided for in Article 229 (4)(h), and section 81(4)(a) of the Public Finance Management 2012.

840.2. Transfers to Other Government Entities

The statement of receipts and payments reflects other receipts amount of Kshs.5,568,942,983 as disclosed in Note 3 to the financial statements which includes an amount of Kshs.5,508,942,983 relating to aviation fees and air navigation charges. Further, the statement reflects transfers to other Government entities of Kshs.5,916,442,983 as disclosed in Note 6 to the financial statements, which include an amount of Kshs.5,568,942,983 under recurrent grants and Kshs.347,500,000 development grants to Government agencies. Out of the recurrent grants, an amount of Kshs.5,508,942,983 relates to transfers to Kenya Civil Aviation Authority (KCAA) and represents amounts spent by KCAA from own generated revenues (Appropriation-In-Aid). However, KCAA records indicated a total amount of Kshs.6,935,252,529 as own generated revenue (Appropriation-In-Aid) resulting in an unexplained difference of Kshs.1,426,309,546.

In the circumstances, the accuracy of other receipts amount ofKshs.5,508,942,983 and transfers to other government entities of Kshs.5,508,942,983 could not be confirmed.

Submission by the Accounting Officer;

It is true that the State Department under note 6 to the financial statement indicated that transfers to Government Agencies and other levels of Government amounting to 5,568,942,983

whereas the actual amount generated by the Institution during the year under review was Kshs. 6,935,252,528.84. The State Department recognized Khs 5,568,942,983 as Appropriation In Aid (AIA). The difference of Kshs. 1,426,309,545.80 has been identified as a disclosure in the Financial Statement under note 6b (ii)

The Authority reported Kshs. 6,953,010,100 as own generated revenues (Appropriation –In-Aid) in the Annual Report and Audited Financial Statements for the year ended 30th June 2022. Consequently, as required of regulatory entities, during the financial year 2022/2023, the Authority remitted Kshs. 1,634,140,169.55 to the National Treasury and Planning, through the Kenya Revenue Authority, being 90% of its surplus for the year ended 30th June 2022. The surplus amount before the audit stood at Kshs. 1,815,711,300 and this decreased to Kshs. 1,812,682,153 after the audit. A copy of the signed Statement of Financial Performance for the year ended 30th June 2022 is hereby attached for your information.

Committee Observations and Findings

The Committee observed that the reconciliations had since been done.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to ensure that reconciliations are done in time and the complete financial statements submitted to the Auditor General in time as provided for in Article 229 (4)(h), and section 81(4)(a) of the Public Finance Management 2012.

841. Expenditure Wrongly Classified as Rentals of Produced Assets

The statement of receipts and payments reflects use of goods and services amount of Kshs.131,220,107 as disclosed in Note 5 to the financial statements which includes an amount of Kshs.6,152,865 in respect of rentals of produced assets. However, review of records revealed that out of the amount of Kshs.6,152,865, an expenditure totalling Kshs.2,969,040, comprising of domestic travel expenses of Kshs.1,905,820, foreign travel of Kshs.715,220 and hire of conference facilities costs of Kshs.348,000, was wrongly charged under the rentals of produced assets expenditure.

In the circumstances, the accuracy and completeness of rentals of produced assets figure of Kshs.6,152,865 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer;

It is true in the year under review, the State Department for Transport charged various items of expenditure such as foreign travel and provision of air tickets worth Kshs. 2,969,040 under the Rentals of produced assets component. In the IFMIS Chat of Accounts classification, 'Rentals of Produced assets' item 2210600 includes the sub-item 2210604 'hire of transport' under which the above expenditure relates.

Committee Observations and Findings

The Committee observed that the expenditure items were charged in wrong votes.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to re-allocate vote heads, contrary to section 43 (2) of the Public Finance Management 2012.

842. Unexplained IFMIS Payments

Review of the Integrated Financial Management Information System (IFMIS) records revealed that there were payments made on 1 and 2 July, 2021 totaling to Kshs.1,295,607,925 paid to two companies, a State Corporation and the Commissioner of Income Tax, reflected in IFMIS records but which could not be traced to any of the accounts in the financial statements.

Further, payments totaling to Kshs.5,945,292 were made to staff from the State Department's deposit account. However, the basis and reason for these payments to staff from deposit bank account was not clear.

In addition, the recurrent cash book reflects a payment to general suspense of Kshs.17,000,000 on 22 June, 2022. The amount however could not be traced to any expenditure account in the financial statements.

In the circumstances, the accuracy, validity and completeness of the expenses of Kshs.1,318,553,217 could not be confirmed.

Submission by the Accounting Officer;

The payments of Ksh 1,295,607,925 stated above related to the 2020/21 FY Budget and were subsequently accounted for in financial year 2020/21.

Date	Payee	Amount (Kshs)
1/7/2021	Geodev	46,063,600
1/7/2021	China Communication Construction	193,086,443
1/7/2021	Edon Construction International	4,277,224
2/7/2021	Kenya Railways Land Compensation	827,746,654
2/7/2021	Commissioner of Income Tax	224,434,004
Total		**1,295,607,925**

The Payments of Kshs.5, 945,292 were made from the deposit account with respect to Regional Intergration Implemenatation Programme (RIIP) whose funds form part of the balances in the Deposit Account.

The Recurrent Bank Account erroneously received an amount of Kshs 17,000,000 meant for the Regional Integration Implementation Program (RIIP) which ought to have been deposited at the Deposit Bank Account of the State Department. The same was receipted under the general Suspense then paid out to the Deposit bank Account. The supporting documents are attached for review.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

843. Unsupported Accounts Payable Balance

The statement of assets and liabilities reflects accounts payables of Kshs.44,281,856 as disclosed in Note 11 to the financial statements. However, the supporting schedule provided reflects a balance of Kshs.42,566,959 resulting in an un-explained variance of Kshs.1,714,897.

Further, the balance of Kshs.42,566,959 comprises of retention monies of Kshs.2,386,014 and deposits of Kshs.40,180,945. However, Management did not provide the supporting documents for the balance of Kshs.Kshs.40,180,945 including the details of the beneficiaries and the payment details of the deposits from Kenya Railways Corporation and State Department for Infrastructure.

In the circumstances, the accuracy and completeness of the accounts payables balance of Kshs.44,281,856 could not be confirmed.

Submission by the Accounting Officer;

The un-explained variance of Ksh 1,714,897 constitutes miscellaneous receipts in the Recurrent Bank account at the Central Bank and forms part of the bank balances remitted back to the exchequer. The amount was recognized as unclassified deposits in the financial statement.

The Kshs.40,180,945 constitutes outstanding balances for the Regional Integration Implementation Program (RIIP), a miscellaneous receipts from State Department for Infrastructure, and the retention monies to Kenya Railways Retrenchment program-whose payouts are advised by the Kenya Railways Corporation.

Committee Observations and Findings

The Committee observed that the reconciliations had since been done.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to ensure that reconciliations are done in time and the complete financial statements submitted to the Auditor General in time as provided for in section 81(4)(a) of the Public Finance Management 2012.

844. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.11,141,815,862 and Kshs.6,301,136,976 respectively resulting to an underfunding of Kshs.4,840,678,886 or 43% of the budget. Similarly, the State Department spent Kshs.6,291,484,512 against an approved budget of Kshs.11,353,315,862 resulting in an under expenditure of Kshs.5,061,831,350 or 45% of the budget.

Further, Management did not provide an explanation on why the final receipts and expenditure budget amounts of Kshs.11,141,815,862 and Kshs.11,353,315,862 respectively did not balance thus occasioning a difference of Kshs.211,500,000.

The underfunding and underperformance affected the planned activities of the State Department and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer;

The statement of appropriation: recurrent and development combined in the Revised Financial Statement has detailed the significant underutilizations. These were majorly occasioned by significant underutilization of budgeted AIA by Kenya Civil Aviation Authority; under absorption in the Horn of Africa Gateway Development Project; uncalled-for transfers to the Kenya Ferry services and Lack of Exchequer release to Kenya Airport Authority.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

845. Pending Bills

Note 15.1 to the financial statements reflects pending bills balance of Kshs.23,764,147. However, Management did not explain why the bills were not settled during the year they occurred.

Failure to clear pending bills in the year to which they relate distorts the budget of the following year as they constitute a first charge on that budget.

Submission by the Accounting Officer;

The Pending bills of Kshs 23,764,145.80 that relates to goods and services was occasioned by lack of exchequer.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

846. Non-Compliance with the One-third of Basic Salary Rule

Review of the Integrated Payroll and Personnel Database (IPPD) for the State Department, revealed that during the year ended 30 June, 2022, nine (9) employees earned a net salary of less than a third (1/3) of the basic salary. This as contrary to Section C.1(3) of the Human Resource Policies and Procedures Manual for the Public Service of May, 2016 which states that public officers shall not over-commit their salaries beyond two thirds (2/3) of their basic salaries and Heads of Human Resource Units should ensure compliance.

In the circumstances, Management was in breach of the regulations as this may expose the staff to pecuniary embarrassment.

Submission by the Accounting Officer;

Management has communicated to the Payroll administrator vide letter Ref.MOT&I/P/HRM/025/1 VOL.III (162) of 3rd November 2022 requesting for a review of the system to ensure that the salary deductions do not fall below 1/3 of the basic salary contrary to as guided by Section 19 (3) of the Employment Act, 2007.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

847. Failure to Deduct PAYE from Employees

Review of the Integrated Payroll and Personnel Database (IPPD) showed that four (4) officers were not deducted Pay-As-You-Earn (PAYE) for the whole financial year as detailed below: -

Payroll Number	Gross Salary (Kshs.)
1980087189	40,770
1991029071	59,770
2005061589	25,070
2010032465	24,479

This is contrary to Section 37(1) of the Income Tax Act, Cap 470 of the Laws of Kenya which states that an employer paying emoluments to an employee shall deduct therefrom, and account for tax thereon, to such extent and in such manner as may be prescribed.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer;

It is true that Section 37 (1) of the Income Tax Act, Cap 470 of the Laws of Kenya which states that an employer paying emoluments to an employee shall deduct therefrom, and account for tax thereon, to such extent and in such manner as may be prescribed. However reason for non-deductions of PAYE from the four officers were persons living with disability and those earning below PAYE threshold.

Committee Observations and Findings

i) The Committee noted that the submission by the Accounting Officer was satisfactory.

ii) The Committee found that the matter was resolved.

848. Allowances Paid Outside IPPD

Review of payment records revealed that allowances amounting to Kshs.4,054,404 were paid through the IFMIS system but were not captured in the IPPD system. Management did not provide any justification for the anomaly. This was contrary to Section 68(1) of the Public Finance Management Act, 2012 which states that an Accounting Officer for a Government entity, shall be accountable for ensuring that the resources of the respective entity for which he or she is the Accounting Officer are used in a way that is - lawful and authorized; and effective, efficient, economical and transparent.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer;

The payment of Kshs. 4,054,404 paid through IFMIS and not through the IPPD related to commutation of accumulated leave days. The exclusion of this payment in IPPD was necessitated by the timelines of closure of IPPD in the month of June. The approval of the aforementioned payment was realized after the closure of the IPPD. The relevant PAYE was deducted and remitted.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

849. Imprest Paid to Officers

Review of the State Department's recurrent cash books revealed that payments totaling to Kshs.58,023,253 were made during the year to twenty-three (23) members of staff for which the officers received imprests covering several days of field travels. However, review of payment records revealed that that the officers were in the field for more days than the work schedule could accommodate and possibly more than the working days available in a year.

In the circumstances, the authenticity of the payments totaling Kshs.58,023,253 could not be confirmed.

Submission by the Accounting Officer;

The Kshs. 58,023,253 staff imprest paid out to was facilitating the officers in supporting their activities as per their respective work plans. Similarly there were trainings sponsored by the Horn of Africa Gateway Development Project (HoAGDP) capacity building Component. Also there are other departments e.g. the Air Accident Department whose work plan entails activities outside the work stations. This explains the numerous imprests issued.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

850. Non-submission of Donor Funded Projects' Financial Statements

The State Department did not submit the financial statements for the following three (3) donor funded projects for the year ended 30 June, 2022 for audit contrary to Section 68(2)(k) of the Public Finance Management Act, 2012.

i. East African Trade and Transport Facilitation Project Cr.No.4148 IDA - MOT
ii. National Urban Transport Improvement Project Cr No.5140 IDA-MOT
iii. Northern Corridor Transport Improvement Project Credit No.4571 and No.3930- MOT.

Although information provided indicated that the respective project bank accounts were closed, a detailed project closure report for each project was not provided.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer;

i. East African Trade & Transport Facilitation Project Cr.No.4148 IDA – MOT

The project has unresolved issues around the Consultant and the contractor, which have hindered the final assessment and certification of the Transport Data Centre. The Principal Secretary set up Technical Committee to ascertain the work done, outstanding liabilities and way forward on resolving the outstanding issues on operationalization of the Transport Data Centre and project closure

ii. National Urban Transport Improvement Project Cr No.5140 IDA-MOT

The project implementation completion report (ICR) has been availed

iii. Northern Corridor Transport Improvement Project Credit No. 4571 and No 3930-MOT

Management notes that the project Implementation Completion Report (ICR) was prepared in collaboration with World Bank by June 2016 having completed all components successfully with no outstanding obligations. The main components touching on assets were as listed below and contained in the ICR:

- Supporting the Kenya Maritime Authority with IT

The implementation of this sub component entailed the procurement and installation of a Local Area Network and computers at the Kenya Maritime Authority Headquarters.

- IT Support for MOT Headquarters (Transcom House)

Entailed procurement of computers and other ICT equipment and installation where applicable. 13. Desk top Computers, 5 black and white printers, 2 colour printers, 8 laptops, 8 ipads and tablets, 5 scanners, photocopier and cyberoam. The items were distributed to PIT offices in Accounts, Finance, ICT, Registries, Planning, Procurement sections and server room

- Equipment to Enhance Maritime Training Capacity (Bandari College)

The implementation of this sub component entailed procurement of supply and installation of navigation bridge simulator software and ICT equipment and cabling of the training room for Bandari College in Mombasa.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer submits a completion and operationalization report on the project within three (3) months of adoption of this report.

851. Delay in Completion of Transport Data Centre

The State Department through the East Africa Trade and Transport Facilitation Project MOT-IDA Credit NO. 4148-KE and 4977-KE awarded a contract for the supply, installation, testing, commissioning and handover of a Transport Data Centre IT, networking, software and hardware on 30 September, 2014 at a cost of Kshs.130,739,261. Further, the State Department

entered into a consultancy contract at a contract sum of Kshs.22,390,000. The consultancy agreement dated 4 July, 2012 was to run for a period of sixty-four (64) weeks with effect from the commencement or agreement date and ending on 25 September, 2013.

Review of the State Department's financial statements revealed that there was no update on the status of the facility, whereas the contract agreements had expired. In addition, the contractor and the consultant had not completed the project to enable issuance of a completion certificate and official hand over of the facility. Available information revealed that the contractor was paid Kshs.120,252,245 (92% of the contract sum) while the consultant was paid Kshs.16,792,500 (75% of the contract sum) as at 30 June, 2022.

Management did not provide any explanation for the delay in the delivery of the Project and the expected date of completion. The delay in completion of the Project has adversely impacted on realization of value for money by the citizens.

Submission by the Accounting Officer;

It is true that there is a delay in completion of the project, however management confirms that there will be no loss of public funds arising from the risk of the equipment already installed becoming obsolete. A Technical Committee set up by the Principal Secretary to ascertain the work done and give way forward on operationalization of the Transport Data Centre (TDC), sought for an assessment of the equipment by the UNES and the conclusion was that only renewal of licenses and upgrading of the TDC to meet business needs in the market was required.

Committee Observations and Findings

The Committee observed that the project had taken inordinately long to complete.

Committee Recommendation

The Committee recommends that the Accounting Officer submits a completion and operationalization report on the project within three (3) months of adoption of this report.

DONOR FUNDED PROJECT

HORN OF AFRICA GATEWAY DEVELOPMENT PROJECT GRANT/CREDIT NUMBER 6768 - KE REPORT ON THE FINANCIAL STATEMENTS

REPORT ON THE FINANCIAL STATEMENTS

852. Unsupported Payments

The statement of receipts and payments reflects purchase of goods and services total expenditure of Kshs.35,108,015 which as disclosed in Note 11.3 to the financial statements relates to training. However, no approved training needs assessment in support of the expenditure was provided for audit review. Further, included in the expenditure on training is an amount of Kshs.1,301,300 issued as imprest for finalization of the medium-term budget for 2022/2023 financial year for the State Department for Transport. No letter of no objection was provided in respect to the expenditure.

In the circumstances, the regularity on the expenditure amounting to Kshs.1,301,300 could not be confirmed.

Submission by the Accounting Officer;

As per financing agreement part D 3 the mandate of State Department of Transport (SDOT) includes but not limited to provision of technical assistance in enhancing institutional capacity at SDOT to effectively oversee and monitor the performance of all modes of transport infrastructure within the region. One of the strategies being undertaken to enhance the aforementioned capacity is through rigorous training.

It is true that an expenditure of Kshs. 1,301,300 with respect to medium-term budget for 2022/2023 financial year was charged to the GOK component.

The cost of budget formulation cuts across the State Departments and the projects under it. It is in this regard that the expenditure of Kshs. 1,301,300 was incurred by the Project.

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

853. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects total budgeted receipts of Kshs.346,300,000 against actual receipts of Kshs.32,449,945, resulting in an under-collection of Kshs.313,850,055 or 91% of the budget. In addition, the statement reflects total budgeted expenditure of Kshs.346,300,000 against actual payments of Kshs.35,108,015, resulting to an under absorption of Kshs.311,191,985 or 90% of the budget. No reasons were provided for the huge variances.

As a result of the under collection and under expenditure, the Project strategic goals of improving cargo take off from the port, reduction of vehicle operating cost to and from container terminal and Moi International airport and enhancement of social economic development of people around the Project area may not be achieved.

Submission by the Accounting Officer;

It is true that the statement of comparative budget and actual amounts reflected under receipts and under absorption at 90.7% and 89.0% respectively.

As per the projects work plan, there were various targeted activities for the year under review. However due to slow procurement processes the targeted activities were not achieved by the close of the financial year.

Listed below are the contracts which had been awarded and not been fully executed as at30th June 2022:-

i. Supply and delivery of 3 motor vehicles at a cost of Kshs.27, 602,064.

ii. Supply and delivery of First Aid equipment and related items at a cost of Kshs.12, 813,400.

iii. Consultancy services for the development of the Strategic Environmental and Social Assessment (SESA) on the reviewed Integrated National Transport policy at a cost of Kshs. 28,600,000.

Further management draws your attention to the project's Strategic goal captured under-Project Overview Note 1.3 of the Financial Statement - "Strengthen the Institutional Capacity of the State Department for Transport (SDoT) and Associated Institutions" as opposed to what is cited in the Auditor General's report -" the project strategic goals of improving cargo take off from the port, reduction of vehicle operating cost to and from container terminal and Moi International airport and enhancement of social development of people around the project.

Committee Observations and Findings

The Committee observed that the explanation was unsatisfactory, as proper project planning and implementation would have made the under-absorption avoidable.

Committee Recommendation

The Committee reprimands the Accounting Officer and recommends that he ensures proper project planning and implementation.

OTHER DONOR FUNDED PROJECTS IMPLEMENTED BY AGENCY UNDER THE STATE DEPARTMENT FOR TRANSPORT

NATIONAL URBAN TRANSPORT IMPROVEMENT PROJECT CREDIT NO. IDA 5140-KE (KRC COMPONENT) – KENYA RAILWAYS CORPORATION

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

858. Pending Accounts Payables

Note 12 to the financial statements reflects pending bills totalling Kshs.3,900,000 as at 30 June, 2022. Management did not provide an explanation for the non-settlement of the pending bills since the project was closed on 31 December, 2018.

In the circumstances, the Project is at risk of incurring unnecessary additional costs due to the delay in settlement of the bills leading to loss of public funds.

Submission by the Accounting Officer;

The pending bills resulted from costs incurred on consultancy services on the NUTRIP team leader. The amount of Kshs. 3.9 Million remained after defraying the other pending bills. However, this amount was budgeted in the FY 2021/22 to ensure it is fully settled in FY 2021/22. We confirm that the project is not incurring additional interest costs or penalties due to delays in the payment.

Committee Observations and Findings

The Committee noted the submission from the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer treats outstanding dues as first charge as per Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

859. Doubtful Achievement of Project Goals

The statement of receipts and payments reflects cumulative receipts from external development partners of Kshs.117,813,333 as at 30 June, 2022, representing 11% of the total donor commitment of Kshs.1,071,552,600. According to the statement of performance against predetermined objectives, the project was closed on 31 December, 2018. It was therefore not possible to confirm whether the projects' goals highlighted under project information and overall performance were achieved with only 11% donor funds received out of the total donor funding commitment of Kshs.1,071,552,600.

Submission by the Accounting Officer;

The NUTRIP KRC component is majorly comprised of consultancy work/studies on the Nairobi and Mombasa Commuter Master Plan and procurement of a track recording car which was still ongoing by the time of the project closure. It was expected that the project will be extended because the KR components took more time to start than envisaged.

The tendering for the Track Recording Car which commenced in October 2015 took longer than expected, it was challenged at the Public Procurement and Review Board (PPRB), and the intention to award had to be reviewed. The track recording car was to absorb over 50% of the budget amount – Kes 500 Million.

Chronology of events on procurement of Track Recording Car

Date	Event
October 2015	Procurement of Track Recording Car commenced
February 2016	Evaluation of tender completed
December 2016	Tender terminated by KR
August 2017	Re-tender of Procurement of Track Recording Car
November 2017	Evaluation of the tender completed
January 2018	Notification to enter into contract issued
January 2018	Suspension of procurement proceedings from Notification from PPARD
August 2018	Lifting of suspension of procurement proceedings
August 2018	Notification to enter into contract re-issued
December 2018	KR entered into a contract for Track Recording Car

Due to budgetary challenges experienced in the financial year, 2018/19 amounts in the DA Account could not be drawn thereby leading to amounts being held until the closure of the credit for KR NUTRIP.

The project aide memoire was released by World Bank on 27/12/2018 therefore the project funding was halted.

Committee Observations and Findings

The Committee notes that the implementing agency was negligent and mismanaged the procurement process.

Committee Recommendation

The Committee reprimands the Accounting Officer and recommends that he submits a detailed closure report on the project within three (3) months of adoption of this report.

Queries Nos. 862-867 cited under Multinational Lake Victoria Maritime Communications and Transport (MLVMCT) Project (ADF LOAN NO.2100150036247)- Kenya Maritime Authority included in the report of the State Department for Shipping and Maritime Affairs

SAFE ROADS/ USALAMA BARABARANI PROGRAMME (EU GRANT NO. KE/FED/037-778) – NATIONAL TRANSPORT AND SAFETY AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

869. Undisclosed Receipts

The statement of receipts and payments reflects an amount of Kshs.190,542,679 which, as disclosed in Note 2 to the financial statements, includes Kshs.185,857,973 relating to proceeds from domestic and foreign grants. However, review of the bank statements for the Programme's bank account reveals that, an amount of Kshs.48,650,000 was credited by State Department of Interior and Citizen services in April, 2022. However, the amount was not included in the statement of receipts and payments for the year ended 30 June, 2022.

In the circumstances, the accuracy and completeness of the receipts amount of Kshs.185,857,973 in respect of proceeds from domestic and foreign grants could not be confirmed.

Submission by the Accounting Officer;

The receipt of Kshs. 48,650,000 relates to Government of Kenya recurrent grant received from the State Department of Interior inadvertently transferred to the project account as opposed to the Authority's main operations account. The receipt was not related to the Usalama Barabarani project hence the lack of inclusion in the statement of receipts and payments for the project. These funds are accounted for in the Authority's main financial statements.

Committee Observations and Findings

The Committee noted that the erroneous receipt was not refunded and corrected.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to keep proper accounting records.

870. Programme Performance and Sustainability

Article 3 of the signed grant contract for Safe Roads/Usalama Barabarani Programme outlined that, the total eligible costs for the Programme was estimated at EUR5,375,000 (an equivalent

of Kshs.676,135,096). The grant was limited to 80% of the total cost of the action. The Government of Kenya (GoK) was required to contribute counterpart funds equivalent to 20% of the action, that is, EUR1,075,000 (equivalent to Kshs.135,227,019). However, as at 30 June, 2022 (twenty-seven months later), the total amount received as GoK counterpart financing was Kshs.10,052,969 equivalent to 7.4% of the expected contribution.

In the circumstances, it was not possible to ascertain whether the Government of Kenya will meet its contractual obligation within the stipulated Programme period.

Submission by the Accounting Officer;

The Authority requested for additional counterpart funding in FY 2022/23 and FY 2023/24. The National Treasury allocated a total of Kshs. 20 Million in the FY 2023/24 out of the Kshs. 97 Million that had been requested.

Committee Observations and Findings

The Committee observed that only Kshs. 20 million had been received as GoK counterpart funds.

Committee Recommendation

The Committee recommends that the Accounting Officer ensures that the project is adequately funded.

871. Underutilized Funds

The statement of receipts and payments reflects total receipts of Kshs.190,542,679 which, as disclosed in Notes 1 and 2 to the financial statements, includes receipts of Kshs.4,684,706 and Kshs.185,857,973 from Government of Kenya and European Union respectively. However, the Programme expenditure for the year amounted to Kshs.62,377,536 resulting to unutilized balance of Kshs.128,165,143 or 67% of the funds received during the year under review. In the circumstances, the slow absorption of the funds may affect the achievement of the intended deliverables and the planned objectives of the programme may not be met in time.

Submission by the Accounting Officer;

The Authority proposed a project addendum that changed the methods of project implementation to ensure efficient delivery of set objectives. The addendum was approved and signed in the last month (March 2022) of quarter 3 and the European Union funding disbursed during the same month.

The delays in the addendum approval and disbursement of funds resulted in late initiation of the procurement process for project consultancies. Majority of procurements have since been concluded and the funds are expected to be fully absorbed within the project implementation period. The consultancies are mostly short-term ranging from 3 to 12 months and are envisaged to be fully completed to meet the planned objectives in time.

Committee Observations and Findings

The Committee observed that the explanation was unsatisfactory, as proper project planning and implementation would have made the under-absorption avoidable.

Committee Recommendation

The Committee reprimands the Accounting Officer and recommends that he ensures proper project planning and implementation.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

872. Use of Funds for Unintended Purpose

The statement of receipts and payments reflect a total expenditure of Kshs.62,377,536. Examination of the bank statements for the Programme's bank account revealed two payments of Kshs.34,765,200 and Kshs.18,077,904, all totaling to Kshs.52,843,104, made in favor of Prison Industries Revolving Funds, on 10 March, 2022 and 22 April, 2022 respectively in respect of supply of number plates which is part of the Authority's core-business and hence not related to the Programme.

As stipulated in the grant contract, donor funds are to be utilized for the set Programme objectives. It was thus not possible to ascertain whether payments for supply of materials used in normal business operations of the National Transport and Safety Authority was within the set objectives and conditions for utilization of the grant funds.

Submission by the Accounting Officer;

The payments relate to the erroneously transferred amount of Kshs. 48,650,000 from the State Department of Interior and Citizen Services. The payments made were utilized to net off the transfer from the State Department.

Committee Observations and Findings

The Committee noted that the erroneous receipt was not refunded and corrected.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to keep proper accounting records.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

873. Lack of Annual Audit Workplan and Internal Audit Reports

Examination of records of the Programme revealed that there was no signed written internal audit report for the Financial Year 2021/2022. Further, review of internal audit function revealed that, there was no evidence that an annual audit plan for the Programme was developed and approved by the audit committee. It was therefore, not possible to establish how the internal audit for the Programme was to be carried out in the year under review without an approved internal audit work plan. Further, it was not possible to ascertain whether the internal audit function reviewed and evaluated the budgetary performance, financial management, transparency and accountability mechanisms so as to give reasonable assurance on state of risk

276 management, internal control and governance of the Project as required by Regulation 160(1) of the Public Finance Management (National Government) Regulations, 2015.

Submission by the Accounting Officer;

During the audit of the Finance and Corporate Research Strategy departments by the internal audit, no significant control weaknesses were observed under the project.

Committee Observations and Findings

The Committee observed that the project lacked the annual audit workplan and audit reports as at time of audit.

Committee Recommendation

The Committee reprimands the Accounting Officer.

HORN OF AFRICA GATEWAY DEVELOPMENT PROJECT (IDA CREDIT NO. 6768 KE) – NATIONAL TRANSPORT AND SAFETY AUTHORITY

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

876. Lack of Internal Audit Reports

As reported in the previous year, the Project was not audited by the internal audit department as provided for in the Project's Appraisal Document Annex 1 Paragraph 14 during the year under review. Although Management explained that the internal audit was carried out under Finance Department and Corporate Research, Strategy and Planning Department audits, no Internal Audit reports relating to the projects were provided for verification.

Submission by the Accounting Officer;

Internal audits were conducted as per the approved internal audit plan and minutes approving the plan as availed.

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

4.18 VOTE 1093: STATE DEPARTMENT FOR SHIPPING AND MARITIME

Mr. Geoffrey Kaituko, the Principal Secretary and Accounting Officer for State Department for Shipping and Maritime, appeared before the Committee on 24th September 2024, accompanied by the following officers:

i. Mr. Julius Seger	–	Director
ii. Mr. Isaiah Nakoru	–	Senior Accountant
iii. Mr. Edwin Odero	–	Accountant
iv. Mr. Jamleck Mulalya	–	Planning Officer
v. Mr. Simon Mungai	–	Principal Economist

And submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

877. Unconfirmed Other Receipts

The statement of receipts and payments and Note 2 to the financial statements reflects other receipts of Kshs. 1,818,203,216 described as incidental sales by Non -market Establishments collected as AIA. However, only an amount of Kshs. 125,175,885 from Bandari Maritime Academy and Kshs. 1,600,261,341 from Kenya Maritime Authority was confirmed from the respective financial statements leaving an unconfirmed balance of Kshs. 92,765,990.

In the circumstances, the accuracy and completeness of other receipts amount totaling kshs.92,765,990 could not be confirmed.

Submission by the Accounting Officer

The correct figure of AIA collected by the three SAGAs is Kshs 1,818,203,215.89 as supported by Confirmation Letters below:

i. Bandari Maritime Academy Kshs. 125,175,885,
ii. Kenya Maritime Authority Kshs. 1,690,887,614.89
iii. Kenya National Shipping Line Kshs. 2,139,716.

These are the same figures that were included in the financial statements of the State Department for the financial year 2021/2022.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

878. Inaccuracies in Outstanding Imprest Balance

878.1. Payments to Staff not Captured as Outstanding Imprest

The statement of assets and liabilities reflects imprests and advances balance of kshs. 260,698 as at 30 June, 2022. However, review of the bank reconciliation statements as at 30 June, 2022

indicates that payments totalling kshs. 4,812,090 were made to staff on 30 June, 2022 but were not reflected as outstanding imprest as at close of the year.

In the circumstance, the accuracy and completeness of the outstanding imprest balance of kshs.260,698 as at could not be confirmed.

Submission by the Accounting Officer

The amount of Kshs 4,812,090, were claims of staff involved in activities that had taken place earlier and the officers had not been facilitated through imprest payments. The expenditure claims were chargeable on the development vote whose bank account had become operational shortly before closure of the financial year.

The 1st development exchequer was received on the 13th May, 2022. These payments were reflected in the bank statement of July 2022.

Consequently, the correct amount of outstanding imprest was Kshs. 260,698 as reflected in the financial statements for the year under review. This outstanding imprest has however, since been fully surrendered.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

878.2. Imprests to Staff

Analysis of payments made during the year for recurrent cashbook showed imprests paid to staff totalling to kshs. 28,177,853 in respect of domestic travel and allowances.

The amounts paid suggests that officers were in the field for more days than the work schedule could accommodate.

In the circumstances, the authenticity of the imprest payment to officers totalling kshs.28,177,853 could not be confirmed.

Submission by the Accounting Officer

The management has analyzed the available documents and records in IFMIS and the findings are as follows:

The Kshs. 28,177,853 figure in question comprises;

i. Ksh. 12,219,100 DSA claims for field trips where imprest was not issued prior to the field visits;
ii. Kshs. 10,200,221 relates to safari imprests issued to officers for field visits and training of officers;
iii. Ksh. 4,162,315 for purchase of goods and services for office operations.
iv. Kshs. 1,596,217 relates to standing imprest for low value procurements for various offices.

From management analysis, the figure of Kshs. 28,177,853 was meant for the four (4) categories of expenditures as indicated above.

Committee Observations and Findings;

The Committee observed that;

i. **The Accounting Officer failed to demonstrate and justify amounts awarded to each officer;**

ii. **Kshs. 4,162,315 for purchase of goods and services for office operations had nothing to do with the imprest budget line;**

iii. **Kshs. 1,596,217 for standing imprest for low value procurements had nothing to do with the imprest budget line.**

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that all unjustified imprestsbe recovered within three (3) months of adoption of this report.

879. Pending Accounts Payables

Note 15.2 to the financial statements reflects pending accounts payable balance of kshs. 5,832,493. Review of the supporting schedule at table 3 attached to the financial statements indicate that bills amounting to kshs.988,525 were invoiced in 2018/2019,kshs.226,200 invoiced in 2019/2020, kshs.39,850 invoiced in 2020/2021 and kshs.4,577,918 invoiced in 2021/2022.Management has not provided justification for non-payment of the long outstanding pending bills which should have formed the first charge in the subsequent years budget and which exposes the State Department to the risk of incurring significant unquantified interests costs and penalties due to delay in settling invoiced bills.

In the circumstances, failure to settle bills during the year in which they relate adversely affects provisions of the subsequent year to which they have to be settled as a first charge.

Submission by the Accounting Officer

It true that Note 15.2 to the financial statements reflects pending accounts payable balance of Kshs. 5,832,493.

These Pending Bills remained unpaid since there was a budget rationalization in the financial year 2021/2022 before the conclusion of the Internal Audit verification exercise. The Budget Cuts affected the balances available in the vote book to enable the State Department to clear the Pending Bills.

In the 2022/2023 financial year the State Department requested for additional funds to be included in the supplementary II to enable the Department clear the Pending Bills.

The supplementary II budget was approved towards the closure of the financial Year. However, the State Department did not receive exchequer funding for this purpose.

Historical Pending Bills list totaling Ksh 12,716,347 has since been forwarded to the National Pending Bills Committee for further verification and direction.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

880. Long Outstanding Third-Party Deposits and Retentions

The statements of assets and liabilities and as disclosed at Note 10 to the financial statements reflects third party deposits and retentions balance of kshs. 1,311,736. Review of records maintained by Management indicates that retention balances were in respect of works undertaken between 18 December ,2018 and 27 June,2019, for partitioning and refurbishment of State Department's office at 8th floor NSSF building and supply, commissioning and installing of internet. The management has not provided explanation for non-payment of these long overdue retentions.

In the circumstances, the State Department runs the risk of incurring interests and penalties for continued holding of third -party deposits.

Submission by the Accounting Officer

It is true that at the time of the audit, there was third party deposits and retentions balances of Kshs. 1,311,736.

This amount comprised of Kshs. 1,067,249 for partitioning and refurbishment of office by Petmark Services Ltd, and Kshs. 244,487 for the supply, installation, testing and commissioning of data and voice network at 8th Floor NSSF Annex Nairobi by Powerware System.

The retention money for the two (2) firms remained unpaid because the contractors had not raised claims by providing documents to show that work had fully been certified as completed.

The two firms have however since been paid their retention money upon submitting the necessary supporting documents.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

881. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs. 2,679,528,614 and kshs. 2,309,731,830 respectively resulting to an under-funding of Kshs. 369,796,784 or 14% of the budget.

Similarly, the State Department expended Kshs. 2,308,008,441 against an approved budget of Kshs. 2,679,528,614 resulting to an under-expenditure of Kshs. 371,520,173or 14% of the approved budget.

The underfunding and underperformance affected the planned activities and may have impacted negatively on services delivery to the public.

Submission by the Accounting Officer

With regards to the under-funding of Kshs. 369,796,784, the funding was to come from Donor fund project which was not forthcoming due to delays occasioned by technical designed gaps during the year under review thus affecting procurement of goods and services.

The State Department under-expenditure of Kshs. 371,520,173 was as a result of the closure of the IFMIS system during the third quarter of the financial year 2021/22 to allow preparation of supplementary budget. The system was opened towards closure of financial year, thus could not undertake activities before the closure of the financial year.

However, the Department's overall absorption rate was at 87% despite the circumstances.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

882. Non-compliance with One-Third Basic Pay Rule

Analysis of the State Department's payroll revealed that during the year, four employees earned salary below one third of their basic pay contrary to section 19 (3) of the Employment Act, 2012 which state that total amount of all deductions made by an employer from the wages of his employee at any one time shall not exceed two thirds of such wages.

In the circumstances, management was in breach of section 19(3) of the Employment Act, 2012.

Submission by the Accounting Officer

The reasons in respect to the non-compliance of the one third basic pay rule by the officers mentioned are as explained below;

i. Mr. Ferdinand Wandera was promoted to the subsequent job group and now meets a third rule in his net pay as per the attached pay slip.
ii. Mr. Mungai Simon, and James Gekobe were issued with letters informing them that they had overcommitted their salaries contrary to section 19(3) of the employment act, 2012 and were asked to normalize their financial affairs to avoid pecuniary embarrassment.
iii. Daudi Kona was working in the field office where he was drawing field allowances. After he was transferred to the Ministry Headquarters, he lost the allowance entitlement thus affecting the one- third basic pay.

The pay slips now meet the One Thirty (1/3) Basic Pay Rule.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

883. Audit Committee

Although the State Department had nominated five members to the Audit committee, no evidence was presented to confirm that the committee met to discuss internal Audit reports contrary to Regulation 179 (1) of the Public Finance Management (National Government) Regulations,2015 which states that the Audit committee shall meet at least once in every three months.

In the circumstances, the effectiveness of the Audit committee could not be confirmed.

Submission by the Accounting Officer

During the year under review, the State Department did not have audit committee of its own as the mandate was vested in the Ministerial Audit Committee. The work of the committee at that time was not effective.

Since the Reorganization of the current ministries in the new government, this State Department now falls under the new Ministry of Mining, Blue Economy, and Maritime Affairs. The Ministerial Audit Committee has now been constituted.

Committee Observations and Findings;

The Committee noted that the submission by the Accounting Officer was unsatisfactory.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to ensure existence of an audit committee during the subject financial year, subject to Regulation 179 (1) of the Public Finance Management (National Government) Regulations, 2015.

THE MULTINATIONAL LAKE VICTORIA MARITIME COMMUNICATION AND TRANSPORT (MLVMCT) PROJECT (ADF LOAN NO. 2100150036247) – KENYA MARITIME AUTHORITY (Originally listed under State Department for Transport)

REPORT ON THE FINANCIAL STATEMENTS

862. Undisclosed and Unaccounted for Domestic Travel Expenses

The statement of receipts and payments and as disclosed in Note 6 to the financial statements reflects purchase of goods and services amount of Kshs. 502,750 which includes domestic travel expenses amount of Kshs. 493,560. However, examination of payment vouchers revealed domestic travel expenses amounting to Kshs. 1,022,760 resulting to an unexplained variance of Kshs. 529,200 which was not disclosed in the financial statements.

In the circumstances, the accuracy and completeness of domestic travel and subsistence amount of Kshs.493,560 could not be confirmed.

Submission by the Accounting Officer

Kshs. 1,022,760 was payment for domestic travel expenses incurred on project related activities out of which Kshs. 529,200 was inadvertently paid from the Kenya Maritime Authority's (KMA's) Current Account and, upon realization, was recognized as a liability in the Project's Books of Account. The Auditor, however, advised that the financial statements be prepared on cash and not accrual basis.

Committee Observations and Findings;

The Committee noted the admission of the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to keep proper accounting records.

863. Cash and Cash Equivalents- Unpresented Cheques

The statement of financial assets reflects cash and cash equivalents balance of Kshs. 61,408,450. However, the balance includes unresolved prior year audit issue on unsupported unpresented cheques balance of Kshs. 1,319,084.

In the circumstances, the accuracy and completeness of cash and cash equivalents balance of Kshs. 61,408,450 could not be confirmed.

Submission by the Accounting Officer

There was no unpresented cheques balance of Kshs. 1,319,084 as at 30th June 2024.

The anomaly was corrected and the Correct Bank Reconciliation Statements were presented to the auditor on 24th September 2022 during the audit.

Committee Observations and Findings;

The Committee noted that the supporting documentation availed by the Accounting Officer related to a previous financial year.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to keep proper accounting records.

864. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final total receipts budget and actual on comparable basis of Kshs. 7,000,000 and Kshs. 7,000,000 respectively or 100% of budget performance rate. However, the Project spent Kshs. 502,750 against an approved budget of Kshs. 7,000,000 resulting to an under-expenditure of Kshs. 6,497,250 or 93% of the budget.

Management has explained that the under-utilization of funds was caused by delayed finalization of mid-term review to pave way for purchase of boats and lengthy approval process of land for Safety and Rescue Centre. In the circumstances, the under expenditure may have affected the capacity of the Project to carry out its programmes and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The Project stalled for the entire of the Financial Year 2021/2022 as the Country waited for the decision of the AfDB on the report of the Mid-term Review. The decision was not received until May, 2022 when the Bank communicated that it had cancelled the Project's Loan. This paved the way for commencement of the redesigning of the Multinational Lake Victoria Maritime Communication and Transport (MLVMCT) Project to the Kenya Lake Victoria Maritime Communication and Transport (KLVMCT) Project.

Committee Observations and Findings;

The Committee noted that the cancellation of the project and subsequent re-design indicated ineffective conceptualization of the project from the start.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to ensure effective project design.

865. Unresolved Prior Year Matters

The prior year audit issues remained unresolved as at 30 June, 2022. Management has not provided reasons for the delay in resolving the prior year audit issues. Further, seven unresolved prior year issues are not disclosed under the progress on follow up of auditor's recommendations section of the financial statements as required by the Public Sector Accounting Standards Board.

Submission by the Accounting Officer

i. Unsupported Bank Reconciliation items

The wrong documents had inadvertently been attached to the financial statements by the anomaly was corrected during the audit and the correct bank reconciliation statements availed.

ii. Opening Bank Account without approval from the National Treasury

Retrospective approval was sought and obtained from the National Treasury.

iii. Pre-payment of Geo-Technical Survey

As at the time of the audit, the activity had not been completed as lab testing was still ongoing. The Geotechnical survey reports were received in October, 2022.

iv. Excess and unbudgeted Commitment Charge

Accounting for commitment charges was still under discussion between the National Treasury, Lake Victoria Basin Commission (LVBC) and Kenya Maritime Authority (KMA) to agree on how the reporting should be since KMA was to account for about 25% of the loan the remaining 75% was to be accounted for by LVBC.

v. Un-procedural issuance of imprests

All advance payments were fully accounted for and supporting documents were availed during the audit.

vi. Lack of Framework for the National Policy Steering Committee and the National Technical Committee

The terms of reference for the National Policy Steering Committee and the National Technical Committee are found in the Project Appraisal Report (PAR) and Technical Annexes.

Committee Observations and Findings;

The Committee reiterates it observation that the cancellation of the project and subsequent re-design indicated ineffective conceptualization of the project from the start.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to ensure effective project design.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

866. Cancellation of Undisbursed/ Undrawn Loan Balance

The statement of receipts and payments reflects Nil loans from external development partners and the cumulative disbursement by African Development Bank is reflected as a cumulative balance of Kshs. 2,092,732 while the cumulative disbursement by the Government to Kenya as counterpart funding reflected is Kshs. 89,000,000. Further, Project information and overall performance on source of funds as reflected in the financial statements indicate undrawn balance from the Bank as Kshs. 527,516,868 as at 30 June, 2022. However, review of records revealed that on 17 May, 2022, the Bank issued a Notice for Cancellation Ref. AfDB/RDGE/LTR/2022/05/059 of the undisbursed loan balance after the disbursement deadline of 30 August, 2022 due to the Project's failure to achieve the strategic goals including establishment of a maritime communications system for safety on Lake Victoria. As at the time of audit on 30 August, 2022, the disbursement and Project implementation status remained the same.

In the circumstances, the loan cancellation may negatively impact the achievement of the projects objectives.

Submission by the Accounting Officer

The loan cancellation followed the conclusion of the Project's mid-term review whereby the three partner states (Kenya, Uganda and Tanzania) could not agree on the best arrangement for implementation of the Project. The mid-term review resulted in the splitting of the project whereby Kenya was ineligible to benefit from the ADF regional envelope since it was no longer part of the regional project.

Committee Observations and Findings;

The Committee reiterates it observation that the cancellation of the project and subsequent re-design indicated ineffective conceptualization of the project from the start.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to ensure effective project design.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

867. Failure to Channel Funds as per the Project Financing Structure

Based on the agreement between the Republic of Kenya and the African Development Fund, the Government of Kenya has so far disbursed Kshs. 107,261,000 as grant to the Project through Kenya Maritime Authority. However, this was against the Project's financing structure which provided for channelling of funds for jointly implemented activities to Lake Victoria Basin Committee (LVBC).

In the circumstances, Management has not complied with the Project's financing structure

Submission by the Accounting Officer

During the mid-term review of the Project, Kenya opposed Section 5.01 (b) of the loan agreement which stated, "Submission for approval to the fund of the subsidiary agreement on the on-granting of UA 2,856,825.52 for jointly implemented regional activities signed between the borrower and LVBC on terms and conditions acceptable to the fund".

Committee Observations and Findings;

The Committee reiterates it observation that the cancellation of the project and subsequent re-design indicated ineffective conceptualization of the project from the start.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to ensure effective project design.

4.19 VOTE 1203: STATE DEPARTMENT FOR HOUSING AND URBAN DEVELOPMENT

Mr. Charles Hinga, CBS, the Principal Secretary and Accounting Officer for the State Department for Housing, appeared before the Committee on 26th March 2024, accompanied by the following officers:

i.	Mr. Charles Liyayi	-	Head of Accounting Unit
ii.	Mr. John Muya	-	Secretary, Administration
iii.	Mr. Hiram Kahiro	-	Secretary, Administration
iv.	Mr. Said Athman	-	Secretary, Housing
v.	Mr. Cassius Kusienya	-	Director, Estates
vi.	Ms. Lilian Kieni	-	Ag. Director UDD
vii.	Ms. Everlyn Nyakwara	-	Senior Chief Finance Officer
viii.	Ms. Purity Kananu	-	Principal Accountant

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

884. Irregular Charge of Expenditure under Acquisition of Assets

As disclosed in Note 8 to the financial statements, the statement of receipts and payments reflects Kshs. 5,544,912,688 in respect to acquisition of assets. However, the following expenditure charged to acquisition of assets did not relate to the expense items where they were accounted for and no supporting documents or justification was provided for audit review;

i. Construction and civil works amount of Kshs. 4,252,432,575 includes expenditure totaling to Kshs. 23,404,486 relating to training and seminars and payments made for routine activities and imprest surrenders for activities not related to construction and civil works.

ii. Refurbishment of buildings expenditure of Kshs. 900,000,000 is made up of expenditure relating to security, electricity, cleaning, office operations, refund of rents, tracking and monitoring of AIA usage, inspections and assessment of mental health care among others all not related to refurbishment of buildings.

iii. Research, studies, project preparation, design and supervision expenditure of Kshs. 391,778,732 includes unrelated expenditure totalling to Kshs. 919,800 and payment to Civil Servants Housing Fund amounting to Kshs. 80,705,232 for which no supporting documents were provided for audit review.

In the circumstances, the accuracy and validity of expenditure on acquisition of assets of Kshs. 5,544,912,688 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The construction and civil works expenditure of Kshs. 4,252,432,575 included seemingly unrelated expenditure totalling to 23,404,486 which include training and seminars, imprest surrenders for activities which do actually relate to construction and payments made for routine work. The said expenditures relate to the supervision and monitoring expenses on construction

works in relation to Kenya Urban Support Program, and there was no recurrent provision for the same.

Refurbishment of buildings expenditure of Ksh. 900,000,000 is largely made up of expenditure which appears not related to refurbishment items including security, electricity, cleaning, office operations, refund of rents, tracking and monitoring of AIA usage, inspections and assessment of mental health care among others. This expenditure however was incurred on maintenance and other operational expenses on the buildings and houses owned by the national government.

Research, studies, project preparation, design and supervision expenditure of Kshs. 391,778,732 include payments to Civil Servants Housing Fund totaling to Kshs. 80,705,232 for which no supporting documents have been provided and payments in respect to unrelated expenditure totaling to Kshs. 919,800. All the documents in relation to the payments to Civil Servants Housing Fund are available for verification. However, the expenditure totaling to Kshs. 919,800 does not appear in any of our records

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer, and the Auditor General's confirmation that the Kshs. 919,800 cited was erroneous.

Committee Recommendation;

The Committee recommends that the Accounting Officer in liaison with National Treasury provides for recurrent funds specific to projects, or capitalize them in concurrence with the donors, in subsequent projects.

885. Compensation of Employees-Payroll Items Paid Outside IPPD

The statement of receipts and payments, as disclosed in Note 4 to the financial statements, reflects compensation of employees amount of Kshs. 734,778,971. However, analysis of IFMIS reports indicated that expenditure on basic salaries - civil service, house allowance and special duty allowance of Kshs. 23,795,085, Kshs. 6,986,402 and Kshs. 7,974 respectively all totaling to Kshs. 30,789,461 were made outside the IPPD system. The basis and supporting documentation for paying employees outside payroll was not provided for audit review.

In the circumstances, the regularity and validity of compensation of employees expenditure paid outside the IPPD system amounting to Kshs. 30,789,461 could not be confirmed.

Submission by the Accounting Officer

The expenditure in relation to Kshs 30,789,461 was paid to various officers to cater for gratuity to officers on employment contracts, returned salaries, Pay As You Earn (PAYE) baggage allowance, staff welfare (funeral expenses). The payments cannot be made through the IPPD System.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the State Department for Public Service configures the IPPD system to capture all allowances payable to all cadres of staff, within three (3) months of adoption of this report.

886. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on a comparable basis of Kshs. 15,517,268,853 and Kshs. 11,214,195,077 respectively resulting in an underfunding of Kshs. 4,303,073,776 or 28% of the budget. Similarly, the State Department expended Kshs. 11,344,516,356 against an approved budget of Kshs. 15,517,268,853 resulting in an under expenditure of Kshs. 4,172,752,497 or 27% of the budget.

The underfunding and under expenditure affected the planned activities of the Department and negatively impacted on service delivery to the public.

Submission by the Accounting Officer

The underfunding and under expenditure affected the planned activities of the Department and negatively impacted on service delivery to the public. However, the under receipts of Kshs. 4,303,073,776 was caused by inadequate exchequer issues from the National Treasury.

It is true that the summary statement of Appropriation – Recurrent and Development combined reflected final receipts budget and actual on comparable basis Kshs. 15,517,268,853 and Kshs. 11,214,195,077 respectively resulting to an under-absorption of Kshs, 4,303,073,776 or 28%.

It is also true that the State Department expended Kshs. 11,344,516,356 against an approved budget of Kshs. 15,517,268,853 resulting in an under-expenditure of Kshs. 4,172,752,497 or 27% of the budget. This under expenditure of Kshs. 4,172,752,497 was occasioned by lack of funding from the National Treasury.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

887. Pending Bills

Note 16.2 to the financial statements reflects pending accounts payable balance of Kshs. 1,634,354,560. As disclosed in summary table 3 of detailed schedule of pending bills at Appendix 1 to the financial statements, the pending bills balance includes bills amounting to Kshs. 971,976,845 that relates to 2020/2021 and earlier financial years. Although Management explained that the pending bills arose due to lack of budgetary provisions and lack of exchequers, the Management did not explain the reason for procuring goods and services without adequate budgetary allocations. Further, it is not clear why the bills have not been factored as a first charge in subsequent budgets as required by law.

In addition, pending bills totaling to Kshs. 265,726,672 incurred between 2008/2009 and2012/2013 are indicated as being under verification. It is not clear why the exercise of verification had not been concluded by 30 June, 2022.

In the circumstances, the State Department risks incurring avoidable interest and penalties on delayed payments due to failure to pay invoiced bills on time. Further, failure to settle bills in the year to which they relate adversely affects the following year's provision to which they form the first charge.

Submission by the Accounting Officer

Included in the detailed schedule of pending bills are pending bills that relate to prior financial years 1997/1998, 1999/2000, 2008/2009, 2009/2010, 2011/2012, 2012/2013, 2015/2016, 2018/2019, 2019/2020 and 2020/2021. The pending bills arose due to lack of budgetary provisions, lack of exchequers and others arose from arbitral awards and court cases related to the defunct Ministry of Local Government which came to the State Department from reorganization of government.

It is further true that in the summary provided under table 3 are pending bills totaling to Kshs. 265,726,672.10 which are still under verification and have taken rather long to conclude the verification. The inordinate delay in concluding the verification was caused by unavailability of information from defunct Ministries, that entailed consulting the Office of the Attorney General for guidance. Further, it is a requirement to consult the National Treasury before paying historical pending bills and getting the necessary budgetary provisions and approval to pay them.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

888. Contingent Liabilities

As previously reported, note 16.4 to the financial statements reflects contingent liabilities amount of Kshs. 491,768,237 (2021-Kshs. 402,494,393) relating to two contractors. The liability arose from arbitral awards on the matter of arbitration between the two contractors and the then Ministry of Local Government. The awards were for two (2) contracts under the Nakuru Town Roads Projects, contract No. PKG/16A of Kshs. 338,561,360, No. PKG/16B of Kshs. 126,338,431 and a ruling on Miscellaneous Application No.579 of 2014 of Kshs. 26,868,445. The awards have been outstanding since 31 October, 2017, 3 June,2018 and 20 August, 2014 respectively.

Although the State Department had paid Kshs. 305,999,999 in relation to Contract No.PKG/16A and PKG/16B as at 30 June, 2022, the awards had accumulated compound interest and other costs of Kshs. 176,791,793, Kshs. 154,662,724 and Kshs. 1,292,367 totaling to Kshs. 342,746,884.

In the circumstances, the additional amount of Kshs. 342,746,884 represents an avoidable expenditure for which no value for money will be obtained.

Submission by the Accounting Officer

It is true that the financial statements reflected pending bills amounting to Kshs.402,494,393.91 payable to Nyoro Construction Co. Ltd which were not paid during the year under review. This arose from arbitral awards to contractors which was not paid due to insufficient budget. Through letter reference PS/MOHL /16A/15/11/2023 dated 16 November 2023, the contractor, Nyoro Construction Company Ltd agreed to a lump sum settlement of Kshs 400,000,000 being the final payment for the Contract No. PKG/164A AND No. PKG16B. The funds were subsequently transferred to the State Law Office for onward payment to the contractor as evidenced by the payment voucher and Central Bank of Kenya Real Time General Settlement (RTGS) statements.

Further, based on letter reference AG/MLG/ARB/1/11 dated 8th June 2021, the State Department transferred a sum of Kshs 26,868,445.35 to the State Law Office being payment in settlement of the claim by PUT Sarajevo General Engineering Co. Ltd which arose from an arbitral award. The payment was transferred to the State Law Office for onward payment to PUT Sarajevo General Engineering Co. Ltd as evidenced by payment voucher and Central Bank of Kenya Real Time General Settlement (RTGS) statements.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

889. Uncollected Revenue from Government Houses

As previously reported, the total number of Government houses across the forty-seven (47) Counties stood at fifty-six thousand eight hundred and ninety-two (56,892) with an expected monthly rental income of Kshs. 127,048,750 resulting into an annual rent potential of Kshs. 1,524,585,000 assuming full occupancy. Rent collections on Government houses for the financial year under review amounted to Kshs.1,018,000,000 leading to an under performance of Kshs. 506,585,000 of the full potential.

Further, the State Department expected to receive Kshs. 138,232,808 rent income fromGovernment houses occupied by the County Government's staff in forty-seven counties. However, only Kshs. 26,580,572 as received resulting to Kshs. 111,652,236 unremitted revenue. In addition, the total uncollected rent over the last two years amounted to Kshs. 1,157,783,429 while the uncollected amounts for financial year 2019/2020 and earlier years have not been quantified.

In the circumstances, the rent income due the State Department was not collected in accordance with Regulation 43(c) of the Public Finance Management (National Government) Regulations, 2015 which requires an Accounting Officer to ensure that all Appropriations-in-Aid due to a National Government entity are collected and properly accounted for in accordance with the relevant laws, rules and regulations.

Submission by the Accounting Officer

This shortfall arose from the following: -

(i) A total of Kshs. 16,990,206.18 was deducted from tenants by various MDAs but was not remitted to the State Department. Demand letters were addressed to the particular MDAs.

(ii) A total of Kshs. 104,095,240 was owed by County Governments. A letter was addressed to Council of Governors to this effect.

(iii) A total of Kshs. 35,650,560 was not collected from 1,714 houses that had been boarded to various Institutions.

(iv) A total of Kshs. 42,465,600 was not collected from 1,501 houses that were irregularly alienated and thus not attracting rent. Most of these are subject of ongoing litigations with government investigative agencies.

(v) Various houses were not occupied due to their dilapidated condition. These houses could not be refurbished within the financial year due to cash flow constraints. As such, rent was not received from such houses across the country.

(vi) There were times when houses were not occupied immediately, they were vacated This was caused by delayed allocation to the next tenant especially in areas with security challenges.

In order to scale up rent collection efficiency, we have instituted several measures which have resulted in a steady increase in overall annual collection over the last four (4) years.

Committee Observations and Findings;

The Committee observed that;

i. **Rents chargeable in government houses are way below market rates and may not be adequate to maintain them;**

ii. **State Departments and county governments deducted the rents from occupants but failed to remit the same;**

Committee Recommendation;

The Committee recommends that;

i. **Accounting Officers that have failed to remit deducted rents are hereby reprimanded and directed to remit the dues within three (3) months of adoption of this report;**

ii. **Treasury recovers amounts outstanding from state departments and county governments, and remits the same to the State Department for Housing, in the next budgetary cycle;**

iii. **The State Department and National Treasury conducts a market survey of these houses and adjusts the rents payable accordingly;**

iv. **The EACC expedites resolution of cases before courts; and**

v. **The State Department prioritizes renovation of these houses.**

890. Lack of Updated Inventory on Boarded Houses

As previously reported, examination of records of boarded houses countrywide revealed

that several houses were either encroached, grabbed, condemned, demolished, transferred to other entities, or converted to offices for commercial use. However, the records were not comprehensive as Management did not have an updated inventory of all houses

In the absence of updated records, the status of the boarded houses, custody of the houses and the extent of unrealized revenue from such boarded houses could not be confirmed.

Submission by the Accounting Officer

It is true that some boarded houses were still included in the register during the year under review.

However, analysis of boarded houses has been done. A total of 1,714 houses were identified and removed from the register.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

891. Abandoned Projects

As previously reported, the construction of one hundred (100) housing units at Emali Administration Police Training Camp at a cost of Kshs. 136,705,536 was abandoned at 85% completion stage. Management has not provided evidence of efforts towards resumption of the works.

In the circumstances, it has not been possible to confirm whether value for money will be realized from the public funds committed to the project.

Submission by the Accounting Officer

It is true that as previously reported, the construction of one hundred (100) housing units at Emali administration Police Training Camp at a cost of Kshs. 136,705,536 was abandoned at 85% completion stage. However, the project at NPS Emali Campus, consisting of 100 units stalled.

A consultative meeting was called by the Ministry of Interior and Co-ordination of National Government (user client) on 9th December, 2021 to discuss how the project will be completed. The meeting was attended by representatives from State Department for Housing and Urban Development (Financing Client), State Department of Public Works (Project Manager) and the contractor. The meeting agreed to mutually wind up the contract and the contractor to hand-over the site to the user client.

The Project Manager organized remeasurement, stock taking and preparation of tender documents for completion of the project. Subsequently, the project was retendered on 18th May, 2023. The project construction is now underway following the identification of a contractor to complete the works.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

892. Gaps in Government Residential Houses Register

As previously reported, according to the inventory of Government houses provided for audit review, the Government had a total of 56,892 houses categorized into institutional, police and pool houses. The houses were further categorized into low, medium and high grades. However, the register maintained by the State Department did not contain key information such as the dates of occupancy and vacancy, occupants' details and reason for non-occupancy.

Failure to maintain a comprehensive register makes it difficult to keep track of Government houses and tenants in relation to occupancy, vacancy of the houses, houses with rent arrears and their respective maintenance costs. This is contrary to Regulation 139(1)(a) of the Public Finance Management (National Government) Regulations, 2015 which states that the Accounting Officer of a national government entity should take full responsibility and ensure that proper control

systems exist for assets and that preventative mechanisms are in place to eliminate theft, security threats, losses, wastage and misuse.

Submission by the Accounting Officer

The residential houses register has since been updated and is available in soft copy.

Committee Observations and Findings;

i) The Committee noted the submission from the Accounting Officer.

ii) The Committee found that the matter was resolved.

893. Non-Compliance with the One Third of Basic Salary Rule

During the year under review, thirty (30) employees earned a net salary of less than one third (1/3) of their basic salaries contrary to Section C.1(3) of the Public Service Commission (PSC) Human Resource Policies and Procedures Manual, 2016. Management did not give an explanation for failure to comply with the policy.

In the circumstances, the State Department contravened Section C.1(3) of the PSC Human Resource Policies and Procedures Manual, 2016 and this may expose the staff to pecuniary embarrassment.

Submission by the Accounting Officer

The IPPD system is configured in such a way to maintain the a third (1/3) rule limit, unfortunately a few cases seem to have exceeded the limit. The HR department has taken note of the cases and corrective measures have been taken to amend the anomaly.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures incremental compliance by all staff.

894. Unprocedural Extension of Contracts

Review of the State Department's records revealed that Kshs. 18,039,162 was paid to three local companies for rendering cleaning services and provision of security services during the year under review. However, the contracts for these service providers were extended for a period of three months as a result of late evaluation of bids for the new contracts. Although Management explained that the late evaluation was as a result of late commencement of the procurement process, this would have been avoided had the head of the procurement function prepared monthly briefs on the expiry of these contracts. This is contrary to Regulation 140 of the Public Procurement and Asset Disposal Regulation, 2020 which provided that the head of procurement function shall prepare a monthly progress report of all procurement contracts and submit the same to the accounting officer in accordance with section 152 of the Act. The report thereof shall include details like contract description, contract number, value of contract, commencement date, current status, the amount of money paid, and the expected completion date.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

It is true the contracts for these service providers were extended for a period of three months as a result of late evaluation of bids for the new contracts, contrary to the law.

The late evaluation was as a result of late commencement of the procurement process, having been occasioned by late finalizing and uploading of the procurement plan. The management has noted the anomaly and will ensure that the same is not repeated in future.

Committee Observations and Findings;

The Committee observed that the explanation was unsatisfactory as expiry of previous contracts was foreseen.

Committee Recommendation;

The Committee reprimands the Accounting Officer.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

895. Digitization of Estate Management

As previously reported, the management of government houses and collection of rent is largely manual as it is yet to be digitized. The benefits that accrue with digitization such as ability to establish expectation on rental income from the individual Ministries, Departments, Agencies or Counties, invoicing, rent collections, booking of revenue, reconciliations and maintenance of houses have not been realized. These gaps in the manual system may lead to undetected loss of revenue.

Submission by the Accounting Officer

It is true that the department runs largely on a manual system. The Department advertised for ERP system but did not get a responsive bidder after evaluation. This was re-advertised. Tender evaluation was done and a contract awarded. An aggrieved bidder challenged the award in court and the matter was later ruled in favor of the state department. The contract for digitization of the Estate Department was awarded and the consultant is already on site.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report on the digitization, within three (3) months of adoption of this report.

DONOR FUNDED PROJECTS

KENYA INFORMAL SETTLEMENT IMPROVEMENT PROJECT NO. P113542 CREDIT NO.4873KE

REPORT ON THE FINANCIAL STATEMENTS

896. Unsupported Expenditure on Purchase of Goods and Services

The statement of receipts and payments reflects an amount of Kshs. 15,203,347 in respect of purchase of goods and services, as disclosed in Note 6 to the financial statements, which includes domestic travel and subsistence expenditure amounting to Kshs. 12,505,486. The domestic travel and subsistence costs further include expenditure for imprest paid to staff on 28 and 30 June, 2022 amounting to Kshs. 478,850 which was not supported with the dates when the events took place and the respective surrenders evidencing attendance.

In addition, the domestic travel expenses also include payments amounting to Kshs. 1,519,600 paid on 24 December, 2021 as subsistence allowance for unidentified officers for attending infrastructure inspection meetings. No work plan was provided to demonstrate that the inspection meetings were part of the project activities.

In the circumstances, the accuracy and validity of the domestic travel and subsistence expenditures of Kshs. 478,850 and Kshs. 1,519,600 could not be confirmed.

Submission by the Accounting Officer

The domestic travel includes expenditures amounting to Kshs. 478,850 were surrenders and claims posted on 28 and 30 June, 2022 and not imprest paid to staff on the said dates. The payment vouchers indicate the dates when the events took place and evidence of attendance were availed to the auditor.

It is true that domestic travel expenses also include payments amounting to Kshs. 1,519,000 paid on 24 December, 2021 as subsistence allowance for various officers. Kshs 796,600 was payment for subsistence allowances for officers undertaking relocation action plans (RAP) activities in counties. This activity is entrenched in Part C (2) of the Financing Agreement. Kshs. 722,400 was paid to officer carrying out inspection of maintenance of completed infrastructure works, which is the last step in infrastructure implementation as laid out in the operations Manual. The activities are part of program management in the workplan.

Committee Observations and Findings;

The Committee observed that the Accounting Officer failed to submit supportive documentation on time as per section 9 (i) (e) of the Public Audit Act, 2015.

Committee Recommendation;

The Committee reprimands the Accounting Officer.

NAIROBI METROPOLITAN SERVICES IMPROVEMENT PROJECT (IDA CREDIT NO.5102-KE)

REPORT ON THE FINANCIAL STATEMENTS

900. Unsupported Expenditure on Purchase of goods and Services

The statement of receipts and payments reflects purchase of goods and services expenditure of Kshs. 7,372,103 as disclosed at Note 11.4 to the financial statements. The expenditure constitutes of other operating costs, printing advertising, supplies and services and training payments amounting to Kshs. 1,876,535, Kshs. 1,485,969 and Kshs. 4,009,600 respectively. However, a detailed and approved work plan was not provided in support of the expenditure. Further, review of the training expenditure of Kshs. 4,009,600 revealed that the expenditure was in respect of per diems and tuition fees paid to eight (8) officers on 29 June, 2022 for attending a security training. Management did not demonstrate how the security training related to the Project. In addition, Management did not provide details on when the respective trainings were undertaken.

In the circumstances, the accuracy and validity of purchase of goods and services expenditure of Kshs. 7,372,103 could not be ascertained.

Submission by the Accounting Officer

The training related to ministry staff seconded to the project as at the time. The detailed work plan, procurement, training curriculum of the training expenditure of Kshs 4,009,600 have now been availed and properly supported.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

901. Unsupported Deposits and Retentions

Note 11.8 to the financial statements reflects accounts payables - deposits and retentions balance of Kshs. 92,319,184 as at 30 June, 2022. However, Management did not maintain a specific deposits and retentions bank account. Further, the amount has not been reported in the statement of financial assets and therefore it is not clear how the settlement will be funded when due.

In the circumstances, the existence and valuation of the accounts payable - deposits and retentions balance of Kshs. 92,319,184 could not be ascertained.

Submission by the Accounting Officer

It is true NaMSIP project did not transfer retention deposit money to retention deposit holding account at Ministry headquarter bank account at Central Bank of Kenya. This is because of direct method mode of payment to Contractors by World Bank. The World Bank disbursement guideline prohibit transfer of funds from project operations account (IDA) to any another holding account. This would lead to ineligible expenditure.

State Department has updated our records since retention money amounting to Ksh12,184,791.20 was paid to respective contractors in the financial year 2022/2023. I further wish to report that outstanding retention money not paid yet belong to two contractors whose contract are incomplete, hence not due for payment. These are Concording building contractor for Mitubiri sanitary land

fill in Muranga County and Three E's contractors for Kiahara Market in Kiambu County is also incomplete.

In view of the above, the outstanding retention money due for payment is Kshs. 80,134,392.80 as per the audit report of Nairobi Metropolitan Services Improvement Project financial statement of FY 2022/2023 xx.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

902. Pending Accounts Payable

Note 12 .1 to the financial statements on pending accounts payable reflects a balance carried forward of Kshs. 59,882,484 as at 30 June, 2022. The pending bills balance comprises of Kshs 2,799,224, Kshs 21,927,777 and Kshs 35,155,483 under construction of buildings, construction of civil works and supply of services respectively which remained unpaid during the year.

The project risks incurring unquantified avoidable costs of interest and penalties due to delay in settling invoiced bills. Failure to settle bills during the year in which they relate adversely affects the provisions of the subsequent year to which they have to be the first charge.

In the circumstances, the accuracy of pending accounts payable balance of Kshs. 59,882,483 as at 30 June, 2022 could not be confirmed

Submission by the Accounting Officer

It is true the project had accumulated pending bills amounting Kshs 59,882,484 as at 30th June, 2022. In the financial year 2022-2023 the project was allocated a budget of Kshs 100m The project paid pending bills amounting to Kshs. 56,222,664.85 in the financial year ended 2022/2023. However, the project received 90% of the exchequer hence it was not possible to pay Kshs. 3,659,819.00 pending bills.

Of the pending bills amounting to Ksh. 56,222,664 85 was paid, and the balance of Kshs. 3,659,819.00 for Antea France forms the first charge in the FY 2023/2024 once exchequer is received.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

903. Supply of Fire Fighting Vehicles

An international firm was contracted by Management vide contract No.ICB:MoNMED/NaMSIP/VEH-16/2012-2013, to supply, deliver and commission seven (7) diesel propelled 6x4, 10,000 litres capacity, fire fighting vehicles under Lot 1 at a contract value of Euros 2,581,182 (equivalent to Kshs 327,904,078).

The contract was signed on 27 June, 2013 and the vehicles were to be delivered to the benefitting local authorities (City Council of Nairobi, Ruiru Municipal Council, Kikuyu Town Council, Thika

Municipal Council, Limuru Municipal Council and Kiambu Municipal Council), on 27 March, 2014 which was nine months after signing of the contract.

Review of the records provided revealed the following anomalies:

903.1. Delay in Delivery of the Vehicles

The seven (7) fire fighting vehicles were delivered in the financial year 2021/2022 and were distributed to the Nairobi Metropolitan Counties on 3rd December, 2021 whereby: Nairobi City County – 1 vehicle, Kiambu County – 3 vehicles, Murang'a County – 1 vehicle, Machakos County – 1 vehicle and Kajiado County – 1 vehicle.

However, from the foregoing the fire fighting vehicles were delivered seven (7) years and nine (9) months after the original expected delivery date. Although Clause 27.1 on liquidated damages provides that ''the purchaser may without prejudice to all its other remedies under the contract, deduct from the contract price as liquidated damages a sum equivalent to the percentage specified in the special conditions of contract (SCC) of the delivered price of the delayed goods for each week or part thereof of delay until actual delivery or performance''. Management did not lodge any claim as liquidated damages arising from delay in delivery of the vehicles.

Submission by the Accounting Officer

The delay in delivery of the Fire fighting vehicles was due to the following reasons;

1) Introduction of taxes on Fire fighting vehicles after tender submission. During the tender submission on 27th June 2013, under the then prevailing VAT Act of 2009, Fifth Schedule, Part B, the Fire fighting vehicles were zero rated.The VAT Act 2013 enacted in August 2013, the fire fighting vehicles were subjected to 16% VAT. Further through the Finance Act 2013 enacted on 25th October 2013, the Government introduced the Railway Development Levy fund (RDL) on all imported goods at a rate of 1.5% of the customs value. In accordance to the General Conditions of Contract para 31.1 (change in laws and regulations) of the contract such changes in law that affects the price shall correspondingly be varied to enable the supplier meet their obligations under the contract.

There was no provision for the above referred taxes and therefore the Ministry requested The National Treasury for waiver, however the request was rejected and The National Treasury advised for negotiation with World Bank to finance the same. This process delayed the processing of Letter of credit (LC) as the supplier needed to be assured that there will be funds to cater for taxes upon delivery of the vehicles.

2) There were various challenges encountered during preparation of LC. The contract provided a contract period of 9 months for supply and delivery of Vehicles at the port of Mombasa;

a) The Contract provided for a Letter of Credit (LC) as the mode of payment to the Supplier of fire fighting vehicle.

b) To facilitate processing of the LC, the Government procured Equity Bank to act on its behalf during negotiations with the supplier's bank (Unicredit, Spa).

c) Upon procuring Equity Bank for the above assignment, they demanded for the LC amount to be deposited with their bank prior to processing of the LC. The World Bank rejected this

proposal and recommended issuance of Special Commitment by themselves to guarantee payment of 80% of the Contract amount to the supplier upon shipment of firefighting equipment.

d) Variation of the contract price (Addendum 01) to include taxes required liaison with World Bank for a No Objection and the supplier before submitting the same to Equity Bank for preparation of LC.

In October 2016, Equity Bank demanded prior payment before processing of LC. The process of payment was rather cumbersome as it involved the Ministry, the National Treasury and the World Bank before the payment reflects in the Equity Bank account in Central Bank in order to commence preparation of LC.

e) The original closing date of NaMSIP was 30th June 2017 however, the LC with a contract period of 9 months was to expire on 25th November 2017. This implied that the clear validity period of 9 months for LC could not be met hence NaMSIP extension was awaited before extension of LC.

f) After extension of NaMSIP to 30th May 2019, the Equity Bank issued an LC with a condition that for it to be operative the World Bank was required to issue a Special Commitment (SC) and this further contributed to delays.

g) Further delays were due to the Finance Bill of 2019 which became effective on 1/1/2020 which increased the Railway Development Levy from 1.5% to 2% and IDF from 2.25% to 3.5% of the contract sum. This required preparation of Addendum 02 which involved World Bank for No Objection and Equity Bank demanded a further payment of their fees before processing of LC which the supplier required to release the Fire fighting vehicles.

h) Upon request by the supplier for Pre-shipment of the vehicles, an inspection team visited the factory of manufacture at Brescia, Italy between 3rd March 2020 to 10th March 2020 and confirmed that the vehicles were ready for shipping. The supplier however, declined to ship them until the payment reflected in their account. This was the during the period of outbreak of CoVID 19 and lockdown was effected in their area on 9th March 2020 and therefore it was not possible to transport vehicles for shipping and hence contributed to further delays.

i) The delay associated with shipment of vehicles in early March 2020 was travel restriction due to outbreak of CoVid 19 and also it affected the commissioning the vehicles which was done in year 2021 after lifting of some CoVid 19 protocols.

3) All the parties to this contract contributed to delays associated with the delivery of the vehicles as follows:

a) World Bank delayed in issuing Special Commitment to make LC operative and issuance of No Objection for Variation of prices occasioned by changes in tax laws.

b) Equity Bank unreasonable demands for prior payments to provide the service.

c) Lack of trust from supplier and frequent request changes to LC terms whenever the taxes varied.

d) From the above, the Management could not lodge claim for liquidated damages arising from delay in delivery of vehicles since most of the technicalities arose outside the contract agreement as indicated in the chronology of events.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

903.2. Inspection of the Fire Fighting Vehicles

Audit inspection exercise carried out in the month of September, 2022 on two (2) fire fighting vehicles based in Nairobi City County and in Thika, Kiambu County including verification of information provided by the maintenance Officers-In-Charge revealed some technical challenges:

(i) The vehicles' brake pads were worn out, an indication that they may have been of low quality.

(ii) The vehicles' body works were disjoining, an indication that they were not well done.

(iii) The vehicles had pump leakage on the discharge points that may be an indication of poor-quality finishes.

(iv) The vehicles' manual hose reels were placed too high which poses a challenge to the fire fighters.

(v) The vehicles' pump bay cabin attachment had started loosening, an additional indication of poor-quality finishes on the vehicles.

(vi) There were compartment partitioning loosening on the fire fighting vehicles.

In the circumstances, it is not clear whether the public obtained value for money from this contract.

Submission by the Accounting Officer

The Seven (7) Fire fighting vehicles were inspected by a technical team from the Ministry of Roads and Transport, Mechanical and Transport Department as per the contract provisions and a Pre-Delivery Inspection Report prepared before commissioning and issuance of fire fighting vehicles to the beneficiary Counties in the financial year 2021/2022. The vehicles met the specification requirements.

The Audit review team visited Nairobi City County fire station and Thika Fire station in Kiambu County. However, during the audit review, Kiambu County reported some challenges on usage of the vehicles. The challenges highlighted are mostly associated with the nature of roads where the vehicles operate and poor maintenance. Some of the challenges caused by poor road condition include brake linings, pump leakage, disjoining of body parts. Frequency of maintenance and servicing of fire fighting vehicles are dependent on the condition of roads within the area of operation and usage of the vehicles.

The challenges highlighted by during the audit review have since been addressed by the Kiambu County.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

904. Delay in Completion of Mitubiri Sanitary Landfill Site Project

The contract for the construction works of Mitubiri sanitary landfill project was awarded to a contractor at a contract sum of Kshs. 1,056,478,730. The contract agreement was signed on 30 May, 2017. Notice to take full possession of the site and commencement was given to the contractor on 24 November, 2017. The original contract period was to be three hundred and fifty (350) days or 12 months, and the project was expected to be completed in November, 2018 but the completion date was later revised to 6 April, 2020. However, available records revealed that the project commenced on 23 April, 2020. In addition, during the 2020/2021 financial year, the contractor was issued with a further extension of time up to March, 2021. During the year under review, the contractor was paid Kshs. 14,420,024 for interim payment certificate (IPC) No.13 vide payment voucher Number 36.

Further review of records revealed that the contract period had been extended from the original 12 months to 29 months with the new expected date of completion being 30 September, 2022. According to the project status as at August, 2022, 99.5% of the project time had lapsed with 86% of work done. Further, physical verification of the project in September, 2022, indicated that works on the project had almost stalled and the project had already entered into the Defect Liability Period (DLP) which was to lapse on 30 September, 2023.

In the circumstances, the public may not obtain value for money from this contract.

Submission by the Accounting Officer

It is true that the contract agreement was signed on 30th May 2017. However, works commenced on 23rd April 2020.

By the time of signing the contract, the Client had not finalized on procurement of the Supervision Consultant who would carry out Design Review and Construction Supervision of the Project. The Contract Agreement for the Construction Supervision Services was signed on 30th October 2018 between the Employer, Ministry of Transport, Infrastructure, Housing & Urban Development and the Consultant, M/S CONSULGAL in Joint Venture with M/s Project Planning & Management Ltd and M/s Charchi Githinji & Partners Consulting Engineers. In line with the requirement of the Supervision Contract, the Consultant was to carry out Design Review of the Project among other works. This is what occasioned the delay in commencement of works.

The fundamental changes to the original design were the following;

- Reduced area of the waste cells to include a buffer zone of 250m from the nearest development,
- Inclusion of a barrier layer on the waste cells of 0.50m of clay and a Geosynthetic clay layer (GCL),
- Change of position of sedimentation pond to the lowest part of the site,
- Addition of chambers for leachate pipe cleaning,
- Inclusion of irrigation system.

The original contract period was 350 days and a Defects Liability Period of 365 days. This period has been extended/revised with a projected Practical Completion being 28th December 2023 and a Defects Liability Period ending on 28th December 2024.

The project is at 88% completion and the major outstanding item is procurement of landfill equipment. All the essential structures have already been completed and the outstanding site works are quite minimal and will easily be completed within the revised contract period. Therefore, there is no risk of not delivering the project as intended.

Committee Observations and Findings;

The Committee observed that the contract was extended to June 2024 with Kshs. 816 million paid.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

KENYA URBAN SUPPORT PROGRAM (IDA CREDIT NO.6134 KE)

REPORT ON THE FINANCIAL STATEMENTS

909. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis amounting to Kshs. 650,000,000 and Kshs. 423,607,948 respectively resulting to an underfunding of Kshs. 226,392,052 or 35% of the budget. Similarly, Management spent an amount of Kshs. 572,457,546 against an approved budget of Kshs. 650,000,000 resulting to an under expenditure amounting to Kshs. 77,542,454 or 12% of the budget.

The underfunding and underperformance affected the planned activities and impacted negatively on service delivery to the public.

Submission by the Accounting Officer

Underfunding:

Due to the prevailing fiscal depression, the government may not be able to finance the projections 100% as per the financing agreement. Austerity measures were effected thereby reducing the allocated amounts. However, the total commitment cost of the government remains and will be funded in the medium – term as the costs is meant for Monitoring and Evaluation of the project during its useful life.

Under-Expenditure;

It is true that the State Department was not able to utilize 100% of the Approved Budget. This is due to the fact that there were unforeseen events e.g. COVID that affected the Department's operations due to the stringent protocols.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

910. Delayed Counterpart Funding

The statement of receipts and payments reflects a loan from external development partners amount of Kshs. 276,210,320 received from International Development Association (IDA) and an amount of Kshs. 147,397,628 received as counterpart funding from the Government of Kenya. Paragraph 1.7 of the financial statements on the funding summary reflects total commitment on donor (IDA) funding of Kshs.31,020,000,000 and counterpart funding from the Government of Kenya amount of Kshs.2,068,000,000.Further, the total cumulative donor funding as at 30 June, 2022 amounted to Kshs.29,440,326,528 representing 95% of the total donor financing projection while that of the counterpart funding amounted to Kshs.330,270,916 representing 16% of the total counterpart financing projection. With the closing date of the Project of 31 July, 2023, it is doubtful that the donor (IDA) financing balance of Kshs. 1,579,673,472 or 5% and the Government's counterpart financing balance of Kshs. 1,737,729,084 or 84% all totaling to Kshs. 3,317,402,557 will be disbursed to fund the Project's activities before the Project closure date.

Delays by the Government in releasing counterpart funds impacts negatively on Project implementation and development for the citizens.

Submission by the Accounting Officer

i. Of the Kshs.1,579,673,472 IDA balance, Kshs 450,000,000 was moved from Window 1 to Window 2 as UIG to support county eligible governments under KUSP restructuring effected in June 2021. However, the World Bank advised that the amount could not be transferred to counties directly as grants, but instead the amount could be utilized on county activities with expenditure and accountability remaining at the national government level, thereby posing implementation challenges.
ii. Delays in procurement of some planned consultancy services at national level leading low absorption of Window 1 funds.
iii. Covid-19 containment measures slowed down implementation of Window 1 activities.
iv. Constrained fiscal space limited the allocation of adequate counterpart funds to the program.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer, and that the project was now closed.

ii) The Committee found that the matter was resolved.

911. Pending Bills

Note 12.1 on other important disclosures reflects pending accounts payable of Kshs. 7,054,118 and as further disclosed in Annex 3(a) to the financial statements.

Included in the pending accounts payable are invoices amounting to Kshs. 2,384,600 that have been long outstanding. However, Management has not provided reasons for nonpayment of the bills which exposes the Project to the risk of incurring interest and penalties.

Failure to settle bills during the year to which they relate adversely affects the provisions of the subsequent year as the form a first charge.

Submission by the Accounting Officer

It is true that the department had accounts payables (pending bills) of Kshs. 2,389,600. In compliance with the Public Finance Management (National Government) Regulations, 2015 (42), the State Department ensured that these expenditure items have been processed.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

912. Kericho County (Kericho Municipality)

912.1. Delay in Construction of Storm Water Drainage Facilities

The County Government of Kericho entered into a contract for the construction of storm water drainage facilities at Kapsuser, Kapsoit, Nyagacho and Majengo areas at a total contract sum of Kshs. 97,700,768. During the year under review, an amount of Kshs. 67,888,219 was paid to the contractor. The works were to be completed within 12 months with expected completion date of 21 May, 2022. However, physical inspection in the month of August, 2022 established that the works at Kapsuser on backfilling and installation of french drains were incomplete while backfilling and drainage works at Nyagacho were yet to be completed.

Further, the County Government entered into another contract with a contractor on 23 May, 2019 for construction of storm water facility within Kericho Town for a period of two (2) years at a contract sum of Kshs. 138,859,917. During the year under review, the contractor was paid a total of Kshs. 42,392,433.

Physical verification in the month of August, 2022, revealed that the works which were to be completed by 23 May, 2021, were yet to be completed and was at 92% with very minimal works ongoing and poor workmanship already noted on completed works. The contractor had requested for four (4) extensions of the contract period. However, Management did not provide adequate explanations on why the extensions were done.

In addition, the contractor had not completed road marking and road signage, the drainage works at the County Assembly were incomplete while the French drains and backfilling of the road shoulders were yet to be done.

Submission by the Accounting Officer

Extension of time was done as per letter ref CGK-KUSP-LHPP-T-002-1-Y01 dated 2nd June 2022 after it became reasonably apparent that the progress of the works delayed due to various factors beyond contractor's control and was extended up to 18th November 2022. The contractor completed the works before elapse of extended duration and a notice of substantial completion, inspection of works and taking over were issued. The project is on defects liability period which is 12 months from the date of taking over of the works.

The contractor has remedied the defective works as instructed, however due to late completion of works, the contractor shall pay liquidated damages to county Government of Kericho at the rate stated in the annex 1 (d) to Conditions of Contract for each day that the actual completion date was

later than intended completion date. Deduction for liquidated damages will be made from retention due to the contractor.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains current status in subsequent audit.

912.2. Delay in Delivery of Fire Fighting Truck

The County Government of Kericho entered into a contract with a contractor for construction of a fire station and structural improvements at Uhuru Garden for a period of one year at a total contract sum of Kshs. 46,942,144 on 23 May, 2019. During the year, the contractor was paid a total of Kshs. 13,018,242. Review of the bill of quantities provided for audit indicated that a provisional sum of Kshs. 14,500,000 was set aside for the purchase of a fire truck. However, physical inspection in the month of August, 2022 revealed that the fire truck had not been delivered. There was no evidence of extension of the contract and no reason was provided for failure to recover liquidated damages as per the contract terms.

In the circumstances, the Public has not obtained value for money on the above contracts.

Submission by the Accounting Officer

The Fire Truck has been delivered and all necessary registration has been done and logbook evidenced.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

913. Homa Bay County (Homa Bay Municipality)- Delay in Completion of Road Works

The County Government of Homa Bay entered into a contract for the upgrading to bitumen standards of junction C-19 to Tom Mboya University Junction Link Road for a period of one year and at a contract sum of Kshs. 44,370,899 on 12 May, 2021. During the year, a total amount of Kshs. 34,620,952 was paid for the road works. However, physical inspection exercise carried out in the month of July, 2022 revealed that, road furniture works amounting to Kshs. 775,000 had not been done yet the contract period lapsed on 12 May, 2022. No reason was provided by Management for the delay in completion of the road works.

In the circumstances, the residents of the County of Homabay have not obtained value for money on the contract.

Submission by the Accounting Officer

The delay was occasioned by obstructions on the road corridor, which was brought to our attention by the contractor through his letter dated September 7 2021. This slowed down the works as the Municipality worked with KPLC Homabay to relocate the said poles for the work to continue.

The road has since been completed and road furniture installed including all road markings. It has also been officially handed over and is currently in use.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains current status in subsequent audit.

914. Bomet County (Bomet Municipality) - Improvement of Longisa Town Roads

The County Government of Bomet entered into a contract for the improvement to bitumen standard of Longisa Town roads. The contract sum was of Kshs. 49,242,441 with the date of commencement of contract being 3 January, 2022 for a contract period of ten (10) months ending on 3 November, 2022.

Physical verification in the month of July, 2022 revealed that the amount certified as at 30 June, 2022 was Kshs. 15,329,416. However, the professional opinion was given after the contract award date. It was also noted that the contract period had contradicting durations with the signed contract indicating six (6) months while the progress reports indicated ten (10) months. This is contrary to Regulation 23 (a) of the Public Procurement and Asset Disposal Regulations, 2020 which requires that an Accounting Officer to ensure that procurement and asset disposal contracts are entered into lawfully and implemented accordingly.

In addition, review of interim payment certificate (IPC) No. 1 revealed that a contingency sum of Kshs. 950,000 was paid. However, the supporting documents and the approval of the amount were not provided for audit contrary to Section 139(2) of the Public Procurement and Asset Disposal Act, 2015.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The signing of the professional opinion was done on the same date as the letter of Contract award on 7th October 2022. The proximity of the two offices made it possible for issuing professional opinion and writing the letter of award on the same date.

The dates were specified in the contracts Form of Bid which was duly filled and signed by the contractor. The project was signed for a contract period of ten (10) Months and an equal Defect liability period of Ten (10) months. Commencement period was January and Contract lapsed on 3rd November, 2022.

Contingency sum of Kshs. 950,000 was internally varied to meet the material testing services which was missing in the tender document. An order for change of quantities was issued and subsequent approved documents supporting the payment of the same amount Kshs. 950,000 were kept in the contract file.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

915. Migori County (Migori Municipality)

915.1. Awendo Municipality Phase III

The County Government of Migori entered into a contract for construction of an ultramodern market, washrooms, cabro paving of paths and landscaping for Awendo Municipality Phase III at a contract sum of Kshs. 55,795,422 for a contract period of six (6) months ending on 30 June, 2022. The amount certified as at 30 June, 2022 was Kshs. 20,290,012. However, physical verification exercise in July, 2022 revealed the following issues:

i. No separate procurement and monthly progress report files were maintained contrary to Section 68 of the Public Procurement and Asset Disposal Act, 2015.

ii. The signed form of tender was missing and there was no evidence that performance bond or bid security were provided by the contractor as required by Regulation 106 (7) of the Public Procurement and Asset Disposal Regulations, 2020.

iii. The signed bills of quantities and specific conditions of the contract were not provided for audit contrary to Section 70 (6) of the Public Procurement and Asset Disposal Act, 2015.

iv. The project was about 60% complete against the actual time lapse of 90%, and was therefore behind schedule. The remaining works included installation of worktops, cabro works, landscaping, water tank installation and installation of a high mast. However, no request for extension of works was provided for audit.

Submission by the Accounting Officer

A separate procurement file for the project is available. The monthly progress reports were maintained.

The signed and stamped form of tender is available and is part of the tender document. The performance bond was availed.

The signed bills of quantities were not provided since it was not requested for by the audit team during the auditing period. However, it is available.

The contractor requested for 3 months' extension which was approved.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains current status in subsequent audit.

915.2. Rongo Municipality Phase II

The County Government of Migori entered into a contract agreement with a contractor for the installation of solar powered street lights in Rongo Municipality Phase III at a contract sum of Kshs. 42,843,295. The date of commencement was 17 January, 2022, for a six (6) months period ending on 30 June, 2022. Amount certified as at 30 June, 2022 was Kshs. 39,518,244. However, the signed form of tender was not provided for audit and there was no evidence of provision of

performance bond or bid security by the contractor as required by Regulation 106(7) of the Public Procurement and Asset Disposal Regulations, 2020.

Further, the signed bills of quantities and specific conditions of the contract were not provided for audit as required by Section 70(6) of the Public Procurement and Asset Disposal Act, 2015 and the branded solar powered street lights were installed in an area where the County Government had previously installed the same leading to duplication of the project.

Submission by the Accounting Officer

The signed form of tender is part of the tender document which was availed marked as page 69-71.

The bid security amounting to Kshs 645,000 only from National Bank was available, and was part of the tender document marked as page 1.

The signed bills of quantities were not provided since it was not requested for by the audit team. However, it is available and is part of what was provided in the bid document from page 93-100.

There were street lights initially installed in the same area but it was recommended by the municipal board that there was need for installation of additional lights since the initial spacing was too wide and was ineffective hence the need to improve on the spacing of the existing street lights in such areas.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

915.3. Ombo Modern Market Migori Municipality Phase III

The County Government of Migori entered into a contract with a contractor for the construction, fabrication and erection of steel tower and water tank, underground water tank and associated works, flood light and supply of stackable heavy-duty steel skip at Ombo Modern Market Migori Municipality Phase III. The contract sum was Kshs. 34,793,828 and commencement date of 17 January, 2022 for a contract period of six (6) months ending on 30 June, 2022. The amount certified as at 30 June, 2022 was Kshs. 31,066,159. However, the signed form of tender was not provided for audit and there was no evidence of provision of the performance bond or bid security by the contractor required by Regulation 106 (7) of the Public Procurement and Asset Disposal Regulations, 2020.

Further, the signed bills of quantities and specific conditions of the contract were not provided for audit as required by Section 70(6) of the Public Procurement and Asset Disposal Act, 2015. In addition, despite the completion of this project in June, 2022 and the previous construction of 420 market stalls at Ombo modern market in June, 2020, the market was not operational. No explanation was provided for delayed operationalization of the markets.

In the circumstances, Management was in breach of the law and value for money on the project may not have been obtained by the public.

Submission by the Accounting Officer

The signed forms of tender are part of the tender documents.

The bid security amounting to Kshs. 525,000 only from Family Bank was provided.

The bills of quantities duly signed by the bidder is also part of the tender document from page 101 -115.

The market stalls had small delays in allocation procedures but this has been completed. Currently the traders have occupied the stalls and business are operational.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains current status in subsequent audit.

916. Nyamira County (Nyamira Municipality)

916.1. Delay in Upgrading of Public Works Offices - CDF Offices - Nyamira Hospital Junction

The contract for the works was awarded at a total contract sum of Kshs. 82,859,330. The contract period was 12 months from 30 April, 2021 to 4 April, 2022. Physical verification exercise in the month of July, 2022 revealed that the road was approximately 21% complete with an amount of Kshs. 8,869,921 already paid to the contractor. However, the contractor was not on site and no works were ongoing. The contractor requested for an extension of time for six (6) months up to 30 October, 2022 citing several reasons for delay of the works, which was not granted. Therefore, the contract period had lapsed but the works were incomplete.

Submission by the Accounting Officer

The contract implementation team certified interim certificate No. 02 of 8th April, 2022, since the submission, the certificate had not been honored thus the contractor was unable to mobilize back to site despite being offered temporary contract extension. It was through the intervention of the contract implementation team and the top departmental management that the contractor resumed on site on the promissory note that the payment shall be honored as soon as the KUSP funds are appropriated into the FY 2022/23 supplementary budget.

In the site meeting dated 23rd May, 2022, Minute No. 03/16/09/21 (accompanied by site instructions dated 23rd May, 2022), the contractor, was tasked to provide more supporting documents/information for the consideration of the extension of time.

Since then, the contractor had been granted an extension of time of 36 weeks ending on 30th June, 2023 with the following minimum terms:

a. Renewal of all statutory documents including insurances and securities;

b. Prepare a revised work program to conform to the new timelines;

c. Submission of updated curriculum vitae (CVs) and testimonials of all key technical staff for approval;

d. No variation of the contract price.

The contractor had been instructed to facilitate the resident engineer to carry out the design reviews for the junctions as per the site instruction that was issued on 18th October, 2021, Ref. CGN/C002/2020-2021. By the time of audit, the contractor had not facilitated the resident engineer's staff, however, was tasked to complete the other sections that had no issues. To date, the contractor has complied with the conditions of the extension of time and has resumed works. Thus, the new revised completion date of the contract shall be 30th June, 2023.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains current status in subsequent audit.

916.2. Delay in Upgrading of (B5) Borabu Inn - Golan Heights Resort - Juakali - Nyamira Boys - (B5) Nyabite Market Road - Phase I

The contract was awarded on 4 June, 2019 at a total contract sum of Kshs. 104,373,213. The contract was for twelve (12) months from on 5 August, 2019 to 4 August, 2020. Physical verification exercise carried out in July, 2022 revealed that the road was approximately 97% complete with an amount of Kshs. 100,578,266 already paid to the contractor, translating to 97% of the contract sum. Review of records indicated that the contract had been extended for 26 weeks to 5 February, 2021 and a further 24 weeks to 20 August, 2021. The contractor cited late payment for works done as part of the reasons for the delay in completion of the contract.

Submission by the Accounting Officer

In accordance with clause 49.2 of the General Conditions of Contract, FIDIC, 4th Edition, 1987, the contractor had been issued with a taking over certificate with effect from 30th December, 2021. The contractor was issued with a snag list of outstanding works and defects. To date, 90% of the snag list items has been complied with. Upon the expiry of the defects liability period on 30th December, 2022, the contractor shall have the final inspection and valuation of the project works and payment of the outstanding works including the retention monies. Meanwhile, project closure is ongoing.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains current status in subsequent audit.

916.3. Delay in Transfer of Funds from County Revenue Fund to KUSP Special Purpose Account

Review of records during the audit inspection exercise carried out in the month of July, 2022 revealed that Nyamira County Government had not remitted an amount of Kshs. 128,256,457 being the funds that were budgeted for in the annual development plan (ADP) of the Project. The funds were still being held in the County Revenue Fund account. No reason was provided by Management to explain the delay in disbursements of the funds to the project account contrary to

the provisions of Regulation 74(5) of the Public Finance Management (County Governments) Regulations, 2015.

In the circumstances, the expected benefits of the project to the public may not be realized.

Submission by the Accounting Officer

At the time of audit, Nyamira Municipality had received an allocation of Kshs.114, 705,300 in the FY 2018/19, another Kshs 114,705,300 in and Kshs. 46,203,293 in FY 2021/22 and no amount of Kshs. 128,256,457 had been received in the county revenue fund as mentioned. Further, all the funds were transferred SPA and the County is committed to support the Municipality through timely transfers to ensure the project's success.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

917. Baringo County - Delay in Kabarnet Municipality Works

The County Government of Baringo entered into a contract agreement for Infrastructure Development - Anyiny-Juakali Road, Municipal Market Phase II, and Recreational Park at Kabarnet Municipality the works on 20 December, 2021 at a contract sum of Kshs. 56,596,100. During the year under review, the contractor was paid an amount of Kshs. 12,033,737. According to the half-yearly progress report dated 30 June, 2022, the works were at 40% complete, and the contract expired on 20 July, 2022 and the contractor had requested for an extension which had not been granted.

Further, the performance bond provided of Kshs. 2,829,804 expired on 21 June, 2022 and had not been renewed as required. No reason has been provided for failure to complete the project as per the contract agreement.

In addition, review of the progress report on rehabilitation of Kabarnet Municipal Market, Construction of Drainage Works and Cabro Paving of Pedestrian Walkways in Kabarnet Municipality dated 30 June, 2022, indicated that the project was 90% complete and the traders had taken over the municipal market despite the project being incomplete.

Further, according to the grand summary reported in the Interim Payment Certificate (IPC) No.2, there was overpayment of some bill items totalling to Kshs.3,787,510. No explanation was provided for this anomaly.

In the circumstances, the public may not have obtained value for money for the delayed projects.

Submission by the Accounting Officer

It is true that Contract Agreement lapsed on 20th July 2022 but there was ongoing request made by the contractor for the extension of the contract via letter dated 8th July 2022 which was delivered and received on 25th July 2022. The implementation committee sat and deliberated on the extension on the same day.

Part of the delay in implementation of KUSP project was due to heavy rains.

Contract performance Bond expired on 21st June 2022 and was duly renewed on 22nd June 2022 by gateway insurance company limited of Policy No: 070/22/03/2105907/2021-2022.

Kabarnet Municipal Market, Construction of Drainage Works and Cabro paving of Pedestrian Walkways is 100% complete and the contractor has been fully paid as per the attached certificate of substantial completion and measurement of bill of quantities.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains completion status in subsequent audit.

918. Kisii County (Kisii Municipality) - Delay in Project Implementation

The Construction of Daraja Mbili – Elimu Umoja Road and Augmentation of Huduma Centre – Kisii Hotel Drain and Associated Works contract was awarded on 23 April, 2021 at a contract sum of Kshs. 50,594,197. The contract period was twelve (12) months from 28 July, 2021 to 28 July, 2022. However, physical verification in the month of July, 2022 revealed that the road was approximately 56% complete with an amount of Kshs. 14,251,270 already paid to the contractor, which translates to 28% of the contract sum.

Further, the contractor requested for extension of time on the contract siting various reasons for the delay in works including obstruction of electrical poles, lack of design both geometric and pavement as well as lack of engineering drawings, changes in sequence and timing of works. The extension was granted for 85 days to 21 October, 2022. However, the delays in the works and the reasons thereof point to poor feasibility studies of the project carried out by the County Government which should have identified these issues at the planning stage of the project.

In the circumstances, the public may not obtain value for money on the contract.

Submission by the Accounting Officer

Prior to project initiation, Kisii Municipality procured the services of a consultant to undertake feasibility studies on the project, the study was two-phased;

a) Feasibility studies
b) Detailed design
c) Engineering supervision

Feasibility studies- The tasks to be performed during this stage will include but not limited to;

1. Desktop study: The consultant will collect any report and document relevant to the project. This will include the planned projects on the proposed works.
2. Reconnaissance Survey: This will be conducted on the proposed corridors for the purpose of route identification, determination of level of encroachment and land ownership review for the proposed road corridor.
3. Road condition Survey: The existing roads will be checked to determine the pavement structure and the current condition of the road.
4. Conditional survey for the existing drainage structures to determine the nature, size and the number, position and size of existing culverts.

5. Traffic Survey analysis, for the purposes of reviewing the existing type and amount of traffic. The consultant will also review the existing traffic survey data carried out by the client.

Preliminary and detailed design- The activities to be undertaken include;

i. Topographical Survey: The consultants' surveyor will carry out detailed survey on the proposed routes. He will develop survey maps that would be used during the detailed design. He will establish the construction control points and determine the level of encroachment on the proposed corridors.
ii. Preliminary and Detailed Design: the consultant will carry out the geometric and pavement design of the road including the drainage systems. The design will also take into consideration the pedestrians walk ways where applicable.
iii. Preparation of bill of quantities (BoQ) and Engineering Cost Estimates: Once the client approves the detailed designs, the consultant will prepare the BoQ and the Engineer's estimates based on the approved designs. These will be subject to modification depending on the modifications done on the drawings.

From the above the consultant undertook the activities as per the required specifications and submitted the report covering all the project requirements, impediments, modifications and measures to ensure that the project is in feasible for the end users. Much as the contractor raised the issue of design, drawings and sequences of works, the extension of time did not include the design aspects but third party issues that were beyond the municipality direct control, i.e Power utilities, water lines, fibre optic cables.

Considering the time period between the application of poles relocation and actual re-routing, the time delay by the KPLC was outside the control of the Municipality and as such they were left with the choice of constant reminders to avert any delays.

With respect to the water line, apart from delays in response to its relocation, there was a challenge of having an old GI water transmission line, during vibration for the sub grade, sub base and the base, the contractor experienced incessant delays due to high frequency of breakages, it occurred at one point the entire road pavement was removed by the service provider to undertake repairs.

Despite the delays and having resumed the works, the contractor accelerated the works and the project was substantially completed within the 1st quarter of the DLP.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains completion status in subsequent audit.

919. Taita Taveta County (Taita Taveta Municipality)

919.1. Irregular Consultancy Services

The tender for the provision of the consultancy services and Environmental and Social Impact Assessment for the Modernization of Mwatate Market was awarded at a contract sum of Kshs. 1,750,000 which was fully paid. However, the tender advertisement documents, list of prequalified

contractors and service providers were not provided for audit. Therefore, it was not possible to determine how the winning consultant was invited for the tender/contract contrary to Regulation 33(3) of the Public Procurement and Asset Disposal Regulations, 2020.

Further, a tender for carrying out Environmental Impact Assessment (EIA) for road networks (700M) leading to the Governor's Office Mwatate Sub-County was awarded at a contract sum of Kshs. 499,032. However, the tender advertisements, list of prequalified contractors and service providers were not provided for audit. It was not possible to determine how the consultant was invited for the tender contrary to Regulation 33(3) of the Public Procurement and Asset Disposal Regulations, 2020.

Submission by the Accounting Officer

The observation on the tender for the provision of the consultancy services and Environmental and Social Impact Assessment for the Modernization of Mwatate Market is noted however the management would wish to state that there was a list of prequalified contractors and service providers for the period of 2018-2020.

Additionally, through request for proposal M/s Josa consultant and associates limited was identified and competitively awarded the consultant service for the environmental impact assessment for the project.

The observation on the tender for carrying out Environmental Impact Assessment (EIA) for road networks (700M) leading to the Governor's Office Mwatate Sub-County is noted and we wish to state that the procurement process was handled by the lands department, we are in engagement with the department to get the said information.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General obtains relevant documentation from the cited lands department to ascertain compliance with the law.

919.2. Proposed Modernization of Mwatate Market

The tender for the proposed modernization of Mwatate Market was awarded at a contract sum of Kshs. 48,770,254. Review of records indicated that a tender addendum No.1 was issued on 15 September, 2020. The amount paid up to July, 2022 amounted to Kshs. 49,896,925 comprising of seven (7) payment certificates totaling to Kshs. 48,243,908 and a retention amount of Kshs. 1,653,017 thereby leading to an overpayment of Kshs.1,126,671.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The observation is noted however the management would wish to state that there was no overpayment to the contractor. The said amount of Kshs 1,653,017 retention money is part of Kshs 48,243,908 contract amount.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

919.3. Delay in Project Implementation

Tender for the rehabilitation of Mwatate County Administration offices access road, construction of 4-door modern toilets, construction of garbage receptacles, construction of parking and walkway and supply and installation of solar street lighting was awarded at a contract sum of Kshs. 48,162,006 on 8 August, 2019. The amount certified for payment at 89% completion of the works was Kshs. 40,167,148 which was fully paid by the Municipality of Mwatate.

However, physical verification during the month of July, 2022 revealed that the project had stalled. Management explained that the unpaid amount of Kshs. 7,994,858 was not provided by the County Government of Taita Taveta as agreed. However, the agreement or associated documents showing how the funding was to be shared between the Municipality and the County Government were not provided.

In the circumstances, public has not obtained value for money on the contract.

Submission by the Accounting Officer

The observation is noted however the management would wish to state that there was budgetary provision by the county government for financial year 2019-2020 to enable co-fund the project totaling to Kshs. 8,800,000.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains current status in subsequent audit.

920. Uasin Gishu County (Eldoret Municipality) - Delay in Project Implementation

The County Government of Uasin Gishu entered into a contract for the upgrading of sixty-four (64) Stadium in Eldoret Municipality at a contract sum of Kshs. 1,163,563,925. The work commenced on 14 June, 2021 for a contract period of 15 months and expected completion date of 9 August, 2022. According to the progress report of June, 2022, the percentage of works completed was 46% against a lapsed period of twelve (12) months or 80% of the contract period. The project is thus behind schedule.

In the circumstances, the expected benefits of the project to the residents of Uasin Gishu may not be realized.

Submission by the Accounting Officer

Upon embarking on the construction of the stadium after the contract signature and site handing over, the contractor requested for geotechnical report to inform depth and breadth of excavations in laying the foundations for the structure. It was realized that the design consultant had not undertaken the investigations hence the need to undertake it. The supervising consultant was requested to identify a suitable firm to do it. In the meantime, the construction wouldn't go on until the report was received. This took time causing the commencement of the construction. The geotechnical investigation report showed that there would have to be changes in the scope of works

including the need for design reviews which would later have a great impact on the quantities and extent of the project.

Further, the site was found to have services which needed relocation to pave the way for the construction. These services were electric power lines and water service lines on the southern and northern edges of the stadium.

A survey had also to be carried out to find out the extent of the boundaries of the site. The stadium space had not been surveyed and beaconed before. Also, there was need to address the environmental safety of the site and produce a health report.

The construction of the stadium was commenced in the second funding period of the Kenya Urban Support Programme (KUSP), with an initial allocation of Kshs 250 million. The board, at the time, believed that the funding was going on for a period of five years. However, at the end of this funding period, it was realized that the fund had exhausted its kitty. Kenya Shillings 163 million only was received in the third year of funding. That happened to be the last tranche of disbursement under the programme. The closure of the KUSP became another cause for extended delays in the project completion since the county government had to seek alternative budgets to ensure the continuity of the project. The county had not budgeted any funds for the project. As a result, the county government allocated Kshs. 103,000,000 in the financial year 2022-2022 and has continued to support the project since then. Two extensions of time for construction have been given to the contractor due to the slow funding from the county government.

The table below shows status of payments for the project as at 30th June 2023;

1	Contract Sum	1,163,563,925.00
2	Cumulative Payment (KShs)	
2.1	KUSP funding	380,070,762.00
2.2	County Government funding	239,066,842.00
	Total Payments	**619,137,604.00**
	Balance	**544,426,321.00**

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains current status in subsequent audit.

921. Kitui County (Kitui Municipality) - Stalled Project - Construction of Kithomboani Modern Market

The County Government of Kitui entered into an agreement for the Construction of Kithomboani Modern Market at a contract sum of Kshs. 351,585,554. The Project commenced on 25 June, 2019 and was expected to be completed by 6 September, 2021.

Audit inspection exercise carried out in the month of July, 2022 revealed that total payments made to the contractor by 30 June, 2022 amounted to Kshs. 208,131,131 or 59% of the contract sum,

while the progress of works was at 85%. The Project had however stalled and the contractor was no longer on site.

In the circumstances, the expected benefits of the project to the residents of Kitui may not be realized.

Submission by the Accounting Officer

The contractor through a letter expressed unforeseen interruptions due to delayed payment after requesting for payment. The contractor requested for extension of Contract and committed to finish the project on time upon payment of pending invoices. The supervising consultant found the reasons valid and period reasonable, thus, granted the extension.

To date, the payment has not been made due to lack of funds and since Kitui County is not the only county with such stalled project, the matter was raised during Lands, Housing and Urban Development committee consultative meeting with Cabinet Secretary Ministry of Lands, Public Works, Housing and Urban Development held on 23rd and 24th January, 2023 in Mombasa. One of the resolutions was that, an inventory of all multi-year projects funded by Kenya Urban Support Program be shared by Council of Governors to the Ministry for consideration in funding or be allowed to be the first charge upon commencement of KUSP 2.

i) Procurement and Adequate financial resources

The aforesaid agreement with M/s Builders and General contractors for the Construction of Kithomboani Modern Market under tender No. CGOKTI/KM/198/2018-2019 whose contract sum was Kshs.351,585,554) was entered after Kitui County qualified to be among 45 counties for Kenya Urban Support Programme (KUSP) funding of Ksh 232,374,200 each financial year throughout the project lifetime. Based on this allocation, Kitui County Co-ordination Team agreed to allocate Kithomboani Modern Market Ksh 100,000,000 for three years and the balance amounting to Ksh 51,000,000 to be catered by Kitui Municipality.

ii) Stalled project

It is true at the time of visit by the auditors the contractor was not on site fully. The contract through a letter expressed unforeseen delays and requested for extension of Contract and committed to finish the project, the supervising consultant found the reasons valid and requested period reasonable and recommended for acceptance.

Note: Through supplementary 1 the Kitui municipality allocated money Ksh 75,000,000 for completion of the market to ensure that the project does not stall

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains current status in subsequent audit.

922. Machakos County (Machakos Municipality) - Delay Projects Implementation

The County Government of Machakos entered into a contract for the construction of Kathemboni Road in Machakos Municipality at a contract sum of Kshs. 117,515,928. The works were to be

completed within six (6) months in May, 2022. The Municipality had paid the contractor an amount of Kshs. 29,088,148. However, the project was yet to be completed and progress of works was at 37% against time lapse of 133% as at 2 August, 2022. No reason was provided by Management for the delay in completion of works.

In the circumstances, the expected benefits of the projects to the public were not realized.

Submission by the Accounting Officer

The contract was awarded on 25th January, 2021. The original project period was 8 months (22nd February, 2021- 22nd October, 2021). This however was extended by 3 months to 20th January, 2022 due to delays occasioned by relocation of power lines, streetlights, water and sewer line along the road corridor.

The project is complete and was inspected for defects on 28th July 2023, and a completion/defects certificate issued.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains completion status in subsequent audit.

923. Nyeri County (Nyeri Municipality) - Delay in Operationalization of Nyeri Municipal Bus Terminus

The County Government of Nyeri entered into a contract for the construction of Nyeri Municipal Bus terminus at a contact sum of Kshs. 575,688,291 on 27 May, 2019. Physical verification in the month of July, 2022, revealed that, although the market works had been completed, the contractor had not handed over the Project to the County Government.

In the circumstances, the expected benefits of the Project to the public were not realized.

Submission by the Accounting Officer

The County Government of Nyeri has already started the process of operationalizing the KUSP funded bus terminal project. To ensure a smooth transition and a proper linkage between the Central Business District (CBD), an operationalization committee was appointed on 2nd September 2022. The committee has mapped the stakeholders and has held two meetings to plan on how to engage them for seamless transition from the old bus parks to the new bus terminus.

The bus terminus was officially opened by H.E. the president on 7th August 2023.

The traders have moved in and we are in the process of moving the public transport vehicles. The process of balloting for business spaces is ongoing and to be concluded soonest possible.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains completion status and use in subsequent audit.

924. Samburu County (Maralal Municipality)

924.1. Unsatisfactory Project Implementation - Trade Market

The County Government of Samburu entered into a contract on 30 June, 2020 for construction of a modern market in Maralal Municipality. The contract duration was one (1) year at a total contract sum of Kshs. 53,981,760. The project expected completion date was 30 June, 2021. The total amount paid to the contractor as at 30 June, 2022 was Kshs. 51,282,672. Physical verification in the month of July, 2022, revealed that the project was handed over on 30 June, 2022 a delay by one year without approval.

Further, the fire-fighting equipment, external pavements and cabro-paving had not been completed while bitumen had not been applied on the cracks of the joints on the roof top to avoid water leakages. The certificate of substantial completion acknowledging the completion of the project works and defect liability certificate to the contractor were not provided. No explanation was provided by the Management on how the remaining works were to be completed.

Submission by the Accounting Officer

i) Project completion timeframe/delay (was to run for one year yet it was handed in 2022)

This was occasioned by lock down owing to corona pandemic thus mobilization and movement became a challenge. Secondly, during site clearance and foundation excavation, it was realized that the site had several pit latrines that had to be drained and stabilized so as not affect structural soundness of the building. The situation was further made difficult during the year 2020 when the county received a lot of rains that meant draining and stabilizing took time.

ii) Areas not complete in terms of works/ variation such as: External paving, Bitumen on top of roofing and other variation did not have authorization.

It is worth noting that the project was initiated during the onset of Corona Virus. At that time to ease burden, the government had reduced VAT to 14% and thus that was what the bidder used. However, this policy was revoked and VAT reverted to 16%. Premised on the above, the bidder wrote requesting for review. The request was granted and supervising team in collaboration with contractor identified areas that could be omitted without significantly affecting the quality and value for the project. During the process of budget appraisal adjustments was first targeted on accessories and external works. Bitumen on top of roofing was targeted since the municipality had planned to put up additional one more floor in the FY2022/2023

iii) No substantial completion certificate and defect liability certificate

A completion certificate has now been availed.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

924.2. Unsatisfactory Implementation of Project – Maralal Municipality

Similarly, Management entered into a contract for cabro works and storm water drainage at Maralal Municipality on 26 July, 2021 at a contract sum of Kshs. 48,510,769. During the year, the contractor was paid a total of Kshs. 32,642,800. However, physical verification in the month of July, 2022 revealed that the cabro works and drainage had not been done between Buffalo area to Wambu Hardware Street quoted at Kshs. 7,050,000 as per the bill of quantities but had been reported as completed as per the measurement sheet of the works prepared on 31 March, 2022. Further, no significant work had been done from the Mosque to Tower Street quoted at Kshs. 2,950,000 in the bill of quantities, yet these works had also been reported as complete from the measurement sheet.

In the circumstances, the Public did not obtain value for money from the contract.

Submission by the Accounting Officer

This was meant to give direction but the main works are to be done around roundabout to Buffalo. The works measured have been done in front of the market. During predesigned works the topographical survey gave area covered that excluded encroached area, after notice of eviction was issued the area increased. The amount paid is less Kshs 570,000 for other works to be done around that area Mosque to Tower. This description was meant to guide direction, but the engineers measured works paid as per certificate dated 30th March 2022. The amount paid was half the provision in the BQ which indicated the whole amount as 7.5 million but amount paid was Kshs 2,950,000, the works was still on progress.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains current status in subsequent audit.

925. Turkana County (Lodwar Municipality)

925.1. Unsatisfactory Construction of Street Parking Lots and Street Lights

The contract for construction of street parking lots (cabro works) and installation and commissioning of solar street lights and flood lights in Lodwar Municipality was awarded at a contract sum of Kshs. 94,428,477 for both cabro works and street lighting as per tender documents provided. However, physical verification in July, 2022 revealed that a total amount of Kshs. 41,639,875 had been paid to the contractor in relation to the cabro works done. Further, all the original documentation relating to the contract were not provided for as they were said to have been taken by the Ethics and Anti-Corruption Commission (EACC) for an ongoing investigation. Further, physical count of all the street lightings revealed that only thirty-two (32) No. street lights had been installed against one hundred and thirty-six (136) as per the contract agreement. No explanation was provided for the failure to install the other one hundred and four (104) street lights. No further measurements of works had been made on the contract since the first payment despite the fact that the contract was 100% complete.

Submission by the Accounting Officer

The tender documents are available and works have since been quantified. The contract sum was Ksh 90,250,000. Cabro Ksh. 54,724,120 and Solar Powered Street lights Ksh 35,525,880.

Measurements of works after the first payment was 11820.09 meters square.

One hundred and thirty-six (136) superior quality Solar Powered street lights (100%) were installed, functional and serving the community.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains current status in subsequent audit.

925.2. Unsatisfactory Construction of a Fire Station and Street Lights

The contract for construction of a fire station and installation of solar powered street lights and flood lights in Lodwar Town was signed on 11 July, 2019 at a contract sum of Kshs. 87,277,623 and a contract period of 52 weeks. The initial completion date was 10 July, 2020. The project comprised of construction of a fire station at a contract sum of Kshs. 53,297,623 and installation of solar powered street lights and flood lights in Lodwar at a sum of Kshs. 33,980,000. Included in the construction of the fire station was a proposed four hundred (400) meter long masonry walling, gates and gate house at the fire station at a cost of Kshs. 13,132,340. This comprised of external walling at Kshs. 3,822,740, metal works Kshs. 3,995,200, finishes Kshs. 914,400 and provisional and PC sums of Kshs. 4,400,000.

However, physical verification exercise in the month of July, 2022 revealed that although the contractor had been paid the full amount of the contract sum of Kshs. 87,277,623, the percentage of the physical work completion was approximately 90% and the masonry walling had been done half way. The supporting documentation such as structural drawings, designs and specifications approvals and committee minutes in relation to payment of the provisional sums amounting to Kshs. 4,400,000 were not provided.

Further, a comparison of the bill of quantities (BQ) and the actual work done in relation to installation of solar powered street lights and flood lights revealed the following discrepancies;

i. According to the BQ, the contractor was to install 8M high hollow silver galvanized steel but a 6M high hollow silver galvanized steel were installed.
ii. The contractor installed 120AH solar battery deep cycle instead of the 200AH solar battery deep cycle as specified in the BQ.
iii. A 100WP 17.5 V high efficiency solar panel was installed instead of 120WP 17.5V high efficiency solar panel specified in the BQ.
iv. A 400W floodlight LED fitting complete with control gear and tabular lamp 220 - 240v,50HZ, 120 beam angle water proof daylight was installed instead of a 500W floodlight LED fitting as provided in the BQ.

v. The contractor was to install two (2) high-mast lighting poles 24 meters high mild steel hot- deep galvanized and spray coated treatment, rust proof average radius of 100mm fixed on to concrete columns with steel gussets and rawl bolts and complete with portable winch for lowering and raising the flood lights for servicing purposes. However, 18 meters and 12 meters high masts floodlights were installed. Further, the installed floodlights did not have a portable winch for lowering and raising the flood lights for servicing purposes.

vi. There was no authority or supporting documentation such as approvals and committee minutes in relation to payment of the contingency sums amounting to Kshs. 300,000.

In the circumstances, the County Government of Turkana did not obtain value for money on the contract.

Submission by the Accounting Officer

a) Construction of the fire station

- Physical work at the time of audit was 100%.
- Works have been quantified. Final worked area equals11820.09 sqm
- 400m length perimeter wall constructed as per the bill of quantities and an open end allowed for expansion and the county government has allocated funds for its completion.
- Architectural designs, specifications and standard bill of quantities were adopted for project implementation.
- Building services engineers drawn from public works led in the supervision.
- Ksh.4.4M is for the sum total sum of work done by the contractor at the abandoned site which will be paid by the county government budget.
- Certificate of practical completion is available.

b) Solar Powered Street lights

The contractor compensated the variance between the BQ and actual work by installing extra nine (9) Solar Powered Street Lights along Ngamorkirionok – Nadirkonyen and Nadirkonyen – County Solution roads, in Nakwmekwi village unit, Township ward.

Committee Observations and Findings;

The Committee noted that the purpoted 'compensation' by the contractor was unauthorized and irregular.

Committee Recommendation;

The Committee recommends that the EACC takes action on those involved in the variations.

926. Trans Nzoia County (Kitale Municipality) - Delay in Project Implementation

The contract for the construction of Multi-Storey Business Complex for County Government of Trans Nzoia was signed on 25 June, 2018 at a contract sum of Kshs. 874,280,383 for a contract period of 728 days. The commencement date for the contract was 10 June, 2019 and the initial completion date was 10 June, 2021. However, the contract period was later revised to 30 November, 2021. The actual amount certified as at 1 June, 2022 was Kshs. 569,611,410 while the actual amount paid was Kshs. 461,603,521. The percentage of the physical work done as at 1 June, 2022 was 85%. However, audit inspection exercise carried out in the month of July, 2022 revealed

that the project was behind schedule and the percentage of time lapsed was 123% against a physical completion of 85%. Management did not provide explanation for the delay in completion of the Project.

In the circumstances, the public may not have obtained value for money from the contract.

Submission by the Accounting Officer

It is true the Project Completion is behind schedule and the Project is still under Construction. Physical Progress as per latest Progress report is at 95.5% as per the contractor's report. Reasons for the delay are as highlighted in the Contractor Letter requesting for time extension.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains current status in subsequent audit.

927. Wajir County (Wajir Municipality) - Delay in Project Implementation

The County Government of Wajir awarded two projects through open tender for the construction of non-motorized transport in Wajir Municipality at a contract sum of Kshs. 42,935,080 and the construction of Soko Mjinga 2 (Soko County Access) road at a contract sum of Kshs. 34,932,942. Review of records revealed that the amounts paid on the two contracts as at 30 June, 2022 were Kshs. 11,651,695 and Kshs. 6,702,174 respectively. However, physical verification exercise carried out on 27 July, 2022 revealed the following issues:

i. The payment of Kshs. 6,702,174 to one of the contractor was not supported with a summary of work done and bill of quantity extract showing the works paid for.

ii. The contract agreements for the two projects did not indicate the completion date for the projects.

iii. The Project Managers did not prepare status reports for the two (2) projects and therefore, it was not possible to confirm whether the payments of Kshs. 11,651,695 and Kshs. 6,702,173 for non-motorized transport in Wajir Municipality and construction of Soko Mjinga 2 (Soko County access) respectively were commensurate with the works carried out for the projects.

iv. The contractor was not on site for the Soko Mjinga 2 (Soko County access) project.

In the circumstances, the public may not have obtained value for money on the contract.

Submission by the Accounting Officer

All supporting documents such as the interim payment certificates and measurements have been prepared before payments were done. Its standard practice that all payment documents be prepared before the contractor is paid. These documents are available at the department.

The contract period as stated in the appendix to the tender is 6 months. This period is counted from the 14 days after the commencement order is issued. The commencement order letter has been issued to the contractors on 7th February, 2022. Hence actual commencement date is 21st February, 2022.

The expected date of completion was August, 2022.

Monthly progress reports have been prepared for each project. These reports are available on demand. Monthly progress reports have been prepared by site engineers and is available for scrutiny. The contractor had delivery issues of contractions but immediate he picked up and work progressed well.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains current status in subsequent audit.

928. Garissa County (Garissa Municipality)

928.1. Irregular Construction of Road

The County Government of Garissa awarded the Upgrading to Bitumen Standard of Galbet Township Access Road contract at a contract sum of Kshs. 81,825,853 in the financial year 2019/2020. Review of records indicated that the contractor had been paid an amount of Kshs. 55,502,069 in 2020/2021 and previous financial years.

Further, the works certified and paid for during the financial year 2021/2022 was Kshs. 17,915,040 making a total payment of Kshs. 73,417,109 for the project. Included in the total payment is an amount of Kshs. 15,043,000 related to culvert and drainage works which was originally tendered at an amount of Kshs. 11,404,250 leading to unsupported overpayment of Kshs. 3,638,750. This was contrary to Section 139(1) of the Public Procurement and Asset Disposal Act, 2015.

Further, physical verification carried out on 1 August, 2022 revealed that the drainage works were poorly done and some culverts were dysfunctional and not in use.

Submission by the Accounting Officer

More funds have been expended on culverts and drainage works due to the Galbet residents' demands to increase the number of cross culverts from six (6) to thirteen (13) for easy access to their households as a result, the project contingency fund which is equivalent to 5% of the project cost have been expended to cover the increased number of cross culverts. The overall project cost has not been increased and has remained the same hence no loss of funds. The request to increase number of culverts from Galbet residents demanding for access to their homes has been availed.

Committee Observations and Findings;

The Committee noted that the submission by the Accounting Officer was unsatisfactory.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures that the contractor remedies defects within three (3) months of adoption of this report.

928.2. Variation of Contract Prices

Review of tender documents, tender committee minutes and other records provided for audit revealed that Management made variation of two (2) contracts for the following projects;

VARIATION OF CONTRACT PRICES						
Project Name	**Tender No.**	**Contractor's Name**	**Original Contract Price (Kshs)**	**Revised Contract Price (Kshs)**	**Variation (Kshs)**	**Variatio (%)**
Proposed Storm Water Drainage and Pedestrian Walkways	GCG/WB/UD/T/003/2018 -2019	Zekone Investment Ltd	91,458,775	101,643,235	10,184,460	11%
Proposed Construction of Qorahey Market	GCG/WB/UD/T/001/2018 -2019	Aspire Ltd Box 84161 - 80100, Mombasa	74,341,042	83,959,580	9,618,538	13%

Available information revealed that the variation of the contracts was initiated by the Project Managers and approved by Garissa Municipality Board. However, the Board minutes approving the variation were not provided for audit contrary to Section 139(1) of the Public Procurement and Asset Disposal Act, 2015.

In the circumstances, Management was in breach of the law

Submission by the Accounting Officer

Board minutes of the meeting approving variation for the 2 projects have now been availed.

Committee Observations and Findings;

The Committee noted the delay in submission of the board approvals.

Committee Recommendation;

The Committee reprimands the Accounting Officer.

929. Kilifi County (Kilifi Municipality) - Delay in Completion of Project

The County Government of Kilifi entered into a contract agreement for the construction of a fire station and emergency centre for a period of one year commencing 17 May, 2021 to 17 May, 2022 at a total contract sum of Kshs. 120,911,300. During the year, the contractor was paid Kshs. 71,666,112. However, physical verification exercise on 28 July, 2022 revealed that the works were at 76% completion. No extension of time had been granted to the contractor after lapse of the contract period. Further, Management did no provide explanations for the delay in delivery of the Project.

In the circumstances, the public may not obtain value for money on the contract.

Submission by the Accounting Officer

The contractor DAECO Construction Ltd requested for extension of contract period on 2/3/2022 vide letter DCL-KFSRC-02 citing reasonable grounds. The Letter of extension was issued. The duration of the initial contract was 12 Months commencing on April 2021 until 22nd March 2022. This period was extended for one (1) year through an addendum to the existing contract to enable

the project to be completed. The new completion date is set to be 14th April 2023 as per the addendum to the existing contract agreement signed on 12/04/2022 by both parties.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains current status in subsequent audit.

930. Tana River County (Tana River Municipality) - Delay in Completion of Project

The County Government of Tana River entered into a contract for construction of 2 Km Phase II storm water drainage. The contract period was six (6) months commencing 20 January, 2022 to 20 July, 2022 at a contract price of Kshs. 61,834,700. As at 30 June, 2022, total amount certified and paid was Kshs. 44,390,597. However, physical inspection carried out on 1 August, 2022, revealed that the Project had not been completed despite the expiry of the contract period. Further, Project status report was not provided for audit and Management did not provide explanation for the non-completion of the Project within the agreed timelines.

In the circumstances, the County Government of Tana River may not obtain value for money on the contract.

Submission by the Accounting Officer

The contract period had been extended by a period of sixty (60) days owing to an approved request from the contractor in view of the season's rains which affected the progress. The contractor was therefore able to complete the works within the extended contract period and document copies of the final inspection are available in file.

The status report documents which were initially held by the supervisors in soft and copy files have since been filled to the contract file.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains current status in subsequent audit.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

931. Meru County (Meru Municipality) - Non-Maintenance of a Deposits Cash book

Review of the Meru County Municipal Board KUSP payments indicated that, the Board retained 10% being retention money from the various contractors. However, the Municipality did not maintain a separate deposits cash book and bank account to confirm whether the funds were deducted and are available on demand at the end of defects liability period of the various contracts.

In the circumstances, the effectiveness of internal controls over deposits and retentions could not be confirmed.

Submission by the Accounting Officer

Meru County didn't have a separate Retention Fund Account for the KUSP projects that have been implemented for KUSP 1, 2 and 3 projects in the Meru Municipality.

However, we have attached payments evidence documents for contract retention monies paid to all the contractors who have completed the development projects in Meru Municipality as required.

Since then, Project Retention Bank Account for the development projects in the County projects, specifically municipalities have been opened.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to operate separate deposits cash book and bank account.

SECOND INFORMAL SETTLEMENTS IMPROVEMENT PROJECT NO. P167814 CREDIT NO. 6759KE

REPORT ON THE FINANCIAL STATEMENTS

933. Acquisition of Non-Financial Assets

As disclosed in Note 8 to the financial statements, the statement of receipts and payments reflects acquisition of non-financial assets of Kshs. 38,438,339 comprising of purchase of vehicles amounting to Kshs. 5,700,000, purchase of office furniture and general equipment amounting to Kshs. 7,829,550, and research, studies, project preparation, design and supervision amounting to Kshs. 24,908,789. However, no detailed approved work plan and budget were provided to indicate that the expenditure was in respect to the budgeted activities of the Project.

In addition, the purchase of office furniture and general equipment expenditure of Kshs. 7,829,000 includes amounts paid on 28 and 30 June, 2022 for supply of desktop computers and network configuration all amounting to Kshs. 5,399,050 and whose date of delivery, commissioning and acceptance were not indicated.

In the circumstances, the accuracy and validity of acquisition of non-financial assets expenditure of Kshs. 38,438,339 could not be confirmed.

Submission by the Accounting Officer

The approved work plan and budget, delivery notes and inspection and acceptance documents and payment vouchers have been provided.

Committee Observations and Findings;

The Committee noted that the documentation were not provided as at time of audit.

Committee Recommendation;

The Committee reprimands the Accounting Officer for late submission of documentation.

934. Purchase of Goods and Services

As disclosed in Note 6 to the financial statements, the statement of receipts and payments reflects purchase of goods and services amount of Kshs. 70,650,376. The expenditure comprised of utilities, supplies and services amounting to Kshs. 7,368,845, communication, supplies and services amounting to Kshs. 4,486,010, domestic travel and subsistence amounting to Kshs. 38,367,608, printing and advertising amounting to Kshs. 12,113,838, training amounting to Kshs. 71,000 and routine maintenance amounting to Kshs. 8,243,075.

However, review of records revealed that a total of Kshs. 1,483,421 issued as standing imprest to cater for office operations and Kshs. 4,060,910 for supply of tonners for a project that had been in operation for just one year was excessive. Further, communication expenditures related to calling cards amounting to Kshs. 4,486,010 were procured during the year. Although the list of the staff airtime entitlement was provided, the detailed breakdown of project staff who got the airtime and the amount received compared to the entitlement was not provided for audit review.

In addition, domestic travel costs of Kshs. 38,367,608 include an unsupported amount of Kshs. 14,974,175 transferred to State Department for Housing and Urban Development. No evidence on how the payments related to the project was provided. Further, imprests paid to staff amounting to Kshs. 18,424,983 did not however have supporting documentation such as the surrender vouchers to show that the activities undertaken related to the project.

In the circumstances, the accuracy and validity of the purchase of goods and services expenditure of Kshs. 70,650,376 could not be confirmed.

Submission by the Accounting Officer

The Kshs. 4,060,910 for supply of tonners for a project was warranted since the project has been running for more than one year. The project has specialized printers for printing of specialized survey and engineering drawings. In addition, the analysis of budget against actual shows that the amount spent was within the budgeted.

The detailed breakdown of project staff who got the airtime and the amount received compared to the entitlement was provided for audit review.

Domestic travel costs of Kshs. 38,367,608 of Kshs. 14,974,175 is not a transfer to the State Department for Housing and Urban Development but payment of subsistence allowances to various officers conducting various activities for the project. All the activities related to the project as shown in the respective payment vouchers for example PV no. 1026 amounting to Kshs. 1,624,400 was payment for subsistence expenses for officers attending single fiduciary management sensitization and training. In addition, imprests paid to staff amounting to Kshs. 18,424,983 did have documentation to show the activities undertaken, all which related to the project as evidenced by the documentation attached in the surrender vouchers.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

935. Annual Work Plan and Budget of the Project

Section F(1) of schedule 2 of the financing agreement requires the recipient to prepare for approval the proposed project consolidated annual work plan and budget for the following fiscal year containing all project activities and eligible expenditures proposed for the year. Further, Section F(2) requires the recipient to ensure that the project is implemented in accordance with the annual work plan and budget. However, although Management provided a work plan for the year, the details in the work plan could not be tied to the specific expenditure items in the statement of receipts and payments.

In the circumstances, Management was in breach of the financing agreement.

Submission by the Accounting Officer

The work plan provided was sufficient to link all contracts under acquisition of non-financial assets.

Further, the activities under purchase of goods and services were consolidated under program management and coordination.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

OTHER DONOR FUNDED PROJECTS IMPLEMENTED BY AGENCY UNDER THE STATE DEPARTMENT FOR HOUSING AND URBAN DEVELOPMENT

KISUMU URBAN PROJECT (PROJECT ADVANCE ACCOUNT) - CKE 1035.01.G - COUNTY GOVERNMENT OF KISUMU

REPORT ON THE FINANCIAL STATEMENTS

938. Purchase of Goods and Services

As disclosed in Note 2 to the financial statements, the statement of receipts and payments reflects an amount of Kshs. 164,895,270 in respect of purchase of goods and services.

However, examination of records revealed the following unsatisfactory issues;

938.1. Unsupported Consultancy Services

The balance includes an amount of Kshs. 28,885,708 incurred on consultancy services.

The main expenditure was incurred on feasibility study, design and construction of Project. However, it is not clear which new projects were being consulted on as the Project has been in existence for the last three years. Further, no evidence was provided to indicate whether the expenditure was incurred to settle existing obligations or pending bills.

Submission by the Accounting Officer

These payments were made for various projects which had been running for a given period of time. The documents were availed for verification and confirmation.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

938.2. Misclassification of Non-Financial Assets as Supplies

Further, the balance includes an amount of Kshs. 65,376,901 described as supply which includes items of furniture, medical equipment and other equipment with a cumulative value of Kshs. 61,663,903 which are non-financial assets in nature and no procurement plan was provided in support of the acquisition of such assets. No explanation was provided for accounting for non-financial assets as supplies.

Submission by the Accounting Officer

It's true that some non-financial assets were recorded as supplies being that the contract awarded had components of supplies of furniture, medical equipment's and other equipment's that made it difficult to ascertain the value of supplies and non-financial assets. However, the management has noted and has corrected it in the amended financial statements.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains the amendments in subsequent audit.

938.3. Unsupported Administration Costs

In addition, the balance includes an amount of Kshs. 56,114,280 under administration costs which include amounts of Kshs. 10,622,116 and Kshs. 7,430,324 paid to two (2) auditing firms for the provision of external audit services. Although, Article 3.4.3 (e) of the Credit Agreement provides for semi-annual audits of the Project by an external auditor, it is not clear how the external auditors were hired as there is no evidence on how their fees, scope of work, reporting channels and feedback was to be determined. The balance of Kshs. 56,114,280 also includes an amount of Kshs. 12,504,483 in respect of taxes paid to the Commissioner of Domestic Taxes. It is not clear how the taxes arose or the purpose for which it was paid.

Further, an amount of Kshs. 10,216,040 was incurred as per diems for workshops, seminars and travel. No reason was provided for failure to have the expenditure recorded under capacity building. No work plans were provided to indicate whether the expenditures had been planned for.

In the circumstances, the accuracy and completeness of expenditure amounting to Kshs. 164,895,270 under purchase of goods and services could not be confirmed.

Submission by the Accounting Officer

It's true that included in the Administration Costs are audit fees paid to PKF and PWC all amounting to Kshs 10,622,116 and other related costs all amounting to Kshs 7,430, 324 leading to a total cost of Kshs 18,052,440 attributed to external audit services. PKF and PWC Audit firms were awarded the tender to provide audit services on a competitive platform as per the Public Procurement Act, due process was done and a no objection report from the donor (AFD) was issued as this was also a condition from the donor.

The decision to procure the services of independent auditors was made on approval by the donor and in line with the Public Procurement and Asset Disposal Act 2015 section 6(1) which state that "subject to the constitution, where any provision of this Act conflicts with any obligation of the Republic of Kenya arising from treaty, an agreement or any other conversation ratified by Kenya and to which Kenya is a party, the terms of the treaty or agreement shall prevail". In this case the no objection by the donor is a requirement for the approval in the Credit Finance Agreement.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

939. Cash and Cash Equivalents

The statement of financial assets reflects cash and cash equivalents balance of Kshs. 2,201,557 as at 30 June, 2022. However, during the year under review, Management recorded expenditure of Kshs. 299,173,957 out of the opening balance of Kshs. 296,972,400 which should have left an overdraft of Kshs. 2,201,557. This therefore results to a variance of Kshs. 4,403,114 which has not been explained or reconciled. Further, the statement of cashflows for the year ended 2020/2021 reflected cash and cash equivalent at end of the year of Kshs. 351,234,781 and a restated balance of Kshs. 296,972,400 resulting to a variance of Kshs. 54,262,381 which has not been explained or reconciled.

In the circumstances, the accuracy of cash and cash equivalents balance of Kshs. 2,201,557 could not be confirmed.

Submission by the Accounting Officer

It is true that there was a misstatement which was corrected in the amended financial statements. The same has been adjusted in the cashbook accordingly.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the Auditor General ascertains the adjustment in the subsequent audit.

940. Unauthorised Expenditure - Lack of Approved Budget

The statement of receipts and payments reflects payments amounting to Kshs. 299,173,957. However, according to the statement of comparison of budget and actual amounts, the expenses

were not budgeted for during the year under review and no reason was provided for incurring expenditure without an approved budget and annual work plan as required, as indicated below;

Payments	Final Budget (Kshs)	Actual Expenditure (Kshs)	Over (Kshs)
Purchase of Goods and Services	0	164,895,270	164,895,270
Acquisition of Non-Financial Assets	0	134,278,688	134,278,688
Total	0	**299,173,957**	**299,173,957**

Although, the Project did not record any receipts during the year under review, no budget adjustment and approval was done to allow utilization of the brought forward cash and cash equivalents balance of Kshs. 296,972,400.

In the circumstances, the regularity of expenditure amounting to Kshs. 299,173,957 could not be ascertained.

Submission by the Accounting Officer

The Project Management used the proposed and approved operations and financial manual for the expenditure running from inception. The cumulative expenditure budget available for verification.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

941. Outstanding Pending Bills

The Kisumu Urban Project had pending financial obligations of Kshs. 29,537,348 as reflected in Annex 2 to the financial statements after the expiry of the Project period on 30 June, 2022. Although Management has explained that necessary follow ups have been made with the donor, the State Department of Housing and The National Treasury, no documentary evidence was provided in support of this explanation.

In the circumstances, the settlement of these obligations could not be confirmed.

Submission by the Accounting Officer

It's true that the management reported outstanding pending bills of Kshs 29,537,348. The management had made the necessary follow up with the donor and the government of Kenya through the state departments of housing and national treasury to settle the outstanding bills.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures all lawful pending bills are settled promptly.

942. Acquisition of Non-Financial Assets

As disclosed in Note 3 to the financial statements, the statement of receipts and payments reflects an amount of Kshs. 134,278,688 in respect of acquisition of non-financial assets.

However, review of records revealed the following unsatisfactory issues;

942.1. Delayed Execution of Contract

The balance of Kshs. 134,278,688 includes payments amounting to Kshs. 61,260,140 that were paid to a contractor for a contract to upgrade Otonglo Market. Review of records revealed that the contract agreement was dated 30 December, 2020, at a contract sum of Kshs. 79,468,296 and a period of forty (40) weeks which was estimated to end on 30 October, 2021. Further, a contract addendum No. 1 on cost and time extension was entered into on 21 February, 2022 for an additional cost of Kshs. 19,459,409 and for a further twenty-one (21) weeks, respectively.

Although the original market area was reduced from 2570m² to 2313 m², the project cost went up by Kshs. 19,459,409. Management has not given justification for the cost escalation given that the original market area was reduced as part of the land was claimed by Kenya Railways Corporation. The certificate of practical completion and handing-over report were not provided for audit verification. Physical verification conducted at Otonglo Market site in October, 2022 revealed that the market structure was complete, but no electricity connection had been done to the facility and it had not been commissioned for use.

Submission by the Accounting Officer

The original contracted size built-up area was 2570m2 and it was reduced to 2313 m2. The original contracted built-up area as per the BQ is 918 m2. It is also true that Kenya railways interfered with the original plot size of 2570m2 to 2313m2which led to the reorganization of the original design taking into consideration additional input from the resettlement action plan (RAP), the market traders, the donor, and the client. As a result of the adjustment, the built-up area went up from 918m2 to 1942m2.

The justification resulted in the addendum which was approved by AFD with no objection dated 23 Feb 2022.

It's true that the hard copies of the certificate of completion and completion report were not availed though the soft copies were availed.

Currently, the market is occupied and is in operation.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

942.2. Failure to Execute Contract on Proposed Completion of Low Volume Access Roads - (Kemri-Otonglo-Tengere-Rota Road)

The acquisition of asset expenditure includes payments amounting to Kshs. 17,268,825 paid to a construction company for the construction of low volume access roads at an initial contract sum of Kshs. 63,687,970 and a contract period of eight (8) months commencing on 7 December, 2018

and ending on 7 August, 2019. At the time of the audit, the contractor had been paid a total of Kshs. 56,015,330 representing 88% of the contract sum.

Physical verification of the Project in October, 2022 revealed that the contractor was not on site and the project was still incomplete due to failure of the concrete beams to meet the tests carried out. Management did not provide explanation on the action being taken to have the project completed. The contractor requested for an extension of the contract period to 31 December, 2019 but there was no evidence that the request was accepted. Further, the performance security bond that the contractor had provided was valid up to 28 July, 2019 and there was no evidence provided on the renewal of the bond.

Submission by the Accounting Officer

It's true that in order to solve the long-span dispute between the client and the contractor that resulted in the halting of the project, a joint re - re-measurement of works was conducted by the clients and the contractor. The results of this joint measurement informed a project appraisal that was presented and approved by the project management committee.

This project appraisal confirmed that the value of work done by the contractor that was due for payment was Kshs 17,268,825. This amount was later approved and paid. The contractor was then instructed to renew the performance security bond and resume work since the outstanding issues on payments had been resolved. The contractor failed to renew their performance security bond and resume works as instructed leading to the commencement of contract termination by seeking AFD no objection, tender approval, and a termination letter dated 18th Jan 2022. The management also reported the same to PPRA by the letter dated 1st Feb 2022.

It's true the performance security bond that the contractor provided from M/s Rafiki Microfinance Bank was valid up to 28 July 2019 hence it had already expired. However, the management through a letter dated 22nd July 2019, advised the contractor to renew the performance bond. A reminder letter for the renewal of the performance bond was sent to the contractor on 31st January 2020.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a status report on the project within three (3) months of adoption of this report.

942.3. Proposed Construction of Perimeter Wall and Installation of Gates at Kenya Wildlife Service (KWS)

The acquisition of asset expenditure further includes payments amounting to Kshs. 1,939,788 which was paid to a construction company for the construction of a perimeter wall and installation of two (2) gates and a pedestrian gate at KWS. Physical verification carried out in October, 2022 revealed that the contractor used concrete blocks, installed only one gate and did not install any pedestrian gate against bills of quantities which required natural stone superstructure, installation of two (2) steel gates and a pedestrian gate respectively.

In the circumstances, value for money in respect of Kshs. 80,468,753 paid during the year towards the project could not be established.

Submission by the Accounting Officer

It is true that during the audit period the contractor had not installed the one gate and pedestrian gate, however the gates had already been fabricated and supplied. The delay for the installation was caused by KWS management not agreeing on the exact location of the gate. The issue has since been resolved and the contractor and the gates installed.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General ascertains status in subsequent audit.

943. Construction of Impala-Dunga-Nanga-Five Ways Road

The statement of receipts and payments reflects expenditure amounting to Kshs. 134,278,688 on acquisition of non-financial assets which as disclosed in Note 3 to the financial statements include a payment of Kshs. 6,384,501 paid to a construction company for installation of street lighting. Review of tender documents revealed that a contract agreement dated 23 March, 2018 was entered into between the County Government of Kisumu, City of Kisumu and the contractor for the construction of Impala-Dunga-Nanga-five ways road at a contract sum of Kshs. 301,145,590.

In an Addendum No.1 dated 21 July, 2019, the procuring entity introduced installation of street lights along the entire stretch of the road to the contract and increased the contract sum by Kshs. 31,377,727 which represents 10.4% contract variation contrary to Section 75(1) and (2) of the Public Procurement and Asset Disposal Act, 2015 which states that a procuring entity may amend the tender documents at any time before the deadline for submitting tenders by issuing an addendum without materially altering the substance of the original tender and an amendment may be made on the procuring entity's own initiative or in response to an inquiry by a candidate or tenderer.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

It's true that introduction of the installation of street lights along the entire stretch of the road to the contract increased the contract sum by Kshs 31,377,727.51 which represents 10.4% contract variation. This was done after seeking approval from AFD who issued a no-objection order for the same to be done instead of a new contract. Justification was done to AFD since the project was coming to an end and the procurement process could not be done to completion before the project ended. AFD gave no objection dated 30th July 2020 for management to proceed and retain the street lighting in the scope of the contract.

The approval of scope was done as per the Public Procurement and Asset Disposal Act 2015 section 6(1) which state that "subject to the constitution, where any provision of this Act conflicts with any obligation of the Republic of Kenya arising from a treaty, an agreement or any other convention ratified by Kenya and to which Kenya is a party, the terms of the treaty or agreement shall prevail". In this case the no objection by the donor is a requirement for approval in the Credit Finance Agreement.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

944. Non-Registration of Heavy-Duty Refuse Compactor

As previously reported, the Project Management purchased a heavy-duty refuse compactor equipment in July, 2020 at an amount of Kshs. 48,990,000. However, ownership documents in respect of the machine were not provided for audit verification. In addition, the equipment did not have a serialized registration code for ease of identification.

In the circumstances, the ownership and tracking of the equipment could not be confirmed.

Submission by the Accounting Officer

It's true that the heavy-duty refuse compactor is not registered. The management is in the process of finalizing registration. The delay was due to tax issues between the suppliers and the management which has been resolved to enable registration as per the letter of tax exemption Requisition availed.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails to the Committee evidence of registration within three (3) months of adoption of this report.

KISUMU URBAN PROJECT (CASH EXPENDITURE FUND) – CKE 1035.01.G - COUNTY GOVERNMENT OF KISUMU

REPORT ON THE FINANCIAL STATEMENTS

946. Trial Balance

The financial statements as at 30 June, 2022 were not supported by a trial balance and ledger to indicate the basis of preparation of the financial statements. In addition, there ware minimal activities in the project's finances during the year. Further, the previous year's net financial position did not agree with the audited financial statements for the year ended 30 June, 2021, which was not resolved in the year ended 30 June, 2022.

In the circumstances, the accuracy of the financial statements for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

It is true that the financial statements submitted for audit were not supported by a Trial Balance and lack of ledgers to support the preparation of the financial statements. However, the

management has now submitted a trial balance in the amended financial statements and prior year adjustments made to correct the net financial position.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to keep proper accounting records and recommends that the Auditor General ascertains the adjustments made in subsequent audit.

947. Statement of Financial Assets

The statement of financial assets for the year ended 30 June, 2022 reflects a comparative balance of Kshs. 6,461,695 in respect to fund balance brought forward while the certified financial statements for the year ended 30 June, 2021 reflect a balance of Kshs. 6,273,235 resulting to a variance of Kshs. 188,460 which was not explained.

In the circumstances, the accuracy of the statement of financial assets could not be confirmed.

Submission by the Accounting Officer

It is true that the statement of financial assets for the year ended 30 June, 2022 reflects a comparative balance of Kshs. 6,461,695 in respect to fund balance brought forward while the certified financial statements for the year ended 30 June, 2021 reflect a balance of Kshs. 6,273,235 resulting to a variance of Kshs. 188,469 which has not been explained or reconciled. However, the adjustments have been made in the amended financial statement to reflect the correct balances. The reconciled and restated net financial position is Kshs. 6,772 as shown in the amended financial statement and Kshs. 1,317 being bank charges expenses.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to keep proper accounting records and recommends that the Auditor General ascertains the adjustments made in subsequent audit.

948. Statement of Cashflow

The statement of cash flows reflects a closing balance of Kshs. 6,772 for the year ended 30 June, 2022. However, the cash and cash equivalents as at 30 June, 2021 after an unsupported restated balance of Kshs. 198,032 was a credit balance of Kshs. 8,089 resulting to a variance of Kshs. 931,207 which was not explained.

In the circumstances, the accuracy of the statement of cashflow for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

It is true the accuracy of the statement of cash flow for the year ended 30 June 2022 could not be ascertained. The error was from the previous year which has been corrected and adjusted in the amended financial statement of Kshs. 8,089 as at 30 June 2021.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to keep proper accounting records and recommends that the Auditor General ascertains the adjustments made in subsequent audit.

949. Unsupported Expenditure

The statement of receipts and payments and Note 2 to the financial statements reflects purchase of goods and services expenditure amounting to Kshs. 189,817 which includes an amount of Kshs. 188,500 in respect to domestic travel and subsistence. However, no detailed surrender documents were provided for audit review.

In the circumstances, the accuracy and completeness of the domestic travel and subsistence expenditure amounting to Kshs. 188,500 could not be confirmed.

Submission by the Accounting Officer

It is true the statement of receipts and payments reflects nil activities during the year, however, the statement of cash flows reflects an amount of Kshs. 1,372 as having been incurred on purchase of goods and services the statement did not show cumulative figures to date. This was due to an error on print out page which omitted cumulative figures on statement of receipts and payments for the year ended 30 June 2022. However, the error has been corrected as stated in the amended financial statement.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to keep proper accounting records and recommends that the Auditor General ascertains the adjustments made in subsequent audit.

Query Nos. 953 – 961 on Staff Officers House Mortgage Scheme Fund are under the purview of the Special Funds Accounts committee and will be examined accordingly.

4.20 VOTE 1095: STATE DEPARTMENT FOR PUBLIC WORKS

Mr. Joel P.L. Arumonyang, the Principal Secretary and Accounting Officer for State Department for Public Works, appeared before the Committee on 21st May 2024, accompanied by the following officers:

i) Mr. Nicholas Mutua	_	Works Secretary
ii) Eng. Benjamin Mwangi	_	Chief Engineer
iii) Mr. Mbogai Rioba	_	Secretary Administration
iv) Mr. Wafula Kuucha	_	Ag. Chief Quantity Surveyor
v) Mr. Michael Ongilo	_	Head of Accounting Unit
vi) Mr. Shavanga Calvin	-	Senior Chief Finance Officer
vii) Mr. Michael Ngolo	-	Deputy Head of Accounting Unit

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

962. Irregular Payments under Use of Goods and Services

The statement of receipts and payments reflects use of goods and services amount of Kshs. 320,108,106 as disclosed in Note 4 to the financial statements. However, the following anomalies were noted;

i) Utilities, supply and services expenditure of Kshs. 6,814,371 includes payments to staff for extraneous allowance and travel costs amounting to Kshs. 205,630 for doing normal work.
ii) The expenditure on foreign travel and subsistence of Kshs. 4,132,810 includes domestic travel and subsistence expenses amounting to Kshs.147,222.
iii) Other operating expenses of Kshs. 162,980,856 include extraneous allowances of Kshs. 2,630,000 paid to officers.
iv) Other operating expenses also include an amount of Kshs. 6,412,700 described as monitoring of footbridges for which no details were provided for audit.
v) Specialized materials expenditure of Kshs.7,502,394 includes Kshs. 780,000 paid as extraneous allowance which is a compensation of employees related expenditure.

In the circumstances, the accuracy and validity of expenditure on use of goods and services amounting to Kshs. 320,108,106 could not be confirmed.

Submission by the Accounting Officer;

i) It is true an amount of 205,630 was wrongly included in utility supplies services expenditure. However, the same has been corrected vide Journal Voucher (JE) No.40278106 a copy of which has been attached. The officers were called upon to undertake extra responsibilities in addition to their normal duties and hence worked over and above the official working hours in line with Human Resource Policies and Procedures Manual for Public Service Clause C 13.
ii) It is true an amount of 147, 222 was wrongly included in the expenditure on foreign travel, however a JE has been corrected Vide a JE No.402,78216.

iii) It is true Kshs.2, 630,000 was paid to officers included in other operating expenses. The officers were called upon to undertake extra responsibilities in addition to their normal duties and hence worked over and above the official working hours in line with Human Resource Policies and Procedures Manual for Public Service Clause C 13.
It is true other operating expenses included an amount of Kshs.6,412,700. The relevant payment voucher have now been availed for audit verification vide out letter Ref. No. PW/ACCOUTS/AQ/50 dated 2nd October, 2023.

iv) It is true Kshs.780,000 was paid as extraneous allowance included in specialized material expenditure. However, a JE has been prepared correcting the same. The officers were called upon to undertake extra responsibilities in addition to their normal duties and hence worked over and above the official working hours in line with Human Resource Policies and Procedures Manual for Public Service Clause C 13.

Committee Observations and Findings

The Committee observed that the explanation by the Accounting Officer was unsatisfactory.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to keep proper accounting records contrary to section 68 (2) (k) of the PFM Act 2012.

963. Irregular Payments under Acquisition of Assets

The statement of receipts and payments reflects acquisition of assets amount of Kshs. 703,054,635 as disclosed in Note 7 to the financial statements. However, this amount includes Kshs. 26,952,500 paid to staff for undertaking daily routine work.

In the circumstances, the propriety, accuracy and validity of expenditure on acquisition of assets of Kshs. 26,952,500 could not be confirmed.

Submission by the Accounting Officer;

It is true Kshs.26,952,500 were paid to staff under acquisition of assets. It is important to note that the amount were for research, feasibility studies, project preparation and design (item 3111400) budgeted under acquisition of assets as reflected in development expenditure estimates (Annex 963).

In order for officers to undertake research, feasibility study, design are required to travel outside their duty station. Hence payment of perdiems and night-out allowances in line with HRM Manual (2016).

The amount relates to the said budgeted item.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

964. Compensation of Employees - Payments Outside Integrated Payroll and Personnel Database (IPPD) System

The statement of receipts and payments and as disclosed in Note 3 to the financial statements reflects compensation of employees' amount of Kshs. 807,129,963 which includes an amount of Kshs. 36,317,963 paid outside the IPPD System.

Management did not justify the payment of salaries outside the IPPD system.

In the circumstances, the validity of amounts paid outside the IPPD system of Kshs. 36,317,963 could not be confirmed.

Submission by the Accounting Officer;

Its true the statement of receipts and payments reflected compensation of employees amounting to Kshs.807,129,963.

The total amount of salary paid through IPPD for the financial year 2021/2022 amounted to Kshs.792,564,506.70.

The difference of Kshs.14,565,456.65 paid outside IPPD comprised of;

i) Casual payments Kshs.5,180,285

ii) Leave commutation Kshs.4,584,864

iii) Gratuity and baggage allowance Kshs.4,800,307.65

Committee Observations and Findings

The Committee noted from concurrence of auditors that the correct amount in question was Kshs. 14,565,456.65. That notwithstanding, the IPPD system ought to have been configured to capture the payments.

Committee Recommendation

The Committee recommends that the State Department for Public Service configures the IPPD system to capture all allowances payable to all cadres of staff within three (3) months of adoption of this report.

965. Unconfirmed Transfers to Other Government Units

The statement of receipts and payments and as disclosed in Note 5 to the financial statements reflects transfers to other Government units amount of Kshs. 1,276,000,000. The amount includes Kshs. 16,000,000 indicated to have been transferred to the Ministry of Works Sports Club. However, Management did not provide documentation to support the creation of the club as a Government entity neither were there financial statements of the Sports Club to confirm receipts of Kshs. 16,000,000.

In the circumstances, the accuracy and regularity of the transfers to other Government units amount of Kshs. 16,000,000 could not be confirmed.

Submission by the Accounting Officer;

It is true that the amount of Kshs. 16,000,000 was transferred to MOW Sports Club as grants during the Financial Year 2021/2023 and the receipt of the same was confirmed by Inter-Entity confirmation letter dated 4th July, 2022 and the income and expenditure statement as at 30th June 2022.

Although the management did not provide the document to support the creation of the club as a government entity at the time of audit the same has been provided to the Auditor.

The club is in the process of preparing the financial statement for the period ending 30th June, 2023 after acquiring the Legal Entity on the 29th June, 2022 under Sports Act 2013.

Committee Observations and Findings

i) The Committee observed that the Auditor General had since verified the payments.

ii) The Committee found that the matter was resolved.

966. Inaccuracies in Outstanding Imprest Balance

966.1. Payments to Staff not Captured as Outstanding Imprest

The statement of assets and liabilities and as disclosed in Note 9 of the financial statements reflects accounts receivables - outstanding imprest and clearance accounts balance of Kshs. 637,210. However, review of the recurrent bank reconciliation statement reflects payments totaling to Kshs. 1,460,832 relating to imprest to staff paid on 30 June, 2022 resulting to an unreconciled variance of Kshs. 823,622.

In the circumstances, the accuracy of the outstanding imprest and clearance accounts balance of Kshs. 637,210 could not be confirmed.

Submission by the Accounting Officer;

It is true the statement of assets and liabilities reflected a balance of Kshs.637,210 in respect to outstanding imprest as at 30th June 2022. The outstanding amount reflected in recurrent bank statement as at 30th June 2022 were cleared in July 2022 as shown in the attached bank reconciliation statement.

All officers who were issued with imprest in FY 21/22 surrendered except a balance of Kshs. 637,210 surrender in FY 22/23.

Committee Observations and Findings

The Committee observed that despite all outstanding imprests having now been surrendered, this was done outside the period provided for in law.

Committee Recommendation

The Committee reprimands the Accounting Officer for breach of section 93 (5) of the PFM (National Govt.) Regulations.

966.2. Imprest to Staff

Review of both development and recurrent cash books revealed that Kshs. 155,555,931 was paid during the year to twenty-one (21) members of staff relating to imprests for domestic travel and subsistence.

In the circumstances, the officers were in the field for more days than the work schedule can accommodate and possibly more than the working days in a year.

In the circumstances, the regularity and value for money of Kshs. 155,555,931 could not be confirmed.

Submission by the Accounting Officer;

It is true that Ksh.155,555,931 was paid to staff as imprests and other payments. The said imprests were "group imprests" in respect of

i) Monitoring and Evaluation

ii) Audit & Inspection of building across the country.

The imprests were properly issued and surrendered with relevant supporting documents. Other payments comprised of

i) Casual Wages

ii) Reimbursements of standing imprests

iii) Allowances.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

967. Inaccuracies in Pending Bills

Note 16.2 and Annex 5A to the financial statements reflects pending accounts payable balance of Kshs. 812,842,132. However, the following anomalies were noted;

967.1. Inaccuracies in Pending Bills

Included in the pending bills balance is an amount of Kshs. 18,073,198 due to a local company for the supply of fuel in previous years. However, the debtor's statement from the company provided for audit reflected a balance of Kshs. 23,650,178 as outstanding resulting in unexplained variance of Kshs. 5,576,980. Further, Management did not explain why the debt has taken a long time to be settled by the State Department.

In the circumstances, the accuracy and completeness of the fuel, oil and lubricants pending bills amount of Kshs. 18,073,198 could not be confirmed.

Submission by the Accounting Officer;

It is true M/S RH Devani had claimed for unsettled bill of Kshs. 23,650,178.00 but after audit verification only Kshs. 18,073,198 was supported through documentation.

This bill has been accruing in our records from previous years since it was incurred when the State Department was under the Ministry of Lands. Since within the period, the debt was partially paid to a tune of Kshs. 2,994,100.00 from P.O NO 1949 dated 14th April, 2022 of Kshs. 4,000,000.00 with the balance of Kshs. 1,005,900.00 as per attached requisition for consumption at the State Department. However, a balance of Kshs. 15,079,098.00 has not been paid by the State Department due to lack of budgetary provision.

It is therefore difficult to remove it from books without any explanation.

Committee Observations and Findings

The Committee noted the submission from the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer settles all pending bills as first charge subject to section 42 (1) (a) of the PFM (National Govt.) Regulations.

968. Understatement of Pending Bills for Security Services

Included in the pending bills balance is an amount of Kshs. 6,761,433 for a security services firm. However, the invoices provided to support the pending bill amount totaled Kshs. 9,061,594, resulting in understatement of the pending bills by Kshs. 2,300,161.

In the circumstances, the accuracy and completeness of the security services pending bills balance of Kshs. 6,761,433 could not be confirmed.

Submission by the Accounting Officer;

It is true that the included in the pending bills list is an amount of Kshs. 6,761,433.00 for Brinks Security. It was also noted that the invoices availed to support the pending bill amount totaled to Kshs. 9,061,594.00 as at 30th June, 2022, thereby understating the pending bill by Kshs. 2,300,161.00.

However, upon reconciliation and confirmation with the service provided, Ms. Brinks Security, they confirmed that the outstanding bill stands at Kshs. 9,061,594. This amount was confirmed to have included outstanding withholding certificates that have not been issued to the service provided but actually the amount of the taxes was deducted at source.

Committee Observations and Findings

The Committee noted the submission from the Accounting Officer.

Committee Recommendation

The Committee recommends that the Auditor General confirms the payment including withholding tax in the subsequent audit.

969. Uncollected Rent Income

The statement of receipts and payments and as disclosed in Note 2 to the financial statements reflects proceeds from sale of assets amount of Kshs. 24,381,170 relating rent income from Government Agencies which includes Kshs. 4,606,680 for rent received from Kenya National Examination Council (KNEC). However, the lease agreement provided revealed that the Council was to pay rent of Kshs. 8,859,000 per annum (Kshs. 738,250 per month) thereby resulting into an uncollected rent of Kshs. 4,252,320. Further, the Council's financial statements and records did not reflect the State Department as a creditor.

In the circumstances, the recoverability of the uncollected rent amount of Kshs. 4,252,320 could not be confirmed.

Submission by the Accounting Officer;

It is true that the Lease Agreement provided revealed that the Council was to pay rent of Kshs.8,859,000 per annum (Kshs.738,250 per month) for all that comprising office space measuring approximately 4,115 square feet and warehouse measuring approximately 22201 situated at the Supplies Branch Yard. However, during the Financial Year under review, a sum of Kshs.4606,680 was received from the Council leaving a balance of Kshs.4,252,320 unpaid. During the year 2022/23, total sum of Ksh.8,454,940.20 was received from KNEC as per attached M R receipts out of which 4,252,320 relates to the outstanding balance of the previous financial year.

Committee Observations and Findings

The Committee observed that KNEC had not captured the State Department as a creditor in its books.

Committee Recommendation

The Committee recommends that KNEC recognizes the debt and settles as provided for in the lease, or the Accounting Officer to terminate the lease, within three (3) months of adoption of this report.

970. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs. 4,120,495,638 and Kshs. 3,117,591,618 respectively resulting to an underfunding of Kshs. 1,002,904,020 or 24% of the budget. Similarly, the State Department spent Kshs. 3,115,911,235 against an approved budget of Kshs. 4,120,495,638 resulting to an under expenditure of Kshs. 1,004,584,403 or 24% of the budget.

The underfunding and under expenditure affected the planned activities of the State Department and have impacted negatively on service delivery to the public.

Submission by the Accounting Officer;

It's true the State Department gross approved budget for the FY 2021/22 was Kshs.4,120,495,638. This comprised of Kshs.3,124,595,638 in Recurrent and Kshs.1,027,800,000 Development. The Gross approved budget includes National Construction Authority (NCA) projected AIA of Kshs.822,000,000 and Kshs.168,000,000 in Recurrent and Development respectively. The under

expenditure Kshs.1,004,584,403 as reflected in the statement is a result of non-submission of AIA collection from NCA.

Committee Observations and Findings

The Committee observed that the explanation was unsatisfactory since the NCA was an agency under the State Department.

Committee Recommendation

The Committee recommends that the Accounting Officer and Director General NCA settle the matter within three (3) months of adoption of this report.

971. Pending Bills

Note 16.2 and Annex 5A to the financial statements reflect pending accounts payable balance of Kshs. 812,842,132. The State Department therefore runs the risk of incurring significant unquantified interest costs and penalties due to continued delay in settling invoiced bills.

Further, failure to settle bills during the year in which they relate adversely affects the provisions of the subsequent year to which they have to be the first charge.

Submission by the Accounting Officer;

No specific budget was given to cover pending bill. However, the accounting officer has requested National Treasury for additional funds to pay pending bills.

Committee Observations and Findings

The Committee observed that pending bills should be treated as first charge in their respective budget lines.

Committee Recommendation

The Committee recommends that the Accounting Officer in liaison with National Treasury prioritizes settlement of pending bills as first charge, subject to section 42 (1) (a) of the PFM (National Govt. Regulations).

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

972. Staffing Levels Above Approved Staff Establishment

Review of the approved staff establishment for the State Department revealed that total of staff in post was 639 as compared to the approved establishment of 818 staff. However, thirteen (13) cadres of staff had 101 staff in post against an approved establishment of 27 staff resulting to over establishment of 74 in the respective cadres or positions within the various departments of the State Department. No explanation was provided by Management including the approval by the Public Service Commission on the employment of more staff than the approved staff establishment for the various positions in the State Department.

In the circumstances, Management was in breach of the approved staff establishment.

Submission by the Accounting Officer;

In-post as at 30th June, 2022 stood at 639.

Prior to issuance by the Public Service Commission of the current Staff Establishment vide letter Ref. No PSC/EMCS/5/(2) dated 26th May, 2021 capping our establishment at 818, we operated with an earlier one issued vide letter Ref No. PSC/ADM/91/1/IV/(55) dated 1st March, 2017 which had an authorized establishment of 1674. Recruitment and Promotions done before 26th May, 2021 were based on the earlier approved establishment thus partly explaining the variances in the current approved establishment. For instance, the current approved establishment for Engineer II/I is 20 but the in-post at the time was 37.

The Public Service Commission approved promotion under succession management initiative to address issues of stagnation and succession gaps in the civil service. Over Four Hundred (400) officers from the State Department for Public Works benefitted from the initiative effected vide letters Ref. No. PSC/EMCS/5/(2) of 26th May, 2021 and Ref. No. PSC/EMS/8/5/(4) of 3rd November, 2021. In some cadres the entire cohort was being moved, which ended up exceeding approved establishment in the grade. For instance, promotion of Ten (10) Senior Superintending Quantity Surveyor to the grade of Chief Superintending Quantity Surveyor caused a variance of four (4).

The postings by the Scheme Administrators in the support service cadres does not always align with the approved establishment for respective cadres.

We are currently working on review of the staff establishment with a view of proposing approval of higher numbers in line with the workload which over time will address the variances currently existing in the approved establishment.

Notwithstanding the variances in certain cadres, we remain grossly understaffed especially among the technical cadres. The annual turnover is not marched by replacements.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer in liaison with the Public Service Commission completes the review and compliance of the staff establishment within three (3) months of adoption of this report.

973. Delay in Completion of Projects

973.1. Proposed Headquarters for Nyandarua County at OlKalou

The proposed Nyandarua County Headquarters at Olkalou Project was awarded to a contractor at a contract sum of Kshs.617,644,564 for a duration of 104 weeks beginning 16 March, 2017 and ending on 16 March, 2019. The contract was terminated on 16 March, 2019 (Initial completion date) for failure to perform as per the contract terms with contractor having achieved 19% completion status The contractor went to Court and sought an injunction to the tendering process of a new contract that had been restarted by the County Government of Nyandarua. In June, 2020 the termination was lifted by the employer and the initial contractor agreed to resume works and

complete the project by July, 2021 which was not achieved. However, through an arbitration process and an addendum dated 01 July, 2021, the contractor transferred the assigned works to another contractor at agreed amount of Kshs.24,900,855 with no further claims.

During the year under review, the project completion time has been extended to 31 December, 2022 vide letter dated 18 January, 2022.

Further, the State Department paid a total of Kshs.60,996,198 to the various contractors working on or assigned to the project. However, the following anomalies were noted;

i) As previously reported, there was no evidence that the Project Management team attempted to warn and possibly terminate the services of the contractor earlier than 16 March, 2019, which was the initial project completion date, when 19% of works had been delivered;
ii) At the time of termination, payments amounting to Kshs.101,623,125 had already been made to the contractor including an amount of Kshs.13,078,306 meant for installation of lifts. However, as previously reported, it was not possible to install lifts given that the project had stalled at the foundation level;
iii) The Project was significantly behind schedule (40% complete) as a result of engaging a contractor who could not deliver as per the contract engagement terms and this has cost the public in terms of delayed delivery of services;
iv) It was also noted that there were additional charges related to the Project totaling Kshs. 83,497,615 occasioned by fluctuations of builders work and materials, interest on delayed payments and contractual claims which were occasioned by delays in project implementation and which were certified for payment.

In the circumstances, the value for money for amount paid to the contractor could not be confirmed due to delay in project execution and related associated costs

Submission by the Accounting Officer;

i) The contractor was issued with a warning letter dated 2nd March 2018 due to the slow progress of the works. Further, the contractor was issued with a Default Notice vide letter Ref BD103/10121A/VOL2/101 dated 31st January 2019 prior to the termination of the contract on 25th March 2019;

ii) The amount of Ksh.13,078,306 certified and paid was for the imported lift components delivered to the site but does not include the locally purchased components and labour for installation of the lift. This is in accordance with Clause 23.2 which states that the contractor will be paid for works done and materials on site and that the materials paid for remain the property of the Employer. The materials delivered are still available on site as they are government property and are currently being used for the installation of the lifts;

iii) The contractor M/s Highpoint Agencies was awarded the contract through a competitive tender process using the evaluation criteria set out in the documents. The contractor executed the works diligently in the first year but significantly slowed in the second year due to delayed payments. Failure by the company to complete the project as required is attributable to lack of adequate funding for the project;

iv) The project commenced on 16th March 2017 with a contract period of 104 weeks (2 years) and thus original completion date of 16th March 2019. By 30th June 2022, the contract expired was 276 weeks. This extended contract period led to additional cost to the project in fluctuations due to change in prices of materials and labour. The certificates were delayed beyond the 30 days after certification by the Project Manager and thus clause 24.5 that provides for payment of interest on delayed payments is applicable.

The building is now 60% complete and has been roofed and finishes have commenced.

Committee Observations and Findings

The Committee observed that;

i) **The works hybrid funding model, i.e. 70% from national government and 30% from county government had seen supervision challenges;**

ii) **The contractors identified by the county government were slow in executing works, pointing to possible lack of capacity.**

Committee Recommendation

The Committee recommends that;

i) **National Treasury issues the balance of contract sums to the county government as conditional grants in the next financial year;**

ii) **The Accounting officer ensures recovery of liquidated damages for delays occasioned by the contractors;**

iii) **The Accounting Officer avails a status report within three (3) months of adoption of this report.**

973.2. Proposed Completion of Voi Pool Housing Project

The Voi Pool Housing project was awarded to a contractor at a contract sum of Kshs. 747,290,699 for a contract period of one hundred and four (104) weeks commencing 01 December, 2012. The estimated completion date of 30 November, 2014 was revised to 31 December, 2019 and later to 31 December, 2022. The contract sum was revised to Kshs. 1,077,429,595 according to the Project status report of August, 2022. However, the contract variation by Kshs. 330,138,896 or 44% of the contract sum was contrary to Section 139(4)(c) and (d) of the Public Procurement and Assets Disposal Act, 2015 which limits the price variation to 20% of the contract sum.

Further, approval for the variation of the price was not provided for audit In addition, the project status report of August, 2022 indicated that an amount of Kshs. 476,299,012 had been certified for payment, with the project being 64% complete. However, the elapsed period of the project was indicated as being four hundred and ninety-four (494) weeks indicating that the project was significantly behind schedule. The total amount paid to the contractor as at 31 August, 2022 was Kshs. 445,501,805 or 41% of the revised contract sum.

Review of records, further revealed that the total pending certificates for the project amounted to Kshs. 30,797,207 comprising of certificate No.18 of Kshs. 16,005,833 and No.19 of Kshs.

14,791,374. These certificates have been delayed for payments by 185 days and 100 days respectively.

In the circumstances, the Project is significantly delayed and the likelihood of cost escalations is high resulting to additional charge to public funds.

Submission by the Accounting Officer;

The project status report indicated the original contract sum of Ksh.747,290,699 and the revised contract sum of Ksh.1,077,429,595. However, we wish to clarify that the indicated revised amount is the proposed financial appraisal amount which would only be applicable if approved by the Employer. The appraisal was not approved and thus the contract sum has remained at Ksh.747,290,699. Further as noted in the Audit, the amount certified was Ksh.476,299,012 which is below the original contract amount.

The project commenced on 1st December 2012 with a contract period of 104 weeks (2 years) and thus original completion date of 30th November 2014. The project has been extended severally due to inadequate funding and as at 30th June 2022 which is 500 weeks (9½ years) after commencement, the completion level was 70%. Currently, eleven (11) No. 3 Bedroomed Maisonettes together with all the Site Works, Plumbing, Drainage and Electrical Installations are complete and now ready for handing over. The remaining 3 Blocks of 36 No. 3 Bedroomed flats are ongoing and scheduled for completion in 2023 subject to availability of funding.

With regard to certificates Nos 18 and 19, the delay was due to unavailability of funding at the time of issuance of the interim certificates.

Committee Observations and Findings

The Committee observed that the project had stalled.

Committee Recommendation

The Committee recommends that the State Department for Housing takes up the project under the affordable housing programme within three (3) months of adoption of this report.

973.3. Proposed Completion of Migori District Headquarters

As previously reported, the proposed completion of Migori District Headquarters Phase I project, was awarded to a contractor at a contract sum of Kshs. 609,471,291 for a duration of 104 weeks starting 31 July, 2009 and was expected to be completed on 29 July, 2011. Available information indicates that there was a variation order of Kshs. 92,064,030 to the contract sum resulting to a revised contract sum of Kshs. 701,535,321. As at the time of audit, works valued at Kshs. 685,283,825 had been certified for payment with Kshs. 539,010,127 already paid.

The following observations were made;

i) The Project was significantly behind schedule as the percentage of completion as at June, 2022 stood at 80%. The office block had outstanding works, the administration block was only at 35% complete and the refurbishment works had not been done with more than 315% of time elapsed;

ii) As previously reported, the Project stalled and the main contractor abandoned site and the Project recommended for termination through mutual winding-up. An unreferenced letter dated 29 June, 2020 by the main contractor indicated concurrence to mutual winding-up of the contract. A certificate of partial completion was issued on 15 December, 2020 and the certificate of making good defects dated 10 June, 2021. However, the final account showing contractual costs and expenses and the eventual payment thereof was not provided for audit;

iii) The Project is thus significantly delayed and the likelihood of cost escalations is high resulting to additional charge to public funds. Further, winding-up the contract would result to additional cost to public funds as a result of costs of tendering, new preliminaries and cost fluctuation due to time value of money.

In the circumstances, the intended users of this project may not get value for money for the funds already paid for this contract.

Submission by the Accounting Officer;

i) The project faced financial challenges due to lack of adequate budgetary allocation and thus certified payments to the contractor were not paid on time. The contractor slowed down execution of the works and eventually the works stalled after the contractor completely stopped working;

ii) The recommendation to wind up the project was to avoid further costs related to extended preliminaries due to elongated contract period. The final account has been prepared and is available for audit review;

iii) The winding up of the project was necessary considering that there was inadequate funding and thus delay in execution of the works. The anticipated additional costs in retender is inevitable but is a better option than keeping the previous contract active and incurring costs in extended preliminaries, fluctuations and other contractual claims.

As per the Submission by the Accounting Officers in sections i-iii, the challenges arose due to circumstances beyond the control of the State Department.

Committee Observations and Findings

The Committee observed that the project had stalled.

Committee Recommendation

The Committee recommends that the State Department for Interior and Coordination of National Government takes up the project within three (3) months of adoption of this report and completes it in the next financial year.

973.4. Interest on Delayed Payment - Completion of Longisa Sub-District Hospital

Review of records revealed that the State Department paid Kshs. 888,562 to a local company for mechanical engineering services rendered on the contract for Longisa sub-district hospital. The amount is a claim of interest due to delay in honoring the fee note for services offered for the period January, 2017 to February, 2020.

In the circumstances, the value for money of Kshs. 888,562 paid as interest on delayed payments will not be realized.

Submission by the Accounting Officer;

The Ministry (the then Ministry Roads and Public Works) procured for consultancy services for the completion of Longisa Sub-District Hospital on 24th Nov. 2006. The works were awarded to MAK Consulting Engineers of P.O. Box 73406-00200, Nairobi on 28th March 2007.

The consultancy contract agreement was signed between Permanent Secretary Ministry of Roads and Public Works (Client) and MAK Consulting Engineers Ltd (Consultant) on 14th May 2007. Applicable terms of appointment and scale of fees was based on conditions of Engagement and Scales of Professional Services for Building Works 1987 Edition.

The Consultant had made application for payment in intervals through the course of the project. The last interim fee application was the 5th and final fee claim dated 27th October 2016 of KES. 4,727,887.59.

Valuation, analysis and voucher/certificate of KES. 2,493,822.46 for the above application was done by Chief Engineer – Mechanical (BS) and forwarded to the Works Secretary on 7th December 2016 for further action.

Chief Engineer – Mechanical (BS) wrote a reminder to Works Secretary of the pending payment on 16th June 2017. This followed a letter from the Consultant trying to establish the status of the same via letter dated 14th June 2017.

Chief Engineer – Mechanical (BS) wrote to the Consultant after consultation with the office of the Works Secretary noting that voucher for 5th certificate was misplaced and could not be traced. The Chief Engineer – Mechanical (BS) through a letter dated 5th July 2019 requested the Consultant to swear and issue an affidavit. The purpose for the affidavit was to swear that they had not received any payment relating to voucher No. 5 of 7th December 2016. The Consultant issued an affidavit dated 8th July 2019 via a letter dated 9th July 2019.

Chief Engineer – Mechanical (BS) resubmitted 5th payment certificate to the Works Secretary on 11th July 2019 together with a copy of the affidavit for further processing of the payment.

The Consultant later applied for interest on delayed payment siting delay in honouring payment of the 5th interim certificate for the period January 2017 to February 2020 as per Clause 215.02 of the conditions of Engagement and Scales of Professional Services for Building Works 1987 Edition. This was done via letter date relating to delay on 12th March 2020.

Chief Engineer – Mechanical (BS) analyzed and forwarded payment voucher No. 6 for the above claim to the Works Secretary for further action on 19th May 2020.

Committee Observations and Findings

The Committee observed that;

i) **Government officers handling the payments were negligent by 'misplacing' the 5th interim payment certificate;**

ii) **The Accounting Officer ought to have consulted the Attorney General before payment of the interest considering the contractor swore an affidavit and re-issued a certificate, in essence acquiescing to the delay.**

Committee Recommendation

The Committee reprimands the Accounting Officer for not protecting public interest.

973.5. Proposed Completion of Mathare Nyayo Hospital

As previously reported, the proposed completion of Mathare Nyayo Hospital project was awarded to a contractor at a contract sum of Kshs. 1,212,414,732 with the anticipated completion date being 26 August, 2015. However, the completion date was revised severally with the latest revised completion date being 31 December, 2020. As at 30 June, 2021 the work progress was at 70% with the elapsed period being more than 275% of the initial completion date indicating that the project was significantly behind schedule resulting to delayed delivery of service.

Further, review of Interim Payment Certificate No.34 revealed that an amount of Kshs. 132,321,751 had been certified for payment. The amount includes additional costs of fluctuation in labour and materials amounting to Kshs. 46,169,430, interest on delayed payments of Kshs. 37,852,236.96 and claims for direct loss and expenses due to changes introduced by the employer of Kshs. 48,300,085. The costs are avoidable and could be attributed to the delay in project completion.

In the circumstances, value for money paid to the contractor may not be achieved due delay in project execution and related associated costs.

Submission by the Accounting Officer;

The project has faced financing challenges due to lack of adequate budgetary allocation within the project period. Due to the delay in payment to the contractor for the amount certified by the Project Manager, clause 23.3 which provides for payment of interest for delay beyond 30 days after certification became applicable. The contract under where applicable. During the extended contract period, there was a significant increase in cost of materials and labour and thus clause 24.5 which provides for payment for fluctuations in the cost of inputs became applicable.

The project has since been completed with funding from the Nairobi Metropolitan Services (NMS) and was commissioned on 17th March 2022.

Committee Observations and Findings

i) **The Committee observed that the project had been completed.**

ii) **The Committee found that the matter was resolved.**

973.6. Proposed Construction of Isiolo County Headquarters

As previously reported, the proposed construction of Isiolo County headquarters was awarded to a contractor at a revised contract sum of Kshs. 556,905,703 from initial contract sum of Kshs. 870,706,011 with completion date of 30 August, 2021. Review of progress report as at 30 June, 2021 revealed physical progress of 35% with more than 109% of time having elapsed, an indication

of slow progress in project implementation. Further, the contractor raised an extension of time claim from 30 August, 2021 to 30 August, 2022 whose approval was not provided for audit. In addition, at the time of audit, works valued at Kshs. 102,300,195 representing 18% of the contract sum had been certified for payment. Included in the amount was Kshs. 2,972,179 relating to interest on delayed payments which forms an extra charge to public funds.

In the circumstances, the value for money for amount paid to the contractor could not be confirmed due to delay in project execution and related associated costs.

Submission by the Accounting Officer;

The slow progress is attributed to delayed payments due to inadequate budgetary allocation and lack of clarity of the site boundaries to facilitate the execution of the external works.

The recommendation for the extension of the contract period by the Project Manager is dated 9th June 2022 and approval was granted by the County Government of Isiolo through letter dated 10th June 2022. The letters are available in the file and are further attached for review by the Auditor.

There were certificates delayed beyond the 30 days after certification by the Project Manager and thus clause 23.3 that provides for payment of interest on delayed payments is applicable.

Currently, the project status is at 60%; the superstructure is complete and construction of the roof cover is in progress.

Committee Observations and Findings

The Committee observed that;

i) **The works hybrid funding model, i.e. 70% from national government and 30% from county government had seen supervision challenges;**

ii) **The contractors identified by the county government were slow in executing works, pointing to possible lack of capacity.**

Committee Recommendation;

The Committee recommends that;

i) **National Treasury issues the balance of contract sums to the county government as conditional grants in the next financial year;**

ii) **The Accounting officer ensures recovery of liquidated damages for delays occasioned by the contractors;**

iii) **The Accounting Officer avails a status report within three (3) months of adoption of this report.**

974. Termination of Contracts and Related Costs

974.1. Rehabilitation of Mtangawanda Jetty

As previously reported, the contract for the rehabilitation of Mtangawanda Jetty was awarded to a contractor at a contract sum of Kshs. 72,468,735. The completion date was initially set at 17

February, 2020 and was revised to 16 June, 2020 and further revised to 12 August, 2020. However, the contractor did not execute the contract within the second revised completion date and is reported to have deserted from the site in October, 2020, a clear indication that the contractor had no capacity to deliver the project.

The employer issued a notice of termination on 27 November, 2020 and after it became apparent that the contractor was not willing to resume work, the contract was terminated on 1 March, 2021. As at the time of the audit, Kshs. 50,685,400 had been paid to the contractor with Kshs. 5,631,711 held as retention amount. The final account had not been prepared to ascertain the costs and all expenses incurred by the employer, the work done, materials on site and inventory/materials in line with the provisions of the contract. Further, the contract was terminated when the project was at 97% completion and the completion cost was estimated to be Kshs. 11,000,000. However, if another contract is awarded, the cost is likely to increase due to fluctuations and preliminary costs involved.

In the circumstances, the value for money on the amount already paid may not be achieved since the project has continued to suffer defects and dilapidation.

Submission by the Accounting Officer;

The Contractor was issued with a default notice on 27th November 2020 and subsequently terminated on 1st March, 2021 due to his failure to resume back to site. But upon further consultations the contractor went back to site.

The Current progress status of the works is 100% complete. A final inspection was done and ascertained that the works are complete with a practical completion certificate issued. The Project was funded by both the State Department for Public Works (SDoPW) and Kenya Ports Authority (KPA).

Committee Observations and Findings

i) The Committee observed that the works were complete.

ii) The Committee found that the matter was resolved.

974.2. Construction of Ndau Sea Wall

As previously reported, the contract for the construction of Ndau Sea wall was awarded to a contractor at a contract sum of Kshs. 365,103,794. The contract period was revised three (3) times with the latest revised completion date of 6 July, 2017. The contractor did not complete the construction within the third revised completion date and is reported to have stopped working on the site in June, 2018.

The employer issued a notice of termination on 7 February, 2019 but the contractor promised to complete the project. Another notice to terminate the contract was issued on 25 July, 2019 which the contractor sought a restraining order from the High Court (Case No.189 of 2019). The case was later dismissed by the Court and consequently the contract was terminated on 16 June, 2021. It is however, not clear whether there was subsequent approval of extension of time between the third revised completion date of 6 July, 2017 and date of notice of termination on 7 February, 2019. Further, at the time the contractor stopped working on site, the project was at 87%

completion with Kshs. 284,504,648 paid to the contractor. However, some of the incomplete sections have since been subjected to aggressive sea wave forces leading to progressive failure.

In addition, with the termination of the contract, the estimated completion cost was Kshs. 80,000,000 with Kshs. 31,611,627 and Kshs. 4,700,000 recoverable from the contractor as retention money and liquidated damages respectively.

In the circumstances, value for money paid to the contractor may not be achieved due to increased costs in terms of reconstruction costs, preliminary costs and fluctuations in price and quantities when a new contract is awarded.

Submission by the Accounting Officer;

The final approved completion date was 6th July, 2017 and there was no further approval for another extension of time. However, the Contractor continued to work beyond this period as it is allowed for in the Contract. This necessitated the Employer to invoke the liquidated damages clause in the Conditions of Contract and deducted damages from the contractor's payment amounting to Ksh. 4,700,000.00.

It is correct that sections of the incomplete seawall have now collapsed. It is also correct that the completion works will cost more than the balance of the contract sum. This was caused by the delay brought about by the court case filled by the Contractor; however, this was beyond the control of the Employer as the case took too long to be determined.

The estimated completion cost for the pending works at the time of contract termination was Kshs, 80,000,000.00 (Contract Balance). However, the works are now estimated to cost Kshs, 110,000,000.00.

Committee Observations and Findings

The Committee observed that the project had been awarded to a new contractor and works were ongoing.

Committee Recommendation

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

975. Projects Behind Schedule

Review of records revealed that eight (8) other projects being implemented by the State Department had slow progress having exceeded their contractual period and were therefore behind schedule as at 30 June, 2022 as indicated below;

No.	Project Name	Contract Start Date	Contract End Date	Contract Amount (Kshs.)	Amount Certified (Kshs.)	Percentage of Completion

1	New Mokowe Jetty	15 February, 2019	12 August, 2022	599,872,373	495,985,129	92
2	Kapkures Footbridge (36m Span)	12 October, 2020	12 April, 2021	7,737,436	3,999,840	65
3	Kiptabsir – Chebongi Footbridge (36m Span)	06 June, 2020	30 June, 2020	8,172,999	6,020,000	98
4	Kiangonina Footbridge	04 May, 2020	30 March, 2022	7,333,902	Nil	15
5	Tirgamo Ipisikhu Footbridge (Laisamis)	10 September, 2021	26 April, 2022	11,219,615	2,500,000	25
6	Kitutu Chache Footbridge	2013	2014	15,439,960	6,965,556	65
7	Proposed Construction of Tharaka Nithi County Headquarters at Kathwana	27 July, 2015	15 January, 2021	458,239,186	297,236,217	75
8	Proposed Construction of Tana River County Headquarters	16 March, 2020	22 September, 2021	495,268,750	259,874,591	51

In the circumstances, delay in completion of projects exposes the public to loss of value for money for the expenditure incurred on the eight (8) projects.

Submission by the Accounting Officer;

i) Mokowe Jetty

The delay in completion of project has been compounded by the lockdown occasioned by COVID 19, rising of prices on cost of building materials & fuel which affects transport.

Contractor has been granted extension of time which lapses on 12th May, 2023. The current status of the project is at 98% most of the scope being practically complete.

ii) Kapkures Footbridge

The delay in completion of project has been affected by political interference and non-performance of the contractor. Contractor issued with Default Notice. The project currently is at 85% complete and is ongoing.

iii) Kiptabsir Chebongi Footbridge

The delay in completion of project has been affected by non- performance of the contractor. Contractor was issued with default notice. The project currently is at 98% complete and currently is in use by the public remaining works being guard rails.

iv) Kiangonina Footbridge

The delay in completion of project has been compounded by effects of COVID 19, change of design and non- performance of the contractor. Contractor was issued with default notice and currently is on site.

v) Tirgamo Ipisikhu Footbridge in Laisamis

The delay in completion of project has been affected by insecurity in the area and curfew. Contractor was granted extension up to 9th June, 2023. The progress of works currently is at 89% approach ramp works ongoing.

vi) Kitutu Chache Footbridge

The delay in completion of project has been affected by funding since no allocation had been provided for the project since 2013 when the country was transitioning from the old to the current constitution. Funds were allocated in this financial year 2022/2023 to the bridge for completion. The contractor remobilized and completed the works in 25th February, 2023.

Committee Observations and Findings

The Committee observed that;

i) **The projects were now complete and in use save for Kapkures footbridge, Tharaka Nithi and Tana River County headquarters;**

ii) **The works hybrid funding model, i.e. 70% from national government and 30% from county government had experienced supervision challenges;**

iii) **The contractors identified by the county government were slow in executing works, pointing to possible lack of capacity.**

Committee Recommendation

The Committee recommends that;

i) **National Treasury issues the balance of contract sums to the county government as conditional grants in the next financial year;**

ii) **The Accounting officer ensures recovery of liquidated damages for delays occasioned by the contractors;**

iii) **The Accounting Officer avails a status report within three (3) months of adoption of this report.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

976. Incomplete Motor Vehicle Register

Review of the systems for the management, safeguarding and maintenance of motor vehicles by the State Department revealed the following anomalies;

i) The motor vehicle register maintained was not in compliance with the National Treasury template provided vide Circular No.23 of 2020. Important information such as cost of vehicle, engine number, chassis number, engine capacity, year of manufacture, financed by, depreciation etc. is missing.
ii) Vehicles financed through projects and provided by contractors through projects with a preliminary condition to provide a vehicle are not clearly reported as financed by specific projects.
iii) The State Department has reported one hundred (100) vehicles, motor cycles and fork lifts in its motor vehicle register bearing GK registration plates. However, only seventeen (17) vehicles had ownership documents inform of log books that were provided for audit.
iv) In addition, information provided from National Transport and Safety Authority (NTSA) portal shows that eighty-three (83) vehicles and motor cycles are registered under the state department of public works PIN number.
v) The motor vehicle register includes fifty-six (56) vehicles bearing private registration plates which have been funded by different projects being undertaken by the State Department. However, available information indicates that some projects have been completed but there was no official communication to facilitate change of ownership from the contractor to the State Department.
vi) The State Department motor vehicle register contains thirty-four (34) vehicles, three (3) motor cycles and four (4) fork lifts that are grounded or unserviceable. The Management has not explained why the vehicles have not been bonded and disposed accordingly.

Failure to maintain an accurate motor vehicle register might result to loss/theft, security threats or misuse of the vehicles. Further, the lack of a complete register is not in compliance with the law. In addition, lack of ownership documents may result to loss of the motor vehicles.

In the circumstances, the systems for the management, safeguarding and maintenance of motor vehicles of the State Department were not working effectively.

Submission by the Accounting Officer;

The State Department was in the process of completing the register.

Committee Observations and Findings

The Committee observed that the explanation was unsatisfatory.

Committee Recommendation

The Committee recommends that the Accounting Officer ensures that there is a complete motor vehicle register within three (3) months of adoption of this report.

977. Incomplete Fixed Asset Register

Review of the fixed asset register provided by the State Department revealed that it was not in compliance with The National Treasury template provided vide Circular No.23 of 2020. Important information such as date acquired, cost of the asset, serial number, tag number, asset condition, current value was not included in the asset register.

In the circumstances, the effectiveness of controls over fixed assets could not be confirmed.

Submission by the Accounting Officer;

It is true that the State Department for Public works did not comply with the National Treasury template provided Circular No.23 of 2020 of fixed Asset Register. This was due to inability of populating the asset data in the prescribed reporting template. The National Treasury trained officers on 14-19 May, 23 populating the entities asset data and the state department is working on updating the fixed asset register.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer ensures that there is a complete fixed assets register within three (3) months of adoption of this report.

978. Audit Committee and Internal Audit

Review of records revealed that the Audit Committee of the State Department met only twice during the year contrary to Section 179(1) of the Public Finance Management (National Government) Regulations which states that the Audit Committee shall meet at least once in every three months.

Further, no evidence was provided to confirm that Management implemented the internal audit report recommendations on Transport System Audit and Construction of five County Headquarters (Nyandarua, Tharaka Nithi, Tana River, Isiolo and Lamu). In addition, no evidence was provided to confirm that the audit committee deliberated on the financial statements for the year ended 30 June, 2022 prepared by the State Department for Public Works before they were submitted to the Office of the Auditor-General for audit.

In the circumstances, the effectiveness of the Audit Committee and the internal audit function could not be confirmed.

Submission by the Accounting Officer;

The committee sat 2 times during the period under review instead of at least a minimum of 4 seating's, however, this has been as a result of financial constraints since the committee and

internal Audit as a department does not have budget allocation, in future we shall endeavor to facilitate the committee as much as possible.

Internal audit was tasked by the Audit Committee to carry out a follow up audit and report to the committee on its finding on the status of the projects and confirm whether the management has implemented the recommendations by the internal audit and report to the committee on the same. Internal audit has developed a program for the exercise which was been approved by the Accounting Officer.

Committee Observations and Findings

The Committee observed that the Accounting Officer had failed to ensure that the internal audit function was effective.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to facilitate the internal audit function contrary to Section 179(1) of the Public Finance Management (National Government) Regulations.

4.21 VOTE 1108: MINISTRY OF ENVIRONMENT AND FORESTRY

Eng. Festus K. Ng'eno, the Principal Secretary and Accounting Officer for State Department for Environment and Climate Change, appeared before the Committee on 20th April 2024, accompanied by the following officers:

i) Dr. David Gikungu	–	Director, KMD
ii) Mr. Mamo Boru	-	Director General, NEMA
iii) Prof. Julius Tanui	–	CEO, KWTA
iv) Ms. Penninah Njuguna	–	Senior Deputy Accountant General
v) Mr. Waiganjo Waweru	–	Senior Chief Finance Officer
vi) Mr. Kennedy Oduka	–	Director, NEMA
vii) Mr. Felab Obanyi	–	Deputy Head of Account Unit
viii) Ms. Elizabeth Masaku	–	Supply Chain Management Officer
ix) Ms. Mercy Mwangi	–	Senior Accountant Internal Auditor General
x) Mr. Anthony Kiumbuku	–	Chief Accountant
xi) Mr. Charles Minjiue	–	SDAG

And submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

979. Unsupported Transfers to Other Government Entities

The statement of receipts and payments, as disclosed in Note 8 to the financial statements, reflects transfers to other Government entities amount of Kshs.11,330,759,914. Included in the amount is other capital transfers grants and subsidies of Kshs.1,720,390,611 which in turn includes an expenditure of Kshs.23,000,000 for the purchase of 44 million tree seedling potting bags for distribution to prisons, schools and other Government Institutions. The deliveries were made to Kenya Forestry Research Institute and Kenya Forest Service Regional Centers across the Country. However, only Ewaso Ngiro South Development Authority confirmed receipt of 1,340,000 bags worth Kshs.1,201,379. The Kenya Forest Service and other beneficiaries had not confirmed receipt of the potting bags.

In the circumstances, the propriety and occurrence of payments amounting to Kshs.21,798,621 on tree seedlings potting bags for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the Ministry of Environment and Forestry and its Agencies together undertake implementation of the National Tree Planting activities.

The Ministry was the lead Institution entrusted with the responsibility of overseeing the coordination as well as spear heading the whole process of procurement of 44, 615, 386 potting bags. With regard to delivering of the potting bags to the respective beneficiaries;

i) The user Department was Forest Conservation and KEFRI was to supply certified seeds in line with the potting bags purchased;
ii) The Forest Conservation as the user Department was to make sure that all the goods procured reached to the intended beneficiaries without losing track on the same;

iii) The plan to distribute the potting bags to schools was vacated because the schools were closed and were not ready to establish the tree nurseries.
iv) Distribution to prisons was vacated because the Ministry established that KEFRI had already supplied potting bags to them.
v) The potting bags were therefore distributed to Regional Development authorities upon their requests and the remaining balance to Kenya Forest Service to distribute and utilize in their tree nurseries.
vi) The Regional Development Authorities; Ewaso Nyiro South Development Authority, Tana and Athi Rivers Development Authority (TARDA), Kerio Valley Development Authority (KVDA), Lake Basin Development Authority (LBDA) and Kenya Forest Service (KFS) who were the intended beneficiaries confirmed receipt of the potting bags.

The confirmation of receipts by beneficiaries were not provided during audit since they had not been received.

Committee Observations and Findings

The Committee noted that the Accounting Officer belatedly submitted the support documentation.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide support documents during audit contrary to the provisions of Section 68(2)(k) of the PFM Act 2012.

980. Use of Goods and Services - National Tree Planting Campaign

According to the Ministry's approved 2021/2022 financial year annual workplan, Kshs.150 million was allocated to National Tree Planting Campaign to prepare a National Forest Policy, rehabilitate and restore 25 hectares in Nairobi Metropolitan, sensitize 10% tree campaign in 47 counties, rehabilitate and restore 52,415 hectares of degraded public and community forests, afforestation and re-forestation of 40 hectares at Naivasha dry port, formulate import and export rules on forest products and operationalize regulations on guns and resins operation.

However, despite an amount of Kshs.147 million having been spent on the programme, there was no evidence that the Ministry had rehabilitated and restored 25 hectares in Nairobi Metropolitan area and 52,415 hectares of degraded public and community forests respectively. Further, the planned afforestation and reforestation of Naivasha dry port was not done.

In the circumstances, validity and occurrence of the expenditure of Kshs.147,000,000 could not be confirmed.

Submission by the Accounting Officer;

The Accounting Officer submitted that the above-mentioned activities were carried out being overseen, coordinated and evaluated by the Ministry during the financial year. However, as at the time of audit the reports/evidences were still being compiled due to multi agency approach and activities having been undertaken across the country.

Rehabilitation and restoration of 25 hectares (Kshs. 4m) in Nairobi Metropolitan was done in;

- Michuki Memorial Park, Ngong road Forest and Aboretum (Nairobi County)- Kshs. 1,989,532
- Mumandu forest and Machakos Town (Machakos County)- Kshs. 499,731
- Ngong Hills Forest (Kajiado County) – Kshs. 758,257
- Thogoto, Keraita, Ragia, Kieni, Kamae and Kinale Forests (Kiambu County).- Kshs. 752,480

The Ministry with it's agencies rehabilitated approximately 35,300 hectares (Kshs. 70 m) of various public and community forests which form part of the water towers as follows;

i) Embobut Forest- Approximately 8000 hectares- Kshs. 15,864,022
ii) Kaptagat forest- Approximately 300 hectares- Kshs. 594,910
iii) Mau Forest- Approximately 9,000 hectares- Kshs. 17,847,207
iv) Masaai Mau Forest- Approximately 11,000 hectares- Kshs. 21,813,253
v) Kirisia Forest- Approximately 5,000 hectares- Kshs. 9,915,115
vi) Mt. Elgon Forest- Approximately 2,000 hectares- Kshs. 3,965,493

Afforestation and re-forestation of 40hectares at Naivasha dry port was not done because the dry port is a special economic zone under the special Economic Zones Authority. Initially, the Ministry had earmarked the area for afforestation because it is bare. However, it was realized that being a special economic zone, it is governed by the special Economic Zones Act 2015 and therefore, permission is required to undertake any activity in the zone. The ministry therefore utilized the allocated money (Kshs. 23 m) on procurement of potting bags for raising of tree seedlings. Kshs. 50 m was disbursed to KEFRI construction of seed centres and seed collection.

Committee Observations and Findings

The Committee noted that the Accounting Officer belatedly submitted supporting documentation.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide support documents during audit contrary to the provisions of Section 68(2)(k) of the PFM Act 2012.

981. Imprests and Advances

The statement of assets and liabilities reflects imprest and advances balance of Kshs.6,728,190 as disclosed in Note 12 to the financial statements. However, imprest payment vouchers amounting to Kshs.23,343,644 issued to an officer were not provided for review. The Management explained that they had submitted the imprest surrender vouchers to Ethics and Anti-Corruption Commission (EACC) for investigation.

In the circumstances, the accuracy and completeness of the imprest and advances balance of Kshs.6,728,190 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer agreed with the audit findings and submitted that the imprests/payment vouchers forwarded to EACC were received back at the Ministry, and the same forwarded to the Auditors for audit review.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

982. Irregular Payment of Allowances

The statement of receipts and payments and Note 6 to the financial statements reflects compensation of employees amount of Kshs.1,138,372,651. The balance includes an amount of Kshs.531,601,056 in respect of personal allowances paid as part of salary. Further, review of payroll and IPPD data revealed that the Ministry paid various allowances totalling to Kshs.223,055,889 as detailed below:

Allowance	**Amount (Kshs.)**
Safety Allowance	80,619,763
Shift Allowance	45,964,083
Adversity Allowance	56,725,458
Aviation Support Allowance	12,794,364
Aviation Allowance	26,952,221
Total	**223,055,889**

However, no evidence was provided for audit review to confirm that these allowances had been approved by the Salaries and Remuneration Commission (SRC).

In the circumstances, the regularity and validity of compensation of employees amount of Kshs.223,055,889 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the Ministry paid the staff of Kenya Meteorological Department the above allowances. These allowances were paid as authorized by the Directorate of Personnel Management (DPM) letter Ref. No. DPM 2A VOL. VII (84) dated 2nd November, 1998 which specified the allowances payable, the rates and the category of officers drawing the allowances. This circular was issued before Salaries and Remuneration Commission (SRC) was established.

Also, vide letter from the Head of the Public Service Ref. No. OP/CAP.1/17/2A dated 18th August, 2020, Kenya Meteorological Department was declared an essential service provider.

The Salaries and Remuneration commission approved the retention of allowances in the interim awaiting the delinking of the Kenya Meteorological Department from the mainstream civil Service.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

983. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects receipts budget and actual on comparable basis of Kshs.14,607,027,165 and Kshs.13,171,939,033 respectively resulting to a receipt shortfall of Kshs.1,435,088,132 or 9.82% of the budget. Similarly, the Ministry expended Kshs.13,197,468,093 against a budget of Kshs.14,606,627,165 resulting to underexpenditure of Kshs.1,409,159,072 or 10% of the budget. The underfunding and underexpenditure affected negatively the planned activities of the Ministry and service delivery to the public.

Further the actual receipts balance of Kshs.13,171,939,033 was less than the actual expenditure balance of Kshs.13,197,468,093 resulting to overexpenditure of Kshs.25,529,060. In the circumstances, it was not possible to confirm whether the overexpenditure of Kshs.25,529,060 was lawful.

Submission by the Accounting Officer

The Accounting Officer submitted that the Ministry's actual expenditure under the above items was kshs 13,197,468,093 against a total budgetary allocation of kshs 14,606,627,165 resulting to an under expenditure of kshs 1,409,159,072.

The reasons for under expenditure are;

i) Delay by Donors in releasing some development projects funds;
ii) Procurement process for some items had not been concluded / delivered by 30th June, 2022, hence payment could not be made for the same;
iii) Non-achievement of AIA collection targets.
iv) Inadequate Development exchequer funding.

The Accounting Officer further submitted that the actual receipts of Kshs.13,171,939,033.00 was less than the actual expenditure balance of Kshs.13,197,468,093.00 resulting to an over-expenditure of Kshs.25,529,060 as per statement of receipts and payment of the financial statement for financial year 2021/2022.

This was as a result of a balance brought forward from Green Growth and Employment project of Kshs.33,914,903.40 which was erroneously omitted from receipts of 2021/2022 financial year.

Committee Observations and Findings

i) The Committee observes that the explanation provided by the Accounting Officer is satisfactory.
ii) The Committee marks the matter as resolved.

984. Unresolved Prior Year Issues

In the audit report of the previous year, several issues were raised in the Report on Financial Statements and Report on Lawfulness and Effectiveness in Use of Public Resources. However, Management has not resolved the issues or given any explanation for failure to adhere to the provisions of the Public Sector Accounting Standards Board and Paragraph 3.20 of the National Treasury Circular Ref. AG.3/88/Vo.II(20) dated 11 May, 2022 on Guidelines on Year End Closing Procedures for The Financial Year 2021/2022.

In the circumstances, Management has not compiled with the reporting template.

Submission by the Accounting Officer

The Accounting Officer provided the status of unresolved prior year issues to the Committee.

Committee findings and observations;

The Committee notes that the 2020/2021 PAC report has since been adopted by the House.

Committee recommendation;

The Accounting Officer is directed to ensure all Committee recommendations are effected within the timelines provided, and submits a status report within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

985. Pending Bills

Annex 1 to the financial statements reflects pending bills totalling to Kshs.670,596,158 as at 30 June, 2022. Analysis of the pending bills indicate that bills amounting to Kshs.613,114,673 or 91% relate to previous years. This is contrary to The National Treasury Circular Ref.ES/03 'R'(R) dated 28 June, 2021 which directed Accounting Officers to prioritize settlement of pending bills by ensuring pending bills form first charge of the 2021/2022 budget.

In the circumstances, the Management was in breach of the National Treasury Circular.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

i) It is true that as at 30th June 2022 pending bills totaled to Kshs 670,596,158.10 Out of the kshs 613,114,673 relating to previous years being 91% of the total pending bills, kshs 595,618,173.05 relate to court awards.
ii) To date pending bills amounting to Kshs.627,555,001.55 have been settled of which Kshs. 595,618,173.05 million relates to court awards and Kshs.31,936,828.65 for suppliers/contracts.
iii) The Ministry has not been able to settle all the pending bills due to inadequate budgetary allocation. However, the Ministry has written to the National Treasury requesting for additional budget allocation to facilitate payment of the bills.

iv) Historical pending bill amounting to Kshs. 104 Million were forwarded to Pending Bill Verification Committee for verification.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

986. Irregular Cash Purchases for Contracted Items

Examination of payment records revealed cash purchases of items such as stationery, toners, printing and photocopying services amounting to Kshs.13,572,608. It was not clear why the goods and services were not procured from the pre-qualified suppliers as the cost exceeded the set threshold of Kshs.50,000 per item per annum. This was contrary to Section 107(b) of the Public Procurement and Asset Disposal Act, 2015 which states that, a procurement entity may use low value procurement procedure if the estimated value of the goods, works or non-consultancy services being procured are less than or equal to the maximum value per financial year for that low value procedure as may be prescribed.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that it is true the Ministry bought some items in cash. However, according to the Accounting Officer, the expenditure was not for the day-to-day office operations which is normally done through procurement process.

The Accounting Officer further submitted that this happens mainly when a group has a workshop/retreat away from the office. Usually, the group prepares a budget which include per diem, fuel conference and staff per diem, the rest of the money is issued to a group team leader who accounts for the expenditure. The teams carry the office printer and only buy a toner to avoid cost of printing.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

987. Internal Audit Function

During the year under review, the Ministry's internal audit department had no substantive head which affected the unit's leadership and execution of its functions. In addition, the unit was understaffed and efforts to secure additional staff from The National Treasury had not been successful thus affecting execution of the annual audit plan.

In the circumstances, effectiveness of the system of internal controls, risk management and governance could not be confirmed.

Submission by the Accounting Officer

The National Treasury posted substantive Heads of Internal audit for the Ministry's two State Departments vide the attached posting order dated 1st February, 2023. The Internal Unit also received two additional staff.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

988. Lack of Risk Management Policy

During the year ended 30 June, 2022, the Ministry had a draft Risk Management Policy which had not been approved for use contrary to Regulation 165(1) of the Public Finance Management (National Government) Regulations, 2015. The regulation provides that the Accounting Officer shall ensure that the national government entity develops risk management strategies, which include fraud prevention mechanism and a system of risk management and internal controls that builds robust business operations.

In the absence of an approved Risk Management Policy, it was not clear how the Ministry identified and mitigated emerging risks in its day-to-day operations.

Submission by the Accounting Officer

The Accounting Officer submitted that an approved risk management Policy was now in place.

Committee Observations and Findings;and Finding;

The Committee noted that the Accounting Officer admitted to lack of a risk management policy as at the time of audit, contrary to regulation 165 of the PFM National Government Regulations 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to maintain a risk management policy contrary to regulation 165 of the PFM National Government Regulations 2015.

DONOR FUNDED PROJECTS

INTEGRATED HEALTH AND ENVIRONMENT OBSERVATORIES AND LEGAL AND INSTITUTIONAL STRENGTHENING FOR THE SOUND MANAGEMENT OF CHEMICALS IN AFRICA (NO.AFR/CHEMOBS PROJECT/C/07-2017)

REPORT ON THE FINANCIAL STATEMENTS

989. Undisclosed Consultancy Payments

The statement of receipts and payments reflects total payments of Kshs.5,194,098 for the year ended 30 June, 2022.The total payments excluded amount of Kshs.534,500 paid for consultancy services being 50% final payment for US$ 10,000 invoice dated 31 March, 2021.

In the circumstances, the accuracy and completeness of the total payments of Kshs.5,194,098 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the Africa Institute (Donor representative) contracted the services of a national consultant for total sum of USD10,000 and made payments directly to the consultant without sending the funds through the National Treasury. The Accounting Officer further informed the Committee that by the closure of the Financial Year, the Ministry had not yet received full documentation for this direct payment and as such the amounts were not captured in the financial statements. However, an analysis of all direct payments is being done and these amounts will be captured in the current financial year 2023/2024 being the close out year for this project as it has come to an end.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The recommends that the Auditor General reviews 2023/24 financial statements to verify.

990. Unsupported University Scholarships

The African Institute set aside US $ 50,000 for a scholarship programme. The Project Assistant and other three (3) staff from other implementing agencies benefited from scholarship studies at the University of Cape Town. However, the amount of scholarship and details for the programme have not been provided for review or disclosed in the financial statements.

In the circumstances, the accuracy and completeness of the total payments for the scholarship programme could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that as way of capacity building, the CHEMOBS project in partnership with the University of Cape Town awarded 4 scholarships to four Kenyans to pursue a course in chemicals risks management.

The amount of 50,000 USD set aside for the scholarship paid directly to the University of Cape Town by the donor and was not sent to the ministry but rather deducted from the scholarship budget with approval from Africa Institute.

The expenditure could not be captured in the IFMIS because the grant Appropriation In Aid was not included in the budget.

As earlier mentioned, all the direct payments will be fully analyzed and reported in the current financial year 2023/2024 being the close out year for CHEMOBS project as it has come to an end.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

991. Budgetary Control and Performance

The statement of comparison of budget and actual amounts for the year ended 30 June, 2022 reflects final revenue budget and actual on comparable basis of Kshs.12,500,000 and Kshs.3,247,991 respectively, resulting in an underfunding of Kshs.9,252,009 or 74% of the budget. Further, the Board spent an amount of Kshs.5,194,098 out of the approved expenditure budget of Kshs.12,500,000, resulting in underexpenditure of Kshs.7,305,901 or 58% of the budget.

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

Submission by the Accounting Officer

It is true that there was underfunding and underspending as compared to the approved budget for FY 2021/2022. The project funds are disbursed by the donor in quarterly installments. There were delays in processing the funds requisitions sent to the donor which resulted to underfunding of the project.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

992. Special Deposit Account

The special deposit account movement schedule as disclosed in Note 11a reflects nil balances. However, a total of Kshs.8,500,841 was deposited into the account and an amount of Kshs.3,247,991 was withdrawn to finance project activities resulting to a closing balance of Kshs.5,252,850. These amounts were not disclosed in Note 11a as required by the Public Sector Accounting Standards board reporting template.

Submission by the Accounting Officer

It is true the special deposit account movement schedule reflected nil balances. This account is fully operated and maintained by The National Treasury.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

KENYA INSTITUTIONAL STRENGTHENING PROJECT PHASE XII (NO. UNEP/KEN/SEV/86/INS/64) PROJECT

REPORT ON THE FINANCIAL STATEMENTS

996. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.15,000,000 and Kshs.8,500,000 respectively resulting to underfunding of Kshs.6,500,000 or 43% of the budget. Similarly, the Project spent Kshs.9,148,353 against an approved budget of Ksh.15,000,000 resulting to under expenditure of Kshs.5,851,647 of 39% of the budget.

The underfunding and under expenditure affected the planned activities of the Project which in turn may have impacted negatively on the service delivery to the public.

Submission by the Accounting Officer

The Accounting Officer submitted that the project budgetary allocation for the year was Ksh.15,000,000 and the actual expenditure was Ksh.9,148,353.35. The under-expenditure was due to delayed disbursement of donor funds.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

998. Lack of Policy on Exchange Rate Used to Pay Salaries

During the financial year under review, the Project converted the salaries of three (3) officers using different prevailing exchange rates from the Central Bank of Kenya (CBK). However, Management did not provide a documented Policy guiding the criteria for determining exchange rate used for conversion of salaries from US Dollars to Kenya Shillings. Further, it is not clear how the Project treated the exchange gain or loss in the financial statements and who authorized the conversion of the exchange rates since none of the rates for the twelve (12) month period agreed with the CBK rates for the whole year under review.

In the circumstances, the efficiency and effectiveness of policy used to guide in payment of compensation of employees could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the project staff are supposed to be paid in USD. The amounts were converted into the functional currency using Government approved policy on exchange rates as per the standard template for preparing financial statements.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

KENYA GOLD MERCURY FREE ASGM PROJECT CREDIT NO. GEF/UNDP/GOK - 00108253

REPORT ON THE FINANCIAL STATEMENTS

999. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.150,000,000 and Kshs.90,121,621 respectively resulting to underfunding of Kshs.59,878,379 or 40% of the budget. Similarly, the Project spent Kshs.96,222,505 out of the budgeted amount of Kshs.150,000,000 resulting to an under expenditure of Kshs.53,777,495 or 36% of the budget.

The underfunding and under-performance affected the planned activities of the Project and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The Accounting Officer submitted that the under expenditure was due to delayed disbursement of funds.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

1000. Pending Bills

As disclosed in Note 12.1 under other important disclosures, the Project had pending accounts payables totalling to Kshs.692,606 as at 30 June, 2022. This amount remained outstanding as at the time of audit in the month of October, 2022. Management has not explained why the bills were not settled during the year when they occurred.

Failure to settle bills during the year in which they relate, distorts the financial statements and adversely affects the budgetary provisions for the subsequent year as they form a first charge. In addition, the Project may incur interest cost and penalties with the continued delay in payment.

Submission by the Accounting

The Accounting Officer submitted that the pending bill was due to delayed disbursement of funds. However, this pending bill was cleared in subsequent year 2022-2023.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer and that the bills had been settled.
ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1001. Unfulfilled Project Objectives

According to the statement of performance against Project's predetermined objectives as reflected in the financial statement, the objectives of the Project may not be attained fully for a duration of five (5) years as analyzed below: -

i) Objective 2. Establishing financing lending arrangements to provide loans for mercury free processing equipment is at 40%.
ii) Objective 3. Increasing capacity for mercury-free ASGM through provision of technical assistance, technology transfer and support for formalization is at 15%.
iii) Objective 4. Monitoring and Evaluation, awareness raising, capturing and disseminating experiences, lessons-learned and best practices is at 30%.

The project objectives ought to be at least at 50% while three (3) years have already lapsed since inception and two (2) years remaining to achieve 100% project objectives.

In the circumstances, the full realization of the planned Project's predetermined objectives could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

i) Objective 2: The objective has not been met because of the need to provide a guarantee fund to financial institutions which the project did not anticipate. The project has documented lessons learnt.
ii) Objective 3: Increasing Capacity for Mercury free ASGM through provision of technical assistance, technology transfer and support formalization. - The project has developed a technology handbook and procurement process for the Mercury free technologies is underway with the support of the donor (UNDP). The counties of Narok, Migori, Kakamega and Vihiga have allocated land to be utilized by the project for demonstrations of alternative technology.
iii) Objective 4: Monitoring and Evaluation, awareness raising, capturing and disseminating experiences, lessons learned and best practices. - The objective will be met. The project has undertaken various awareness raising campaigns in all project regions and developed a database for ASGM miners.

Committee Objectives and Findings

The Committee noted the explanation given by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Auditor General reviews the project in the subsequent audit.

SOUND CHEMICALS MANAGEMENT MAINSTREAMING AND UPOPS REDUCTION IN KENYA PROJECT (GRANT NO. P0099820)

REPORT ON THE FINANCIAL STATEMENTS

1003. Variances Between the Statement of Receipts and Payments and Statement of Comparison of Budget and Actual Amounts

The following inaccuracies were noted in the statements as shown below:

Item	Statement of Receipts and Payments (Kshs.)	Statement of Comparison of Budget and Actuals (Kshs.)	Variance (Kshs.)
Transfer from Government Entities	4,763,200	-	4,763,200

Compensation of Employees	7,588,275	3,898,276	3,689,999
Purchase of Goods and Services	86,817,409	85,744,208	1,073,201
Total Payments	**94,405,684**	**89,642,484**	**4,763,200**

In addition, the statement of comparison of budget and actual amounts has a casting error of Kshs.6,240,000 on the final expenditure budget column.

In the circumstances, the accuracy and completeness of the financial statements could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the under-casting error of Kshs.6,240,000 was corrected in the amended financial statement of the year ended 30 June 2022.

The variance of Kshs. 4,763,200 were funds credited to the project account during the year and were not added to statement of comparison of budget and Actuals because they were refund for Government payments erroneously paid from project account and not new transfers from the Government into the account.

Committee Observations and Findings

(i) The Committee observed that the reconciled records were not availed to the Office of the Auditor General during the audit period; and

(ii) The Accounting Officer failed to adhere to the required reporting formats provided under Regulation 101 of the Public Finance Management (National Government) Regulations, 2015;

Committee Recommendations;

The Committee reprimands the Accounting Officer for failing to adhere to the required reporting formats provided under Regulation 101 of the Public Finance Management (National Government) Regulations, 2015.

1004. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.137,000,000 and Kshs.89,661,416 respectively resulting to underfunding of Kshs.47,338,584 or 35% of the budget. Similarly, the Project spent Kshs.89,642,484 against an approved budget of Kshs.137,000,000 resulting to an under expenditure of Kshs.47,357,516 or 35% of the budget.

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

Submission by the Accounting Officer

The Accounting Officer submitted that the under absorptions of project funds was mainly attributed to procurement bottlenecks which were beyond the control of the Ministry nor the Government of Kenya. Due to COVID 19, the responses to tenders floated by Government did not attract capable firms which led into bid cancellation. The Accounting Officer gave an example of Ashpits worth Kshs. 15M could not be constructed because the firm that worn the tender decided to withdraw. The Accounting Officer also submitted that the time was short to re-issue the tender since the project was ending in Dec 2021. Hence the budget could not be absorbed fully.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

SYSTEM FOR LAND BASED EMISSIONS AND ESTIMATION IN KENYA (SLEEK) PROJECT

REPORT ON THE FINANCIAL STATEMENTS

1007. Presentation and Inaccuracies in the Financial Statements

The financial statements for the year ended 30 June, 2022 contain the following anomalies:

i) The statement of receipts and payments reflects, receipts from Government entities amount of Kshs.711,394 and cumulative to date amount of Kshs.3,133,494. However, the previous years' audited financial statements reflected nil transfers from Government entities and cumulative to date balances resulting to unexplained variance in the cumulative amounts to date of Kshs.2,422,000.
ii) The statement of receipts and payments reflects nil amount of other grants, transfers and payments for the year under review, and prior years' but reflects cumulative to date amount of Kshs.2,422,100 resulting to unexplained cumulative to date other grants amount of Kshs.2,422,100.
iii) Note 5 to the financial statements on compensation of employees reflects Nil balance personal allowances paid as part of salary for the year under review and cumulative to date amount of Kshs.11,645,568. However, the previous year's audited financial statements reflect Kshs.12,325,000, thus resulting to unreconciled and unexplained variance of Kshs.679,431.
iv) Note 5 to the financial statements on compensation of employees reflects Nil balance on other personnel payments for the year under review and cumulative to date amount of Kshs.3,352,768. However, the previous year audited amount was Kshs.3,360,268, thus resulting to unreconciled and unexplained variance of Kshs.7,500.

In the circumstances, the accuracy and completeness of the financial statements for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

i) The variance of Kshs. 2,422,000 was mainly a transfer which had been received in 2016/2017 which had been erroneously omitted in the previous statement. The omission was corrected in the financial statement of 2021/2022.
ii) The Ksh.2,422,100 reflected in the financial statements for the year 2016/2017 has been omitted in the consecutive statements through an oversight. However, this figure has been included in the year under review to correct the error.
iii) It is true note 5 on compensation of employees reflects a nil balance of other personnel allowances paid as part of salary for the current period and a cumulative of Ksh. 11,645,568. whereas previous year's balance was Kshs. 12,325,000 resulting to a variance of KS. 679,431.10. The figure of Kshs. 12,325,000 in the previous year's reports was overstated by Kshs. 679,431.10 and the correction done in the current year. However, this explanation was erroneously omitted in the financial statements. The same has been disclosed in the amended financial statements.
iv) The compensation of employees for the financial year ended 30th June 2021 amount of Kshs. 3,360,268 was over-casted by Kshs. 7,500. The total personnel payments to date add up to Ksh. 3,352,768. The total personnel payments up to financial year 2017/2018 was Ksh. 2,438,968, Ksh. 300,000 for 2018/2019 and Ksh. 613,800 for 2019/2020 adding up to Ksh. 3,352,768. Payment vouchers were availed for audit review.

Committee Observations and Findings

The Committee noted that the Accounting Officer belatedly reconciled the statements.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide support documents during audit contrary to the provisions of Section 68(2)(k) of the PFM Act 2012.

1008. Overstatement of Payments

The statement of receipts and payments reflects compensation of employees of Kshs.711,394 as disclosed in Note 5 to the financial statements which includes basic salaries to permanent employees of Kshs.711,394. However, the schedule and payment vouchers provided for audit supports an amount of Kshs.680,071, thus resulting to unreconciled and unexplained variance of Kshs.31,323.

In the circumstances, the accuracy and completeness of compensation of employees amounting to Kshs.711,394 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the payment vouchers amounting to Ksh. 31,323 were not availed to auditors at the time of audit review. They had been mixed up with others. However, the same were traced and availed for audit review.

Committee Observations and Findings

The Committee noted that the Accounting Officer belatedly availed support documentation.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to provide support documents during audit contrary to the provisions of Section 68(2)(k) of the PFM Act 2012.

1009. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.1,500,000 and Kshs.711,394 respectively resulting to an underfunding of Kshs.788,606 or 43% of the budget. Similarly, the Project spent Kshs.711,394 against an approved budget of Kshs.1,500,000, resulting to an underexpenditure of Kshs.788,606 or 53% of the budget.

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

Submission by the Accounting Officer

The Accounting Officer submitted that reasons for under absorption is that not all pending claims were cleared for payment due to lack of renewal of employment contract for the project staff hence payment could not be made.

Committee Observations and Findings

i) The Committee noted the explanation given by the Accounting Officer.
ii) The Committee found that the matter was resolved.

1010. Undrawn External Assistance

Note 12.2 under other important disclosures to the financial statements reflects undrawn external assistance of Kshs.21,705,441. Management indicated that the project is complete. However, it was not clear or explained how the project was completed with an undrawn balance of Kshs.21,705,441 or 37% of the total funding.

In the circumstances, the completion of the project as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the project has undrawn balance of Kshs. 21,705,441 to date. This is due to the fact that the project ended in December 2019 before making a requisition for the remaining funds. The funds cannot be accessed now since the project lapsed.

Committee Observations and Findings

The Committee observed that the Ministry failed to make requisitions for the project funds at the right time pointing to laxity.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to perform duties bestowed upon the office.

LAKE VICTORIA ENVIRONMENTAL MANAGEMENT PROJECT PHASE III (LVEMP) PROJECT PREPARATORY ADVANCE NO. V1570 - KE

REPORT ON THE FINANCIAL STATEMENTS

1013. Unauthorised Expenditure and Sustainability of Phase III of the Project

The statement of receipts and payments and Note 6 to the financial statements reflects purchase of goods and services expenditure amounting to Kshs.8,234,418 which includes domestic travel and allowances, printing, advertisement and information supplies and other operating expenses amounting to Kshs.3,240,064, Kshs.1,206,452 and Kshs.1,674,756, respectively. However, the expenditure was not supported by an approved annual work plan.

Further, as reported in the previous year, the Project received Kshs.10,000,000 being the Government of Kenya counterpart funding. The International Development Agency (IDA) through its letter dated 2 October, 2019 addressed to The National Treasury and the Ministry of Environment and Forestry had communicated its decision to stop the Project activities and funding as it reviews its regional integration strategy in Sub-Sahara Africa.

In the circumstances, the validity of the purchase of goods and services expenditure amounting to Kshs.8,234,418 and the ability of the Project to continue to sustain its services is doubtful.

Submission by the Accounting Officer

The Accounting Officer submitted that this was resolved in the Public Accounts Committee recommendations for the Financial Year 2020/2021.

Committee findings and observations;

i) The Committee noted that the matter was resolved in its 2020/2021 report.
ii) The Committee found that the matter was resolved.

1014. Pending Accounts Payable

Notes 12.1 and 12.2 on other important disclosures to the financial statements reflects pending accounts payables and pending staff payables of Kshs.326,199 and Kshs.13,572,000 due to suppliers and staff respectively all relating to 2019/2020 and earlier years. However, Management did not provide any reason for non-payment of the bills or explain how the bills will be cleared given that the project is no longer funded by the donor.

Failure to settle bills during the year to which they relate distorts the financial statements and adversely affects the budgetary provisions for the subsequent year which they form a first charge.

Submission by the Accounting Officer

The Accounting Officer submitted that the bills relating to suppliers of Kshs.326,199 have since been settled. He further submitted that the staff related to top ups for seconded staff from the Ministry had not been paid by the time the project closed. It has not been possible to pay the top ups due to budgetary constraints.

Committee Observations and Findings

The Committee noted that the pending bills relating to suppliers had since been cleared while staff top ups were yet to be cleared.

Committee Recommendation

The Committee recommends that Accounting Officer settles staff top-ups within three (3) months of adoption of this report.

NATIONAL ACTION PLAN ON ARTISANAL SMALL – SCALE GOLD MINING PROJECT

REPORT ON THE FINANCIAL STATEMENTS

1019. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final budget and actual on comparable basis of Kshs.8,214,520 and Kshs.2,902,786 respectively, resulting to an underfunding of Kshs.5,311,734 of 65% of the budget. Similarly, the Project spent Kshs.2,755,860 out of the budgeted amount of Kshs.8,214,520 resulting to an underexpenditure of Kshs.5,458,660 or 66% of the budget.

The underfunding and underperformance affected the planned activities of the Project and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The Accounting Officer submitted that it was true that the project received Kshs.2,902,786 out of a budgeted expenditure amount of Kshs.8,214,520 resulting to underfunding of Kshs.5,311,734. This was attributed to remaining funds not disbursed by the donor.

Further, the budget for this project was factored during Supplementary II and approved by parliament in June, 2022 hence there was inadequate time to absorb all the funds. The project spent Kshs.2,755,860 out of a total of Kshs.2,902,786 received from the National Treasury which is 95% of the available fund.

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

KENYA SPECIAL PROJECT ON BRSM AND SAICM

REPORT ON THE FINANCIAL STATEMENTS

1026. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects total revenue budget of Kshs.15,000,000 against actual receipts of Kshs.9,320,883 resulting to underfunding of Kshs.5,679,116 or 38% of the budget. Similarly, the statement reflects approved expenditure

budget of Kshs.15,000,000 against actual expenditure of Kshs.10,292,266 resulting to underexpenditure of Kshs.4,707,733 or 31% of the budget.

The underfunding and underexpenditure affected the planned activities of the Project and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The Accounting Officer submitted that the project estimated receipt from the donor of Ksh.10,287,500 and Kshs.5,000,000 from GOK. The shortfall from the donor estimates was Ksh.966,617 which is 9.4% of the budget.

The Accounting Officer further submitted that the GOK amount was not remitted to the project due to inadequate exchequer funding from the National Treasury.

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

STRENGTHENING DROUGHT RESILIENCE FOR SMALL HOLDER FARMERS AND PASTORALISTS IN THE IGAD REGION PROJECT NO.03/DRESS-EA/07/OSS-KE/20

REPORT ON THE FINANCIAL STATEMENTS

1030. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects budgeted and actual receipts of Kshs.80,000,000 and Kshs.2,306,912 respectively resulting to underfunding of Kshs.77,693,087 or 97% of the budget. Similarly, the statement reflects budgeted expenditure of Kshs.80,000,000 against actual expenditure of Kshs.729,600 resulting to underexpenditure of Kshs.79,270,400 or 99% of the budget.

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

Submission by the Accounting Officer

The reasons for under absorption of project funds in the financial year 2021/2022 were:

i) The project's first budget was captured in supplementary budget which was approved in March, 2022
ii) The National project Steering Committee (NPSC) approved the work plan and procurement plan late in the financial year i.e 27th April, 2022. This was to trigger the disbursement of the project activity implementation funds.
iii) The long process of project funds requests further delayed the implementation of the project activities as this was to be approved by donor. Until the end of the financial year, the project concentrated on project start-up activities. Being a new project, the main project activities will begin in the financial year 2022/2023.

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1031. Delayed Release of Project Funds

The statement of receipts and payments and Note 2 to the financial statements reflects receipts amount of Kshs.2,306.912. The amount was transferred by The National Treasury to the Ministry's development bank account on 28 April, 2022. However, the Ministry transferred the amount to the project account on 5 July, 2022 after the close of the financial year. No reason was given for the delay in transferring the funds before the close of the financial year.

Delay in release of Project funds may result in low absorption of the budget and this may affect the development programmes of the Project and provision of services to the public.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

It's true that the receipts of Kshs.2,306.912.75 was transferred to the project bank account after the closure of the financial year 2021/2022. A payment of Ksh2,306,912.75 transferring the funds to the project account was prepared on 22nd June, 2022 but due to delays in opening of the project account, the funds were transferred to the project account on 5th July 2022. These transactions were recorded in our books of accounts as transactions for financial year 2021/2022.

Bank reconciliation statement for the project account was prepared as at 30th June, 2022.

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

KENYA ENABLING ACTIVITIES FOR HFC PHASE - DOWN PROJECT (GRANT NO. UNEP/KEN/SEV/81/TAS/01+)

REPORT ON THE FINANCIAL STATEMENTS

1035. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects a final expenditure budget of Kshs.5,500,000 against actual expenditure of Kshs.4,021,800 resulting to underexpenditure of Kshs.1,478,200 or 27% of the budget.

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

Submission by the Accounting Officer

The Accounting Officer submitted that the project budgetary allocation for the year was Ksh.5,500,000 and the actual expenditure was Kshs.4,021,800. The under-expenditure was due to delayed disbursement of donor funds.

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1036. Failure to Maintain Project Bank Account and Cash Book

During the year under review, the project did not maintain a separate bank account and cash book but relied on the Ministry's development cash book for recording its transactions. This is contrary to Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015 which states that for the purpose of disbursement of project funds, there shall be opened and maintained a project account for every project at Central Bank of Kenya unless it is exempted by the Cabinet Secretary, in writing, into which all funds shall be kept and such an account shall be known by the name of the project for which it is opened and each project shall maintain only one bank account.

In the circumstances, the Project Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer agreed with the auditor's findings. He submitted that his is due to the fact that the project started its activities late towards the end of the financial year and it was not possible to open an account in June.

He further submitted that an excel cash book that records all the expenditure for the project was maintained and provided a sample to the Committee.

Committee Observations and Findings

The Committee observes that the Accounting Officer was in breach of Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015.

Committee Recommendations

The Committee reprimands the Accounting Officer for failing to open the project bank account as provided for in law.

OTHER DONOR FUNDED PROJECTS IMPLEMENTED BY AGENCIES UNDER THE MINISTRY OF ENVIRONMENT AND FORESTRY

GREEN ZONES DEVELOPMENT SUPPORT PROJECT PHASE II (CREDIT NO.P.KE-AAD-005) - KENYA FOREST SERVICE

EPORT ON THE FINANCIAL STATEMENTS

1039. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.740,000,000 and Kshs.716,864,384 respectively resulting to an underfunding of Kshs.23,135,616 or 3% of the budget. Similarly, the statement reflects actual total

expenditure of Kshs.696,323,527 against a budget of Kshs.740,000,000 resulting in underexpenditure of Kshs.43,676,473 or 6% of the budget.

The underfunding and under performance affected the planned activities of the Project and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The Accounting Officer submitted that the Project received EURO 1,869,371.52 from African Development Bank with value date of 1 March 2022 for project activities implementation. Consequently, the projects requested for the entire tranche of EURO 1,869,371.52 vide its letter to the PS, Ministry of Environment & Forestry Ref No KFS/GZDSP II/10 /VOL.1/22 dated 1 March 2022. However, the National Treasury released a reduced amount of EURO 1,589,200 vide letter REF EA/FA/78/7/028/D dated March 2022. The balance was subsequently released to the project in 19th August 2022 as per Ref: EA/FA/78/7/028/.

With regards to under-absorption, the main reason was due to procurement contracts that were entered during the year under review and were running beyond the financial year. Notably is the contract for purchase of vehicles of Kes. 46,943,925 which was entered on 20 June 2022 and was to be completed in three months (September 2022).

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

1040. Unresolved Prior Year Matter

In the audit report of the previous year, a paragraph on over expenditure on Motor Vehicle Insurance was raised under Report on Lawfulness and Effectiveness in Use of Public Resources. However, the Management has not resolved the issue nor given any explanation for failure to adhere to the provisions of The National Treasury year end closing procedures for the financial year 2021/2022.

In the circumstances, Management was in breach of The National Treasury guidelines.

Submission by the Accounting Officer

Paragraph	Issue	PAC Recommendation	Action by Management
924	Over Expenditure on Motor Vehicle Insurance.	The Committee admonishes the Accounting Officer and recommends that he formalizes the payment within three (3) months of adoption of this report.	The over-expenditure on Motor Vehicle Insurance was due to the project spending Kshs.20, 181,077 on vehicles insurance in two separate payments of Kshs. 5,723,905 and Kshs. 14,457,172 respectively both for comprehensive cover for insurance vehicles. These are detailed below; The first payment of Kshs. 5,723,905 was a pending debt from the financial

Paragraph	Issue	PAC Recommendation	Action by Management
			year 2019/2020. This debt was paid on18th September 2020. The second payment of Kshs.14, 457,172 was the value of comprehensive insurance of new project vehicles, and the same had to be accommodated in the budget to cover project vehicles as they implement planned activities in line with the work plan. The Payment was done on 09th July 2021.

Committee findings and observations;

The Committee noted that its report had since been adopted by the House.

Committee recommendation;

The Committee recommends that the Accounting Officer submits a status report on implementation of its recommendations within three (3) months of adoption of this report.

KENYA WATER TOWERS PROJECT (GRANT NO. FED/2016/375-958) – KENYA FOREST SERVICE

REPORT ON THE FINANCIAL STATEMENTS

1045. Unresolved Prior Year Issues

In the audit report of the previous year, several issues were raised in the report on the financial statements. However, Management did not resolve the issues or provide the status of progress on follow up of auditor's recommendations as provided by the Public Sector Accounting Standards Board template and The National Treasury Circular Ref.AG.3/88/Vol.III (12) of 11 May, 2022.

In the circumstances, Management was in breach of The National Treasury guidelines.

Submission by the Accounting Officer

The Accounting Officer submitted that there were several issues from the audit of the previous year that remained unresolved during the year under review as per the table below;

Paragraph	Issue	PAC Recommendation	Action by Management
927	Failure to Close Project	The Committee recommends that the Accounting Officer ensures that the audit process is concluded so as	The Project was closed in August 2023.

		to close the project within three (3) months of adoption of this report by the House.	
928	Unsupported Receipts	The Committee reprimands the Accounting Officer for failing to transfer funds to the project account as required under regulation 76 of the PFM National Government Regulations 2015, and submits a report to the Committee in three (3) months of adoption of this report as to whether the amount was eventually transferred.	The Project was closed in August 2023 and Management could not transfer the funds since the expenditure had already happened in the KFS main development bank account. The Project bank accounts are already closed.

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

1046. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects total revenue budget of Kshs.5,000,000 against actual receipts of Kshs.2,500,000 resulting to revenue shortfall of Kshs.2,500,000 or 50% of the budget. Similarly, the statement reflects approved expenditure budget of Kshs.5,000,000 against actual expenditure of Kshs.1,351,617 resulting to underexpenditure of Kshs.3,648,384 or 73% of the budget.

The underfunding and the underexpenditure affected the planned activities of the Project and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The Accounting Officer submitted that the project was suspended from January 2018 and later terminated by the donor in October 2020. The funding associated to the expenditure was meant to help in lifting the suspension from the donor.

The underfunding was attributed to delay in funding from the National Treasury. This in return affected implementation of the planned activities.

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

CAPACITY DEVELOPMENT PROJECT FOR SUSTAINABLE FOREST MANAGEMENT IN KENYA (CADEP GRANT NO.22) – KENYA FOREST SERVICE

REPORT ON THE FINANCIAL STATEMENTS

1049. Unsupported Direct Purchase of Goods and Services

The statement of receipts and payments and as disclosed in Note 7b to the financial statements reflects direct purchase of goods and services of Kshs.116,000,000. However, the documents in support of the direct purchase of goods and services were not provided for audit.

In the circumstances, the accuracy, completeness and validity of the expenditure of Kshs.116,000,000 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the donor (JICA) does not provide details of the direct purchases done by its officers and reporting of this expenditure is only done for disclosure purposes. The Service only receives the said goods and services with the requisite specifications and acknowledges receipt as per the work plan, and JICA (donor) does not share information on how the goods and services were procured but avails the required goods and service at the specified time and place. The Service does not operate separate donor bank account and does not receive the donor funds for the project. This is the procedure JICA follows across the board in all grant related Technical Cooperation Projects. The project is now closed.

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

1050. Unresolved Prior Year Audit Issue

In the audit reports of the previous year, a paragraph on unsupported direct purchase of goods and services was reported. However, Management has not resolved the issue.

In the circumstances, the Management was in breach of The National Treasury guidelines.

Submission by the Accounting Officer

The Accounting Officer informed the Committee that the unresolved prior issue related to unresolved prior year Issue from the audit of the previous year that remained unresolved during the year under review as per the table below;

Paragraph	Issue	PAC Recommendation	Action by Management
939	Unsupported Direct Purchase of Goods and Services	The Committee recommends that the Accounting Officer obtains the documents from the donor and avails	This is the procedure JICA follows across the board in all grant related Technical Cooperation Projects.

		them to the Auditor General within three (3) months of adoption of this report.	The project is now closed.

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

INTERNATIONAL PARTNERSHIP PROGRAMME – FOREST 2020 PROJECT - KENYA FOREST SERVICE

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1054. Late Submission of Financial Statements

The Management of National Environment Management Authority submitted the financial statements for the Green Growth and Employment Thematic Programme to the Office of Auditor General on 13 October, 2022 which is 13 days after the statutory deadline of 30 September, 2022. This is contrary to Section 47(1) of the Public Audit Act, 2015 which states that the financial statements required under the Constitution, the Public Finance Management Act, 2012 and any other legislation, shall be submitted to the Auditor-General within three months after the end of the fiscal year to which the accounts relate.

In the circumstance, the Project Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that management has always endeavoured to submit to the Auditor-General financial statements within three months after the end of the financial year to which the accounts relate. The submission of the Annual Report and Financial Statements of Green Growth and Employment Programme to the Office of Auditor General on 13th October 2022 was an isolated case. This was mainly due to the fact that the Programme ended on 30th of June 2021 as per program agreement, a Closure and Regulatory Audit was done as required.

It was not in our understanding that further Financial Statements were to be submitted as the program had ended and the audit report of the year ended June 2021 availed to the Donor as per paragraph 11.8 of the Development Engagement Document.

It is therefore upon the advice of the Auditors undertaking the Audit that the Authority prepared and submitted the Project Financial Statements to enable the Auditors carry out the Audit.

Committee Observations and Findings

The Committee observed that Accounting Officer failed to submit the financial statements within the timeline provided under sections 68 and 81 of the PFM Act, 2012.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to comply with sections 68 and 81 of the PFM Act, 2012.

1055. Acquisition of Non-Financial Assets

1055.1. Irregularities in Procurement of Laptops

The statement of receipts and payments and as disclosed in Note 4 to the financial statements reflects an amount of Kshs.7,843,131 in respect to acquisition of non-financial assets which includes Kshs.277,713 relating to purchase of office furniture and general equipment which further includes Kshs.248,345 which was paid to two service providers for supply of laptops. However, the Laptops were delivered on 22 June, 2021 but the inspection and acceptance were carried out on 15 July, 2021 which is twenty-three (23) days after delivery. This is contrary to Section 48(3)(a) of the Public Procurement and Asset Disposal Act, 2015 which states that the inspection and acceptance committee shall immediately after the delivery of the goods, works or services inspect and where necessary, test the goods received.

In the circumstances, the Project Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

i) The delay in the inspection of the laptops was attributable to some of the members of the Inspection and Acceptance Committee being engaged in other work-related activities outside the office when the laptops were received on the 22nd of June 2021.
ii) It was therefore not possible to immediately inspect the laptops upon receipt as recommended.
iii) The Management confirms that as a requirement, the receiving officer has to confirm the goods are as per the specifications provided and thus there was no risk of Receipt and custody of goods that do not meet user department and the entity specifications.
iv) The Acceptance Committee later inspected the laptops and affirmed that they were genuine and met the user department specifications.

Committee Observations and Findings

The Committee noted that members of the acceptance committee should have been recalled to conduct the exercise.

Committee Recommendation

The Committee reprimands the Accounting Officer for acting in breach of Section 48(3)(a) of the Public Procurement and Asset Disposal Act, 2015.

1055.2. Irregularities in Procurement of Refurbishment of Buildings

The statement of receipts and payments and as disclosed in Note 4 to the financial statements reflects an amount of Kshs.7,843,131 in respect to acquisition of non-financial assets which includes Kshs.7,565,418 relating to refurbishment of buildings. However, the ad hoc opening committee and evaluation committee were not appointed in writing by the Accounting Officer. This is contrary to Regulations 91(2)(a) and (3) of the Public Procurement and Asset Disposal Regulations, 2020 which states that the Accounting Officer or such other person delegated in writing by that accounting officer shall, and for the purposes of the procurement process, appoint an ad hoc opening committee in accordance with section 78 and the ad hoc evaluation committee shall carry out the evaluation in accordance with the Act and these Regulations.

In the circumstance, the Project Management was in breach of the law.

Submission by the Accounting Officer

The Authority was guided by the provisions of the Public Procurement and Asset Disposal Act 2015 Sub-section 105 and 106 on the procedure of request for Quotations.

The suppliers selected were of the required experience and skills and successful quotations were the ones with the lowest prices and met the requirements set out in the request for quotations.

With this in mind, there was no official appointment of an ad hoc opening committee and evaluation committee since the provisions of Public Procurement Act 2015 sub section 105 &106 did not require such and the authority was in transition to the new Regulations 2020

As per the Auditor's guidance on the change in regulations that requires that quotations be opened by an officially appointed ad hoc opening committee and evaluated by an evaluation committee, the Management took cognizance of this fact and going forward from then has since adopted the recommendation in the Regulations 2020.

Committee Observations and Findings

The Committee noted the admission by the Accounting Officer.

Committee Recommendation

The Committee reprimands the Accounting Officer for acting contrary to Regulations 91(2)(a) and (3) of the Public Procurement and Asset Disposal Regulations, 2020.

INTEGRATED PROGRAMME TO BUILD RESILIENCE TO CLIMATE CHANGE AND ADAPTIVE CAPACITY OF VULNERABLE COMMUNITIES IN KENYA - NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

1058. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects total final expenditure budget of Kshs.524,800,990 and actual payments of Kshs.140,326,715 resulting in budget under expenditure of Kshs.384,474,275 or 73%. It was noted that acquisition of non-financial assets reflected the highest budget underutilization of 78% or Kshs.379,169,257.

In the circumstances, the vulnerable communities in Kenya did not receive services equivalent to Kshs.384,474,275 reflected as under expenditure for the year ended 30 June, 2022.

Submission by the Accounting Officer

The Accounting Officer submitted that low absorption was attributable to the following causes;

i) The project experienced delayed absorption mostly due to long procurement processes.
ii) Disruptions by the COVID-19 Pandemic.

iii) However, the management centralized the procurement processes and most of the water infrastructure tenders were awarded and the contractors were able complete the works before the end of the Programme.
iv) Management provided additional staff to the Programme Unit to enhance capacity to deliver the project before it ended.

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

1059. Unresolved Prior Year Audit Matters

There were issues raised in the audit report for 2020/2021 financial year of which no report or recommendations from the Project Management and oversight bodies were submitted for audit verification and clearance. The issues remain unresolved and Management has not given satisfactory explanation for delay in resolving them.

Submission by the Accounting Officer

The Accounting Officer submitted that management appeared before the Committee in July 2022 and clarified on the issues raised by the Auditor. A large number of the issues were resolved as per the report that was provided.

Committee findings and observations;

The Committee noted that its report for FY 2020/2021 had since been adopted by the House.

Committee recommendation;

The Committee recommends that the Accounting Officer avails a status report of implementation of its recommendations within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1060. Unsatisfactory Construction of Projects

The statement of receipts and payments Note 6 to the financial statements reflects acquisition of non-financial assets of Kshs.106,731,733 which relate to construction of civil works. The following observations were made:

1060.1. Projects in Laikipia and Kajiado Counties

Physical verification carried out in October, 2022 on various projects revealed some incomplete projects, omissions of items or works and change in bill of quantities specification all totalling to Kshs.1,551,289. This is contrary to Regulations 138(3) and (5) of Public Procurement and Asset Disposal Regulations, 2020.

Submission by the Accounting Officer

The Accounting Officer submitted the following status report;

	Project	Observation	Value of Incomplete/Omitted Works (Kshs)	Remark
1	Adaptation Village Mashuru	No sign board	50,000	The signage board was installed.
		The sanitation block was not constructed.	282,689	The Sanitation block was not part of works for Mashuru site.
		30gauge pre-painted box profile was fixed instead of pre-painted 28 gauge box profile	336,000	The Contractor was notified to correct the defect. The Contractor has not been paid the retention amount for the Project.
		One (1) double door was fixed instead of three (3) double door as per the bill of quantities	40,000	The contract is a measured works contract hence the contractor was only paid for works done.
	Sub Total		**708,689**	
2	Mosiro Adaptation Village	Basic hall painting not done	30,600	The painting has since been done
		One (1) double door was fixed instead of three (3) double door as per the bill of quantities	40,000	The contract is a measured works contract hence the contractor was only paid for works done.
		30gauge pre-painted box profile was fixed instead of pre-painted 28gauge box profile G.I roofing as indicated in the bill of quantities .	336,000	The Contractor was notified to correct the defect. The Contractor has not been paid the retention amount for the Project.
		Five (5) strand galvanized barbed wire fencing was		At the time of audit, the works were not complete. This has however been

		fixed instead of six (6) strand galvanized barbed wire		completed but the works are pending final inspection as they are part of works mentioned above.
	Sub Total		**406,600**	
3	Adaptation Village – Leshugu Secondary School	Only 26 Solar Panels installed instead of 30 solar panels as per BQ @ 15,000 each	60,000	The contractor provided 26 panels of 365 watts as which give more power than 30 panels of 260 watts at no extra cost.
		One (1) double door was fixed instead of three (3) double door as per the bill of quantities	40,000	The contract is a measured works contract hence the contractor was only paid for works done.
		30gauge pre-painted box profile was fixed instead of pre-painted 28gauge box profile G.I roofing as indicated in the bill of quantities.	336,000	The Contractor was notified to correct the defect. The Contractor has not been paid the retention amount for the Project.
	Sub Total		**436,000**	
	Sub Total		**1,551,289**	

Committee Observations and Findings

The Committee noted the submission of the Accounting Officer.

Committee Recommendation

The Committee recommends that the Auditor General confirms status in subsequent audit.

1060.2. Establishment of Seven (7) Adaptation Villages in Kisumu and Homa Bay Counties

The construction of civil works expenditure includes payments amounting to Kshs.21,727,147. The cumulative amount spent as at 30 June, 2022 amounts to Kshs.34,367,798. The contract price for the construction of seven (7) Adaptation Villages in Kisumu and Homa Bay Counties amounted to Kshs.45,253,901 with each Adaptation Village costing Kshs.6,464,843.

The scope of work per adaptation village included drilling, casting, gravel packing and test pumping of the borehole, equipping of the boreholes, contraction of elevated steel pressed water tank, construction of water kiosk, all related civil and plumbing works, sanitation facility and fencing of the land to secure the borehole, sanitation facility and demonstration site. However, physical verification exercise carried out in October, 2022 revealed some works were not done, some project activities were not labelled and incomplete works. This is contrary to Regulations 138(3) and (5) of Public Procurement and Asset Disposal Regulations, 2020.

Submission by the Accounting Officer

The Accounting Officer submitted that all works have since been completed.

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

1060.3. Construction of Flood Protection Dykes along River Asao

In addition, the construction of civil works expenditure includes an amount of Kshs.11,724,710 paid to a firm for construction of flood protection dykes and installation of flood warning system. The total cost for the contract was Kshs.35,087,664 and the cumulative amount paid as at 30 June, 2022 was Kshs.21,448,375 comprising of Kshs.9,723,664 paid previously and Kshs.11,724,710 paid in 2021/2022 financial year. However, physical verification carried out in October, 2022 revealed some incomplete works and change in specifications.

The following observations were also noted:

i) The dyke was not constructed in accordance with the bill of quantities specifications since it was constructed on an existing road therefore there was no site clearance and excavation works done with estimated cost of Kshs.5,493,376. Further, the dyke length was 3.6 kilometers instead of 4 kilometers.
ii) Slope protection by grassing on both sides of the embankment amounting to Kshs.1,994,040 was not done, while the crest width did not match the bill of quantities specifications of 1.7 meters.
iii) The control room and installation of flood warning system amounting to Kshs.500,000 were not constructed.
iv) One (1) sign board was erected instead of two (2) as indicated in the bill of quantities with each signboard costing Kshs.116,000.
v) Tender documents for other bidders were not provided for audit review hence not possible to ascertain if the procurement process was fair, equitable, transparent, competitive and cost-effective.

This is contrary to Regulations 138(3) and (5) of Public Procurement and Asset Disposal Regulations, 2020.

In the circumstances, value of money of the above projects could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

i) The dyke constructed as per design were 1.760 Km on the Right side of the river and 1.920 km on the left side which totals to 3.680Km which was verified on site.
ii) The dyke is designed to have a bottom width of 12m and a 2m wide gravel road at the crest. The original ground had a small path with vegetation encroachment. Vegetation was cleared and the top 200 mm soil removed to anchor the dyke before commencement of filling works.
iii) Slope protection by grassing on both sides has been done.
iv) Construction of control room and installation of flood warning system was done and the flood warning system is now operational.
v) The contractor erected two but at the time of site verification, one had been vandalized. It was however replaced and maintained to the end of the project.

The Tender documents have since been provided for audit review.

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

1061. Lack of Detailed Breakdown of the Annual Procurement Plan

The National Environment Management Authority annual procurement plan for the 2021/2022 financial year reflects procurement of goods and services for the executing entities on the implementation of Adaptation Fund and GCF Projects of Kshs.631,557,600. However, detailed breakdown of goods works and services to be procured and value of each package of goods, works and services under both Projects were however not reflected in the annual procurement plan. This is contrary to Regulations 41(a), (f) and (g) of Public Procurement and Asset Disposal Regulations, 2020.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that management provided the detailed breakdown of goods, works and services that were to be procured and value of each package of goods, works and services in both the projects in the annual procurement plan as per the Auditor's Recommendation.

Committee Observations and Findings

The annual procurement was not provided during audit contrary to Regulations 41(a), (f) and (g) of Public Procurement and Asset Disposal Regulations, 2020.

Committee Recommendation

The Committee reprimands the Accounting Officer.

1062. Lack of Approved Budget

The statement of comparison of budget and actual amounts for the year ended 30 June, 2022 reflects original budget of Kshs.453,897,204 and final budget balance of Kshs.524,800,990. However, the Management did not provide an approved budget to support the balances and the

Authority's Board approval minutes. This is contrary to the Regulation 31(1) of Public Finance Management (National Government) Regulations, 2015.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that an approved budget and Board minutes have since been provide for audit review.

Committee Observations and Findings

The Committee observed that an approved budget was not made available during audit contrary to Regulation 31(1) of Public Finance Management (National Government) Regulations, 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer.

1063. Incomplete Annual Work Plan

The 2021/2022 annual work plan reflects total cost of Kshs.76,000,000 on procurement of goods, works and service, workshops and reports, meetings and workshops for Adaptation Fund project. However, the annual work plan did not provide details of specific activities and timelines. This is contrary to Section 4.3 of National Environment Management Authority Financial Management and Procurement Manual which states that it is the responsibility of the Authority Management to ensure that detailed annual work plans and budgets are prepared and Section 7.1.1 of the NEMA Finance Management Manual.

In the circumstances, Management was in breach of the Authority's financial management and procurement manual.

Submission by the Accounting Officer

The Accounting Officer submitted that the detailed and complete annual work plan was provided for audit review.

Committee Observations and Findings

The Committee observed that an annual work plan was not made available to the OAG during audit.

Committee Recommendation

The Committee reprimands the Accounting Officer.

1064. Irregular Expenditure on Management Fees

The statement of receipt and payments and as disclosed in Note 5 to the financial statements reflects cumulative to date expenditure on purchase of goods and services totalling to Kshs.99,835,456. The expenditure exceeds the 8.5% maximum expenditure on management fees allowed by the financing agreement of USD 720,216.65 or Kshs.75,622,748 converted at a rate of Kshs.105, by Kshs.24,212,708. This is contrary to Paragraph 8.0.1 of Financing Agreement

between the Adaptation Fund Board and National Environment Management Authority (NEMA), signed on 4 November, 2014.

In the circumstance, Management was in breach of the Financing Agreement.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

i) According to the financing agreement the administration fees was pegged at 8.5% of the Project cost.
ii) The Project cost was USD 9,998,238. The Administration fees as at 30th June 2022 was computed as follows; USD 9,998,238*8.5%*126=107,000,000. (At the prevailing exchange rate of Kshs.126 per 1 USD)
iii) The cumulative administrative expenditure as at 30th June 2022 amounted to Kshs.99, 835,456 which was within the allowable Management fee of Kshs.107,081,000.
iv) Management therefore did not exceed the 8.5% management fees on running of the project.

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

NEMA-GCF PROJECT PREPARATION FACILITY: "DEVOLVED CLIMATE CHANGE GOVERNANCE TO STRENGTHEN RESILIENCE OF COMMUNITIES IN TARGET COUNTIES" (PROJECT NO: KEN-PPF-010) - NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

1067. Budgetary Control and Performance

The statement of comparison of budget and actual amounts for the year ended 30 June, 2022 reflects revenue budget and actual revenue of Kshs.31,387,985 and Kshs.4,647,291 respectively resulting to an underfunding of Kshs.26,740,694 or 85% of the budget. Similarly, the Project spent Kshs.4,647,291 against an approved budget of Kshs.31,387,985 resulting to an underexpenditure of Kshs.26,740,694 or 85% of the budget.

The underfunding and under expenditure affected the planned activities and may have impacted negatively on service delivery to the stakeholders of the project.

Submission by the Accounting Officer

The Accounting Officer submitted that the low absorption was attributable to the following causes;

- The project experienced delayed absorption mostly due to long procurement processes and challenges.

- Disruptions by the COVID-19 Pandemic.

- To avoid further delays in the planned activities, the management engaged Jomo Kenyatta University of Science and Technology to carry out the feasibility studies under government-to-government arrangement.

JKUAT completed the feasibility study report and handed to the Authority.

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

1068. Delayed Project

The National Environment Management Authority contracted a Company to undertake project feasibility studies in line with GCF requirements at a cost of Kshs.10,300,000 from 6 November, 2020 for a period of four (4) months. The contract period had lapsed on 7 March, 2021 and the Company had not submitted the final report.

This delayed the work of the other three consultants who relied on the feasibility study report to carry out the following assignments:

i) Development of Environmental Social Management Framework, Gender Analysis and Associated Gender Action Plan.
ii) Due Diligence and Capacity Assessment of Potential Implementing Entities; Development of Mechanism for Partnering with Local NGOs, Civil Society, and County Governments.
iii) Development of a Green Climate Funding Proposal.

In addition, the future of Project was not certain since the donor had not provided an extension of the agreement which lapsed on 25 February, 2022 contrary to Clause 2.4 of Amendment No.3 of the Project Cooperation Agreement between United Nations Office for Project Services and NEMA concerning the implementation of NEMA-GCF Project Preparation Facility "Devolved Climate Change Governance to Strengthen Resilience of Communities in Target Counties" which states that the contribution granted to the Government under the agreement shall be provided for the period of thirty two (32) months from 26 June, 2019, the date upon which United Nations Office for Project Services has disbursed the first instalment as specified in clause 3.2 (of the original agreement) until 25 February, 2022.

In the circumstances, the future of the Project could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that there were a contract administration challenges that occasioned the delay and there was disruption by the COVID-19 Pandemic. To avoid further delays in the planned activities, the management engaged Jomo Kenyatta University of Science and Technology (JKUAT) to carry out the feasibility studies under government-to-government arrangement.

The JKUAT completed the feasibility study report and handed to the Authority. All the three consultancies were completed and reports submitted to NEMA.

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1069. Failure to Open Project Bank Account

The statement of financial assets reflects a balance of Kshs.26,740,694 in respect to cash and cash equivalents. These project funds were not maintained in a separate Project Account at the Central Bank of Kenya contrary to Section 76(1) of the Public Finance Management (National Government) Regulations, 2015.

In the circumstances, the Project Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that the National Treasury granted NEMA authority to open GCF Bank account. Management has opened the bank account with Kenya Commercial Bank, Gateway Branch.

Committee Observations and Findings

The Committee observes that management failed to open a project bank account during the year under review contrary to Section 76(1) of the Public Finance Management (National Government) Regulations, 2015.

Committee Recommendation

The Committee reprimands the Accounting Officer.

NEMA - GCF READINESS AND PREPARATORY SUPPORT: "NEMA CAPACITY STRENGTHENING PROGRAMME TOWARDS ACCESSING CLIMATE FINANCE FROM GREEN CLIMATE FUND" - (CREDIT NO: KEN-RS-003) – NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

1072. Unresolved Prior Year Issues

In the report of the previous year, several paragraphs were raised under the Report on Financial Statements, Report on Lawfulness and Effectiveness in use of Public Resources. These prior year audit issues remained unresolved as at 30 June, 2022. Management has not provided reasons for the delay in resolving the prior year audit issues.

Submission by the Accounting Officer

The Accounting Officer submitted that the prior year issue was on the failure to open project bank account. The prior year issue has now been resolved by getting the National Treasury's authority to open GCF Bank account with Kenya Commercial Bank, Gateway Branch.

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1073. Purchase of Goods and Services - Procurement of Conference Facilities

The statement of receipts and payments under purchase of goods and services reflects an amount of Kshs.18,589,321, which includes Kshs.2,685,648 on hospitality supplies and services which further includes payments amounting to Kshs.2,636,800. Review of the supporting documents revealed the following:

i) An Ad-hoc Opening Committee was not constituted as required by Section 78(1) of the Public Procurement and Asset Disposal Act, 2015.
ii) An Ad-hoc Evaluation Committee was not constituted as required by Section 46(1) of the Public Procurement and Asset Disposal Act, 2015.
iii) A list of registered suppliers for conferencing facilities from which the quotations for the services were sought was not provided for audit review as required by Section 57(1) of the Public Procurement and Asset Disposal Act, 2015.
iv) The professional opinion by the head of procurement function had no recommendation based on a market survey.
v) The opinion did not include the names of the Ad-hoc Opening Committee Members.
vi) The names of the Evaluation Committee members and their appointment letters were also not included in the opinion contrary to the provisions.
vii) The opinion did not state whether the award was appropriate for the method of procurement applied citing specific provision of law and quotation document.
viii) The opinion did not state whether the recommended price for standard goods were within the indicative market prices.

In the circumstances, the Project Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

i) The Kshs 2,636,800.00 on hospitality payments is a cumulative figure emanating from small seminars/ workshops carried out in the county level by use of quotations.
ii) The Public Procurement Asset Disposal Regulations, 2020, were released through a gazette notice on 2nd July 2020. R.91 has provided for the appointment of an ad-hoc opening committee, ad-hoc evaluation committee and a recommendation by way of a professional opinion by the head of procurement to the Accounting Officer. The Public Procurement and Asset Disposal Act came into effect on came on January, 7th 2016. Sec.105 of the PPADA, 2015 provides for when request for quotations may be used whereas Sec.106 outlines the procedure to be followed in using the request for quotations method. Prior to the release of the PPADR 2020, the Authority was guided by the provisions of PPADA, 2015 which does not have these extra provisions;
iii) The management accepts that, there was no official appointment of an ad hoc opening committee and evaluation committee was since guided by the provisions of Public Procurement and disposal Act 2015, sub section 105 &106 which not require appointment of the committee. The authority was therefore in transition to the new Regulations 2020;

iv) As per the Auditor's guidance on the change in regulations that requires that quotations be opened by an officially appointed ad hoc opening committee and evaluated by an evaluation committee, the Management took cognizance of this fact and going forward from then has adopted the recommendations in its operations;
v) Conference facilities are procurable subject to availability. Market survey was based on hospitality industry categorization i.e. one star, two star etc. The requirements of R.91 would therefore be impractical for their timely procurement as opposed to provisions of Sec. 105 & 106 of the Act. The supply chain function further since then has appreciates the Framework Contracting method of procurement pursuant to Sec.141 of the PPADA 2015 and R.134 of the PPADR 2020, as a more practical approach to procure hotel and conference facilities;
vi) The department has conducted a country-wide market survey on hotels proving both conference and accommodation services with the ultimate objective of developing framework contracts with hotels in major counties within Kenya;
vii) In order to ensure effective operationalization of the PPADR 2020 together with the PPADA, 2015, it was necessary for all supply chain management staff to undergo professional training on the same. Staff in the supply chain management department have since undergone substantive trainings conducted by the Kenya Institute of Supplies Management on the application of the PPADA 2015, the PPADR 2020.

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

AFRICA ENVIRONMENTAL HEALTH AND POLLUTION MANAGEMENT PROJECT (AEHPMP) GEF GRANT NO: TFOB3322 - NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

1076. Slow Absorption of the Project Funds

The Government of Kenya procured and signed a contract on 14 August, 2020 for a grant facility funding from International Bank for Reconstruction and Development under the sponsorship of Global Environment Facility (GEF) valued at US dollars 8,073,395 equivalent to Kshs.861,834,916 for a project titled "Africa Environmental Health and Pollution Management Program Kenya." The project was to last for five years (60 months) up to 31 July, 2025. The National Environment Management Authority (NEMA) was nominated as the Project Implementing Agency under the supervision of the World Bank.

However, review of records revealed that from the date of inception of the Project in 2020, twenty-six (26) months had lapsed, translating to 43% lapse of time allocated while the project implementation expenditure was Kshs.21,497,600 out of Kshs.861,834,916 which translates to 2.5% of funds utilization resulting to huge mismatch between time taken and work done.

Further, the Project had a budgetary allocation of Kshs.97,653,764 to finance its work plan/budget for the year, out of which only Kshs.21,497,600 was utilized which translates to 22% funds absorption.

In the circumstances, the under performance affected the planned activities and might have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The Accounting Officer submitted that the project started during Covid 19 period which restricted most of project activities. Most initial activities involved trainings which could not take place during this period of COVID 19.

Secondly whereas the project agreement was signed in August 2020 there was delay in disbursement of funds which were received in May 2021. This was one month to the end of the FY 2020/2021 therefore the project implementation started in FY 2021/2022 which was only one year of implementation. These delays resulted in commencement of project activities and expenditures several months after the project effective date.

The project has put in place strategies for fast-tracking absorption of the funds by unbundling the project for the remaining three years and spread the project funds in the remaining period providing a clear pathway for ensuring absorption of all project funds by July 2025.

The project work plan and activities have been discussed and agreed with the World Bank which will ensure full absorption of the funds within the remaining project period.

Committee Observations and Findings

i) The Committee noted the submission of the Accounting Officer.
ii) The Committee found that the matter was resolved.

4.22 VOTE 1109: STATE DEPARTMENT FOR WATER, SANITATION AND IRRIGATION

Mr. Julius Korir, CBS, the Principal Secretary and Accounting Officer for the State Department for Water, Sanitation and Irrigation, appeared before the Committee on 27th March 2024 and 3rd February 2025, accompanied by the following officers:

i.	Eng. Samuel Alima	–	Secretary Water and Sanitation
ii.	Ms. Jennifer Owino	-	Head of Accounting Unit
iii.	Mr. James Karori	–	Deputy Accountant General
iv.	Mr. Humphrey Masai	–	Senior Accountant
v.	Mr. Geoffrey Rono	–	PA to the Principal Secretary

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1080. Unreconciled Transfers to Other Government Entities

The statement of receipts and payments and Note 8 to the financial statements reflects transfers to other government units amounting to Kshs.61,516,304,273. The transfers comprised of Kshs.4,903,973,740 capital grants, Kshs.56,492,906,655 current grants, and Kshs.119,423,878 other capital grants. However, the financial statements for the recipients reflected receipts totalling Kshs.54,979,519,755. The resulting variance of Kshs.6,536,784,518 was not reconciled or explained.

In the circumstances, the accuracy and completeness of the transfers to other government entities totalling to Kshs.61,516,304,273 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer;

The State Department conducted reconciliation with various entities that had differences and have since agreed as per the table below. It is noted that since our Agencies are on accrual accounting, the reporting was dues to time difference reporting.

In view of the above:

i. Some entities reported disbursement for 2020/2021 that was received in the first week of July 2021 in the current year
ii. Other entities omitted disbursement done on 30th June 2022 and credited on their accounts after 1st July 2022
iii. While others did not take into account direct payments.

Management did not have prior review of the Agencies financial statements but has since ironed out and the same presented to the auditor for review.

Ref	SC, SAGA or Public Fund's name	Amount transferred during the year	Amount Ackwoleged	Reconciliations done? (yes/no)
1	Lake Victoria North Water Works Dev. Agency	261,237,000	261,237,000	They had included AIA of 100,000,000
2	Lake Victoria South Water Works Dev. Agency	1,135,635,996	1,135,635,996	Reconciled
3	Coast Water Works Development Agency	2,149,838,307	2,149,838,307	Had timing differences of 191,855,665
4	Water Sector Trust Fund	902,415,358	902,415,358	Reconciled
5	Tana Water Works Development Agency	3,108,575,927	3,108,575,927	Had timing differences
6	Central Rift Valley Water Works Development	3,738,730,805	3,738,730,805	Had timing differences
7	National Water Harvesting and Storage Authority	1,930,500,000	1,930,500,000	Reconciled
8	Northern Water Works Development Agency	1,263,480,327	1,263,480,327	Reconciled
9	Athi Water Works Development Agency	16,480,844,529	16,480,844,529	Reconciled
10	Hydrologists Registration Board	15,000,000	15,000,000	Reconciled
11	Water And Sanitation Development Project	2,951,893,790	2,951,893,790	Reconciled
12	North Rift Valley Water Works Development Agency	229,740,900	229,740,900	Reconciled
13	Regional Centre on Ground Water Resource Education	62,999,996	62,999,996	Reconciled
14	Thwake Multipurpose Water Development Project	6,812,643,274	6,812,643,274	Reconciled
15	Kenya Water Institute	243,000,000	243,000,000	Reconciled
16	Upper Tana Natural Resources Management Project	697,656,930	697,656,930	They had included AIA of 100,000,000

17	Coastal Region Water Security and Climate Resilience Project	1,116,715,305	1,116,715,305	Omitted direct payments
18	Water Resources Authority	612,000,000	612,000,000	Reconciled
19	National Irrigation Authority	11,109,783,522	11,109,783,522	Reconciled
20	Kenya Water Security and Climate Resilience	2,308,047,166	2,308,047,166	Omitted direct payments
21	Tanathi Water Works Development Agency	1,139,512,145	1,139,512,145	Reconciled
	Total	**42,382,287,893**	**42,382,287,893**	

Committee Observations and Findings;

The Committee noted that the Accounting Officer was yet to reconcile with seven agencies.

Committee Recommendations;

The Committee reprimands the Accounting Officer for failing to ensure that reconciliations are done in time and the complete financial statements submitted to the Auditor General in time as provided for in Article 229 (4)(h) of the Constitution, and section 81(4)(a) of the Public Finance Management Act 2012, and recommends that the outstanding reconciliations be done within one (1) month of adoption of this report.

1081. Budgetary Control and Performance

The summary statement of appropriation-recurrent and development combined reflects budgeted receipts of Kshs.77,868,904,533 against actual receipts of Kshs.63,288,404,599 resulting to an underfunding of Kshs.14,580,499,934 or approximately 19% of the budget. Similarly, the summary statement also reflects final expenditure budget and actual on comparable basis of Kshs.77,868,904,533 and Kshs.63,287,176,543 respectively, resulting to an underexpenditure of Kshs.14,581,727,990 or approximately 19% of the budget.

Although Management attributed the underfunding to lack of Exchequer releases from The National Treasury and lengthy procurement processes, the Ministry may not have implemented all the planned activities, thereby impacting negatively on delivery ofservices to the public.

Submission by the Accounting Officer;

The Accounting Officer submitted that it is true that the State Department did not expend the budget to the tune of Kshs. 14,581,727,990 or approximately 19% of the budget due to insufficient exchequer and Covid 19 pandemic. The Accounting Officer further submitted that Ministry was not able to implement all the planned activities as planned due to the afore mentioned conditions. Some of the activities were executed during the FY 2022/2023.

Committee Observations and Findings;

i) **The Committee observed that the explanation given by the Accounting Officer is satisfactory.**

ii) **The Committee found that the matter was resolved.**

1082. Lack of Ownership Documents for Construction of Partakilat Water SupplyProject (Narok County - Kilgoris Sub-County)

Included in the expenditure of Kshs.991,454,179 on acquisition of assets is an amount of Kshs.56,182,293 paid by the Ministry to a Company for construction of a small dam (Partakilat Water Supply Project - Narok County - Kilgoris Sub-County). The Ministry awarded a tender to the contractor at a contract sum of Kshs.374,678,383. The Project scope of works included construction of an 8-meter-high embankment small dam with a storage capacity of 300,000m^3, construction of 3.3Km - 160mm diameter HDPE rising water main from the dam to ground storage tank, construction of 250m^3 ground masonry tank with estimated prices of Kshs.3,145,424, construction of 6.8Km 160/110 mm diameter HDPE water distribution pipeline, land acquisition for dam site and some parts on a 10m high steel tower, erecting 288m^3 capacity steel tank on a 10m high steel towerwith estimated price of Kshs.11,965,388 and constructing a composite filter unit for watertreatment whose budget would be sourced from contingencies and savings. The contract was signed on 7 December, 2020 and the works commenced on18 December, 2020. The Project was to take twelve (12) months with the expected completion date of 17 December, 2021. However, audit inspection in the month of July, 2022 revealed that the Project was 40% complete and therefore the contractor was behind schedule, although the Ministry had paid a total of Kshs.145,609,534 to the contractor. The projected completion time as per the project plan was 17 December, 2021.

Documents provided for audit revealed that, the Ministry was to acquire the land on whichthe dam was to be constructed through the contractor at a cost of Kshs.14 million. However, inspection of the Project revealed that, at the time of Project commencement, the land owner(s) had not legally transferred the said parcels of lands to the Ministry andthe sale agreements between the Ministry and the vendors were not provided for review.Thus title ownership of the parcels of land on which the dam was to be constructed could not be confirmed

In absence of title deeds for the land on which the dam and the tanks are being constructed, the Ministry is exposed to land disputes which may arise as the Ministry may have built the dam on a private land using public resources.

Submission by the Accounting Officer;

The Accounting Officer submitted that the Ministry had written to the National Land Commission forwarding the following documents: Agreement from the lawyer signed by the CBO and the seller, Registration Certificate of the CBO, Account details of the CBO, Copies of KRA Certificates for the CBO and the seller, Copy of Land Title Deed, Copy of Official Search, Copy of the ID for the seller; seeking guidance on purchase of the land in question; with the possibility of moving forward to purchasing the land in which the dam and the tanks have been constructed. So far the works are at 75% as per the progress report.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a status report within three (3) months of adoption of this report.

1083. Delayed Project Implementation

The Ministry entered into a contract for consultancy services to undertake land degradation assessment and model project for degradation scrutiny for upper Kerio Valleyand upper Ewaso Nyiro North River water sheds. The effective date of the contract was 28 October, 2020 and the commencement date was 27 November, 2020, being thirty (30)days after the effective date. The Project was scheduled to be completed within 120 working days, tentatively by 31 May, 2021.

However, by 31 May, 2021, the Project was not complete and the consultant requested for an extension to 30 June, 2022. At the time of audit in September, 2022, the extension period had lapsed but the Project was still incomplete, and some deliverables were yet to be executed as per the contract.

The delayed project completion may indicate poor planning, monitoring and implementation of the Project.

Submission by the Accounting Officer;

The Accounting Officer submitted that there had been a delay in the completion of the project and necessitated an extension of the same vide request approval Ref: MWSI/SCMS/4/2/ VOL. 1 of 27th May, 2022 for six months. The consultant had submitted the final draft reports and supporting maps; however, the payment was delayed due to reduction in the supplementary estimates in financial year 2020/2021 and lack of funds to disseminate as per the contract in the concerned counties.

The Consultant has since completed the work and submitted the final reports in September, 2022 and Quality Prints in March, 2023.

Committee Observations and Findings;

i) **The Committee noted that the project implementation had since been completed and confirmed by the Office of the Auditor General.**

ii) **The Committee found that the matter was resolved.**

1084. Unresolved Prior Years Matters

In the audit report of the previous year, several issues were raised in the Report on Financial Statements and Report on Lawfulness and Effectiveness in Use of Public Resources. However, Management did not resolve the issues or give any explanation forthe failure to adhere to the provisions of the Public Sector Accounting Standards Board and The National Treasury's Circular Ref: AG.3/88/ Vol.VII(21) dated 11 May, 2022 on year end closing procedures for the financial year 2021/2022.

Submission by the Accounting Officer;

The Accounting Officer submitted that the Ministry was awaiting the Public Accounts Committee recommendations for the 2020/2021 Auditor General's report.

Committee Observations and Findings;

The Committee notes that its 2020/2021 report had since been adopted by the House.

Committee Recommendation;

The Committee recommends that the Accounting Officer implements recommendations within the stipulated timelines.

1085. Pending Bills

Note 18.1 to the financial statements reflects pending bills balance of Kshs.58,497,725. However, Annex 1 to the financial statements reflects pending bills totaling to Kshs.64,994,871 resulting to an unexplained variance of Kshs.6,497,146, casting doubt on the accuracy and completeness of pending bills balance of Kshs.58,497,725 as at30 June, 2022.

Further, failure to settle bills during the year to which they relate distorts the financial statements and adversely affects the budgetary provisions for the subsequent year as they form a first charge.

Submission by the Accounting Officer;

The Accounting Officer submitted that it is true that the State Department had pending bills to the tune of Kshs. 58,497,725 and not Kshs.64,994,871. The variance of Kshs.6,497,146 was erroneously included in the schedule, which has since been corrected. The Pending bills were occasioned by insufficient exchequer and Covid 19 pandemic. Some of the pending bills were treated as a first charge in the FY 2022/2023 while others are still pending due to budgetary constraints.

Committee Observations and Findings;

i) **The Committee noted that the explanation given by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1087. Weak Internal Controls in Stores and Inventory Management

Examination of the Ministry's stores and the stock cards revealed that there was no proper custody, care and management of stores as only one officer was in charge of receiving and issuing of stocks and updating the stock cards. As a result, it was not easy to determine the re-order levels because the stock card balances were inaccurate. Further,review of stock cards revealed that additional slow moving/low demand stock were purchased at the close of the financial year. However, Management did not provide explanations for purchasing additional slow-moving stock.

In addition, the stores were not well arranged on the shelves as some stock items were placed on the floor.

In the circumstances, it was not possible to determine the effectiveness of controls implemented in the stores department to guard against losses.

Submission by the Accounting Officer;

i) The Accounting Officer submitted that he has appointed Assets and Inventory Management Committee, which had and shall be responsible for Stocktaking exercise on quarterly and annual basis. The Annual Stocktaking Report for last Financial Year is ready.

ii) The Accounting Officer also submitted that the introduction of Stock Management System had been part of all the department requirements, but it had been hindered by lack of sufficient funds.

iii) The Accounting Officer further submitted that the Ministry is expecting the National Treasury to support in the IFMIS module which is on the pathway of being implemented. The department may therefore not require to procure new Stock Management System, while the same is being rollout by the National Treasury.

Committee Observations and Findings;

i. **The Committee notes that there was ineffective use of resources as money was spent on buying slow moving goods towards the end of the financial year;**

ii. **The Committee also noted the apparent lack of internal controls since only one officer was in charge of receiving and issuing stock.**

Committee Recommendations;

The Committee reprimands the Accounting Officer for failing to ensure that strong internal controls and inventory management systems are in place, and recommends that the same is instituted within one (1) month of adoption of this report.

DONOR FUNDED PROJECTS

UPPER TANA CATCHMENT NATURAL RESOURCE MANAGEMENT PROJECT (UTaNRMP) IFAD LOAN NO.1-867-KE; IFAD ADDITIONAL FINANCING LOAN NO.2000002597-KE; AND SPANISH TRUST FUND LOAN NO.1-E-8-KE

REPORT ON THE FINANCIAL STATEMENTS

1089. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects budgeted receipts of Kshs.850,000,000 and actual receipts of Kshs.797,656,930 resulting to a revenue shortfall of Kshs.52,343,070 or 6%. In addition, the statement reflects budgeted expenditure of Kshs.850,000,000 and actual expenditure of Kshs.822,651,217 resulting to underexpenditure of Kshs.27,348,783 or 3%.

In the circumstances, the under expenditure of Kshs.27,348,783 and the budgeted but unrealized receipts of Kshs.52,343,070 may have negatively impacted on goods and service delivery to the intended beneficiaries of the Project.

Submission by the Accounting Officer;

The Accounting Officer submitted that the under collected revenue of Ksh. 52,343,070.00 (6% of the budget) was due to delay in timely absorption of the funds by targeted community beneficiaries who delayed in meeting their agreed part on financing conditions hence delay in timely absorption. Poor weather-related challenges, especially for activities which are rain dependent, also contributed to the non-realization of the 100% target. These made it difficult for the Ministry to seek timely replenishment to enable us realize a 100% mobilization of the external financing.

However, the Accounting Officer submitted that the Project managed to achieve 94% of its revenue and expenditure targets of the approved budget of Ksh.850 million for the period under review, despite the challenges.

The Accounting Officer further submitted that the underutilization of the budget was attributed to the efficiency realized as the Project had started implementing exit strategies thereby empowering the relevant county-based institutions to handle some activities like capacity building of community groups (training/sensitization/local workshops etc);

However, it was worth noting that the Project managed to actually absorb 97% which was within its approved budget of Ksh.850 million, which is a better progress.

Committee Observations and Findings;

i) **The Committee noted that the explanation given by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

COASTAL REGION WATER SECURITY AND CLIMATE RESILIENCE PROJECT (IDA CREDIT NO.5543-KE)

REPORT ON THE FINANCIAL STATEMENTS

1094. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.2,500,000,000 and Kshs.888,273,973 respectively resulting to an underfunding of Kshs.1,611,726,027 or 64% of the budget. Similarly, the Project expended Kshs.1,241,032,696 against an approved budget of Kshs.2,500,000,000 resulting to an under-expenditure of Kshs.1,258,967,304 or 50% of the budget.

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

Submission by the Accounting Officer;

The Accounting Officer submitted that low absorption of funds was due to delays in the commencement of construction works for Mwache Dam project at a cost Kshs. 13.7 billion, which constitutes 70% of the loan finance. This resulted from:

i. Delays in land acquisition delays which was hampered by NLC internal processes, faulty land survey and registration records in the dam area, which necessitated fresh surveys to be carried out and authenticated by Director of Surveys,

ii. Presentation of incorrect land ownership documents and succession disputes,

iii. Inadequate allocation by NT for land compensation budget and strict social safeguards in the RAP as approved by world Bank.

To ensure the project meets its objectives, the Accounting Officer submitted that the Government has already negotiated with World Bank for a restructured Finance Agreement with extension of the project up to January 2027 and additional funding to ensure completion of the dam. The initial challenges that slowed the land compensation and resettlement of PAPs have largely been overcome enabling the Project to complete land acquisition for Priority areas and the contractor has already commenced the construction works.

Committee Observations and Observations;

The Committee observed that the Mwache dam project had taken inordinately long to be completed.

Committee Recommendations;

The Committee recommends that the Accounting Officer takes concrete steps towards completion of the project and submits a status report to the Committee within three (3) months of adoption of this report.

1095. Delayed Construction of Mwache Multipurpose Dam Project

As reported previously, the Ministry of Water, Sanitation and Irrigation awarded a contractfor construction of Mwache Dam on 21 March, 2019, but the commencement of the worksdelayed pending acquisition of land, compensation, relocation and livelihood restoration process. A review of progress made on the construction revealed that, during the year under review, the contractor was paid an advance payment amounting to Kshs.85,267,787, and a notice given to start construction of permanent dam works. Thework was scheduled to commence on 1 November, 2021.

However, a site visit in October, 2022 revealed that the contractor had not completed mobilizing equipment for the construction at the site. Further, compensation of the project-affected persons and acquiring of the necessary land required for the Dam construction had not been finalized.

Submission by the Accounting Officer;

The Accounting Officer submitted that the Ministry acknowledges there were initial delays in commencement of the works due to slow progress of land acquisition process by NLC. Once it was determined that land acquisition for priority areas land which is needed to be handed over to the contractor for the works to commence would not be completed by 1st November 2021, the start date was moved to 4th March 2022 and the contractor notified accordingly. Acquisition of Priority areas 1 and 2 has since been finalized and handed over to the Contractor who has mobilized and commenced construction works.

To date, the following is the work progress:

i. Two Contractors camps in both the main Dam and Lower Check Dams have been completed and in use.

ii. Access roads have been graded and in use around the construction area

iii. Excavation works at the main dam ongoing on both the right and left banks is ongoing. Slope protection being undertaken concurrently

iv. Construction of Base camp and Administration building is ongoing

v. Assembling of aggregate crushing plant has been completed and test runs are being conducted before full roll-out of aggregate production

vi. Explosive magazine has been complete and in use and this will accelerate the rate of excavation works

vii. Lower Check Dam diversion channel excavation has been completed and the river diverted to allow for dam foundation excavation before commencement of concrete works

viii. Overall work progress stands at 5% and efforts are being put to fats track the implementation.

NLC are currently undertaking acquisition of priority area 3 land which will only be required for the impoundment of the dam and therefore will not affect the progress of the ongoing works. Awards for the affected persons in P3 expected to be issued starting March 2024.

Committee Observations and Observations;

The Committee observed that the Mwache dam project had taken inordinately long to be completed.

Committee Recommendations;

The Committee recommends that the Accounting Officer takes concrete steps towards completion of the project and submits a status report to the Committee within three (3) months of adoption of this report.

1096. Unresolved Prior Year Matter

1096.1. Unrecovered Funds on Terminated Contract

As reported in the previous year, the Ministry of Water, Sanitation and Irrigation, through Coastal Region Water Security and Climate Resilience Project entered into a contract for construction of Rain Water Harvesting Facilities and Sanitation blocks, for schools in Kwale County Phase 2. This contract, which was signed on 22 October, 2018 was for a sum of Kshs.55,113,821. However, on 9 June, 2020, the contract was terminated with approximately 90% of the works pending and the contractor was paid an amount of Kshs.20,410,667 as advance and certified work done. A joint inspection team determinedthat the contractor was to pay the Ministry Kshs.27,752,838 as penalties on value of uncompleted work and unrecovered advances. Review of the progress made on the matter in November, 2022 revealed that the amount was yet to be received by the Ministry.

In the circumstances, the intended objectives may not be achieved and there may be lossof Project funds.

Submission by the Accounting Officer;

The Accounting Officer submitted that the Ministry terminated the contract after the Contractor abandoned the works before completion. The termination process followed the contract provisions and warning letters, and notices were issued leading to termination after non-compliance. A joint inspection for final certification established that the contractor owed the employer a sum of Kshs. 12,749,749.43 being the balance of unrecovered advance payment plus difference in interim payments and actual certified works and a further 15,003,089.30 in applicable penalties due to fundamental breach of contract. The Ministry wrote a demand letter dated 10th August 2020 for payment of the debt in accordance with the terms of the contract. The Contractor has responded through an advocate refuting the demand. The matter has been forwarded to the Ministry's legal counsel for follow-up to ensure the payment is done. (Correspondences and Contract documents were provided to the Committee)

The Accounting Officer also submitted that Ministry wrote to Chartered Institute of Arbitrators of Kenya (CIArb) on 31st October 2023 vide letter Ref MWSI/SDI/PS/76(46) requesting for the appointment of an Adjudicator to guide in the resolution according to Clause 23.1 and 23.2 in the General Conditions of Contract. The institute requested to be furnished with all the contract documents as requested in order to appoint a suitable candidate to guide in the process. (Attached letters from Ministry and CIArb). The institute vide letter Ref. dated November 2023 appointed an adjudicator who has communicated to the parties and the arbitration process is set to commence.

Meanwhile, the remaining works have been awarded to local contractors using the balance of unutilised funds in lots to ensure the objective of the project is achieved.

The current work progress is approximately 75%. For the first lot of 6No. schools. An additional 3No. has been contracted and work will commence soon.

Committee Observations and Findings;

The Committee observed that the Accounting Officer failed to institute measures to recover penalties of Kshs. 27,752,838 from the contractor and insufficient pursuit of the arbitration process, as recommended in the previous PAC report of FY 2020/21.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to implement its recommendations in the cited report and recommends that the Accounting Officer provides a status update within three (3) months of adoption of this report.

1097. Sustainability of Project's Livelihood Programme

The Project disbursed grants totalling Kshs.22,465,136 to sixty-two (62) community groups in Kwale County under the Livelihood Programme. The programme was to carry out a series of activities aimed at improving sustainable livelihood and sharing the Project's benefits in rural areas of the County.

The activities included establishment of tree nurseries, greenhouses and horticulture, dairy, poultry farming among other economic activities. However, as reported in the previous year, some beneficiary groups diverted funds to activities not stated in the GrantAgreement. A review of Project records in October, 2022 revealed that out of Kshs.22,465,136 of Project grants for livelihoods, an amount of Kshs.19,161,440 had been accounted-for leaving a balance of Kshs.3,303,696. Due to the shortcomings, the livelihood programme activities may not be sustained.

Submission by the Accounting Officer;

The Accounting Officer submitted that the disbursement of funds for the livelihood programme to the selected groups was based on an approved project proposal and work plan whose implementation was to be monitored by Kwale Government Project Implementation Unit (PIU) to ensure compliance to the agreed activities and financial accountability. A fiduciary review was conducted jointly by the CRWSCRP and PIU officials on September 2020 to monitor the progress by the supported groups. A follow-up assessment of expenditures records by the project accountant showed the gaps on the un-accounted funds totaling to kshs. 3,303,696.

The groups were instructed to avail supporting documents for the un-accounted funds before disbursement of any more funds to them. The project worked in collaboration with the Kwale County PIU and another review was undertaken and the missing accounting documents were availed by the beneficiary groups. The funds are fully accounted for and the matter concluded. The documents were availed for audit verification in financial year 2022/23. Due to the challenges experienced in the financial management and accountability for the grants, it was decided that no further funding would be disbursed under this sub-component.

Ward	Funds Received in entire Wards	Amount for groups that have submitted returns	Funds accounted for as at 30.06.2021	Outstanding Balance

Mwavumbo	7,024,809.00	7,052,887.00	5,313,910.00	1,710,899.00
Samburu	7,602,947.00	7,601,532.00	7,570,235.00	32,712.00
Kasemeni	7,838,183.00	6,689,835.00	6,278,098.00	1,560,085.00
TOTAL	**22,465,939.00**	**21,344,254.00**	**19,162,243.00**	**3,303,696.00**

Committee Observations and Findings;

The Committee observed that the issue recurred from the financial year 2020/2021 and recommendations issued in its report.

Committee Recommendation;

The Committee recommends that the Accounting Officer implements its recommendations in the cited report and provides a status update within three (3) months of adoption of this report.

THWAKE MULTI-PURPOSE WATER DEVELOPMENT PROGRAM PHASE 1 (AfDB LOAN NO. 2100150029993, 2000200003351, AGTF NO. 5050200000501 AND AfDB GRANT NO. 2100155025973)

REPORT ON THE FINANCIAL STATEMENTS

1100. Undisclosed Interest on Delayed Payment to Contractor

The statement of receipts and payments and as disclosed under Note 12.6 to the financial statements reflects acquisition of non-financial assets of Kshs.6,755,136,923 which includes an amount of Kshs.98,580,082 in respect of interest charged on delayed payments to contractor on certified works. Review of the contractor interim payment certificates Nos.4,5,6,7,9,10 and 11 revealed interest claim on the project as a result of delayed payments totalling Kshs.383,405,756, out which an amount of Kshs.199,483,474 in respect of interim certificate number 4, 5 and 6 had been paid as at 30 June, 2022.

The interest charged could have been avoided and is a wastage of public funds. Further,the unpaid interest in respect to interim certificates 7, 9, 10 and 11 amounting to Kshs.183,922,282 was not disclosed and included in the list of pending bills for the Program as at 30 June, 2022.

In the circumstances, the accuracy and completeness of accounts payable as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer;

The acquisition of non-financial assets of Ksh 6,755,136,923 as disclosed in the financial statements is in respect of the actual payments made in the year under review and does not include any interest charges.

It is true that Interest charges amounting to Kshs.383,405,756 were omitted in the list of pending bills. We would wish to clarify that Ksh 383,405,756 was a cumulative claim from the contractor of Ksh 100,903,392 and Ksh. 282,502,364 submitted in 2020/2021 and 2021/2022 financial year respectively.

The claim amounting Ksh 100,903,392 was submitted the ministry in October 2020 verified and paid as per the attached PV. However, another claim of Ksh. 282,502,364 was submitted at the end of June 2022 which was yet to be verified and therefore not included in our Pending Bills.

This claim of Ksh 282,502,364 was later reconciled to the tune of Ksh 236,011,102 and disclosed as part of the pending bills for the year ended June 30, 2023.

The interest on delayed payments have been occasioned by the following factors:

i. Non-payment of outstanding VAT to the contractor due to inadequate budgetary provision. Partial payments have been made by offsetting the outstanding VAT subject to the budget allocated and exchequer received. An amount of Ksh 127.5 million has been paid in the financial year ended 30th June 2023 to offset this balance.

ii. Delayed legislation of the National Public Debt threshold in 2019 that increased the public debt ceiling to Kshs 9 trillion. The Additional Financing Agreement between GOK and African Development Bank (AfDB) could not be operational until the legislation was concluded. Therefore, the work done by the contractor and certified for payment could not be processed on time.

The Ministry has also put in place measures to ensure the Interim Payment Certificates are reviewed and processed within the contractual time frame to minimize delays that can lead to interest charges.

These measures include report from the Engineer's Representative for every Interim Payment Certificate explaining the items due for payment and review by Contract Implementation Team (CIT), see sample letter ref 5083037/2021/JM/10513 dated 30th September 2021.

Committee Observations and Findings;

The Committee notes that there was wastage of public funds on payment of interest.

Committee Recommendations;

The Committee directs the Accounting Officer to put in place measures to ensure that interest/penalties on delayed payments are not incurred.

1101. Unresolved Prior Year Audit Matters

In the audit report of the previous year, several issues were raised under the Report on Financial Statements, Report on Lawfulness and Effectiveness in Use of Public Resources, and Report on Effectiveness of Internal Controls, Risk Management and Governance. However, the Management has not resolved the issues or given any explanation for failure to adhere to the provisions of the Public Sector Accounting Standards Board templates.

Submission by Accounting Officer

Audit Matter	PAC Recommendation	Status
Funding of the Program's downstream phases. The issue raised was lack of funding for the remaining phases.	The Committee reprimands the Accounting Officer for failing to resolve a prior year matter contrary to section 68 (2) (l) of	The Project is currently at 94% as at now. A cabinet memo is being done, of which after approval will allow the government in negotiating with the donor to fund the remaining phases.
Water pollution of Athi River. The issue raised was non mitigation of the risk of pollution on the dam.	The Accounting Officer should ensure that measures are put in place to mitigate pollution in Athi River pursuant to regulation 160 of the PFM National Government Regulations 2015, and provide a status report within three (3) months of adoption of this report.	We are putting up Flip Bucket dams in the upper ridges of Nairobi rivers to intercept upstream sewage. Building of underground sewage treatment plants to treat sewage before the water is discharged back into the river River embankment reinforcement river draining reshaping and sewer interception network Vegetation restoration, construction of wetlands
Non construction of temporary site offices: The issue was consideration of the option to lease rather than build.	The matter was resolved	Resolved
Delayed development of physical hydraulic model.	The matter was resolved	Resolved

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report on outstanding projects within three (3) months of adoption of this report by the House.

1102. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects budgeted receipts and actual on comparable basis amounting to Kshs.7,843,000,000 and Kshs.7,241,366,902 respectively resulting a shortfall of Kshs.601,633,098 or 8 % of the budget. Similarly, the Program had an approved total expenditure budget of Kshs.7,843,000,000 against the actual expenditure of Kshs.7,238,904,429 resulting to an under expenditure of Kshs.604,095,561 or 8% of the budget.

The underfunding and under expenditure imply that some of the planned activities were not implemented which could impact negatively on the achievement of the overall Program's goals and objectives.

Submission by Accounting Officer

The actual funding and expenditure for the period was 92% leaving a balance of 8% as underfunding and under expenditure.

Reasons for the under expenditure was attributed to the contractor who was not able to raise sufficient certificate to pay the full amount provided for in the budget

The Ministry, in a bid to mitigate the recurrence of such under absorption of funds, requested for a cash flow pattern to guide in preparation of the supplementary budget for subsequent financial

year. The contractor provided its cash flow schedule in its letter Ref No. CGGC-TH-LTR-2023-52 dated 22nd February 2023

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1103. Pending Bills

Annex 2 to the financial statements reflects pending bills of Kshs.444,026,590 as at 30 June, 2022. However, Management did not provide any explanation why the amount was not settled during the year under review.

In the circumstances, the Program is exposed to unnecessary interest and penalties on delayed or non-payment of claims.

Submission by Accounting Officer

The pending bills of Ksh 444,026,590 have been analysed to include VAT owed to contractor of Ksh 433,979,306 and Ksh 10,047,284 for other consultants, all payable from GOK counterpart funds which were not settled due to insufficient budgetary allocation in the year under review. The Ministry had requested the National Treasury vide letter ref: TMWDP/FIN/GEN/144 dated 7th May, 2021 for additional budget and a further reminder vide letter ref: TMWDP/FIN/BGT/053 dated 2nd November 2021 to offset the accrued balances. However, National Treasury in its response vide letter ref: RES 1109/21/01/'A' (36) dated 15th November 2021 advised the Ministry to provide for expenditure within its voted provision as it was not in a position to provide additional funding.

Aware of the risks and penalties that may accrue from the delayed payments, these pending bills were prioritized and paid using the budgetary provision in the subsequent financial year ended 30th June 2023. The Ministry managed to pay Ksh 127,500,000 of the outstanding VAT on the contractor leaving a balance of Ksh 306,479,306. The dues owed the consultants then were also fully settled. The ministry further made payments of Kshs. 102,500,000 in 2023-2024 reducing the balance to Kshs.203,979,305. Currently the state department has a budgetary provision to clear the part of the pending bill within the year.

Committee Observations and Findings

The Committee noted that the Accounting Officer failed to pay pending bills due to lack of exchequer.

Committee Recommendation

The Committee recommends that the Accounting Officer ensures that pending bills are settled as a first charge pursuant to Regulation 42 of the PFM (National Government) Regulations, 2015.

1104. Delayed Completion of Works

Review of the records revealed that the Project contracted a company for the construction of 80.5m high dam-688 cubic meters' storage capacity including associated works at a cost of Kshs.36,971,346,551. The Construction works started on 27 March, 2018 and were expected to be completed by 5 November, 2022 with fifty-six (56) months (1,683 days) implementation period excluding defects liability period of one (1) year. The scope of works entailed, Concrete faced rock fill dam, Main and emergency spillway, Low level outlet, Intake tower, Access roads, Hydro mechanical plant, Electrical and mechanical plant. However, review and analysis of progress reports, latest submitted Interim Payment Certificate 11 and the field verification exercise revealed that the overall physical progress of the works as at 30 June, 2022 was estimated at 70.5% against 92.5% project time lapse, or 1,556 days having elapsed (96%) against the signed contract period of 1,683 days, hence the works are behind the scheduled completion date.

Further, land was still a hindrance to the progress of the works as part of the road and saddle dam remained under private ownership as at the time of audit in October, 2022. No effort appears to have been made by the Project Management team to resolve the matter.

In the circumstances, the Project may not be completed within the contract period.

Submission by Accounting Officer

The delay in the construction schedule has been caused by factors beyond the control of management. These factors include:

i. The outbreak of covid 19 leading to temporary stoppage of activities at the site and subsequent scaling down of manpower, in adherence to Ministry of Health guidelines that required minimum people on site.

ii. Lack of critical ingredients such as the explosives which were required in the blasting of rocks at the site.

iii. Unexpected geological conditions at the dam foundation that required further treatment.

The portion of land that was still being occupied in May 2022 was vacated in August 2022 and the whole land is fully available to the contractor.

The implementing agency has also enhanced monitoring of the dam construction to ensure that works are completed on schedule. These measures include:

i. Weekly and monthly monitoring of the construction process;
ii. Development of accelerated or catchup plan
iii. Contractor working on both day and night shifts; and
iv. Consultation between the leadership of the implementing agency and the top leadership of the contractor where the latter deployed more resources to accelerate implementation of the project.
v. The program end timelines were revised to 7th December 2024.

The current progress of the project is at 94% with expected contract end date of 7th December 2024 and defect liability period to 7th December 2025

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submit a status report of the project within three (3) months of the adoption of this report.

1105. Incomplete Corporate Social Responsibility Projects

As reported in the previous year, Thwake Multi-Purpose Water Development Program activities included drilling and equipping of six (6) community boreholes at a cost of Kshs.4,500,000 each under Corporate Social Responsibility (CSR) projects in Kitui Rural, Makueni and Mbooni Constituencies. However, an inspection carried out in October, 2022 revealed that, drilling and equipping of five (5) out of the six (6) had not been completed.

Further, construction and renovation of classrooms in five (5) Constituencies were incomplete and poorly done. No measures have been put in place by Management to ensure the contractors adhere to the works specifications and that CSR projects are completed before the expiry of the contract period.

In the circumstances, the community may not benefit from the boreholes as water is a priority to them for household and livestock use.

Submission by Accounting Officer

The Ministry acknowledges that six boreholes were drilled to supply clean water to the local community around the Thwake dam area. Three boreholes were drilled successfully, equipped and put into use for supply of clean water to the local community. These include Kwa Kavithi for Mutukya Community in Mbooni East Constituency, Kwa Katheu Mulani for Kisyaani Community and Kwa Makau for Katithi Community in Makueni Constituency. The other three boreholes were drilled but found to be dry with one in Mbooni East Constituency and two in Kitui Rural Constituency.

The Ministry did make arrangements to drill additional boreholes to replace the dry boreholes and has advised the contactor via letter ref: MWSI/WTR/PS/7/73 dated 3rd May 2023 to the supervising consultant to review the BOQs for the boreholes and undertake the drilling works with the remaining budget of corporate social responsibility projects in order to ensure the targeted community gain access to clean water.

The drilling of the additional boreholes commenced on 7th December 2023. The one borehole required for Mbooni East Constituency for Kathulumbi community was drilled to completion successfully and equipping (construction of water kiosk and piping) commenced and was completed by 31st January 2024.

Mukameni borehole in kitui rural constituency has been drilled to completion however works on test pumping, pipping and electrical installations are yet to be completed. Nzamba borehole is yet to be drilled and the state department is making efforts to secure funding for the project.

Works on Kinyau primary school in kitui rural constituency and Syomakanda primary school were completed and certificates of completion received.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submit a status report of the uncompleted projects within three (3) months of the adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1106. Lack of Internal Audit Reports on the Program

During the year under review, the Internal Audit Unit did not carry out an audit of internal controls, risk management, financial reports, and the implementation of the Project. As a result, the effectiveness of the internal controls and risk management put in place by Management, could not be confirmed.

Submission by Accounting Officer

The internal audit function of the Program is provided by the Internal Audit Department of the Ministry of Water, Sanitation and Irrigation. Audit was conducted.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

KENYA ITALY DEBT FOR DEVELOPMENT PROGRAMME

REPORT ON THE FINANCIAL STATEMENTS

1109. Budgetary Control and Performance

The statement of comparison of budget and actual amount reflects final receipts budget and actual on comparable basis of Kshs.41,000,000 and Kshs.2,317,112 respectively resulting to underfunding of Kshs.38,682,888 or 94% of the budget. Similarly, the Programme spent Kshs.40,025,892 against budgeted expenditure of Kshs.41,000,000 resulting to under expenditure of Kshs.974,108 or 2.4% of the budget. The underfunding and under expenditure affected the planned activities of the Programme which may have impacted negatively on the service delivery to the stake holders.

Submission by the Accounting Officer

The management takes note of the recommendation to ensure maximum budget absorption/ maximum utilization of allocated fund to fulfil the overall objectives of the project. The under-expenditure was due to the delays by the Contractor in implementing the project a result of delays in obtaining approvals for railway and road crossings

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1110. Long Outstanding Advance

The financial statements reflect accounts receivables of Kshs.12,991,890 as disclosed in Note 8 to the financial statements. This amount was advanced to the Ministry of Water, Sanitation and Irrigation vide requisition letter reference MEWNR/ACCTS/233 on 17 September, 2014, and was meant to enable the Ministry to pay for an outstanding travel bill due to a service provider. This outstanding amount had not been refunded to the Kenya - Italy Debt for Development Programme by the close of the financial year under review which is more than seven (7) years since the advance was made. This, therefore, means that the advance was not utilised for the intended purpose of the Programme considering that the Programme activities officially ended. Additionally, the Government of Kenya through the National Treasury risks being compelled by the Government of the Italian Republic to make repayments as per provisions of Article II.6 of the funding agreement.

Submission by Accounting Officer

The advance has was utilized for the intended purpose of the Programme as the payment to the service provider has been made. The donor was satisfied with the project completion and has since given program review report and commendation. The project was completed successfully in 2022/2023 financial year.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that it awaits the report of the Auditor General for FY 2022/23.

1111. Lack of an Approved Procurement Plan

The financial statements reflect an amount of Kshs.7,204,940 relating to printing, advertising and information supplies expenditure as disclosed in Note 3 to the financial statements. However, the Management failed to provide an approved annual procurement plan contrary to Section 53(2) of the Public Procurement and Asset Disposal Act, 2015 which highlights the expenditure and other details in accordance with third schedule of the Public Procurement and Asset Disposal Regulations, 2020.

Further, prior year financial statements reflect an expenditure Kshs.2,877,190 for printing, advertising, and information supplies against the current year's expenditure of Kshs.7,204,940 leading to unexplained increase in expenditure of Kshs.4,327,750.

In the circumstances, Management was in breach of the law.

Submission by Accounting Officer

The master procurement plan was included in the approved procurement Plan for FY 2018/19 under consultancy services. The State Department regrets the omission in the subsequent year. The project has since been completed in 2022-2023.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the accounting officer for failure to institute an annual work plan.

1112. Delay in Project Implementation - Manooni Water Project

Manooni Water Project being implemented by the Project through Tanathi Water Works Development Agency was to be completed by 30 June, 2021. However, the Project's duration was extended by one year up to 30 June, 2022 vide a letter dated 7 September, 2021. However, at the time of the audit in October, 2022, the Project was yet to be completed despite the expiry of the extension period. Further, Management provided the National Technical Committee Meeting minutes dated 10 May, 2022 indicating that the Project completion was at 97%.

In the circumstances, failure to complete the project on time adversely affect delivery of the objectives of the project despite having invested a substantial amount of money on the project.

Submission by Accounting Officer

Manooni was completed and handed over to the Water company for operations and completion certificate and handover reports evidenced.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendations

The Committee recommends that the Auditor General ascertains status in subsequent audit.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1113. Inventory Management Control Weakness

Review of the management of inventory revealed unsatisfactory matters as follows:

i. Management did not provide evidence of the existence of a physical store where deliveries are received and issued to the user departments. It was, therefore, not clear where Management stores the procured goods.
ii. There was lack of accountable documents especially S11 which should be used by the user department to requisition toners from the store. It was, therefore, not clear how Management requisitioned for the toners from the store.

iii. There were no store ledger cards which would track the movement and condition of inventories and stock reorder levels.

iv. There was lack of a proper electronic/manual system of managing inventories. This contravened Regulation 166(4) of the Public Procurement and Asset Disposal Regulations, 2020 that requires an effective, economic, efficient, and transparent use of Government inventory, stores and assets at all levels, and that an Accounting Officer of a procuring entity shall take full responsibility of the management or control of inventory and assets.

Submission by Accounting Officer

i) The Accounting Officer has appointed various committees to undertake procurement and inventory duties

ii) On the other hand, the National Treasury is supporting state departments through the IFMIS module. The module has already been implemented and already in use.

Committee Observations and Findings;
The Committee noted the admission by the Accounting Officer of the failure to manage the stores and inventory efficiently.

Committee Recommendation;
The Committee reprimands the Accounting Officer.

KENYA WATER SECURITY AND CLIMATE RESILIENCE PROJECT (IDA CREDIT NO.5268/5674-KE)

REPORT ON THE FINANCIAL STATEMENTS

1115. Unresolved Prior Year Audit Matters

There were issues raised in the audit report for 2020/2021 financial year of which no report or recommendations from the Project Management and oversight bodies were submitted for audit verification and clearance. Further, the issues remained unresolved contrary to Section 68(2)(l) of the Public Finance Management Act, 2012 which requires Accounting Officers designated for National Government entities to try to resolve any issues resulting from an audit that remain outstanding.

Submission by Accounting Officer

The absorption of funds for the Lower Nzoia Irrigation Project increased substantially in later years to an extent the physical work progress achieved was 72% as at 31st March 2024 and the current financing amounting to USD 113M was entirely exhausted. Since then the ministry has secured additional financing of USD 30M to finalize the remaining 28%.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendations

The Committee recommends that the Auditor General ascertains status in subsequent audit.

1116. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.2,880,000,000 and Kshs.2,407,631,630 respectively resulting to an underfunding of Kshs.472,368,370 or 16% of the budget. Similarly, the Project expended Kshs.2,423,853,836 against an approved budget of Kshs.2,880,000,000 resulting to an under expenditure of Kshs. 456,146,164 or 16% of the budget.

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

Submission by Accounting Officer

The low absorption of funds was especially related to the reduced rate of execution of Works for the Lower Nzoia Irrigation Project by the Contractor occasioned by delayed land acquisition by the National Land Commission (NLC). This affected construction along the Main and Secondary canals where compulsory land acquisition is ongoing. However, recently, the NLC has undertaken expedited land acquisition and compensation process to the effect that the Contractor has been able to undertake significant construction and given that PAPs have begun allowing access for installation of tertiary canals, KWSCRP expects absorption to increase remarkably.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1117. Failure to Remit Statutory Dues

Review of the Project's human resource records for the year ended 30 June, 2022, revealed that the deductions and remittance of contributions to Compulsory National Social Security Schemes and Compulsory National Health Insurance Schemes for temporary employees of the Project were not withheld contrary to Section 20 of the National Social Security Fund Act No. 45 of 2013 and Section 16 of the National Hospital Insurance Fund (Amendment) Act, 2021 on standard contributions. As a result, Management was in breach of the law.

Submission by Accounting Officer

It is true the project did not deduct the stipulated statutory deduction from the casuals. This was effected from the subsequent financial year 2022-2023.

The project did not deduct the statutory dues as the temporary employees are engaged to the project for a duration of three months only, then take a break for one month hence bringing confusion on how to remit the statutory dues. After some consideration, with the HR, it was decided we follow

the guidelines and be deducting the statutory dues. This was effected from the subsequent financial year.

Committee Observations and Findings;

The Committee noted the admission of the breach by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to ensure statutory deductions are remitted.

WATER AND SANITATION DEVELOPMENT PROJECT (IDA CREDIT NO.6029/6030-KE)

REPORT ON THE FINANCIAL STATEMENTS

1121. Budget Utilization

The statement of comparative budget and actual amounts reflects actual receipts of Kshs.3,653,862,378 against a budget of Kshs.4,590,000,000 resulting into a receipts shortfall of 20% of budgeted receipts. Further, the statement reflects final expenditure budget and actual on comparable basis of Kshs.4,590,000,000 and Kshs.7,056,925,116 resulting to an over-expenditure of 54% of the budget.

Submission by Accounting Officer

Low absorption of the budget amount was due to late approval of the county Government Bill on April 2022 that could not allow second disbursement of funds to the counties before closure of the financial year. However, the funds had been disturbed by the World Bank to the Project designated account.

The over-expenditure was due to inclusion of an expenditure arising from 2020/2021 FY disbursement that was not accounted for in the same year to the tune of Kshs. 3,403,062,738. These funds were disbursed the last week of June 2021 and being a Multi-year project the expenditure was incurred and accounted for during 2021-2022 financial year. They have been analyzed as below:

	INSTITUTION	AMOUNT
1	Mombasa County	373,801,176
2	KWALE COUNTY	186,503,544
3	Kilifi County	381,790,777
4	GARISSA County	228,004,435
5	Water Services Regulatory Board	19,744,850
6	Taita Taveta County	110,561,121
7	WAJIR County	145,035,656
8	Coast Water Works Development Agency	167,080,353
9	Water Sector Trust Fund	1,742,103,885

10	Northern Water Works Development Agency	48,436,943
	TOTAL EXPENDITURE	3,403,062,738

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1122. Implementation of Procurement Work Plan

Review of the Project's procurement plans revealed that each of the twelve (12) implementing agencies prepared a procurement plan indicating each activity to be undertaken, with expected start and completion dates during the 2021-2022 financial year, with a combined estimated contract amount of USD 199,564,982. However, no documentary evidence was provided to confirm that each of the agencies had prepared a quarterly report on the implementation of the annual procurement plan and submitted them to the Cabinet Secretary or County Executive Committee Member for finance as required by Regulation 40(6) of the Public Procurement and Asset Disposal Regulations, 2020.

Submission by Accounting Officer
The signed Financing Agreement has only requirement of submission of quarterly progress reports detailing the status of all WSDP activities not later than forty-five (45) days after the end of the period covered by such report and then shared with the world bank and national Treasury. Procurement plans are managed by the World Bank Online STEP system. No separate provision has been provided for submission of Stand-alone Implementation of Procurement plans.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

1123. Lack of Register of Bank Accounts
The statement of financial assets and liabilities reflects bank balances of Kshs.1,428,374,239 held by different implementing agencies as detailed in Note 8 to the financial statements. Review of the Project's financial statements, payment records, correspondence files and other records revealed that the project operated eleven (11) bank accounts for implementing agencies and one (1) Central Bank of Kenya account during the year under review.

However, there was no evidence that a register of the bank accounts authorized by the County treasury or The National Treasury indicating the name of the bank, branch, account number, purpose of account, authorization details, opening date, authorized signatories, date of closure among others was kept and maintained by the Project Management as required by Regulation 87(3) and (4) of Public Finance Management (National Government) Regulations, 2015.

Submission by Accounting Officer
The project maintains a file of the Authorized accounts for the project and a register whose extract is appended here below.

No.	Account No.	Account Name	Bank Name
1.	1000457201	MoWSI	Central Bank of Kenya
2.	1240284225	Kwale County	KCB
3.	1240218648	Coast Water Works Development Agency	KCB
4.	01560276782381	Mombasa County	Equity Bank
5.	0180280425687	Water Sector Trust Fund	Equity Bank
6.	1283235579	Northern Water Works Development	KCB Bank
7.	01071032110300	Water Services Regulatory Board	Equity bank
8.	1239146469	Kilifi County	KCB
9	1236141776	Kilifi County	KCB-Malindi
10.	010300278635680	Wajir County	Equity Bank
11.	0580279720179	Garissa County	Equity Bank
12.	1242765387	Taita Taveta County	KCB Bank

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

LAKE VICTORIA WATER SUPPLY AND SANITATION PROGRAMME PHASE II PROJECT NO. P-Z1-EAO-004(ADF GRANT NO. 2100155019967) - LAKE VICTORIA SOUTH WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

1126. Unsupported Transfers and Disposal of Project Assets

Annex 3 to the financial statements reflects a summary of fixed assets balance of Kshs.105,861,430 which includes assets worth Kshs.92,870,770 which had been handed over to other public entities. These included three tractors transferred to Kericho County Government, two tractors each transferred to Nyamira and Migori County Governments all valued at Kshs.27,930,000. The transfers also included motor cycles, sludge exhausters and skip loaders valued at Kshs.2,250,000, Kshs.38,267,770 and Kshs.24,423,000 respectfully which were purportedly transferred to Water Companies under the jurisdiction of Lake Victoria South Water Works Development Agency.

However, Management did not provide a signed inventory to support these transfers to other Water Companies. In addition, the ownership documents for a Nissan XTrail were not provided for audit review. Further, proceeds of Kshs.701,500 from disposal of a double cabin pick-up during the year was not disclosed in these financial statements.

In the circumstances, the authenticity of these transfers and completeness of the revenue received could not be confirmed.

Submission by Accounting Officer

The Ministry has received the report that all the supporting documents have since been availed for audit verification by the LVSWWDA. The proceeds from disposal of a double cabin pick-up during the year was disclosed in the subsequent financial statements under note 20.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1127. Pending Bills to Contractors

Annex 2 to the financial statements reflects an amount of Kshs.175,943,278 under pending bills. This amount includes amounts of Kshs.59,495,770 and Kshs.92,000,000 described as retention money owed to contractors. However, the reported amounts represented claims and interest due to contractors and not retention money as reported. Further, Management did not provide supporting documents for audit review, on how the claims and interest amounts were arrived at.

In the circumstances, the accuracy and completeness of outstanding pending bills of Kshs.175,943,278 could not be confirmed.

Submission by Accounting Officer
The Agency has confirmed that the financial statement has been corrected by replacing the sub-title "retention" by "claims and interests". A proof of Kshs 59,495,770, Kshs 92,000,000 and Kshs 24,447,508 has been availed. The contractual claims arose from the clauses of the contract agreement for the project. The contractual claims have not been cleared due to lack of budgetary provisions / budget cuts in supplementary budgets.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1128. Project Performance and Timelines

The Project was expected to run from 15 April, 2011 to 31 December, 2019. However, the Project had no activities for the last two years except settling of pending bills which had been incurred previously. No reasons were provided for failure to have the Project formally closed and the assets and existing liabilities transferred to the relevant authorities as earlier envisaged.

In the circumstances, the Project may continue to incur additional costs which will not be a proper charge to public funds.

Submission by Accounting Officer
The Agency has confirmed that the implementation of the actual works under the project is complete, Assets and handed over to WSPs for operation and maintenance. However, the full closure of the project is pending due to the outstanding claims/pending bills owed to the contractor by LVSWWDA. The MWSI is supporting LVSWWDA to allocate some funds to reduce the pending bills under the project. In the current FY 2024/25, the MWSI has allocated KES 15 Million.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer settles the pending bills as first charge.

1129. Presentation of the Financial Statements

The financial statements submitted for audit did not indicate the applicable financial reporting framework contrary to the requirements of the reporting template prescribed by the International Public Sector Accounting Standards Board (IPSASB).

In the circumstances, the financial statements were not fairly presented.

Submission by Accounting Officer
The Agency has confirmed that the financial statements were corrected to indicate the reporting basis which is the cash basis of accounting in line with the reporting template prescribed by the international Public Sector Accounting Standards Board (IPSASB).

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1130. Inaccuracy of the Statement of Comparison of Budget and Actual Amounts

The statement of comparison of budget and actual amounts reflects a final budget of Kshs.80,000,000 and actual receipts of Kshs.133,734,544 respectively resulting to a performance difference of Kshs.53,734,544. However, this was attributed to the delay in disbursement of budgeted funds in the year 2020-2021 that were received in July, 2021. The roll over budgeted funds were included as an adjustment in the statement of comparison of budget and actual amounts.

In the circumstances, the accuracy and completeness of the statement of comparison of budget and actual amounts could not confirmed.

Submission by Accounting Officer

The Agency has presented documents to prove that the budget performance difference identified was due to the fact that the second disbursement of funds for the project in 2020/2021 delayed and were received at the beginning of the financial year 2021/2022.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1131. Nugatory Costs on the Delayed Settlement of Pending Bills

During the year under review, an amount of Kshs.34,000,000 was paid out to a contractor as interest due to delayed payments. It was further noted from Annex 2 to the financial statements that an amount of Kshs.59,495,770 and Kshs.92,000,000 was still owed to a contractor in form of unpaid claims and interests respectively. This implies that the outstanding pending bills will continue to attract additional interest.

In the circumstances, continued payment of interest may not be a proper charge to public funds.

Submission by Accounting Officer

The Agency has reported that the amount of Kshs. 34,000,000 was payment certificate and not interest claim. Claims on penalties and interest on delayed payments Interest of Kshs.59,495,770 and Kshs.92,000,000 was due to; delay in land acquisition, delay in tax exemption and interests on delayed payment. The Agency has secured the contractor's commitment to waive any further claim on delayed payments arising from the claims. This is evidenced in the attached approval letter and Contractor's acceptance of the same.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

LAKE VICTORIA WATER AND SANITATION PROJECT GRANT NO CKE 1093 02 M, CREDIT NO. CKE1093 01 L AND EIB NO. FI No83890 Serapis No 2011-0619 - LAKE VICTORIA SOUTH WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

1134. Irregular Expenditure

The statement of receipts and payments reflects an amount of Kshs.10,687,618 under Project management expenses, which as disclosed in Note 6 to the financial statements includes an amount of Kshs.1,654,910 on capacity building and Kshs.609,100 on travelling and accommodation. The travel expenses include cost of air tickets to Nairobi amounting to Kshs.231,500 for staff who attended training on tax management. However, the training expenditure balance of Kshs.1,654,910 includes the cost of the tax training. The two activities do not relate to the Project and are not a proper charge.

In the circumstances, the propriety on the expenditure on the training on tax management and the air tickets could not be confirmed.

Submission by Accounting Officer

LVSWWDA has confirmed that the training on tax management was part of the Capacity Building and Training Plan for the Project and identified Kenya Revenue Authority Training Institute as the trainer. The purpose of the training was to capacity build the staff involved in the multi-donor funded project to ensure Tax compliance and mitigate the tax related risks mechanisms of withholding income tax in situations where the payment certificates are paid by the foreign financiers directly to the contractors and consultants yet the Agency is obliged to withhold tax and remit to Kenya Revenue Authority. Capacity building of staff to enhance Compliance with Tax Policies for a large project such as LVWATSAN is considered as appropriate and relevant expenditure.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1135. Unconfirmed Acquisition of Non-financial Assets

The statement of receipts and payments reflects an amount of Kshs.5,745,285 under acquisition of non-financial assets, leading to an accumulated amount on non-financial assets of Kshs.7,114,460. However, review of the asset documentation and audit verifications conducted during the year revealed that, the assets were not tagged and could not be differentiated from the other assets.

In the circumstances, the existence and ownership of the assets could not be confirmed.

Submission by Accounting Officer

The Agency has reported that all the assets which were acquired through the project have since been tagged properly and are available for verification.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1136. Delayed Project Completion and Performance

As disclosed in Note 4 to the financial statements, the statement of receipts and payments and reflects an amount of Kshs.121,020,028 on purchase of goods and services. The amount includes balances of Kshs.87,382,145 and Kshs.33,637,882 incurred on project management consultancy services and technical design and supervision consultancy, respectively. However, review of records revealed that Management entered into a contract for consultancy services for Technical Assistance and Capacity Building at a contract sum of Kshs.223,137,747. The contract commenced on 14 August, 2018 for a period of forty-five (45) months and was expected to be completed by 14 May, 2022. During the year under review, Management paid an amount of Kshs.87,382,145 bringing the cumulative expenditure to Kshs.123,021,963 (55%). The Project was therefore behind schedule.

Further, another contractor was paid an amount of Kshs.33,637,882 to undertake feasibility studies, design and supervision of works under the project packages 1 & 2 in Kisumu City. Review of Interim Certificate No. 8 dated 22 January, 2022 revealed that the cumulative expenditure as at 30 June, 2022 was Kshs.58,721,225 representing 18% of the total contract price of Kshs.311,343,443. The Project commencement date was 25 August, 2017, for a period of fifty-six (56) months with an expected completion date of 25 April, 2022. Verification of the status of the contract revealed that the Projects' planned deliverables earmarked for completion had not been realized. However, no evidence was provided to demonstrate progress of the two consultancies. Management did not demonstrate the efforts it is making to expedite the implementation of the Project.

In the circumstances, the delayed, commencement and subsequent completion of the project negates the public from deriving services from the Project.

Submission by Accounting Officer

The project was delayed due to effect of COVID-19 containment protocols which restricted local and International movement between January 2020 and December 2022. Since the Consultant-

COWI/AS is based in Denmark, the experts could not travel into and out of the Country during the time. Find attached, Presidential Executive Order No.1 which restricted entry or exit of Nairobi for the peak period of COVID 19.

The progress of the the activities is presented below;

a) Technical Assistance and Capacity Building

In order to complete the outstanding works which delayed due to the covid 19 travel restrictions, the contract has been extended to December 2024. Progress of the consultancy is 92% and the only ongoing activity is assistance in tender process for procurement of Works package 3 consultant, which is due to be completed in November 2024.

b) Consultancy for Technical Studies, Design & Supervision of Works Package 1&2

Phase I of the consultancy (Studies) has been completed and the Phase II (supervision of works) commenced in December 2022 and expected to be completed by 24th October 2026 following contract Amendment No 2 which was signed on 6th July 2022. Progress of the consultancy is 65%.

Committee Observations and Findings;

The Committee noted the delay in the project implementation.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of the adoption of this report.

WATER AND SANITATION SERVICES IMPROVEMENT PROJECT (IDA CR. NO.5103-KE) - LAKE VICTORIA NORTH WATER WORKS DEVELOPMENT AGENCY

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1140. Failure to Close the Project

As reported in the previous year's report, the Project, with a budget of US$34,990,184 (equivalent to Kshs.3,252,230,091), commenced on 14 December, 2012, and was to last for seven (7) years up to 31 December, 2019, but was extended to 2020. However, as at the time of audit, in September, 2022, the Project had not formally closed. No explanation was provided for the failure to close the Project at the expiry of its life time. Further, the statement of receipts and payments reflects Kshs.39,690 in respect to operating costs for the 2022 financial year incurred after the project timelines had expired.

In the circumstances, the validity and propriety of the Kshs.39,690 expenditure could not be ascertained.

Submission by Accounting Officer

The project was officially closed in 2020, The bank accounts were closed upon approval by the national treasury 2023. Attached is correspondence with National Treasury on Closure of the account.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

KENYA TOWNS SUSTAINABLE WATER SUPPLY AND SANITATION PROGRAM (LOAN NO.2000200000501) - ATHI WATER WORKS DEVELOPMENT AGENCY (AWWDA)

REPORT ON THE FINANCIAL STATEMENTS

1144. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects budgeted receipts of Kshs.1,896,000,000 and actual receipts of Kshs.1,470,515,653 resulting to a budget shortfall of Kshs.425,484,347 or 22%.

Further, the statement reflects budgeted expenditure of Kshs.1,896,000,000 and actual expenditure of Kshs.1,431,998,611 resulting to under absorption of Kshs.464,001,389 or 24% of the budget. The underfunding and under expenditure affected the planned activities of the Project and may have impacted negatively on service delivery to the public.

Submission by Accounting Officer

Project receipts were less by 22% while the expenditure was less by 24%. This was occasioned by the fact that certificates worth Kshs. 407,679,865 could not be processed through the ministry owing to the exhaustion of the program-wide budget. Given that the project disbursements are wholly direct payment in nature, delayed processing of the disbursements affect both the revenue and the expenditure components of the budget. The project financial report is on cash basis and thus, only payments that had gone through the ministry and paid by AfDB could be factored as expenditure for the year. Therefore, if the payments had been processed through the ministry the project would have been at 99% and 97% revenue and expenditure budget absorption rates respectively.

There were therefore no delays in the delivery of goods and services as earlier planned because the under-utilization happened at the payment stage as explained above.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1145. Failure to Open and Operate a Separate Project Bank Account

Audit review revealed that Athi Water Works Development Agency (AWWDA) operates one bank account at a local bank for all the projects under its control. Review of the bank statement revealed that the account had a bank balance of Kshs.595,009,769 as at 30 June, 2022 while the bank reconciliation statement indicated cash book balance of Kshs.537,031,407. These funds were commingled with other projects funds contrary to Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015.

In the circumstances, the Project Management was in breach of the law.

Submission by Accounting Officer

By the time the audit was conducted, AWWDA operated one Development Bank Account through which GoK counterpart fund for projects whose financing agreements did not require opening of a separate project account.

The bank statement as at 30th June 2022 showed a bank balance of Kshs.595,009,769 while the cashbook had a balance of Kshs.557,031,407. The difference of Kshs.37,978,407 related to unpresented cheques (as per the attached certificate of bank balance and bank reconciliation- All the unpresented cheques have since cleared.

On the accuracy of the cash and cash equivalent balance of Kshs.396,861,994 AWWDA operated a fund accountability Statement for each of the projects that were managed through the development fund account and a fund summary whose balances are reconciled with the cashbook balance. The fund accountability for Kenya Towns Sustainable Water Supply and Sanitation Program together with the fund summary were availed.

Committee Observations and Findings;

The Committee noted the admission of the breach by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for breach of Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015.

1146. Stalled Projects

1146.1 Changamwe Re-pooling Sewer Network

The Contract for the works was awarded to a Company at a contract sum of Kshs.204,483,295 while the contract commencement date was 14 December, 2018 and the expected completion date was 14 June, 2020, which was later extended to 14 January, 2021. As at 30 June, 2022, the contractor had been paid Kshs.72,816,261.

However, review of the documents presented for audit revealed that the project had stalled due to a court order issued for an ongoing lawsuit by the contractor against the AWWDA for breach of contractual agreement that restrained the AWWDA from evicting the Contractor from the possession of the construction site and appointing another contractor to proceed with the construction work, pending the hearing and determination of the suit.

Further, audit verification done in October, 2022 revealed that the manholes constructed had been vandalized and filled with litter. This will require removal of the litter for the construction to proceed which will attract further costs. In addition, the piping works were done about 3km out of the expected 15km with overall work completed at only 15%. It is therefore not clear if the works would be completed due to the ongoing lawsuit.

In the circumstances, the value for money for the expenditure of Kshs.72,816,261 may not be realized.

Submission by Accounting Officer

Changamwe sewerage project stalled but at 20% not at 15%. However, the reason for stalling was not because AWWDA breached the contract as indicated by the auditor.

Due to the contractor's non-performance AWWDA initiated the process of contract termination and recalling of guarantees. The contractor on his part, obtained a court injunction restraining AWWDA from evicting them from site and stopping the process of guarantee recall until the case is heard and determined. As it stands, all the site is still under the contractor's possession until he hands over the works to AWWDA. The contractor had not constructed the manhole covers and therefore the works have not been vandalized. Unblocking of the manholes is also within the contractor's scope of works after completion of the works at no further cost to the contract.

That notwithstanding, value for money for the expenditure to date being payment against value of certified works except for the guaranteed advance payment was ascertained.

The Project is currently under arbitration.

Committee Observations and Findings;

The Committee noted the delay by the Accounting Officer in settling the matter with the contractor to enable the resumption of works.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report of the arbitral proceedings within three (3) months of the adoption of this report.

1146.2 Construction of Mwala Cluster Water Supply Project

The Contract for the works was awarded to a Contractor at a contract sum of Kshs.583,332,778 with the commencement date of 1 April, 2019 and expected completion date of June, 2020, which was later extended to 5 August, 2021. However, the contract was terminated on 24 May, 2022 because the contractor executed the works at a very low pace. The works completed as at the time of termination was 3% against time lapse of 180%.

Further, the contractor had been paid an amount of Kshs.133,733,822 which included Kshs.116,666,555 for advance payment and Kshs.17,067,267 for interim payment while the total value of works executed and certified amounted to Kshs.17,537,673. However, the AWWDA had performance security bond of Kshs.58,333,277 which could not guarantee recovery of the paid amounts. At the time of audit in October, 2022, the Project had stalled and no evidence was provided on how the Project was to be completed.

In the circumstances, the value for money for the expenditure of Kshs.133,733,822 may not be realized.

Submission by Accounting Officer

As at the time of audit, the contract for Mwala had already been terminated and the AWWDA was in the process of processing the certificate of final account in order to discharge the contractor.

The state department disagrees with the auditor's observation that the performance guarantee amount could not guarantee the amounts paid. This is because the advance payment of

Kshs.116,666,555 was guaranteed by an advance guarantee separate from the performance guarantee. As at the time of audit both guarantees had been cashed and the amounts were received by AWWDA on 5th August.

At the point of contract termination, AWWDA recovered the advance amount of Kshs.116,666,555 while interim payment certificate (IPC 2) was paid against value of works done. In effect, AWWDA earned an additional Kshs.58,333,277 for contractor's non-performance.

The contract was readvertised and contractor procured to implement the works from 14th December 2023 to 14th December 2025, currently the progress is 5% with site clearance for treatment works ongoing

Therefore, there was value for money for all the reported expenditures under this contract.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1147. Delayed Project Implementation

1147.1 Slow Implementation of Machakos Water Supply Project

The statement of receipts and payments and as disclosed in Note 11.8.1 to the financial statements reflects an amount of Kshs.510,329,209 in respect to acquisition of non-financial assets - TAWWDA which includes Kshs.471,860,045 for construction of civil works which further includes Kshs.228,008,804 paid to a construction company for the construction of Machakos Water Supply Project.

However, review of the project documents and audit inspection done in October, 2022 revealed that the overall project progress was at 43% and some work components including source works, raw water mains, rising mains, gravity transmission mains and electrical mechanical water supply had not started with the delay being attributed to a law suit filed by the contractor which required all project works to be stopped. The case was set aside on 29 January, 2021 and a resumption order issued to the Contractor on 08 March, 2021 except for the Miwongoni dam site.

In addition, even though the AWWDA is undertaking engagements with project affected persons (PAPs) in a bid to acquire land for the Dam site and that the National Land Commission (NLC) are finalizing on the valuation report after which compensation will begin, the process has taken long, and this may lead to several works not being completed within the contract period which may lead to cost overruns.

In the circumstances, the value for money for the expenditure of Kshs.228,008,804 may not be realized.

Submission of Accounting Officer

The delay in implementation was caused by court cases related to Land acquisition as observed by the auditor. Although the compensation process has been lengthy, the state department doesn't envisage further delays. Thus, the project is expected to be completed within the contract period which lapses on 7th December 2024.

The issue of non-confirmation of value for money does not arise because the payments are against certified works and the contract is progressing well as per programme of works and it is still within the implementation period.

The valuation for the affected parcels has been completed awaiting budget for compensation to allow for access for dam construction works.

The overall progress of the project is currently at 66% with the major pending works being the dam construction.

Committee Observations and Findings;

The Committee noted the delay in the implementation of the project.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report of the project within three (3) months of the adoption of this report.

1147.2 Slow Implementation of Machakos Sewerage Project

Further, the amount of Kshs.471,860,045 includes Kshs.141,706,921 paid to construction companies for construction of Machakos Sewerage Project. However, review of the Project documents and audit inspection done in October, 2022 revealed that some work components including sewage treatment plant, consumer connections sewer, electro mechanical sewerage and rehabilitation works had not started due to delays in acquisition of the sewer treatment plant land. The overall progress for the Project was at 31% pending approval of the extension of completion date to 4 June, 2023.

In the circumstances, the value for money for the expenditure of Kshs.141,706,921 may not be realized.

Submission by Accounting Officer

The current overall progress is 72.53%, the contract completion date is 14th July 2024. The contractor has been handed over all the sites under the contract. Works will be completed within the extended time period as per the contractor's revised programme of works.

Consequently, the issue of inability to confirm value for money on the expenditure related to this project does not arise because payments are made against value of works executed except for advance payment which is guaranteed and in the process of being recovered.

Committee Observations and Findings;

The Committee noted the delay in the implementation of the project.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of the adoption of this report.

1147.3 Slow Implementation of Kitui Matuu Last Mile Project

Further, the amount of Kshs.471,860,045 includes an amount of Kshs.102,144,319 paid to a construction company for the construction works for Kitui Matuu Last Mile connectivity of water

and sanitation works in Tana Athi Water Works Development Agency areas. However, review of the Project documents revealed that the contract was signed on 18 September, 2019 with a revised completion date of 31 December, 2022. The overall work progress was 36% which was two (2) months to the end of the revised contract period which was evident that several works may not be completed within the contract period which may lead to cost overruns.

The delay was attributed to many factors including delayed submission of contractor's request for specific tax and duty exemptions for various items, lack of possession of site for Wote intake works, lack of access to the Murang'a South intake site and raw water main due to delayed issuance of the permit from Kenya Forest Services (KFS), lack of contractor's key personnel on site, inadequate mobilization of materials meant for the works and inadequate cash flow by the contractor. If amicable solutions to the challenges are not found, the Project may be delayed further denying the beneficiaries the intended services.

In the circumstances, the value for money for the expenditure of Kshs.102,144,319 may not be realized.

Submission by Accounting Officer

The works are at 36% implementation and that all sites have been handed over to the contractor. It is true that the contractor has been having cash flow challenges leading to inadequate mobilization of materials and equipment for the works.

Both the implementing and the beneficiary agencies have jointly held several management meetings with the contractor to resolve the challenges highlighted in a bid to push for timely completion of the remaining works. The Kshs.102,144,319 incurred within the financial year is the value of measured work executed hence the issue of inability to confirm value for money on the expenditure related to this project does not arise.

The contract is currently under termination having been given a No Objection by AfDB to terminate.

Committee Observations and Findings;

The Committee noted the delay in the implementation of the project.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of the adoption of this report.

1147.4 Slow Implementation for Construction Works for Water Distribution for Malindi/Watamu Project

The statement of receipts and payments and as disclosed in Note 11.8.2 to the financial statements reflects an amount of Kshs.100,403,387 in respect to acquisition of non-financial assets – CWWDA. The payment includes an amount of Kshs.89,893,387 for construction of civil works which further includes Kshs.71,679,511 paid to a construction company for the construction of water distribution line for Malindi/Watamu. The contract sum was Kshs.288,793,278 effective 26 August, 2020. The expected completion date was 26 February, 2022 which was later revised to 25 August, 2022 and later revised to 25 November, 2022.

However, audit verification done in October, 2022 revealed that the pipping works were in progress although the pipping connection for the hundred (100) existing consumers and the three hundred (300) new consumers had not been done. Further, the project progress was at 70% and the time lapse was at 96% which was a clear indication that the project was behind schedule compared with the agreed projects' duration.

In the circumstances, value for money for the expenditure of Kshs.71,679,511 may not be realized.

Submission by Accounting Officer

The contract faced some delays due to approval of master list and specific tax exemptions that slowed down acquisition of materials for the works. However, the connection of existing and new consumers is currently ongoing as per the programme of works after the network was fully tested and water connected.

The Kshs.71,679,511 incurred within the financial year is the value of measured work executed hence the issue of inability to confirm value for money on the expenditure related to this project does not arise.

The works are at 93% implementation and that all sites have been handed over to the contractor

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee found that the matter was resolved.

KENYA TOWNS SUSTAINABLE WATER SUPPLY AND SANITATION PROGRAMME (AfDB LOAN NO.2000200000501) - TANA WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

1150. Acquisition of Land - Lack of Ownership Documents

The statement of receipts and payments and as disclosed in Note 4(a) and (b) to the financial statements reflects acquisition of non-financial assets amount of Kshs.96,708,448 which includes Kshs.13,011,998 and Kshs.76,755,500 both totalling Kshs.89,767,498 for acquisition of land. However, although the sale agreements with the vendors for the respective parcels of land were provided for audit, title deeds for fully paid and partly paid land had not been acquired.

In the circumstances, the ownership status of the parcels of land could not be confirmed.

Submission by Accounting Officer

The amount of Kshs. 76,755,500 relates to Land Acquired by TWWDA for implementation of Marsabit Water & Sewerage Infrastructure and Parcels of land amounting to Kshs. 13,011,998 relate to land acquired for implementation of Chogoria and Chuka Water & Sanitation Infrastructure. Six land parcels valued at Kshs.42,685,300 have title deeds and the tittle deeds are hereby provided.

The current status of land ownership is as shown in Table 1 below:

DATE	PARTICULARS	CHQ No.	AMOUNT	REMARKS	CURRENT STATUS
01/09/2021	Catherine Kathure Marete	025228	1,680,000	Land Acquisition for Chogoria Sewerage	Transmission process ongoing.
01/09/2021	Henry Migue	025230	1,532,053	Land Acquisition for Chuka Sewerage	Transmission process ongoing
09/09/2021	Saleh Salim	025444	7,413,000	Land Acquisition for Marsabit Sewerage Project	Tittle deed transferred to NWWDA & Provided
09/09/2021	Soke Ote	025445	7,413,000	Land Acquisition for Marsabit Sewerage Project	Tittle deed transferred to NWWDA & Provided
09/09/2021	Hassan Salim	025446	7,413,000	Land Acquisition for Marsabit Sewerage Project	Tittle deed transferred to NWWDA & Provided
07/10/2021	Ndumbai Mwangangia	026002	1,601,243	Land for Chogoria Sewerage	Transmission process ongoing
07/10/2021	Andeline Nkuruni	026003	1,601,243	Land for Chogoria Sewerage	Transmission process ongoing
12/10/2021	Loyd Njue Muchiri	026062	587,112	Land for Chogoria Sewerage	Transmission process ongoing
12/10/2021	Japhet Mbae	026063	293,561	Land for Chogoria Sewerage	Transmission process ongoing
12/10/2021	Beatrice Nkuene	026064	160,124	Land for Chogoria Sewerage	Transmission process ongoing
12/10/2021	Charity Maingi	026065	213,432	Land for Chogoria Sewerage	Transmission process ongoing
12/10/2021	James Kairanya	026082	179,893	Land for Chogoria Sewerage	Transmission process ongoing
12/10/2021	Nicholas Riungu	026083	59,893	Land for Chogoria Sewerage	Transmission process ongoing
12/10/2021	Hellen Kaburi	026084	120,000	Land for Chogoria Sewerage	Transmission process ongoing
12/10/2021	Wilfred Micheni	026086	59,893	Land for Chogoria Sewerage	Transmission process ongoing

12/10/2021	Japhet Kariuki	026087	59,893	Land for Chogoria Sewerage	Transmission process ongoing
21/10/2021	Abdi Muhsin Yusuf	026299	1,360,000.00	Land for Mandera Sewerage	Tittle deed transferred to TWWDA & Provided
29/12/2021	Calumen Kangai K	027611	36,000.00	Land for Chogoria Sewerage	Transmission process ongoing
29/12/2021	Kimathi Kathenya	027612	83,679.00	Land for Chogoria Sewerage	Transmission process ongoing
29/12/2021	Timothy Mugendi K	027613	83,679.00	Land for Chogoria Sewerage	Transmission process ongoing
04/01/2022	Jacklin Kithuci Rucha	027707	1,725,000.00	Land for Chogoria Water	Tittle deed transferred to TWWDA & Provided
04/01/2022	Wilfred Kathenya	027701	934,058.00	Chogoria sewerage land	Tittle deed transferred to TWWDA & Provided
25/01/2022	Salim Abubakar	028048	18,545,100.00	Land for Marsabit Sewerage	Tittle deed transferred to NWWDA & Provided
08/02/2022	Soke Oke Soke	028349	29,652,000.00	Land for Marsabit Sewerage	Tittle deed transferred to NWWDA & Provided
16/02/2022	Loyd Nyaga	028507	400,000.00	Land for Chogoria Water	Tittle deed transferred to NWWDA & Provided
09/03/2022	Esther Ntagana	029001	1,601,242.00	Land for Chogoria Sewerage	Transmission process ongoing
22/03/2022	Denge Godona Qarbicha	029292	514,000.00	Land for Marsabit Sewerage	Transmission process ongoing
22/03/2022	Denge Godona Qarbicha	029293	321,240.00	Land for Marsabit Sewerage	Transmission process ongoing
24/05/2022	Fatuma Bagaja	030511	1,284,960.00	Land acquisition for Marsabit	Transmission process ongoing
24/05/2022	Omar Salim	030512	514,000.00	Land acquisition for Marsabit	Transmission process ongoing

23/06/2022	Soke Ote	031020	1,316,480.00	Land acquisition for Marsabit	Tittle deed transferred to NWWDA & Provided
23/06/2022	Hibro Huka Cheto	031030	424,040.00	Land acquisition for Marsabit	Transmission process ongoing
23/06/2022	Ali Elema Kapchowa	031031	584,680.00	Land acquisition for Marsabit	Transmission process ongoing
	GRANT TOTAL		89,767,498.00		

Committee Observations and Findings

The Committee noted the delay in the acquisition of land documents.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of the adoption of this report.

1151. Unresolved Prior Year Matter

As previously reported, ownership status for parcels of land valued at Kshs.186,821,596 could not be confirmed as 30 June, 2021. However, audit verification carried out in the month of September, 2022 revealed that title deeds for parcels of land valued at Kshs.7,325,775 had not yet been acquired, and therefore the matter remains unresolved.

Submission by Accounting Officer

The amount of Kshs. 7,325,775 relates to part payment for fourteen (14) parcels of land for implementation for Chogoria and Chuka Water and Sewerage Infrastructure which are under succession and were gazetted on 13th August 2021 vide gazette notice No. 8294 for eight (8) parcels and certificate of confirmation of grant issued on 5th April 2022 for six (6) parcels of land. Therefore, the Agency is waiting completion of pending succession which are undergoing court processing.

Committee Observations and Findings;

The Committee noted the submission of the Accounting officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of the adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1152. Delay in Projects Implementation

As previously reported, available information and contract agreements for the current works implemented by both the Tana Water Works Development Agency and the Northern Water Works Development Agency show that various contract agreements for the implementation of the

Projects were signed in 2018 and early 2019 with completion dates set for June and July, 2020. However, by 30 June, 2020 the projects were not completed leading to revision of the completion dates to November and December, 2021.

The Projects were not completed by 30 June, 2022, and the completion dates were further extended to between December, 2022 and March, 2023. Review of the project status report dated 31 August, 2022, indicated that five (5) out of sixteen (16) projects were less than 60% complete by 31 August, 2022, three years and six months to March, 2023, the end of the contract period. Further, during the year under review, ten (10) projects with a contract sum of Kshs.6,368,017,899 were visited for verification in the month of September, 2022. Three projects with a total contract sum of Kshs.2,298,019,476 had satisfactory progress.

However, seven (7) projects with a contract sum of Kshs.4,069,998,423 had not been satisfactorily executed and had overall completion levels ranging between 51 % and 76%. There is risk of significant number of works not being completed within the contract period which may result in cost escalations. Although the Management attributed the delay in implementation of the projects to failure to obtain tax exemption and inadequate counterpart funding, no evidence was provided on measures being taken to forestall the recurrence of a similar situation. Delay in projects completion continues to deny the key stakeholders including the citizens the benefits that were to arise from the projects.

Submission by Accounting Officer

The Agency is fast-tracking the completion of the project to ensure that the intended benefit to the community is achieved.

The Agency has been holding meetings with the contractor and also internal Rapid Results Initiative (RRI) Meetings every Wednesday with officers attached to the projects to ensure that the projects are completed in time and the intended benefit to the community is met.

The current overall project completion rate is at as shown in the table 2 below and completion certificates for the complete projects are hereby attached.

S/No	*Project Name*	*Completion Rate*	*Completion Period*
1	Chogoria Sewerage Infrastructure	98%	30/06/2024
2	Chuka Sewerage Infrastructure	95%	30/06/2024
3	Chuka Water Supply Infrastructure	96%	30/06/2024
4	Meru Sewerage Infrastructure	74%	30/06/2024
5	Marsabit Sewerage Infrastructure	89%	30/06/2024
6	Mandera Water Supply Infrastructure	72%	30/06/2024
7	Mandera Sewerage Infrastructure	80%	30/06/2024
8	Kerugoya Kutus Sewerage Infrastructure	100%	Complete
9	Kerugoya Kutus Water Supply Infrastructure	100%	Complete
10	Chogoria Water Infrastructure	100%	Complete
11	Marsabit Water Supply Infrastructure	100%	Complete

12	Garissa Town Water Supply Project– Last Mile Connectivity	100%	Complete
13	Isiolo Water Supply Project -Last Mile Connectivity	100%	Complete
14	Muranga Urban Water Supply Project- Last Mile Connectivity	100%	Complete
15	Muranga South Water Supply Project- Last Mile Connectivity	100%	Complete
16	Othaya Sewerage Project- Last Mile Connectivity	100%	Complete

Committee Observations and Findings;

The Committee noted the submission of the Accounting officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of the adoption of this report.

KENYA TOWNS SUSTAINABLE WATER SUPPLY AND SANITATION PROGRAMME-CR.NO. P-KE-E00-011 (AFDB LOAN NO.2000200000501) – CENTRAL RIFT VALLEY WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

1155. Unsupported Purchase of Goods and Services

The statement of receipts and payments reflects purchase of goods and services expenditure amounting to Kshs.284,508,661. The expenditure includes imprests of Kshs.29,232,551 issued in respect of domestic and subsistence allowances. However, supporting schedules showing names of persons paid, work done and results obtained in support of the imprest issued were not provided for audit review.

In the circumstances, the accuracy and completeness of purchase of goods and services expenditure amounting to Kshs.29,232,551 for year ended 30 June, 2022 could not be confirmed.

Submission by Accounting Officer

The supporting schedules showing the names of persons paid, work done and results obtained in support of the imprest issued are attached for audit review. Further, during the time of audit, the ERP system implementation was nearing completion and as was rolled out in the 2021/2022 financial year's statements the reports training then was on going though now completed had been a challenge for the end users on how to access information already keyed in.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1156. Unexplained Variance in Acquisition of Assets

The statement of receipts and payments reflects acquisition of assets expenditure amounting to Kshs.2,976,134,403. The expenditure includes payments totalling to Kshs.403,580,497 made in respect of two projects. However, the payments differed with development partner disbursement balance of Kshs.387,832,151 resulting to an unexplained variance of Kshs.15,748,345 as detailed below:

Project	Financial Statement (Kshs.)	Schedule Balance (Kshs.)	Variance (Kshs.)
Olkalau Town Sewarage	208,392,987	197,315,201	11,077,786
Narok Town Sewage	195,187,509	190,516,950	4,670,559
Total	**403,580,496**	**387,832,151**	**15,748,345**

In the circumstances, the accuracy and completeness of acquisition of assets expenditure amounting to Kshs.403,580,496 could not be confirmed.

Submission by Accounting Officer

These payments as reported in the Financial Statements of Ksh 403,580,496 is correctly stated and as supported by the IPCs to the one contractor for Narok and Olkalou towns sewerage projects. The table on IPCs paid and copy statement of confirmed disbursement from African Development Bank and Appendix 1 is attached for audit verification.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1157. Unsupported Bank Balance

The statement of financial assets reflects bank balance of Kshs.111,689,296. However, the Programme's cash book, bank reconciliation statements and certificate of bank balance were not provided for audit. Further, as reported in the previous year, the Programme does not maintain a designated bank account and its activities funded by Government of Kenya are undertaken through the implementing Agency (Central Rift Valley Water Works Development Agency) bank account. This was contrary to clause 1.2(j) and (h) of the subsidiary loan agreement between the Government of Kenya and the Agency which provides that a local and foreign currency bank accounts shall be opened for the purpose of receiving the portion of loan from the Government and Development Partners.

In the circumstances, the accuracy, completeness and existence of the bank balance of Kshs.111,689,296 could not be confirmed.

Submission by Accounting Officer

The Kenya Towns Water Supply and Sanitation is budgeted as a Loan A-in-A and not Loan Revenue component or grant, therefore there was no provision in the Subsidiary Loan Agreement to provide for a local foreign currency bank account for receiving portions of the loan from the

development partner. Further, the Agency has since opened a separate bank account for the project GoK counterpart funds. Copy attached.

Committee Observations and Findings;

The Committee noted that the Subsidiary Loan Agreement required the opening of a separate bank account, therefore there was a breach of the contract.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to adhere to the terms of the contract.

1158. Unsupported Summary of Fixed Assets

The summary of fixed assets in Annex 4 to the financial statements reflects total assets balance of Kshs.6,898,339,599. However, included in the balance are assets valued at Kshs.671,959,175 whose detailed schedules were not provided for audit as detailed below:

Particulars	Amount
Land	263,422,730
Building and Structures	137,323,611
Transport Equipment	231,739,977
Office Equipment Furniture and Fittings	8,793,542
ICT Equipment	8,311,770
Other Machinery and Equipment	10,213,812
Intangible Assets	12,153,733
Total	**671,959,175**

Further, the Annex 4 reflects disposal of intangible assets totalling Kshs.118,310,333. However, documentary evidence in support of the disposal, such as disposal committee reports and advertisements for disposal were not provided for audit verification.

In the circumstances, the accuracy and completeness of the summary of fixed assets balance of Kshs.6,898,339,599 could not be confirmed.

Submission by Accounting Officer

The detailed schedule of the fixed asset bought under the program is attached for audit verification. The Kshs.118, 310,333 intangible assets is comprised of consultancy services.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1159. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects total receipts final budget of Kshs.3,240,000,000 against actual receipts of Kshs.3,298,531,144 resulting to over collection of Kshs.58,531,144. The statement also reflects a final expenditure budget of Kshs.3,234,573,418

against actual expenditure of Kshs.3,286,854,562 resulting to over expenditure of Kshs.52,281,144.

In the circumstances, the regularity of the over collection and over expenditure of Kshs.58,531,144 and Kshs.52,281,144, respectively could not be confirmed.

Submission by Accounting Officer

The Agency had requested for a budgetary adjustment as the amount of pending bills from previous financial year 2020/2021 was huge. A copy of correspondence is attached for audit verification.

The over Expenditure was financed from unutilized funds from the previous financial year 2020/2021. From the Audited Financial statements for the year ended 30th June, 2021.The statement of comparative budget and Actual amount. The final budget for Loan from external Development partners was Kshs 2,380,000,000 and actual payment was Kshs 2,094,035, 513, funds carried forward of Kshs 85,9647,487 from fy 2020/2021 as per Prior Year Audit Certificate Balance copy attached.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1161. Delayed Projects Implementation

Review of records provided on eight (8) projects revealed the following matters affecting successful implementation of the projects as indicated below:

No.	Particulars	Contract Value (Kshs.)	Payments to Date (Kshs.)	Comments
1.	Keroka Town Water Supply Last Mile Connectivity	114,309,996	22,861,999	Advanced payment of Kshs. 22,861,999 paid to the contractor was attached by Kenya Revenue Authority leading to project stoppage.
2.	Kabarnet last Mile Connectivity	113,331,422	46,413,715	Kshs.45,122,857 or 39% of the contract relates to discretionary expenditure.
3.	Acquisition of Land	117,021,752		Out of 55.7 acres acquired only 20.8 acres were paid for in full leaving 32.17 acres valued at Kshs. 61,784,802 unpaid thereby negatively affecting project implementation.
4.	Kipkarren Dam Treatment Works and Associated Pipeline Water Project	1,185,758,692	767,104,954	Total payments of Kshs. 767,104,954 includes advance payment of Kshs. 118,572,444 not supported by a valid bank guarantee. The recoverability of the advance is therefore doubtful.

5.	Bomet Mulot Water Supply and Sanitation Project	2,068,582,536	356,652,161	Advance payment of Kshs. 356,652,161 issued to contractor does not match certified works.
6.	Oyugis Water Supply and Sanitation	608,822,546	361,533,787	Project variation of Kshs. 23,811,908 not supported by relevant approvals and with no objection letter from donor.
7.	Chepareireira Sewerage Project	217,096,202	100,882,860	Motor Vehicle purchases of Kshs. 35,515,550 exceeded the budget of Kshs.22,000,000 leading to unauthorized expenditure of Kshs.13,515,550
8.	Malaba Water Supply Project	654,336,922	103,363,574	Lack of access and wayleaves for sections of the project are delaying implementation

Failure to implement projects as planned may have negatively impacted on delivery of services to the residents of Kenya.

Submission by Accounting Officer

1) Keroka

The KRA notice was lifted in May, 2022 and contractor remobilized to site and works commenced to completion. The advance guarantee has since been fully recovered. The project's final inspection was carried out on 15th and 16th February 2024.

2) Kabarnet last mile connectivity

The contingent sum of the contract was set aside at 10% of the grand total of the contract. This is as specified in contract and was to cater for contractor's camp, personnel, house, equipment and project utilities such as security, water and electricity to be maintained on a monthly basis for entire project duration.

3) Acquisition of land.

The Agency paid full price for parcels that were fully transferred to the Agency or title deeds surrendered with proper transfer documents. However, only 85% was released in respect to the parcels whose ownership was pending successful transfer to the Agency and retained 15% of negotiated prices amounting to Ksh 61,784,802.

4) Kipkaren dam treatment works and associated pipeline water project

The advance payment guarantee of Ksh 118,572,444 was extended to 26th December 2022 during which performance was not achieved.

The parties to this contact mutually agreed to terminate due to non-performance by the contractor.

The bank granted a 'No Objection' to the notice for termination with conditions towards final and recovery of the full advance payment made to the contractor. Copy documentation attached.

The contractor is currently demobilising from site and mobilising all materials at his custody to site for purposes of preparation for final inspection and settlement. The project remains at 62% complete.

5) Bomet-Mulot water and Sanitation

The advance payment guarantee of Ksh 356,652,161 is not a measure for certified works but a pre-condition towards commencement of works as per the General Conditions clause 14.2, 14.3 and 14.7.1 of Contract and the percentage is as supported in the specific/particular conditions of the contract as specified.

This advance is payable upon provision of a valid bank guarantee and is recoverable upon achieving 20% of certified works to be fully recovered upon attaining 80% certified works. Works are on-going and is at 36%.

6) Oyugis water supply and sanitation

The variation was catered for within the contingent sums and was due to unforeseen additional quantities of works arising from designs at execution stage and is within the scope of works under the contract. This was done in accordance to the conditions of contract. The project was completed and handed over in. Report of handover attached.

7) Chepareria sewerage project

The two projects, Kapenguria-Makutano and Chepareria by the same contractor were planned to be executed concurrently according to contract documents. The project vehicles for Kapenguria was provided for at Ksh 14 Million and Chepararia was 3 vehicles for Ksh 22 Million. The Chepareria project was completed and final inspection carried out in July 2023. Attached is report. One of the vehicles was bought in February 2024.

Execution of works for Kapenguria commenced and are on-going and all its vehicles were procured in February 2024. This project is at 45%.

8) Malaba water supply

There was a delay in getting approvals by Kenya Railways and this was resolved and the project is complete and copy of inspection snag list and minutes of handover/taking over of the project. The project was commissioned by the Head of State on 21st January 2024.

Committee Observations and Findings;

The Committee noted the delay in the implementation of the project.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of the adoption of this report.

1162. Delay in Programme Funding

The Programme was advanced loans and grants for a duration of five years with effect from 9 January, 2017 to 31 December, 2021 but subsequently extended to 31 December, 2023. However, out of the total donor commitment total loan balance of Kshs.15,953,306,157 only

Kshs.7,568,575,920 (or 47%) was disbursed leaving a balance of Kshs.8,384,730,237 undrawn. Equally, out of the total Government of Kenya counterpart funding balance of Kshs.2,073,227,699 only Kshs.487,809,620 (or 24%) was disbursed leaving undrawn balance of Kshs.1,585,418,079.

In the circumstances, the delay in funding may negatively affect the implementation and overall achievement of the Programme's objectives considering the limited period remaining before its closure.

Submission by Accounting Officer

The project duration was initially five years with effect from 9 January, 2017 to 31 December, 2021 but subsequently extended to 31 December, 2023. It has further been extended to 31 December 2025.

The delays are caused by

a) delays in approval of master list and processing of specific exemption requests.

b) Delays in project sites hand over due to the lengthy of land acquisition process.

c) Inadequate counterpart funding as compared to cost escalations in property prices.

The overall programme current status is at 88% with donor fund of Ksh 11,341,603,964 and GoK counterpart of Ksh 750,285,605.

Committee Observations and Findings;

The Committee noted the inordinate delay in the implementation of the project.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of the adoption of this report.

SUPPORT TO WATER AND SANITATION SERVICES IN PERI-URBAN AREA (LOAN NO. BMZ 2013.6543.6) - ATHI WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

1165. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.1,048,250,401 and Kshs.703,896,989 respectively, resulting to underfunding of Kshs.344,353,412 or 33% of the budget. Similarly, the Project spent Kshs.629,847,394 against the budgeted amount of Kshs.1,048,250,401 resulting in under expenditure of Kshs.418,403,007 representing 40% of the estimated expenditure. The underfunding and under expenditure affect the implementation of planned activities and may impact negatively on the expected delivery of the Project to the public.

Submission by Accounting Officer

All the disbursements under the project except for Government of Kenya (GoK) counterpart are direct payment in nature.

This underutilization of the allocated budget to a tune of Kshs.344,353,412 was occasioned by the delay in supply of imported water pipes for the Lot 1 project which was caused by covid restrictions. This delayed the implementation of works associated with pipe laying hence the budget under-utilization.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1166. Failure to Open a Project Bank Account

As reported previously, the Project Management did not open a separate Project bank account, but instead the Project funds were deposited to the Agency's development account. This was contrary to Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015 which provides that for purpose of disbursement of Project Funds, there shall be opened and maintained a project account for every project.

In the circumstances, the Project Management was in breach of the law.

Submission by Accounting Officer

The project doesn't have a separate bank account for projects whose financing agreements do not expressly require the opening a separate special and project bank accounts. This applies in instances where disbursements for all donor monies are in the form of direct payments.

Where that is the case, the National Treasury approved for Athi Water Works Development Agency (AWWDA) to open a development bank account for the management of GOK counterpart funds to avoid opening a multiplicity of bank accounts to handle GOK counterpart and also projects which are fully GoK financed.

AWWDA has since gotten approval from NT to open a separate bank account for the Kenya Towns Sustainable Water Supply and Sanitation Program GOK counterpart funds.

Committee Observations and Findings;

The Committee noted the admission of the breach by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to adhere to Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015

KISII WATER SUPPLY AND SANITATION PROJECT - ORIO11/KE/21 - LAKE VICTORIA SOUTH WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

Basis for Qualified Opinion

1169. Unsupported Fund Balance

The statement of receipts and payments reflects cumulative project surplus of Kshs.14,190,152 which differs with the nil balance reflected in the statement of financial assets. Further, there was no documented movement between the closing fund balance of Kshs.14,190,152 reflected in the statement of financial assets as at 30 June, 2020 and the reported nil balance as at 30 June, 2022 and 30 June, 2021. Although the Management explained that the balance of Kshs.14,190,152 was available for utilization in the second phase of the project implementation, this was not disclosed in the financial statements or supported by any documentation.

In the circumstances, the accuracy of the nil fund balance as at 30 June, 2022 reflected in the statement of financial assets could not be confirmed.

Submission by Accounting Officer

The carried forward balance of Kshs. 14,190,152 was used to finance administrative work plans whose funding did not materialize due to supplementary budget cuts. The breakdown of expenditure has been provided.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1170. Unsupported Cash Movement

The statement of financial assets reflects nil cash and cash equivalents balance as at 30 June, 2022 and an equivalent comparative balance. However, as reported in the prior year, the Management did not explain how the balance of Kshs.14,190,152 held as at 30 June, 2020 was expended given that the Project did not record any receipts or payments in the 2020/2021 and 2021/2022 financial years. Under the circumstances, the accuracy and completeness of the reported cash and cash equivalents nil balance as at 30 June, 2022 could not be confirmed.

Submission by Accounting Officer

The budget in 2019/20 was 20,000,000, this amount was utilized, leaving a balance of Kshs. 14,190,152. The subsequent financial statements was adjusted to include the balance which was utilized to finance short term intervention projects within the project area and other projects whose exchequer release were not received/delayed.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1171. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects nil budget and actuals for the year ended 30 June, 2022. Although Management explained that the Project was not funded during the year and that the Project had not progressed to the implementation phase, no further information was provided on what the Project was to achieve during the year under review as no workplans were provided for audit review. In addition, the Management did not indicate how the Project was to be funded after the initial financier declined to fund the Project.

In the circumstances, the Project did not deliver any benefits to the intended beneficiaries.

Submission by Accounting Officer

The implementation of Kisii Water supply Project was planned in two phases;

- Phase I -Development Phase (planning phase):
  This phase was to conduct a feasibility study, design studies, and Environmental Impact Assessment and prepare Resettlement Action Plan (RAP) and was completed in 2019.
- Phase II-Implementation phase:
  This phase required funding of the project based on Feasibility Study and Designs and RAP. The Government through the National Treasury has been exploring suitable and sustainable financing framework for funding the implementation phase. E.g in February 2029, the Government received an offer for credit financing from ING bank of Netherlands. Currently, the Government has prioritised the project for implementation as Public Private Partnership.

The project activities have now prepared the project proposal in readiness for funding the implementation phase, which once achieved will result in the intended benefit of providing adequate, portable and sustainable water supply to over 450, 000 people in Nyamira and Kisii Counties.

Committee Observations and Findings

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1172. Absence of Project Cash book and Bank Account

As previously reported, the Management did not maintain a cash book and a separate bank account for the Project as required by Clause 6.11 of the Grant Agreement. Instead, receipts and payments in respect to the Project were recorded and accounted for in the main cash book and bank account of the implementing entity contrary to Section 68(2) of the Public Finance Management Act, 2012 which requires Accounting Officers to maintain proper financial and accounting records.

In the circumstances, the Management was in breach of the law.

Submissions by Accounting Officer

The project donor component was paid directly by the financier to the respective payees (the Consortium that conducted the Studies).

Since the completion of development phase, the project has not been receiving budgetary allocation since FY 2020/2021.

The Agency made request to open project bank account in line with section 28 of the Public Finance Management Act, 2012 and is yet to receive approval.

Committee Observations and Findings

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer evidences opening of the account to the Committee within three (3) months of adoption of this report.

1173. Delay in Project Implementation

As previously reported, a feasibility study report submitted to Infrastructure Development Facility (ORIO) on 29 October, 2018, indicated that the cost of the proposed Bunyunyu Dam Water Project increased to Euro.90,000,000 equivalent to Kshs.10.8 billion from its original cost estimated at Euro.551,475 equivalent to Kshs.66,103,002. The increased cost resulted from change in the Project's scope, mainly caused by addition of works in Nyamira County, and the estimated increase in price indices between 2011 to 2019. After the original financier declined to fund the additional costs, identification of a new financier commenced in February, 2019. However, Management did not confirm whether this was successful. Expenditure records indicated that the Project had as at 30 June, 2022 spent Kshs.86,344,504 on feasibility studies.

In the circumstances, value for money on the expenditure and attainment of the Project's objectives given the Project end date of 28 September, 2023 could not be confirmed.

Submission by Accounting Officer

The objective of the development phase was to prepare the project technical feasibility studies, Environmental and Social Impact Assessment and prepare Resettlement Action Plan, which are necessary for resource mobilization and to guide the implementation of the project.

The funding for the development phase therefore achieved its value for money as the project is now ready for implementation once funding for implementation is secured.

The Agency has requested for funding for the implementation phase through the Ministry to the National Treasury.

Committee Observations and Findings

The Committee noted the inordinate delay of the commencement of the implementation of the project.

Committee Recommendation;

The Committee recommends that the Accounting Officer submit a status report within three (3) months of the adoption of this report.

WATER SECTOR DEVELOPMENT PROGRAMME - LAKE VICTORIA SOUTH (KERICHO, KISII, NYAMIRA AND LITEIN) LOAN NO.BMZ 2010 65 861 AND GRANT NO.BMZ 2010 70 457 - LAKE VICTORIA SOUTH WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

1175. Failure to Open Bank Account and Maintain a Separate Cash Book

The statement of financial assets reflects a balance of Kshs.11,514,071 in respect to cash and cash equivalents. However, review of the Project's records indicated that the Project Management used the Implementing Agency's bank account and cash book to process receipts and payments relating to the Project. This was contrary to Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015 which provides that, for the purpose of disbursement of Project Funds, there shall be opened and maintained a Project account of every Project at the Central Bank of Kenya unless it is exempted by the Cabinet Secretary in writing, into which all funds shall be kept and such an account shall be known by the name of the Project for which it is opened and each Project shall maintain only one bank account. Further, Section 6.1(d) of the financing agreement states that the recipient of the funds shall maintain separate books and reports showing all costs incurred in connection with the expert services and clearly identifying the services financed from the financial contribution.

In the circumstances, the accuracy of the financial statements could not be confirmed as no cash book was maintained for the project. Management was also in breach of the law and the Financing Agreement.

Submission by Accounting Officer
In this project, the financier directly pays over 90% of the contractor's certificate and 100% of the consultants' certificates and therefore only the GOK counterpart funds are expended by the Agency through its Development Account.

The Project has been substantially completed and the funding is closing in December 2024 hence further need for opening of Specific bank account may not be necessary at the moment.

Committee Observations and Findings;

The Committee noted the admission of the breach by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for breach of the terms of the contract.

1176. Inaccuracies in the Financial Statements and Notes to the Financial Statements

The statement of receipts and payments reflects Kshs.3,996,512,560 in respect to cumulative payments since the inception of the project. The statement further reflects a surplus of Kshs.11,514,071 which could not be confirmed as no separate cash book and bank account were maintained for the Project.

In the circumstances, the accuracy of the accumulated payments amounting to Kshs.3,996,512,560 as at 30 June, 2022 could not be confirmed.

Submission by Accounting Officer

The Agency used the development bank account for the GOK Counterpart payment of the project. The management has acted on the Auditors recommendation and the Board has approved for opening of GOK development account for the project.

The Project has been substantially completed and the funding is closing in December 2024 hence further need for opening of Specific bank account may not be necessary going forward.

Committee Observations and Findings;

The Committee noted the admission of the breach by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for breach of the terms of the contract.

1177. Pending Bills Payable by Financiers

Note 12(1) on other important disclosures reflects Kshs.28,387,231 in respect to pending bills. However, this amount excludes pending bills of Kshs.508,541,382 described as payable by the financier which was presented for audit review without any supporting documents and has not been disclosed in the financial statements. Further, the amount of pending bills payable by financier differs with Kshs.468,163,810 reflected as undrawn balances from the financiers, disclosed in Note 1.7 table A under project information and overall performance. Management did not explain how the additional pending bills of Kshs.40,377,572 over and above donor commitments arose and how they will be funded.

In the circumstances, the accuracy and completeness of the pending bills amount of Kshs.28,387,231 disclosed in the financial statements could not be confirmed.

Submission by Accounting Officer

There were no pending bills by financiers on the said year, the Kshs. 508,541,382 was the undrawn amount of money i.e., the loan amount minus the amount drawn on that date. The same was amended in the audited financial statement for the year 2021/2022.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1178. Non-Financial Assets

1178.1 Irregular Expenditure

The statement of receipts and payments reflects Kshs.674,830,036.98 in respect to acquisition of non-financial assets as disclosed in Note 5 to the financial statements. This amount includes Kshs.241,098,830 paid to a contractor for expansion of water supply and sanitation systems for Kisii and Nyamira towns which in turn includes Kshs.17,486,448 and Kshs.117,753,339 in respect to variation orders and extension of time respectively which had not been justified. Review of the contract and other records for the works revealed that the contract which was awarded at a contract sum of Kshs.2,289,840,260 commenced on 31 March, 2017 with the expected completion date of

20 December, 2020. The amount of variation orders included Kshs.1,499,630 as cost of laying 6.4km tertiary pipes supplied to Gusii Water and Sanitation Company (GWASCO). However, the cost of the pipes supplied to the Water Company could not be determined as no values were recorded in the handing over schedule provided for audit review.

Further, review of the project status as at 30 June, 2022 revealed that the Project was complete and handed over to the GWASCO. However, the handover notes excluded the assets which were formerly used by the Project.

In the circumstances, the validity of the amount paid of Kshs.135,239,787 could not be confirmed.

Submission by Accounting Officer

The handing over notes with the cost of pipes handed to GWASCO have since been provided.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1178.2 Unconfirmed Ownership of Project Motor Vehicles

As reported in the previous year, the fixed assets register, as reflected in Annex 4 to the financial statements, reflects total fixed assets amounting to Kshs.170,529,603 comprising of motor vehicles, motorcycles, water distribution pipes and equipment and laboratory equipment. However, the logbook for a motor vehicle valued at Kshs.6,438,600 was not provided for audit review.

In the circumstances, the ownership of the motor vehicle could not be confirmed.

Submission by Accounting Officer

The Agency has since obtained the logbook for KCR 854R.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1179. Summary of Fixed Assets Register

As reported in the previous year, Annex 4 to the financial statements reflects summary of fixed assets register with total assets value at Kshs.170,529,603 as at 30 June, 2022. The assets include motor vehicle, Toyota Prado, valued at Kshs.9,355,500 purchased for the project supervision as per the bills of quantities. However, the vehicle was not provided for physical verification during the audit in October, 2022. Information available indicates that the motor vehicle was directly handed over to the Ministry of Water and Sanitation by the Contractor in 2018 but there was no evidence that the same was authorized by the Chief Executive Officer of the implementing agency. No reason was provided for the handing over of the vehicle to the Ministry, which was contrary to Regulation139(1)(a) and (b) of the Public Finance Management (National Government) Regulations, 2015, that requires prudent management of public assets.

Submission by Accounting Officer
The vehicle was allocated to the Ministry to support project coordination and supervision given that the Ministry plays roles in project monitoring and coordination of other Government agencies involved in the project. The vehicle Toyota Prado KCP 064N has since been returned to the Agency and the same is registered in the name of the Agency as per the attached log book.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1180. Expansion of Water Supply Systems in Kericho

The statement of receipts and payments reflects acquisition of non-financial assets amounting to Kshs.674,830,037 in respect to rehabilitation of civil works as disclosed under Note 5 to the financial statements. This amount includes expenditure totalling Kshs.185,013,883 paid during the year, for the expansion of Kericho Water Supply Systems, awarded to a foreign Engineering Company at a contract sum of Kshs.1,189,805,385. Audit verification of the Project in the month of October, 2022 revealed that the contractor was still on site and the project was ongoing although the revised completion date of 30 June, 2022 had expired. Further, the engineer's progress of work report as at 30 June, 2022 indicated that 93% of works had been executed although the ownership of the parcel of land on which the Project is built had not been confirmed as the title deed was yet to be obtained. Management explained that the County Government of Kericho was in the process of transferring the land ownership of the parcel of land from a private firm to the Project. However, no reason was provided why the process which started in 2017 had not been completed as at the time of audit.

In the circumstances, it could not be confirmed whether the land and development thereon were properly safeguarded.

Submission by Accounting Officer
The 10 Acre piece of land where the New Kimugu Water Treatment Plant is being constructed was acquired by the County Government of Kericho through the National Land Commission. Payments have been made and the County Government of Kericho is in the process of transferring the land ownership from Unilever to the County Government of Kericho.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of the adoption of the report.

1181. Expansion of Water Supply and Sanitation Systems in Kisii and Nyamira

The statement of receipts and payments reflects expenditure on acquisition of non-financial assets-works of Kshs.674,830,036 which, as disclosed in Note 5 to the financial statements, includes an

amount of Kshs.241,098,830 in respect to expansion of Water Supply and Sanitation Systems in Kisii and Nyamira awarded to an International Company at a contract price of Kshs.2,289,840,260. Although both Projects were completed and handed over to Gusii Water and Sanitation Company (GWASCO) Ltd, the Projects continue to draw huge sums of money even after completion and handing over which is a clear indication that they are not self-sustaining.

In the circumstances, the citizens did not get value for money in respect to Kshs.2,289,840,260 incurred on the projects.

Submission by Accounting Officer
Kisii and Nyamira Water Supply and sanitation project is complete and handed over to the company and it is fully operational and citizens are being supplied with clean water. The high operation and maintenance cost is due the fact that the project is actually serving the residents by supplying the water through pumping due to the reality of topography of Kisii region which is hilly and where most residents actually resides in the top of the hills.

The production records for the month of June and July 2022 was provided as evidence of the continued service for audit review.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

TRILATERAL DEVELOPMENT COOPERATION IN KENYA, WATER AND SANITATION SECTOR PROJECT (CREDIT NO. BMZ 201365352) – LAKE VICTORIA SOUTH WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

1184. Unsupported Cash and Cash Equivalents

The statement of financial assets reflects cash and cash equivalents balance of Kshs.45,905,344 as at 30 June, 2022 which was not supported by a cash book, bank confirmation certificate and a bank reconciliation statement. In addition, the Management did not maintain a separate bank account or operate a separate cash book for recording transactions in respect to Project funds. This was contrary to Section 6.1 (d) of the Financing Agreement which requires the recipient of funds to maintain books and reports showing all costs incurred in connection with expert services and clearly identify the services financed from the financial contribution. The Management has attributed this to the fact that any receipts and payments for the Project are made out of the project funds which are held in the implementing Agency's bank account and recorded in the Agency's cash book.

In the circumstances, the accuracy of the cash and cash equivalents balance of Kshs.45,905,344 as at 30 June, 2022 could not be confirmed.

Submission by Accounting Officer
The Agency appreciated the auditors recommendation and following the approval of the Board they are in the process of opening specific projects development bank accounts.

Committee Observations and Findings;

The Committee noted the admission of the breach by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for breach of the terms of the contract.

1185. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects expenditure of Kshs.94,656 against an approved budget of Kshs.46,000,000 resulting to an under expenditure of Kshs.45,905,344 or 98% of the budget. The underperformance affected the planned activities and may have impacted negatively on service delivery to the public.

Submission by Accounting Officer

The reason for under absorption was due to the fact that second, third and fourth quarter disbursements from the parent Ministry was received in the 4th quarter.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1186. Unsupported Project Funding

Section 1.7 of the project information and overall performance reflects the funding summary with an approved budget of EUR 700,000 equivalent to Kshs.76,600,000 and counterpart funding by Government of Kenya (GoK) amounting to Kshs.46,000,000. However, the counterpart funding was not supported by the financing agreement dated 28 September, 2015 between KfW Development Bank, Frankfurt am Main and the Republic of Kenya. As a result, GoK funding of Kshs.46,000,000 increased the project budget to Kshs.122,600,000 from Kshs.76,000,000 detailed in the financing agreement but no corresponding amended agreement and approved budget were provided for audit verification.

In the circumstances, the source and justification of additional funding from GOK amounting to Kshs.46,000,000 was not supported.

Submission by Accounting Officer

The GoK funding is supported by the approved budget, by Treasury and Parent Ministry.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1187. Sustainability of the Project

The statement of receipts and payments indicates that the project made payments amounting to Kshs.94,656 and did not implement the bulk of the budgeted activities in the year under review. As reported in the previous year, the Project was behind the stipulated completion date of 30 June, 2020 as per the loan agreement. A letter dated 28 October, 2020 by the Ag. Chief Executive Officer

of Lake Victoria South Water Works Development Agency to the Principal Secretary, Ministry of Water, Sanitation and Irrigation requested the loan disbursement window to be extended to 30 June, 2022 and the due date for the loan to be extended to June, 2032. Information available indicates that The National Treasury confirmed the extension of the donor disbursement to 30 June, 2022 and an additional donor funding of Kshs.20,000,000 which was to be available during the year under review in addition to counterpart funding received from Government of Kenya amounting to Kshs.46,000,000. The Management did not provide any workplan for completion of the outstanding project activities.

In the circumstances, the adequacy of the funds provided and the roadmap for the Project completion could not be known with certainty.

Submission by Accounting Officer

The first Project Agreement is a grant agreement which was provided by the Government of Germany to assist the Agency in developing a new project for Wastewater Management in Lake Victoria South Works Development Agency. The grant was provided to finance Feasibility Study and Designs for Wastewater Management in Migori, Homa Bay and Kericho. The Grant was used as intended and Feasibility Study and Designs completed for the targeted towns.

Based on the Project Feasibility Study and Designs, the project has been funded by the financier to the tune of Euros 20 million and the financing Agreement was signed on 28th November 2022 and Subsidiary Agreement signed in August 2023. Currently the designs are ongoing before the tendering for works begins in the FY 2024/2025.

Committee Observations and Findings

The Committee noted the inordinate delay in the commencement of the implementation of the project.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of the adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1188. Lack of Evidence for Project Implementation

Section 1.2 of the financial statements on project information and overall performance indicates that the Project will come to an end on 30 June, 2023. In addition, the statement of performance against projects pre-determined objectives states that the project is awaiting the development phase and therefore could not attain the four (4) strategic objectives of;

i. Conducting feasibility study for the management of liquid sludge and solid waste in Lake Victoria Basin towns of Migori and Homa Bay,

ii. Establishment of an Industrial Waste Management Information System and management toolkit for Homa Bay and Migori towns and their environs,

iii. Feasibility study of supplementary investments in water distribution systems of some areas of Homa Bay, and

iv. Needs assessment and concept for a regional training and research center for holistic approach to waste water management. However, the strategic objectives which had a budget of EUR 700,000 equivalent to Kshs.76,600,000 and have been funded up to EUR 521,095 (Kshs.66,332,758) which is equivalent to 74.4% of the budget with no tangible details on achievement of any of the strategic goals outlined in the financing agreement.

In the circumstances, the achievements of the Project strategic goals have not been accounted for despite 74.4% of the donor commitment amount having been made from inception of the Project to date.

Submission by Accounting Officer

The project initial objectives which were conducting feasibility study, needs assessment and establishment of waste water Management information systems have been achieved and the reports are available for review.

Based on the project Feasibility Study, the Based on the Project Feasibility Study and Designs for other towns, the project has been funded by the financier to the tune of Euros 20 million and the financing Agreement was signed on 28th November 2022 and Subsidiary Agreement signed in August 2023.

Currently the designs are ongoing before the tendering for works begins in the FY 2024/2025.

Committee Observations and Findings

The Committee noted the inordinate delay of the commencement of the implementation of the project.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of the adoption of this report.

1189. Failure to Prepare Itemized Budget for the Project

The statement of comparison of budget and actual amounts indicates that the Ministry of Water, Sanitation, and Irrigation allocated an original budget of Kshs.90,000,000 to the project which was scaled down to Kshs.46,000,000 through supplementary estimate.

However, the project Management did not give a detailed budget indicating a line-by-line breakdown of the budget items contrary to paragraph 1.7.20 of the International Public Sector Accounting Standards (Cash Basis) which requires budget documents to provide details about particular activities, programs or entities.

In the circumstances, the purpose of the funds budgeted could not be confirmed.

Submission by Accounting Officer

The budgetary allocation of Kshs 46,000,000 was a portion of the global budget for project short-term intervention for civil works of which payments were supported by interim payment certificates. This is a budget line item which is already itemized.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

NAIROBI WATER DISTRIBUTION NETWORK PROJECT (CREDIT BMZNO. 2020.82.527/KV 26833) - ATHI WATER WORKS DEVELOPMENT AGENCY

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1193. Failure to Open a Project Bank Account

The Project Management had not opened a separate Project bank account, but instead the project funds were credited to the Athi Water Works Development Agency's development account. This was contrary to Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015 which provides that for purpose of disbursement of Project Funds, there shall be opened and maintained a project account for every project.

In the circumstances, the Project Management was in breach of the law.

Submission by Accounting Officer

The project doesn't have a separate bank account for projects whose financing agreements do not expressly require the opening a separate special and project bank accounts. This applies in instances where disbursements for all donor monies are in the form of direct payments.

Where that is the case, the National Treasury approved for Athi Water Works Development Agency (AWWDA) to open a development bank account for the management of GOK counterpart funds to avoid opening a multiplicity of bank accounts to handle GOK counterpart and also projects which are fully GoK financed.

The Project is 100% complete hence no need to open a separate Account for GOK counterpart funds.

Committee Observations and Findings;

The Committee noted the admission of the breach by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for breach of Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015.

1194. Extension of Water and Sewerage Services in Peri-Urban and Informal Settlements - LOT 3

The statement of receipts and payments reflects expenditure on acquisition of non-financial assets of Kshs.778,055,510 which as disclosed in Note 8 to the financial statements, includes Kshs.18,845,666 for Lot 3 Project that was paid to a contractor as retention money after expiry of the defects' notification period and a performance certificate issued on 30 September, 2021. However, audit verification of the project in September, 2022 revealed that though the construction of water pipelines in three (3) informal settlements (Gitari Marigo, Ngando and Kawangware) was complete, the Nairobi City Water and Sewerage Company Ltd (NCWSC), mandated to carry out

all the consumer water connection works including metering, had not commenced the consumer connections. As a result, the utilization of the water distribution networks constructed under the Project as well as the use of the sewerage system were delayed due to lack of water.

Consequently, value had not been derived from the expenditure incurred on the extension of water and sewerage services in peri-urban and informal settlements.

Submission by Accounting Officer

The state department confirms having paid Nanchang Engineering Company limited Kshs 18,845,666 retention money after issuance of the performance certificate on 30th September 2021. The payment is for release of retention money for the works done at the end of the Defects Liability Period. The water connection works were not part of the contractor's scope of works and thus had no linkage with the retention release.

It is the responsibility of the water company, Nairobi City Water and Sewerage Company (NCWSC). NCWSC has since commenced consumer connections.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

NORTHERN COLLECTOR PHASE 1-ADDITIONAL REHABILITATION AND DEVELOPMENT OF THE NETWORK (CREDIT NO. CKE-1074) - ATHI WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

1198. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.1,448,570,000 and Kshs.531,960,000 respectively, resulting in underfunding of Kshs.916,610,000 or 63% of the budget. Similarly, the Project utilised Kshs.383,601,469 against the budgeted amount of Kshs.1,448,570,000 resulting into under-expenditure of Kshs.1,064,968,531 or 74% of the estimated expenditure. The underfunding and under-expenditure affect the implementation of planned activities and may impact negatively the delivery of the Project to the public.

Submission by Accounting Officer

The project faced a big challenge on wayleave acquisition and court cases that resulted to stoppage of works on the construction of the Raw and Treated Water pipelines from Kigoro Water Treatment Plant to Gigiri reservoir. As such most of the activities for this contract were not undertaken as planned. The budget absorption was therefore low as the contractor could not raise IPCs as per the workplans and disbursement plan.

As disclosed in the Statement of Comparative Budget and actual amounts for the year ended 30th June 2022, the project had a budget of Ksh 1,448,570,000 but was only able to disburse Ksh 531,959,008 which represent 35% absorption rate on the budget.

All the challenges encountered were addressed and all disbursements under the credit CKE 1074 were be finalized by 31st January 2024.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1199. Special Account Statement

The special account statement reflects EUR 11,504,237 or Kshs.1,460,604,989 under amounts withdrawn and not yet claimed as at 30 June, 2022. This amount represents cumulative funds transferred to the local project bank account, but whose expenditure returns had not been submitted to The National Treasury by the closure of the financial year.

Consequently, accountability of the Project in The National Treasury records was incomplete.

Submission by Accounting Officer

As per the Credit Financing Agreement clause 3.1 the final beneficiary can request for a drawdown in the form of Renewable Advances for payment of the expenses financed under the Facility in accordance with the purpose set forth in Clause 2.2 (Purpose).

The Facility may be made available in several advances in an amount of at least three (3) millions of Euros each. Each advance will be disbursed by AFD to a special account opened by the Final Recipient identified by the name of the Project in a commercial bank which has received the approval of the AFD (the "Account").

The Drawdown of the second and subsequent tranches will be subject to evidence of the use of an amount at least equal to 80% of the amount of the first tranche on the basis of the following items:

A drawdown request in accordance with Clause 3.2 "Drawdown Request";

i. A list of expenditures setting out the items to which these expenses will be imputed;

ii. copy of the bank statement for the account opened by the Final Recipient and identified by the name of the Project showing the debit movements corresponding to expenditures of the Project, as well as monthly statements;

iii. A detailed inventory and report on state of performance of the Project;

iv. A report presenting the progress of the Project including a financial audit report;

v. A timetable of expenditures envisaged for the next years.

Any undocumented or insufficiently documented amounts will be deducted from the following advance.

The state department confirms that AWWDA has been accounting for all the advances received from the Donor in the Project Account as provided for in the Credit Financing Agreement. All the receipts received in the project account has been included in the Statement of Receipts and Payments in the year the amounts were received. The Financial accounts has been audited over the

years and supporting documents to support the expenditures provided to all stakeholders including Ministry of Water Sanitation and Irrigation, National Treasury and AFD.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1200. Delay in Completion of Ngethu - Gigiri Treated Water Pipeline

The statement of receipts and payments reflects acquisition of non-financial assets amount totalling to Kshs.383,370,503 as indicated in Note 8 to the financial statements. Included in this amount are payments in respect to construction of civil works totalling to Kshs.362,759,652, out of which an amount of Kshs.356,019,812 was paid to the contractor for the construction of raw and treated water gravity mains from Thika Dam Kigoro-Gigiri transmission pipeline. The contract commencement date was 27 October, 2016 with original completion date being 25 April, 2019 (30 months).

Review of the works progress report revealed that, the overall progress of works was at 41% completion level compared to the previous year's level of completion of 36% and 89% of the revised contract period had lapsed. In addition, only 4.16KM or 11% of the total length of 36.94KM of the pipeline from Ngethu treatment works to existing Gigiri Reservoir had been laid, leaving 32.78KM or 89% outstanding. This was in spite of the contractor having less than seven (7) months to the revised completion date timeline of 31 March, 2023. As at the time of audit in September 2022, no works were on-going. Further, there was no evidence that the Project Management had communicated to AFD of the delay of the project completion contrary to article 12.4 of the Credit Facility Agreement and 7.3 (a) of the Subsidiary Loan Agreement, which require the borrower to inform the lender of any event or incident that has a material adverse effect on the implementation of the Project.

As result of the foregoing, it was not possible to ascertain whether the project would be completed by the revised completion date of 31 March, 2023.

Submission by Accounting Officer

It's true that there has been little progress on works for construction of raw and water gravity mains from Thika Dam to Kigoro Treatment Works to Gigiri Tanks during the year under review. This was mainly due to delay in acquiring wayleaves as some Project affected persons went to court which issued works stoppage. The delay was also caused by contractual challenges especially on the variation of prices for steel in the world market.

The 55km long water transmission pipeline is currently at 96% complete; 53.5 km has been laid and 1.5 km is outstanding. The pipeline project is funded by AFD under credit CKE 1074. The pipeline works are expected to be completed in April 2024.

It's not true that the Project Management did not communicate to AFD of the delay of the project completion contrary to article 12.4 of the Credit Facility Agreement and 7.3 (a) of the Subsidiary

Loan Agreement, which require the borrower to inform the lender of any event or incident that has a material adverse effect on the implementation of the Project. The lender was always notified of all events that affected the completion of the project during the semi-annual Aide-Memoirs.

Quarterly Progress reports on the project implementation were also shared with all key stakeholders including the parent Ministry, National Treasury and the lender.

The Project Management also holds monthly meeting with the lender where progress on all works components is discussed.

Committee Observations and Findings

The Committee noted the inordinate delay in the commencement of the implementation of the project.

Committee Recommendation;

The Committee recommends that the Accounting Officer submit a status report within three (3) months of the adoption of this report.

1201. Unutilized Kigoro Water Treatment Plant

The contract works for the construction of the Kigoro Water Treatment Plant was awarded to a construction company at a contract sum of Kshs.1,115,019,524 inclusive of tax. The contract commencement date was 15 May, 2015 with the completion date set to 15 May, 2018.

As at 30 October, 2020, the construction works at the treatment works were substantially complete and the plant was ready for commissioning. However, audit verification of the project conducted on 21 September, 2022 revealed that the plant had remained idle for a period of twenty-three (23) months since its completion date but continues to incur a monthly estimated cost of operation of Kshs.10,500,000 which includes cost of electricity in running and maintenance of the electro mechanical equipment at the plant. Consequently, it was not possible to confirm whether value for money will be realized on the expenditure incurred on the Kigoro Water Treatment Plant.

Submission by Accounting Officer

The Kigoro water treatment plant was completed before the completion of the Construction of Raw and Treated Water Mains as the pipelines contract faced various challenges especially on acquisition of wayleaves and court orders to stop the works due to compensation related issues.

The raw water mains have now been fully completed and the Kigoro Water Treatment is being operated intermittently as the the downstream pipeline works is finalized. The treated water produced is being transmitted to Ngethu and connected to the already existing pipelines to Gigiri.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1202. Nugatory Cost for Delayed Payment of Value Added Tax (VAT)

Review of documentation for Kigoro Treatment Works to Gigiri tanks showed an outstanding Value Added Tax (VAT) amount of Kshs.130,152,323 that had not been settled as at 30 June,

2022. This amount had subsequently attracted interest and penalties totalling to Kshs.257,191,705, as per a letter from the Kenya Revenue Authority (KRA), compelling the contractor to pay the amount. The explanation provided for the delay was lack of enough funds to pay the Value Added Tax (VAT) which should have been included in the budget for the Project.

In the circumstances, the Project Management incurred avoidable expenditure of Kshs.257,191,705.

Submission by Accounting Officer

The Contract for the construction of Construction of Raw and Treated Water Gravity Mains from Thika Dam to Kigoro Treatment Works to Gigiri Tanks (Contract no. AWSB/WASSIP AF/COMP.1/W-2/2015) was initially awarded inclusive of VAT as the Government of Kenya was to provide funds to pay for VAT. During implementation the Government was not able to provide the funds to pay for VAT and thus it recommended that AWWDA seeks VAT Exemption for the project.

An addendum 1 Variation of Contract for Exclusion of Value Added Tax (VAT) was Signed on 23rd May 2018. The Addendum did not become effective as VAT Exemption was not granted by National Treasury. (Addendum 1on VAT)

When AWWDA experienced delay in getting the Exemptions, the funds were budgeted counterpart funds for the project.

Though there were delays of paying the Value Added Tax (VAT) as the VAT exemptions was waited, AWWDA has been making part payments of the outstanding VAT depending on allocation received from the GOK. All outstanding VAT has now been paid.

The contractor paid all the VAT and AWWDA re-imbursed the paid VAT to the Contractor from the GOK Counterpart funds received. The Project Management did not incur the expenditure of Kshs.257,191,705 cited in the draft report.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

NAIROBI SANITATION OUTPUT BASED AID (OBA) PROJECT - (IDA GRANT NO.TF014251 AND NO.TF0A5607) - NAIROBI CITY WATER AND SEWERAGE COMPANY LIMITED

REPORT ON THE FINANCIAL STATEMENTS

1205. Unconfirmed Counter-part Funding Loan Balance

The statement of receipts and payments reflects miscellaneous receipts of Kshs.42,474,690, which relates to co-funding of the Project by the Nairobi City Water and Sewerage Company (NCWSC). The Management of the Company entered into a loan agreement with a local bank via letter dated 4 August, 2016 for a maximum loan facility of Kshs.600,000,000, to finance the Nairobi Sanitation Output Based Aid (OBA) Project. This loan, which formed part of the Company's contribution

towards the Project, was payable by the project beneficiaries through application fee and monthly repayment of the loan, as well as interest on funds collected but not immediately paid on account of the loan. Information reflected in the summary of overall performance section of the Project financial statements indicates that 17,226 sewer and 6,436 water connections were completed. An upfront connection fee of Kshs.1,648 per household was charged all totalling to Kshs.38,994,976.

In addition, total monthly repayment following the completion of the defect liability period in June, 2019, was Kshs.450 and Kshs.150, for the sewer and water connections, respectively. These monthly repayments were to be made within a period of four years in respect of sewer connection and three years in respect of water connection respectively. Based on the information presented above, the total repayments received during the payment period was Kshs.406,836,000. Further, review of the bank's working capital loan statements revealed that the Company earned interest on balances in the account totalling Kshs.253,619,568 in the period between January, 2017 and June, 2022. The three facilities recorded above yielded total receipts of Kshs.699,450,544. Review of documents provided for audit revealed that as at 30 June, 2022 the Company had repaid the loan totalling to Kshs.483,504,505 which included Kshs.225,178,118 and Kshs.258,326,386 for principal and interests respectively, leaving an outstanding loan balance of Kshs.302,528,009, reflected in the bank statement. Had the Company used the receipts of Kshs.699,450,544 to pay off the loan as envisaged in the financing agreement, the outstanding balance would have been less than Kshs.88,077,173 and not Kshs.302,528,009 currently reflected as outstanding in the bank statements.

In the circumstances, the accuracy and completeness of the outstanding loan balance of Kshs.302,528,009 could not be confirmed.

Submission by Accounting Officer

The Company only received kshs 529,201,331 as loan and these funds were disbursed to the Contractor. The Kshs 253 million is interest accrued on the loan facility and not interest earned as its being loaded onto the loan every month and repaid as per the loan agreement. The loan balance as per the records of kshs 302,528,009 is correct.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1206. Uncollected Miscellaneous Receipts

As disclosed in Note 11.4 to the financial statements, the statement of receipts and payments reflects cumulative miscellaneous receipts co-funding by NCWSC of Kshs.810,624,938. Included in the amount is the Company's own contribution and finance costs of Kshs.281,423,607 which differs with the computed cumulative receipts of Kshs.699,450,544 which should have been received, resulting to unreconciled revenue variance of Kshs.422,733,755, between the two records.

In the absence of reconciliation between the two sets of records, it was not possible to confirm the accuracy of the cumulative Company contribution and interest income of Kshs.281,423,607, reflected in the financial statements.

Submission by Accounting Officer

The Company's own contribution is kshs 281,423,607 comprising of finance costs kshs 258,368,983 interest and kshs 23,054,624 paid by the company inform of taxes withheld on the Contract by Interways Ltd, Losai Management Ltd and Elly Otieno Aguko.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1207. Unremitted Disbursements

As reported in the previous year, the statement of receipts and payments reflects cumulative proceeds from domestic and foreign grants of Kshs.486,571,479, as disclosed in Note 11.2 to the financial statements. However, according to the Funding Summary in Section 1.7 of the Project information and overall performance, the Project received cumulative grants of Kshs.497,576,479, resulting to an unreconciled variance of Kshs.11,005,000. According to explanations provided by Management and disclosed in Note 12 to the financial statements, the variance of Kshs.11,005,000 was an amount which was withdrawn from the special account and transferred to the Ministry of Water and Sanitation in 2016/2017 but was not refunded to the project.

In the circumstances, it was not possible to confirm the accuracy of the accumulated grant advanced of Kshs.486,571,479 for the year ending 30 June, 2022.

Submission by Accounting Officer

These funds were not received by the Company from the Ministry of Water and Sanitation.

Committee Observations and Findings;

The Committee noted that the submission of the Accounting Officer was unsatisfactory.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the Accounting Officer provides evidence of receipt within three (3) months of the adoption of this report.

1208. Unreconciled Donor Receipts

According to the information in the funding summary at Section 1.7 of the financial statements, the funding received to date is USD4,912,725 while the project's special account report for IDA Loan Credit No.TF 014251-KE reflects amount advanced by IDA to the project amounting to USD3,567,380 as at 30 June, 2022, resulting in an unreconciled variance of USD1,298,335.

In the absence of reconciliation between the two sets of records, it was not possible to confirm the accuracy of the cumulative amount received into the project from the special account, as at 30 June, 2022.

Submission by Accounting Officer

The project had two TF accounts viz No.TF014251-KE and TF0A5607. The table below summarizes the original budget amounts and the actual receipts from each;

Donor Financing	Original Amount (US$)	Revised amount (US$)	Actual disbursed (US$)
TF14251	4,330,000	3,567,380	3,567,380
TFA5607	2,600,000	1,345,345	1,345,345
Total	6,930,000	4,912,725	4,912,725
Total project cost	6,930,000	4,912,725	4,912,725

There is no variance in the amounts disbursed as the two cumulatively add to US$ 4,912,725.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1209. Lack of Records

The Project information and overall performance indicates that 17,226 and 6,438 households were connected with sewer and water, respectively. However, Management did not provide the list of beneficiaries of the project for audit verification. In the absence of such documents and related details, it was not possible to confirm the accuracy and completeness of the balances reflected in the financial statements in relation to achievements of the project.

Submission by Accounting Officer

The listing of customers connected is available for review.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1210. Slow Absorption of Funds

As reported in the previous year, according to the project information at Paragraph 1.2 of the financial statements, the project's end date was 30 June, 2019. In addition, according to the project funding summary at Paragraph 1.7, IDA had committed USD6,930,000 equivalent to Kshs.693,000,000 as at 30 June, 2019. However, actual drawdowns during the project's life amounted to USD4,912,725 equivalent to Kshs.497,576,479, leaving an undrawn balance of Kshs.201,727,500. Further, there was no evidence of Management initiation of closure process for the Project or any attempt to seek extension of funding from the Donor. The lapse of the credit facility before drawdown of the funding may have resulted in failure to implement and achieve all project deliverables, and a possibility that the project did not achieve the objective of providing water and sanitation services to the intended beneficiaries.

Submission by Accounting Officer

The undrawn balance relates the sustainability component of the project. The OBA payments were originally structured so that NCWSC was eligible for 50 percent of the subsidy on verification of working connections. The remaining 50 percent was to be paid after verification of 6 months of sustained service delivery, as evidenced by billing records. Due to delays in project

implementation, the project only managed about 30% of the sustainability funds hence the balance was not drawn as the project did not meet the conditions to claim.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1211. Project Closure Reports

As reported in the previous year, according to Paragraph 1.2 of the financial statements, the project completion date was 30 June, 2019. Review of special account reports revealed that the grants were last received in 2018. Further, the certificate of substantial completion dated 26 August, 2019 indicated that the defects liability period of the work would expire on 8 July, 2020. However, the project closure report was not provided for audit review, more than one year after the expiry of the defects liability period.

In the absence of the project closure report, it was not possible to confirm the actual status of the Project.

Submission by Accounting Officer

The project final report and the final output verification report are available for review.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1212. Contingent Liability

As reported in the previous year, and as disclosed in Note 14.5 to the financial statements, there was a pending arbitration dispute between a contractor and Nairobi City Water and Sewerage Company (NCWSC) in respect of the project. In this dispute, Management had failed to pay the contractor an advance of Kshs.166,224,772 as agreed in the contract terms. The contractor had completed the project as at the time of the audit in September, 2022. In view of the information recorded above, a contingent liability is likely to arise.

Submission by Accounting Officer

The contract signed between Interways works ltd and NCWSC provided for advance payment for mobilization at 20% of contract value Kshs 206,224,772. At the time of commencement of the contract it was realised that the grant agreement on the other side had not provided for advance payment. The grant agreement was later amended to provide for advance payment at 10% of the grant amount of USD 4,330,000. Subsequently the contractor was paid kshs 40 million as an advance.

On completion of the project he lodged a claim to an adjudicator claiming non-payment of an advance payment balance of kshs 166,224,772 on the grounds that he had to borrow to finance the mobilisation. The adjudicator directed the matter be taken to arbitration and pending resolution.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of the adoption of this report.

1213. Lack of Social Sustainability Fund

Although the project was handed over to the Company on 30 June, 2019, the legal basis for establishing a social sustainability fund was yet to be passed by the County Government of Nairobi, and there was no evidence of steps taken towards establishing or financing it. This may result in inability to service the project in the long run and subsequent loss of the significant investment in the project.

In the circumstances, it was not possible to confirm the sustainability of the significant investment made in the above project.

Submission by Accounting Officer

The project is self-sustaining as the customers connected are billed and pay their bills.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1214. Shortfall in Achievement of Targets

The Implementation, Completion and Results (ICR) report with respect to the original and revised indicators and targets, indicates the number of target communities was expanded to twelve (12) informal settlements and two (2) resettlement areas. However, the Project only delivered services to six (6) informal settlements and the two resettlement areas. The restructuring of the initial design resulted in increased targets and costs.

In addition, the ICR report revealed that at the completion of the Project, the number of sanitation and water connections as well as the number of individual beneficiaries were below the revised targets, as detailed below:

Revised Indicators	Original Target in 7 Informal Settlements (Persons)	Revised Target (Persons)	Actual Achievement (Persons)	Not Achieved (Persons)	Not Achieved (%)
People provided with access to improve water sources under the project urban	80,000	131,000	97,855	33,855	26

People provided with connection to sewerage network	80,000	167,000	137,243	29,243	21
Unique project beneficiary of which women be 50%	80,000	167,000	137,243	29,243	17.5
New Household sewer connections constructed under the project	16,000	13,000	9,843	3,157	24
New Piped household water connections that are resulting from the project intervention	16,000	10,900	7,683	3,217	29.5
People in the informal settlement with access to improved water sources under the project		144,000	84,940	59,060	41

Management has explained that the reasons for not achieving the revised connection targets included, project implementation delays arising from water supply inconsistency, damage of water pipes during construction of the Kayole - Soweto Road, and in other areas water supply lines had not been finalized by Water Company, resulting in limited or no water supply. It was not clear why Management commenced the Project without ensuring that other requirements for the success of the project were in place. It was further not clear why Management revised the targets higher without assessing and mitigating the possible risks and challenges.

In the absence of explanation for the gaps in the project recorded above, it was not possible to confirm that the project's objective of providing water to the people in the earmarked informal settlement, was achieved.

Submission by Accounting Officer

This was as a result of project delays arising from water supply inconsistency, damage of water pipes during construction of the Kayole Soweto road, and in other areas water supply lines had not been finalized.

Committee Observations and Findings;

The Committee noted that the submission of the Accounting Officer was unsatisfactory.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the Accounting Officer submits a status report within three (3) months of the adoption of this report.

NAIROBI RIVERS BASIN REHABILITATION AND RESTORATION PROGRAM: SEWERAGE IMPROVEMENT PROJECT PHASE II (AfDB LOAN NO.2000200003407 AND ADF LOAN NO.2100150040550) – ATHI WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

1217. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.1,141,104,216 and Kshs.1,021,167,379 respectively, resulting into underfunding of Kshs.119,936,837 or 11% of the budget. Similarly, the Project utilized Kshs.1,017,909,623 against the budgeted amount of Kshs.1,141,104,216 resulting into under expenditure of Kshs.123,194,593 representing 11% of the estimated expenditure. The underfunding and under expenditure may affect implementation of the planned activities and impact negatively on delivery of the Project to the public.

Submission by Accounting Officer

All the disbursements under the project except for GoK counterpart are direct payment in nature and some payments had not been cleared at the Ministry and therefore had not been paid at the end of the year. The non-payment of such certificates resulted to the reported underfunding and under-expenditure. The underfunding and under expenditure did not affect both the implementation of the planned activities and service delivery to the public.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1218. Slow Progress of Works

As previously reported, review of the Project records and audit verification carried out in September, 2022 revealed that the construction of Kahawa West, Githurai 44 & 45, Kahawa Sukari Reticulation sewer which was awarded at a contract sum of Kshs.2,154,077,998 for a duration of eighteen (18) months from 15 March, 2021 to 14 September, 2022, was still incomplete and that the overall progress of works was only at 27.9% completion level against eighteen (18) months, or 100% time lapsed of the contract period. Further, the status review carried out on the construction of Mwiki and Clayworks reticulation sewers which were awarded at a contract sum of Kshs.1,794,140,606 revealed overall progress stood at 18% against time lapsed of seventeen (17) months or 98% of the eighteen (18) months contract duration from 22 March, 2021 to 20 October, 2022. No satisfactory explanation has been provided for the delays in addition, the status review of Lot 4-Construction of East and West of Nairobi Reticulation sewers which was awarded at a contract sum of Kshs.1,278,465,431 revealed overall progress stood at about 30% against time lapsed of fourteen (14) months or 78% of the eighteen (18) months contract duration from 29 July, 2021 to February, 2023. No satisfactory explanation has been provided for the delays The implementation of the projects is therefore behind schedule, and it is unlikely that the remaining

time will be enough to complete the Projects. Consequently, the Program's objectives may not be realized as envisaged.

Submission by Accounting Officer

The progress of works for construction of Kahawa West, Githurai 44 & 45, construction of Mwiki and Clayworks reticulation sewers and Construction of East and West of Nairobi Reticulation sewers is currently at 73%, 91% and 49% against a time lapse of 89%, 94% and 68% respectively. The contracts for construction of construction of Kahawa West, Githurai 44 & 45 and construction of Mwiki and Clayworks reticulation sewers have since been extended to 11/7/2024 and 23/8/2024 in order ensure smooth completion of all the project components. In order to avert further delays in the implementation of this contract, the management has been holding weekly project management meetings with the contractor in addition to the monthly site meetings.

Three contracts have experienced delays occasioned by different reasons specific to each contract ranging from difficulties to site access by contractors, cashflow challenges by contractors and budgetary challenges especially for GoK counterpart.

Although the three contracts under the project are behind schedule, the project will deliver the envisaged project benefits to the residents of targeted areas without further delays. Contract extensions are done without cost to the Agency.

To ensure that the project objectives are met, the management in liaison with the financier have extended the program implementation period to 31st December 2024 to take care of the time lost at the start. This was done to ensure that the various contracts under the program have been extended in order to ensure attainment of the project objectives.

Committee Observations and Findings

The Committee noted the delay of the implementation of the project.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of the adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1219. Labelling and Tagging of Project Assets in NARSIP II

Included in the statement of receipts and payments is the acquisition of assets amount of Kshs.1,017,500,783 which includes construction of Kahawa West, Githurai 44 & 45 and Kahawa Sukari Reticulation Sewers in Lot 2 (Kshs.324,242,101), Construction of Mwiki & Clayworks Reticulation Sewers in Lot 3 (Kshs.91,239,473) and Construction of East and West of Nairobi Reticulation Sewers in Lot 4 (Kshs.412,778,675) as disclosed in Note 8 to the financial statements. Verification of works and assets on site revealed that the Project's assets were not labelled for ease of identification and proper custody as per the requirement of Regulation 166(4) (a) and (b) of the Public Procurement and Asset Disposal Regulation, 2020.

In the circumstances, effectiveness of the Asset Management System to safeguard assets could not be confirmed.

Submission by Accounting officer

Asset labelling is done at the final stages of project implementation before handover to the water service provider. The works under this project are yet to attain substantial completion hence the reason for the current status. The water company undertakes serialized labelling for ease of maintenance.

However, as part of the requirement of the contracts, all manhole covers are inscribed with the initials of the Water Services Provider in the area of jurisdiction for ease of identification.

Committee Observations and Findings;

The Committee noted the admission of the breach by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the Accounting Officer ensures that the assets are properly labelled as provided under Regulation 166(4) (a) and (b) of the Public Procurement and Asset Disposal Regulation, 2020

BURA REHABILITATION DEVELOPMENT PROJECT (LOAN NOS. BADEA 3530: LA/763, KUWAIT 752, OPEC 1154P) – NATIONAL IRRIGATION AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

1222. Budgetary Control and Performance

Note 1.7 on Funding Summary indicates that the Project duration is for ten (10) years from 2013 to 2023, with an approved budget of $118,893,500 equivalent to Kshs.7,569,733,000. However, out of the total funding, the amount realized from donor commitment amounted to Kshs.2,270,920,000 and GOK counterpart funds of Kshs.5,298,813,000. During the year under review, donor funding of Kshs.1,470,776,000 or 65% and GoK counterpart funding of Kshs.3,736,049,000 or 71% were received. This is an indication of slow release of funds, and yet the project duration is expected to end in less than a year. Further, the statement of comparison of budget and actual amounts indicates that the Project was expected to receive a total of Kshs.1,550,000,000 in the year under review. However, Kshs.965,617,930 was realized resulting in a deficit of Kshs.584,382,070 or 38%. Similarly, out of the budgeted expenditure of Kshs.1,550,000,000, an amount Kshs.1,038,901,568 was spent hence an under expenditure of Kshs.511,098,432 or 33% of the budget. As a result, the Project's goals and activities may not be achieved within the financing period which commenced on 27 May, 2013 and is expected to end on 13 December, 2023.

Submission by Accounting Officer

The figure of Kshs. 1,038,901,568 refers to the payments to the Contractor which is based on certified executed measured works. During the Financial year under review, the measured works executed by the Contractors were Kshs. 1,038,901,568 and this was the amount paid. The payment were both made by GoK and the donors.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1223. Pending Bills

Note 12 .1 on Other Important Disclosures and Annex 3a reflects pending accounts payables amount of Kshs.261,712,434. However, Management did not provide any explanation why the amount was not settled during the year under review.

In the circumstances, the Project is exposed to unnecessary interest and penalties on delayed or non-payment of claims.

Submission by Accounting Officer

National Irrigation Authority had submitted Interim Payment Certificates to Kuwait Fund which had not been paid by closure of the Financial Year 2021/2022 hence the pending bills. The pending bills have since been settled.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1224. Unresolved Prior Year Matter

In the audit report of the previous year, an issue on budgetary control and performance was raised on the Project. However, the Management has not resolved the issue or given any explanation for failure to adhere to the provisions of the Public Sector Accounting Standards Board templates.

Submission by Accounting Officer
This issue on budgetary control and performance has since been resolved.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1225. Failure to Maintain Separate Bank Account

The statement of financial assets and as disclosed in Note 11 to the financial statements reflects an amount of Kshs.1,091,471,356 in respect of cash and cash equivalents. The Management did not maintain a separate cash book or detailed analysis for the Project during the year under review. The Project continued to receive the counterpart funds through the Authority's development bank account. This is contrary to Regulation 76(1) of the Public Finance Management Regulations (National Government), 2015 which states that, for the purpose of disbursement of Project funds, there shall be opened and maintained a project account for every project at Central Bank of Kenya unless it is exempted by the Cabinet Secretary, in writing, into which all funds shall be kept and such an account shall be known by the name of the Project for which it is opened and each Project shall maintain one bank account.

In the circumstances, Management was in breach of the law.

Submission by Accounting Officer
The Authority has since opened a new bank account for the project. Please note that the Authority does not receive counterpart funds but they are directly paid to the contractors by the Donors.

Committee Observations and Findings;

The Committee noted the admission of the breach by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to adhere to Regulation 76(1) of the Public Finance Management Regulations (National Government), 2015.

1226. Delay in Project Implementation

The Project Loan Agreement signed in 2013, the project duration was to take 10 years commencing 2013 to 2023. However, records indicate that the construction of a new main canal and associated civil works for the Rehabilitation Project was awarded on 12 February, 2021 to a contractor at a contract sum of Kshs.1,764,278,550. According to the signed contract agreement of 10 March 2021, the agreed contract period was 18 (eighteen) Months (547 days) from 7 April, 2021 to end on 07 October, 2022. However, review of project progress as of 30 June, 2022 revealed the payments totalling Kshs.447,057,535 or 25 % of the contract sum had been made against an overall physical completion level of about 38.5%. This, therefore, indicates delayed implementation of the Project, with only a few months remaining to the end of the Project duration. In view of the above, the Project is behind schedule and it is unlikely that the set timelines will be achieved which may lead to additional costs.

Submission by Accounting Officer
New Main Canal and Associated Civil Works from Korakora to Nanighi is currently at 55% complete with the following milestone achieved. The major challenge affecting project progress is delay in payment of certified payment certificates as result of delay in release of exchequer funds for the GOK component. The contact is projected to be substantially completed by 30th April 2024.

Committee Observations and Findings;

The Committee noted the delay of the implementation of the project.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of the adoption of this report.

MWEA IRRIGATION DEVELOPMENT PROJECT (LOAN NO. KE-P27) - NATIONAL IRRIGATION AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

1230. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.3,301,000,000 and Kshs.1,839,938,959 respectively resulting to an underfunding of Kshs.1,461,061,041 or 44% of the budget. Further, the Project had an expenditure

budget of Kshs.3,301,000,000 whereas the actual total expenditure was Kshs.1,829,578,342 resulting in an under expenditure of Kshs.1,471,421,658 or 45% of the budgeted amount. The underfunding and under expenditure, implies that some activities of the project were not implemented and may have negatively impacted on service delivery to the public.

Submission by Accounting Officer
All the activities in the project were undertaken as planned, the under absorption was due to the change of payment mode from Advance Payment Procedure to Direct Payment by the donor (JICA). The payments have since been forwarded to JICA through the Parent Ministry for Payment thus there was no under expenditure.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1231. Unresolved Prior Year Audit Matters

In the report of the previous year, issues were raised under the Report on Lawfulness and Effectiveness in Use of Public Resources and Other Matter sections of the report. Although the Management has indicated that all the issues have been resolved under progress on follow up of auditor's recommendation section of the financial statements, the matters remained unresolved as at 30 June, 2022.

Submission by Accounting Officer
The issues have since been resolved.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1232. Delayed Project Completion

Review of the project's documents and physical verification revealed that as of the time of the audit on 12 October, 2022 the progress for the construction of the Mwea Irrigation Thiba dam and appurtenant structures were complete and handed over to the Authority. However, the construction of Phase II of the project comprising construction of the irrigation canals had little progress as follows:

i. The construction work in Phase II is divided into two contracts. Lot 1 for construction and civil works of the irrigation facilities, was awarded to a firm at a contract sum of Kshs.851,961,000. The construction commenced on 22 March, 2021 with a completion date of 22 July, 2022 as per the contract agreement which was revised to 1 February, 2023. Further, according to the progress report of July, 2022, the project was behind schedule at 25.9% completion level against 16 (sixteen) months or 73% of the time elapsed, indicating that the project may not be completed before the end of the contract period.

ii. Lot 2, which involves civil works of drainage facilities and other works, was awarded to a firm for a contract sum of Kshs.648,789,983. The works commenced on 22 March, 2021 and were, expected to be completed by 22 July, 2022. However, a review of the project status report and physical verification in October, 2022, revealed that the project was at 30 % completion level. No evidence was provided of the contract extension, yet the contract period had lapsed. Although, Management attributed the delay to slow payment processing by the Authority and the Ministry of Water, Sanitation and Irrigation, the Project is at risk of incurring penalties of the Central Bank's prevailing market rate of interest plus 3% for any delayed payments.

In the circumstance, delayed completion of the canal works may lead to cost overruns, delay of expected benefits to the public and the value for money on avoidable penalties.

Submission by Accounting Officer
The under budgeting of the project by the National Treasury culminated into delay in honoring the payments. The contract for Lot 2 was extended up to 2nd February 2024 and all the payments to the Contractor have since been cleared. There is no delay in the processing of the payments. Currently is at 55%. All the payments for Lot 1 Contractors have been cleared and works are ongoing on site.

Committee Observations and Findings

The Committee noted the delay of the implementation of the project.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of the adoption of this report.

1233. Avoidable Interest on Delayed Payments

The statements of receipts and payments and as disclosed in Note 8 to the financial statements reflects acquisition of non-financial assets payments controlled by the entity of Kshs.111,941,293. Included in the balance is Kshs.34,947,773 relating to interest charged, which arose from delayed payments to a firm engaged for the construction of Thiba dam. The interest charged were occasioned by failure to pay the contractors within 28 days after raising the Interim Payment Certificates (IPC) and concurrence to pay as indicated in the contract agreement. Although Management attributed the delay in paying the contractor to under-budgeting, the interest charged could have been avoided and is therefore a wasteful use of public funds.

In the circumstances, the Public did not obtain value for money on the nugatory interest.

Submission by Accounting Officer
The construction of Thiba dam was completed and the Defects notification period ended on 17th July 2023. The dam was impounded on 24th May 2022 and the dam has been in use from July 2022 up to date. The objective of the dam to supply water to Mwea Rice farmers and stabilize Thiba river has since been achieved and the value for money on the project has been realized.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1234. Failure to Maintain a Separate Bank Account for the Project

The statement of financial assets reflects cash and cash equivalents balance of Kshs.12,719,783. However, as at the time of audit in October, 2022, the Project had not opened the account, but continued to receive the counterpart funds through the Authority's development bank account This is contrary to Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015 requires the Project to open a separate bank account for the purpose of receiving and accounting counterpart funds.

In the circumstances, the Management was in breach of the law.

Submission by Accounting Officer
The Authority has since opened a new bank account for the project. Please note that the Authority does not receive counterpart funds but they are directly paid to the contractors by the Donors.

Committee Observations and Findings;

The Committee noted the admission of the breach by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to adhere to Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015

RWABURA IRRIGATION DEVELOPMENT PROJECT – NATIONAL IRRIGATION AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

1237. Unsupported Bank Balance

The statement of financial assets and as disclosed under Note 11 to the financial statements reflects a bank balance of Kshs.35,543,747. However, the bank balance was not supported with a cash book, bank statements, and certificate of bank balance, bank reconciliation statements, and board of survey report. Further, the National Irrigation Authority did not open a separate Project bank account for the purpose of receiving and accounting counterpart funds. As at the time of audit in October, 2022, the Project continued to receive the counterpart funds through the Authority's development bank account.

In the circumstances, the accuracy and completeness of the bank balance of Kshs.35,543,747 could not be confirmed.

Submission by Accounting Officer
The Authority has been maintaining one cash book and bank account for all its GoK development grants. This has been due to the many projects that are managed by the Authority making it difficult to open a bank account for each of them. However, the Authority has since opened a new bank account for the project. Please note that the Authority does not receive counterpart funds but they are directly paid to the contractors by the Donors.

Committee Observations and Findings;

The Committee noted the admission of the breach by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to adhere to Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015.

1238. Pending Accounts Payable

Review of other important disclosures under Annex 3a to the financial statements, revealed pending bills amounting to Kshs.7,736,982 as at 30 June, 2022 out of which Kshs.538,349 was in relation to pending claim by a consultant that has remained outstanding for over two (2) financial years. Management did not provide satisfactory explanations for the failure to settle the claim. This exposes the Project to the risk of incurring interest costs and penalties as provided for under clause D of the contract signed between the consultant and the National Irrigation Authority. Further, failure to settle bills during the year to which they relate distorts the financial statements and adversely affects the budgetary provisions for the subsequent year as they form a first charge.

Submission by Accounting Officer
The figure of Kshs.538,349.00 which refers to pending bill at the closure of the financial year as indicated under Note 12. The contract is time based and this amount relates to Payment certificate No.3 which was prepared on 25th May 2022 and recommended for payment on 27/05/22 and was in the process of approval for payment by the year end.

Committee Observations and Findings

The Committee noted that the Accounting Officer failed to pay pending bills due to lack of exchequer.

Committee Recommendation

The Committee recommends that the Accounting Officer should ensure that pending bills are settled as a first charge pursuant to Regulation 42 of the PFM (National Government) Regulations, 2015.

1239. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final receipts budget and actual on a comparable basis of Kshs.706,000,000 and Kshs.335,511,266 respectively resulting in an underfunding of Kshs.370,488,734 or 47% of the approved budget. Similarly, the Project expended Kshs.365,954,163 against an approved budget of Kshs.706,000,000 resulting in an under expenditure of Kshs.340,045,837 or 52% of the approved budget.

In the circumstances, the underfunding and underperformance affected the planned activities and may have impacted negatively on service delivery to the public.

Submission by Accounting Officer
The allocation after the supplementary budget of 2021-22 was Kshs 706,000,000 out of which Kshs 365,954,163 was utilized. The low absorption was attributed to the Expiry of pre-shipping inspection contracts between KEBS and Inspection companies by 31st March, 2022 thus delaying pre-inspection of materials at the port of origin as provided in clause 30 of the conditions of contract.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1240. Unresolved Prior Year Audit Issues

The Project's audit report of the previous year highlighted several issues under Report on Lawfulness and Effectiveness in Use of Public Resources. However, the Management has not resolved the issues or given any explanation for failure to adhere to the provisions of the Public Sector Accounting Standards Board templates and The National Treasury's Circulars.

Submission by Accounting Officer
The issues have since been resolved.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

IMPROVEMENT OF DRINKING WATER AND SANITATION SYSTEMS IN MOMBASA: MWACHE PROJECT (AFD CREDIT FACILITY NO.CKE 1103 01 C) – COAST WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

1243. Unreconciled and Unexplained Variance Between the Project's Financial Statements and Special Account Statement

The Project's statement of receipts and payments reflects an amount of Kshs.243,657,000 as loan from external development partners. However, the special account statement maintained at the Central Bank of Kenya indicates that a total of Kshs.245,923,600 was withdrawn from the special account and transferred to the Project's bank account, resulting in an unreconciled and unexplained difference of Kshs.2,266,600.

In the circumstances, the accuracy and completeness of the loans from external development partners of Kshs.243,657,000 could not be confirmed.

Submission by Accounting Officer
CWWDA requested for Euro 2 million from the Exchequer through the Ministry of Water, Sanitation, and Irrigation (MWS&I). On the 27th June 2022 the Agency received Kshs. 243,657,0000 into the Project Account for the Improvement of Drinking Water and Sanitation Systems in Mombasa and not Kshs. 245,923,600 as indicated by the Audit.

The Agency used the book value of Ksh. 243,657,000 as per the transfer rate where Central Bank used the current (30 June 2022) prevailing rate. Therefore, the variance of Kshs. 2,266,600 is an exchange gain arising from fluctuation in the exchange rate.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1244. Accounts Receivable - Undisclosed Outstanding Imprests

The statement of financial assets reflects nil accounts receivables (imprests and advances). However, disclosed in Note 6 to the financial statements under other purchase of goods and services are other operating expenses of Kshs.352,960 relating to imprests surrenders for Mwache River water quality monitoring activities. However, imprest warrants reviewed showed that imprests totalling Kshs.2,029,520 remained un-surrendered but have not been disclosed in the statement of financial assets as at 30 June, 2022. In addition, the Management did not maintain imprests register, contrary to Regulation 93(4)(c) of the Public Finance Management (National Government) Regulations, 2015 which requires the details of the applicant to be recorded in the imprest register including the amount applied for.

In the circumstances, the accuracy and completeness of the nil accounts receivable (imprests and advances) balance could not be confirmed.

Submission by Accounting Officer
In September 2017, AFD issued No Objection for the financing (reimbursement) of costs for the Mwache river water quality monitoring tests. It was agreed that before receipt of funds into the project account, CWWDA would finance the tests using its internal funds then get reimbursed once money was received in the project account.

The difference of Kshs. 2,029,520 relates to Mwache River Water Quality monitoring costs that were financed by CWWDA through the Institutional Accounts before disbursements were made into the AFD Project.

In addition, the Agency confirms that it maintains an imprest register where all the imprests issues and surrenders are recorded. And that the above imprests were recorded in the CWWDA main register. As at end of the reporting period that is 30th June 2022, all the imprests issued for the water quality monitoring were fully surrendered and accounted for under the institutional accounts.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1245. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.1,760,000,000 and Kshs.351,513,176 respectively, resulting to underfunding by Kshs.1,408,486,824 or 80% of the budget. The underfunding was attributed to delays in donor disbursements. Similarly, the Project expended an amount of Kshs.108,215,841 against an approved budget of the same amount. The underfunding may lead to delays in Project implementation and realization of the intended benefits.

Submission by Accounting Officer
CWWDA had planned to execute the key activities under the project (water treatment plant, transmission pipelines and the distribution network), however due to the delayed commencement of the dam works contract (executed by MWS&I under the Kenya Coastal Water Security and Climate Resilience Project - KWSCRP) due to delays in RAP implementation, the planned activities could not be executed. This is because the signature and commencement of the Mwache

Dam works contract was a Condition Precedent (CP) in the CFA (Attached). The dam contract was signed on 11th August 2019 but due to delayed compensation of project affected persons (PAPs), construction commenced in March 2022 but again further delayed to Jan 2023 due to suspension of works by the contractor as a result of delayed payment.

Another CP was the conclusion of financing plan for component 1 (water treatment plant and transmission pipelines). Unforeseen changes, such as the World Bank reshuffling the budget allocated for the construction of upstream infrastructures, namely West Mainland and North Mainland Transmission Pipes and Reservoirs, and project cost escalation due to external factors like inflation (stemming from COVID 19 Pandemic [long lockdowns] and the Ukraine War), necessitated restructuring the project implementation. These adjustments took longer than initially anticipated during the CFA signing.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1246. Acquisition of Non-Financial Assets

The statement of receipts and payments reflects expenditure on acquisition of non-financial assets totalling Kshs.107,856,176 as disclosed in Note 8 to the financial statements.

The following observations were made:

1246.1 Construction of Civil Works

Note 8 reflects expenditure on construction of civil works of Kshs.38,130,757, being advance payment for emergency works to increase water availability in Likoni under Contract of 18 August, 2021 at a contract sum of Kshs.319,751,128 and a duration of eighteen months. The records also show that the site was handed over to the contractor on 27 August, 2021. However, the expenditure of Kshs.38,130,757 excludes 2% withholding tax of Kshs.687,040.68 and 3% VAT of Kshs.1,030,561.02, all amounting to Kshs.1,717,602 which were accounted for under Coast Water Works Development Agency.

In addition, during project verification of 30 September, 2022, the following observations were made:

i. The scope of works required the contractor to drill two new ground water boreholes (A and 9). However, borehole A had not been drilled while borehole 9, although drilled, was not functional after rejection for being developed contrary to the Engineer's instruction on the quality of gravel.
ii. The works on Lines 1-1, 1-2 and 1 connecting boreholes 8, C and A to the main line had not yet commenced.
iii. Installation of electro-mechanical works and pipe works at fifteen (15) borehole sites, extension flow division chamber (Marere Pipeline), construction of DN250- 200 HDPE PN 25 parallel Marere Pipeline of 6,368m and chlorine dosing units at Kaya Bombo and Magodzoni had not commenced with only foundation excavations of the two chlorination units done.

iv. No water supply in Likoni as the combined hydraulic - chemical well rehabilitation of eight (8) boreholes were yet to be done and only five (5) boreholes (6.1, 6.2, D2, 8.1 & C) had been cleaned and rehabilitated.

In the circumstances, regularity of the expenditure totalling Kshs.38,130,757 on construction of civil works could not be confirmed.

Submission by Accounting Officer

The expenditure totaling Kshs 38,130,757 was advance payment for Contractor's mobilization and was provided for in the contract as per Sub-Clause 14.2 of Particular Conditions of Part A – Contract Data and Sub-Clause 14.2 of the General Conditions of Contract. This was payable against an acceptable bank guarantee in the currencies in which the accepted contract amount is payable. Kshs. 1,717,602 relates to the total of both Withholding Tax (Kshs. 687,040.68) and VAT (Kshs. 1,030,561.02) deducted from the Advance payment of Kshs. 38,130,757 done as per of KRA regulations, this amount was debited from CWWDA Institutional Account since the Project Account had not received disbursements as at the time the Advance Payment was effected. This amount would be reimbursed into CWWDA Institutional accounts once funds are received into the Project account as stated in, Clause 3.4.1 of the Credit Financing Agreement (CFA).

CWWDA forwarded a Reimbursement Request on the 31st August 2022 and was subjected to

i) KYC Procedures and Approvals to be done by AFD

ii) Independent Audit done by AFD

It was only until 21st March 2024.that the No Objection for reimbursement was received. The agency is in the process of effecting the transfer.

As at the time of Audit, the progress of work executed was 21.1% and included the following works done:

- combined hydraulic - chemical well rehabilitation of boreholes 6.1, 6.2, D2, 8.1 & C
- Site clearance, foundation setting out, foundation excavation and concrete casting for the foundation of the chlorination unit at Kaya Bombo Reservoir
- Site clearance, foundation setting out, foundation excavation and concrete casting for the foundation of the chlorination unit at Magodzoni Reservoir
- Clearance, setting out, confirmation of levels and excavation of Borehole A 647m collector pipeline and Borehole 4/7 820m collector pipeline.
- Clearance, setting out and confirmation of levels of Marere parallel pipeline.
- Geophysical investigations for boreholes

Likoni is supplied water from Kaya Bombo Reservoirs by gravity; Boreholes A, 4, 7 and C transmit water to Kaya Bombo reservoirs from which it flows by gravity to Likoni. Cleaned Boreholes 4, 7 and C, were usable for water production and the Contractor was instructed to reinstate them to transmit water to Kaya Bombo reservoirs to avert the water shortage in Likoni.

To date the progress is at 52% with 9 new boreholes drilled, developed and test pumped, 6 boreholes rehabilitated, 4km out of the 6km Marere pipeline laid, dosing units at Kayabombo and Magozoni 88% completed. Overall, the project is planned for completion in August 2024. Delays

have been caused mainly by slow processing of tax exemptions, budget cuts and slow disbursement of funds.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1246.2 Research, Studies, Project Preparation, Design and Supervision

The financial statements as disclosed in Note 8 reflects an expenditure of Kshs.69,725,419 in respect of research, studies, project preparation, design and supervision. The expenditure includes payments of Kshs.17,703,957 and Kshs.30,246,721 for consultancy services procured for Detailed Design Review and Adoption and Construction Supervision of Water Distribution Pipelines in Mombasa and Sanitation Facilities in Mombasa South Mainland (Likoni) and Long-Term Technical Assistance (LTTA) respectively. The following observations were made:

1246.2.1 Payment for Construction Supervision Before Detailed Design Review

The Consultancy Services for Detailed Design Review and Adoption and Construction Supervision of Water Distribution Pipelines in Mombasa and Sanitation Facilities in Mombasa South Mainland (Likoni) contained also in the terms of reference detailed design review and adoption for water distribution in North Mainland (NML), West Mainland (WML) and South Mainland (SML). However, a total of Kshs.13,776,206 was paid for construction supervision of Mombasa Water Distribution Works-North Mainland (Short Term Works) Lot 1A under Phase 2, before completion of Detailed Design Review and Adoption under Phase 1.

Submission by Accounting Officer
The Consultant (Ingerop) was engaged to carry out review of the detailed design and construction supervision of three work contracts in Mombasa namely:

- North Mainland (NML) Short Term works – financed by World Bank
- South Mainland (SML) Short Term works, West Mainland (WML) short- and medium-term works – financed by AFD.
- South Mainland (SML) Sanitation Works– Financed by AFD

Immediately the Consultant was mobilized they commenced / prioritised with the Design, review and adoption for NML and after which supervision of the Works contract also started since the works had been contracted under Water and Sanitation Development Project (WSDP) - WB funding. The Consultant submitted a Design review and Adoption report on 20th July 2021 for NML , this was done within timelines and was thus paid for accordingly as per the Special Conditions of Contract (SCC) Clause 45.1 (c) ,2nd Payment.

The other two reports (West Mainland and South Mainland Report) were also completed and paid for accordingly.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1246.2.2 Unsupported Modification of Terms of Reference

According to the terms of reference attached to the Request for Proposal for the Consultancy Services for Detailed Design Review and Adoption and Construction Supervision of Water Distribution Pipelines in Mombasa and Sanitation Facilities in Mombasa South Mainland (Likoni), Task 1.1 under Phase 1 of scope of services, the consultant was to undertake detailed design review and adoption report for South Mainland (Short Term), West Mainland (Short and Medium Term) and North Mainland (Short Term) water supply components. However, audit review of the minutes of negotiation held on 1 April, 2021 revealed agreement on design review and adoption report for South Mainland (Short Term) and West Mainland (Short and Medium Term) only. No explanation was provided for the omission of North Mainland (Short Term) water supply components.

Submission by Accounting Officer
North Mainland (NML) short term works were never omitted from the scope of services. The French Development Agency (AFD) while giving its No Objection on the draft contract commented on the Minutes of Negotiation and confirmed the prioritization of the design review of NML short term works and also addressed the issue of having the design review and supervision teams running concurrently for NML and MML/SML. As already explained under item 1246.2.1 above, the Consultant prepared and submitted the reports for North Mainland (NML) as per Special Conditions of Contract (SCC) Clause 45.1 (c) 2nd Payment which provides for payments of all the three reports. Furthermore, Appendix A of the Contract contains the TOR which also included North Mainland as part of the scope and thus there were no modification in terms of scope performed for this Contract.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1246.2.3 Lack of No Objection Letters

The Management failed to provide for audit "No Objection" letters issued by AFD before advertising for the Request for Expressions of Interest for the consultancy services.

Submission by Accounting Officer
AFD gives "No Objections" in form of emails and not letters. The No Objection emails issued by AFD before advertising for Request for Expressions of Interest were availed during the time of audit and are hereby reattached:

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1246.2.4 Delayed Signing of Contract

Review of Tender on Consultancy Services for Long Term Technical Assistance (LTTA) revealed that the professional opinion issued on 20 September, 2018 recommended award of contract at a cost of Euro 1,537,454(Approx. Kshs.181,419,572) and was signed on 25 June, 2020. However,

the contract was signed after the validity period of 120 days from the submission deadline of 21 May, 2018, contrary to Clause ITC 12.1 of the Request for Proposal.

Submission by Accounting Officer
Contract negotiations was held on 4th October 2018 and No objection on the draft contract received from AFD on 14th November 2018 which advised that the contract would only be signed after the signature of the On-Lending/Subsidiary Agreement (SA) between the National Treasury (NT) and Coast Water Works Development Agency (CWWDA). The Subsidiary Agreement (SA) was signed on 10th March 2020 while the contract was signed on 25th June 2020. The draft contract was initialled by both parties meaning there was no need for extension of proposal validity having initialled the contract (draft) in place. CWWDA, for abundance of caution, ensured that the extensions for validity of the proposals were provided.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1246.2.5 Irregular Procurement of Consultancy Services

The advertisement for Request for Expression of Interest was done on 13 June, 2017 for the Tender on Consultancy Services for Long Term Technical Assistance (LTTA). However, there was no evidence of an approved budget for the procurement. Additionally, the procurement commenced before the signing of the Credit Financing Agreement and Subsidiary Loan Agreement. No explanation was provided for the irregularities. In the circumstances, regularity of the expenditure of Kshs.69,725,419 in respect of research, studies, project preparation, design and supervision could not be confirmed.

Submission by Accounting Officer
The Long-Term Technical Assistance (LTTA) was to support CWWDA in the project implementation hence the need to procure their services early. The procurement for LTTA contract was approved vide AFD Mission Aide Memoire for March 2017, Paragraph 52 (Aide Memoire attached herewith). The Credit Financing Agreement (CFA) for the Mwache Project (CKE1103) was signed on the 21st June 2018 whilst subsidiary agreement (SA) was signed on 10th March 2020. Even though procurement of the consultancy services begun before the signing of the CFA and SA, it was a Condition Precedent that no contract was to be signed until after the signing of the Subsidiary Agreement (SA) and the approval of the Procurement Plan by the Donor.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

NAIROBI INCLUSIVE SANITATION IMPROVEMENT PROJECT (GRANT NO:5600155005153) - ATHI WATER WORKS DEVELOPMENT AGENCY

REPORT ON THE FINANCIAL STATEMENTS

1249. Budgetary Control and Performance

The statement of comparison of budget and actual amounts for the year ended 30 June, 2022 reflects total budget receipts of Kshs.120,000,000 and actual receipts of Kshs.71,758,051 resulting to a budget shortfall of Kshs.48,241,949. Further, the statement reflects total budget expenditure of Kshs.120,000,000 and actual payments of Kshs.21,758,051 resulting to an under expenditure of Kshs.98,241,949. In addition, the approved budget of the Project for the year under review was not provided for audit review. As a result, the source of the balances reflected in the statement of comparison of budget and actual amounts could not be confirmed.

In the circumstances, the shortfall and under-absorption of the approved budget is an indication of activities not implemented by the Project Management leading to non-provision of services to the stakeholders.

Submission by Accounting Officer

This is attributable to the fact that, with an exception of GoK counterpart, all the project components are direct payment in nature and are thus determined by attainment of the consultancy outputs. The consultant did not achieve the planned deliverables during the year hence the low revenue receipts and budget absorption. That notwithstanding, the contract is still within the set timelines and will be completed within the contract period therefore the issue of non-provision of services to stakeholders does not arise.

On the legality of the financial transactions, the project had an allocated budget of Kshs. 120,000,000 as per the attached original and supplementary budget printed estimates which were also availed to the auditor during the audit exercise.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

4.23 VOTE 1112: MINISTRY OF LANDS AND PHYSICAL PLANNING

Hon. Generali Nixon Korir, the Principal Secretary and Accounting Officer for the State Department for Physical Planning appeared before the Committee on 22nd August 2023 accompanied by the following officers:

i.	Mr. Antony Masinde	Chief Finance Officer
ii.	Mr. Julius Mugambi	Deputy Accountant General
iii.	Mr. Charles Mulandi	Head of Procurement
iv.	Mr. Andrew Kositany	Personal Assistant to Principal Secretary
v.	Mr. Tom Abuta	Deputy Chief State Counsel
vi.	Ms. Jacinta Mutua	Director of valuation

and submitted as follows;
REPORT ON THE FINANCIAL STATEMENTS

1252. Irregular Reallocation of Expenditure

The statement of receipts and payments reflects expenditure on use of goods and services totaling to Kshs.951,340,932 as disclosed in Note 4 to the financial statements. Examination of payment vouchers and expenditure ledgers revealed that payments amounting to Kshs.3.617.809 were irregularly charged to wrong expenditure items without approval for reallocation as detailed below:

Item Charged	Correct Account	Amount (Kshs.)
Specialized Materials and Services	Foreign Travel	2,435,231
Specialized Materials and Services	Subsistence and Domestic Travel	1,108,978
Repair and Maintenance of Motor Vehicle	Subsistence and Domestic Travel	43,600
Repair and Maintenance of Motor Vehicle	Office and General Supplies	30,000
Total		**3,617,809**

In absence of any reallocation of the budget, the accuracy and regularity of the expenditure relating to the above account items could not be confirmed.

Submission by the Accounting Officer

It is true that during the financial year under review, expenditure payments amounting to Kshs. 3,617,809 were charged to varying expenditure items without approval for re-allocation as detailed in the table above.

During the financial year, the National Treasury instituted austerity measures that resulted in budget cuts through Supplementary I for FY 2021/22 budget whereby the recurrent vote suffered 50% reduction amounting to Kshs. 105,150,000 for use of goods and services expenditure items. These cuts severely affected foreign travel and domestic travel items of expenditures which had already been incurred and committed for payment of air tickets expenditures.

The services had been provided by firms registered under the Access to Government Procurement Opportunities (AGPO) category with expenditures already committed being brought for payment in June 2022 when the period for initiating reallocation had closed.

In view of the circumstances, and to avoid accumulation of pending bills, the expenditures were then charged to the items mentioned in the table above which were deemed closely related to the items in question.

The State Department has since put in place measures to ensure expenditure payments are correctly charged to their budget line items and authority for reallocation is sought from the National Treasury before payment of expenditure is made where necessary.

Committee Observations and Findings;

The Committee observes that despite the Accounting Officer submitting that the sums had been committed prior to budget cuts, the ministry ought to have sought and obtained approval from National Treasury, and ultimately Parliament vide a supplementary budget as per section 43 (2)(b) of the PFM Act 2012.

Committee Recommendation;

The Committee reprimands the Accounting Officer.

1253. Lack of Ownership Documents

Annex 4 to the financial statement reflects the summary of fixed asset register with a historical balance of Kshs.5,223,757,593 as at 30 June 2022. However, ownership documents of land, buildings and structures and transport equipment with historical cost balances of Kshs.1,297,261,745, Kshs.186,499,088 and Kshs.83,798,020 respectively were not provided for audit review. Further, scrutiny of the physical fixed asset register provided for audit revealed that the register was incomplete as it did not indicate details of the assets, the dates of acquisition and the cost of the assets.

In the circumstances, the ownership and valuation of the assets could not be confirmed.

Submission by the Accounting Officer

It is true that the fixed assets composition for the Ministry now State Department for the period under review included land, buildings and transport equipment with historical cost balances of Kshs.1,297,261,745.00, Kshs.186,499,088.00 and Kshs.83,798,020.00 respectively whose ownership documents were not provided to the auditor. It is also true that physical inventory of assets registers then provided to the auditor was incomplete as it did not provide for the details of the specific assets, their dates of acquisition, location and the cost of the assets.

The State Department has however, since then updated the requisite fixed assets register. The fixed asset registers books now prepared has captured the land references of the parcels of land owned, the vehicle logbooks and other details of the fixed assets including the date of acquisition, current location and the cost of the fixed assets. The prepared fixed assets register and copies of the vehicle log books and the information relating to the land owned by the State Department have been forwarded to the Auditor for their review.

It is however imperative to note that most of the land parcels have not been valued but the State Department is exploring means to value them and update the fixed assets registers on their new values as required subject to funds availability.

The State Department commits to continuously update the fixed assets register in the required format and regularly share with the National Treasury and the Office of the Auditor General the updated fixed assets register as may be required.

Committee Observations and Findings;

i) **The Committee observed that the Auditor General had since received the fixed assets register, despite it having gaps on values of some of the assets.**
ii) **The State Department availed copy of title deed in respect to KISM, as LR. No. 94712. Other parcels owned by the state department are under various stages of processing.**

Committee Recommendation;

The Committee recommends that the Accounting Officer henceforth maintains and avails for audit verification an updated fixed assets register, and concludes titling of all titles under the name of the state department within six (6) months of adoption of this report by the House.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1254. Delayed Payment of Legal Claims

Note 15.3 on other important disclosures reflects contingent liabilities amounting to Kshs.19,745,016,189 in respect of various court awards against the Ministry as analyzed in Annex 5 to the financial statements. However, individual case files for the court award totaling to Kshs.760, 709,415 of the total contingent liabilities of Kshs.19, 745,016,189 were not provided for audit review.

Further, records provided for audit indicated that during the year under review, the Ministry paid a total of Kshs.100,000,000 out of a decretal sum of Ksh.240,000,000 awarded on 25 September 2015 for Malindi Land Case No. 120 of 2011. In addition, the decretal sum had accumulated additional interests' charges amounting to Kshs.57, 565,282 for the period it had been unpaid. This interest was avoidable had managements settled the award in time.

In the circumstances, value for money for the expenditure on interest charges could not be confirmed.

Submission by the Accounting Officer

It is true that during the audit, out of the several files presented, individual case files for court awards amounting to Kshs. 760,709,415 were not traced for audit review. However, we have provided a status report on all Legal claims outstanding as at the end of financial year 30th June 2023.

Further, it is true that the Ministry paid a total of Kshs.100,000,000 out of the decretal sum of Kshs.240,000,000 awarded on 25th September 2015 for Malindi Land Case No.120 of 2011.

During the FY 2021/22, the Ministry was allocated Kshs.100, 000,000 for Settlement of Legal dues while the total outstanding legal claims as at the end of the financial year was Kshs19,745,016,189. Therefore, the Ministry faces a huge challenge in settling all the outstanding legal claims due to budgetary constraints.

The State Department has lobbied for additional funding through the Parliamentary Committee on Lands to enable us to settle the outstanding legal claims and also avoid additional interest charges for unpaid legal claims in future as is the practice on cases with huge decretal amounts, the Ministry together with the Attorney General had initiated negotiations with the plaintiff where it was agreed to waive substantial amounts on decretal sum and interest, in line with Article 159(2)(c) of the Constitution of Kenya.

Committee Observations and Findings;

The Committee observed that some of the claims were as a result of irregular compulsory acquisition of property, wrongful cancellation of title and double allocations.

Committee Recommendation;

The Committee recommends that the Accounting Officer reviews all court awards and initiates disciplinary action against all officers who were involved in illegal or irregular acts that led to litigation, within six (6) months of adoption of this report by the House.

REPORT ON THE REVENUE STATEMENTS

1257. Budgetary Control and Performance

Review of the budgeted and actual revenue collections for the year under review revealed that the Ministry did not realize all the budgeted revenue under the following revenue items:

Revenue Item	Actual Amount (Kshs.)	Budgeted Amount (Kshs.)	Variance (Kshs.)	Unrealized Revenue %
Stamp duty	5,099,886	13,637,556	(8,537,670)	63
Stand Premia on Town Plots	51,289,316	81,588,614	(30,299,298)	37
Other Revenue	612,035,451	996,457,873	(384,422,422)	39
Land Adjudication and Case Fees	215,628	1,497,084	(1,281,456)	86
Conveyance Fees	6,577,910	8,243,130	(1,665,220)	20
Land Valuation Fee	9,345,611	51,357,671	(42,012,060)	82
Land Registration Fees	8,543,178	18,515,080	(9,971,902)	54

Although the Management explained that the reason for non-realization of the budged revenue in full was because of COVID-19 pandemic and the year 2022 was an election year, persistent under-collection of revenue could have negative effects on service delivery to the Kenyan citizens.

Submission by the Accounting Officer

It is true that the Ministry did not meet budgeted revenue targets for the period ending June 30th, 2022, partly due to Covid-19 pandemic. However, there were other reasons that caused the non-realization of the budgeted revenue which include:

i. Budget cuts; Due to the austerity measures in the Financial Year 2021/2022 AIEs funds that are used to facilitate activities in our land offices were severely affected thereby compromising our ability to meet the revenue targets.
ii. Waiver of search fees; The government waived payment of search fees as a way to enhance ease of doing business in Kenya. The Ministry was charging Kshs.500/= per search and therefore the waiver of this fees affected particularly the collection of Land Registration fees. We thank the Government for we have been granted authority to reinstate the search and registration fee which will increase revenue collection.
iii. Staff shortage; The State Department has been having a serious staff shortage compromising the ability to perform our duties. We have a serious shortage of valuers which has affected our ability to generate revenue on valuation of property.
iv. Revenue targets are set without consulting the line Ministry. There are times where we have one-off revenue windfalls which don't recur in the subsequent financial year. There is therefore need for constant consultation between the National Treasury and the State Department on the revenue targets.

Going forward, the State Department has put in place measure of raising revenue which include ensuring all land transaction payments are cashless and we have on-boarded into the E-citizen platform which will enhance revenue collections.

Committee Observations and Findings;

i) The Committee observed that the digitization process that has been ongoing at the ministry had taken inordinately long to conclude. The Accounting Officer submitted that the system, Ardhi Sasa, was now live in Nairobi and would be rolled out countrywide based on resource availability.
ii) Further, the Committee observed that there was possibility of revenue leakages because process of land transactions was done at separate stations with no integration.
iii) The vote line at the ministry of 'other revenue' was general and did not have sub-codes for breakdown of the various sources of revenue.
iv) The Committee also observed that the ongoing recruitment of 100 additional valuers would invariably amount to improved revenue generation and collection.

Committee Recommendations;

The Committee makes the following recommendations;

i. The ministry, Treasury and Kenya Revenue Authority integrates the land transaction systems between KRA and the ministry for end-to-end control and accountability within one year of adoption of this report by the House;
ii. National Treasury breaks down the vote head 'other revenue' into various revenue or sub-heads with sub-codes.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1259: Lack of Land Valuation Index

Audit inspection of the Land Valuation Department in nineteen (19) Land Registries revealed that none on the offices had an approved valuation index/valuation zonal rate to guide in the valuation

of land. The regional offices use estimation to value land in order to determine the stamp duty payable. Although the Management explained that the Ministry has undertaken valuation preparation of land value index in twenty-two (22) counties, the remaining twenty-five counties do not have an approved valuation index/valuation zonal rate.

In the circumstances, the Ministry risks losing revenue in some regions in the absence of an approved land valuation index to guide valuation of land for the purpose of stamp duty.

Submission by the Accounting Officer

It's true that the sampled nineteen (19) Land Registries did not have an approved valuation index to guide in the valuation. However, valuation of properties for assessment of stamp duty is guided by the prevailing market price of the properties within the location of concern. The valuers conduct site visits and inspection of properties to ascertain the location, developments thereof and the market value of the property before valuation for assessment of stamp duty. It is usually property specific. On the other hand, the Land Value Index is a general guide of values and can only be used to guide value of vacant land.

The Department has a valuation staff shortage and is currently operating at 25% capacity, and this has impacted on Stamp Duty Generation. Each Land Registry requires a Valuer or two each. However, the National Treasury has now approved the recruitment of hundred (100) Valuers out of which the recruitment process of Forty (40) Valuers is at short listing stage. The recruitment is aimed at addressing the understaffing in valuation Department in order to enhance the valuation processes and consequently improve collection of stamp duty.

The Ministry has started preparation of Land Value Index in twenty (22) counties awaiting submission to Parliament for approval while a further eighteen (18) counties are awaiting Public Participation before finalization for submission to Parliament. Preparation of Land Value Index in seven (7) counties: - Turkana, Baringo, Wajir, Samburu, West Pokot, Elgeyo Marakwet and Mandera which fall within the pastoral communities is yet to start.

Committee Observations and Findings;

i) **The Committee observes that despite the Land Act requiring the ministry to develop land valuation indices, there was need for its regular updating in line with development activities on various land registration areas countrywide.**
ii) **Further, the current process of recruitment of 100 additional valuers will see the ministry have 50% of its establishment and ensure valuation of land is based on actuals.**

Committee Recommendation;

The Committee recommends that the ministry submits to the National Assembly land value indices for all forty-seven (47) counties within one year of adoption of this report by the House.

4.24 VOTE 1122: STATE DEPARTMENT FOR INFORMATION, COMMUNICATION, TECHNOLOGY AND INNOVATION

Eng. John Tanui, MBS, the Principal Secretary and Accounting Officer for State Department for ICT and Digital Economy, appeared before the Committee on 27th August 2024, accompanied by the following officers:

i) Mr. Francis Odera	–	Head of Accounts
ii) Mr. Stanely Ramanganya	–	CEO – ICT Authority
iii) Ms. Esther Maina	–	Secretary Administration
iv) Mr. Loyford Murithi	–	Director ICT

And submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1261. Pending Bills

Annex 1 to the Financial statement reflects pending account payable totaling to Kshs. 178,918,663(2021-Kshs. 196,103,992.68) as at 30th June 2022 which mainly arose during the year. Management has not explained why the bills were not settled during the year when they occurred. The project is at risk of incurring significant interest cost and penalties with continued delay in payment. Failure to settle bills during the year to which they relate distorts the financial statements and adversely affects the budgetary provisions for the subsequent year as they form a first charge.

Submission by the Accounting Officer

It is true that the State Department had a pending accounts payable totaling to Kshs. 196,103,992.68 as at 30th June 2022. The bills arose due budget cut and to lack of exchequer funding from the National Treasury and have now been cleared.

Committee Observations and Findings;

i) The Committee noted that the submission by the Accounting Officer was satisfactory.

ii) The Committee found that the matter was resolved.

1262. Unresolved Prior Year Issues

In the report of the previous year, several paragraphs were raised under the Report on Financial Statements, Other Matter and Report on Lawfulness and Effectiveness in Use of Public Resources. Although the Management has indicated that some of the issues have been responded to, the matters have remained unresolved.

Submission by the Accounting Officer

Some prior year issues had not been resolved as at 30th June, 2022.However, the issues were discussed by the PAC and report made on November 2023, and the recommendations made by PAC have been implemented.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

1263. Budgetary Control and Performance

The Summary statement of appropriation reflects final receipts budget and actual on a comparable basis of Kshs. 20,169,675,559 and Kshs. 18,184,086,831 respectively resulting to an under-funding of Kshs. 1,985,588,728 or 10% of the budget. Similarly, the Project expended Kshs.18,182,750,083 against an approved budget of Kshs. 20,169,675,559 resulting to an under-expenditure of Kshs. 1,986,925,476 or 10% of the budget. The underfunding and underperformance affected the planned activities and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

It is true that the summary statement of comparison reflected receipts shortfall of Kshs. 1,985,588,728 or 10% and under-expenditure Kshs. 1,986,925,476 or 10% of the budget. These shortfalls resulted due to lack of exchequer funding and budget cuts.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

DONER FUNDED PROJECTS IMPLEMENTED BY THE AGENCIES UNDER THE STATE DEPARTMENT FOR ICT & DIGITAL ECONOMY.

EASTERN AFRICA REGIONAL TRANSPORT TRADE AND DEVELOPMENT FACILITATION PROJECT IDA CREDIT NO. 5638-KE - INFORMATION AND COMMUNICATION TECHNOLOGY AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

1267. Slow Project Funds Absorption

The project was started in November 2015 and was to run for six (6) years to end in December 2021. However as reflected under the funding summary, out of the total commitment of Kshs 2,979,795,000 by IDA and the Government of Kenya, an amount of Kshs 482,594,172 or 16% had been released to the project as at 30th, June 2022.

As previously reported, due to continued underfunding, the project is unlikely to fully achieve the intended objectives.

Submission by the Accounting Officer

It is true that as reflected under funding summary, out of the total commitment of kshs 2,979,795,000 by IDA and the Government of Kenya ,an amount of Kshs 485,594,172 or 16% had been released to the project as at 30th June 2022 This delay in release of exchequer was caused by the National Treasury, but the project is in progress and will be completed on time.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer and that the project had since been closed.**

ii) **The Committee found that the matter was resolved.**

1268. Budgetary Control and Performance

The statement of comparison of budget and actual amount reflect final receipts budget and actual on comparable basis of Kshs 900,000,000 and Kshs 482,594,172 respectively, resulting to an underfunding amounting to Kshs 417,405,828 or 40% of the budget. Similarly, the statement reflects final expenditure budget and actual on comparable basis of Kshs 900,000,000 and Kshs 440,024,499 respectively, resulting to an under expenditure of Kshs 459,975,501 or 51% of the budget

The underfunding and underperformance affected the planned activities and may have impact negatively on service delivery to the public.

Submission by the Accounting Officer

It is true the underfunding and underperformance affected the planned activities and may have impacted negatively on service delivery to the public. This was occasioned by budget cuts during the financial year 2021/2022.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

HORN OF AFRICA GATEWAY DEVELOPMENT PROJECT –IDA CREDIT NO.6768-KE- INFORMATION AND COMMUNICATION TECHNOLOGY AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

1273. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects total actual receipts of Kshs 113,748,479 against estimated amounts of Kshs, 176,000,000 resulting in a shortfall of Kshs 61,251,521 or 35% Similarly, the project had an approved total expenditure budget of Kshs 175,000,000 against the actual expenditure of Kshs 41,037,111 resulting to an under absorption of Kshs 133,962,889 or 77% of the budget.

In the circumstance, the under absorption may have affected the implementation of the projects planned programmes and activities.

Submission by the Accounting Officer

It is true the under absorption may have affected the implementation of the projects planned programmes activities, this arose from the change in approach adopted by the World Bank whereby ICT Authority was requested to install ducts as well as undertake civil works. The initial working agreement was that ICT Authority would be responsible for installation of the fiber optic cable and active equipment and provide supervision. KeNHa was to install the ducts, undertake civil works

and provide supervision of the same. The World Bank shifted this position to accommodate representations from road contractors, This therefore meant that the scope of the design and consultancy needed to be enhanced despite the fact that the procurement process under the initial scope was almost at the tail end. This resulted into termination of the initial procurement process and restarting afresh. No further work could proceed before the design was finalized leading to the low absorption.

Committee Observations and Findings;

i) The Committee noted the submission of the Accounting Officer.

ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1274. Outstanding Imprest

The statement of financial assets and as disclosed under Note 6 to the financial statements reflects imprest and advances amounting to Kshs 403,200 which ought to have been accounted for on or before 30th, June 2022. This is contrary to regulation 93(5) and (6) of the Public Finance Management (National Government), Regulations 2015.

In the circumstances Management was in breach of the law.

Submission by the Accounting Officer

It is true the statement of finance assets and as disclosed under Note 6 to the financial statements reflects imprest and advances amounting to Kshs 403,200 which ought to have been accounted for on or before 30th, June 2022, which was in the breach of the law, However, the outstanding imprests and advances have been surrendered and recovered respectively.

Committee Observations and Findings;

The Committee noted the admission of the breach by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the Accounting Officer recovers interest as per the prevailing CBK rate, from the defaulting officers for the time they held imprest outside the law, as per regulation 93 (6) of the Public Finance Management (National Government), Regulations 2015, within three (3) months of adoption of this report.

4.25 VOTE 1123: STATE DEPARTMENT FOR BROADCASTING AND TELECOMMUNICATIONS

Prof. Edward Waswa Kisiang'ani, PhD, the Principal Secretary and Accounting Officer for the State Department for Broadcasting appeared before the Committee on 12th February and 1st August 2024, accompanied by the following officers:

i.	Mrs. Karanja Priscilla	Deputy Director
ii.	Mr. Mosiria Martin Machuki	Chief Finance Officer
iii.	Ms. Miriam Gitau	Director of Human Resource
iv.	Mr. Maweru Kimutai	Director Administration
v.	Ms. Francesca Nyambura Mwangi	Ag. Director Supply Chain
vi.	Mr. Michael Okidi	Ag. Director GAA
vii.	Mr. Mulei Muia	Director Public Communication
viii.	Mr. Kioko Mutunga	Public Communication Officer

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1278. Non-payment of Pending Bills

As disclosed under Annex 1 to the financial statements, pending bills totaling to Kshs. 257,017,835 were not settled during the year but were instead carried forward to financial year 2022/2023. No reasons were provided for not settling the bills within the financial year.

Failure to settle pending bills during the year in which they relate distorts the financial Statements and adversely affects the budgetary provisions for the subsequent year as they form a first charge.

Submission by the Accounting Officer

The pending bills of Kshs. 257,017,835 were not settled during the FY 2021/22 due to delayed remittance of A.I.A. by MDAs/SAGAs and inadequate budgetary provision from the National Treasury.

The State Department has requested the National Treasury to progressively increase the allocation to Government Advertising Agency to settle the Pending Bills.

Committee Observations and Findings;

The Committee observed that some of the pending bills went as far back as 2013 and were hence not treated as first charge. Moreover, the government policy of centralizing advertisements through Government Advertising Agency may have the effect of laddening the state department with unpaid bills that are not prioritized by other government agencies.

Committee Recommendation;

The Committee recommends that the state department settles verified bills owed between itself and other government agencies within the prevailing financial year.

1279. Unresolved Prior Year Matters

In the report of the previous year, several paragraphs were raised under the Report on Financial Statements and Report on Lawfulness and Effectiveness in Use of Public Resources. Although the Management indicated that some of the issues were resolved under progress on follow up of auditor's recommendation section of the financial statements, the matters remained unresolved as at 30 June, 2022.

Submission by the Accounting Officer

The State Department appeared before the Public Accounts Committee on Monday 27th February 2023 where the issues were discussed/resolved. The State Department awaits the report/ recommendations of the Committee.

Committee Observations and Findings;

The Committee noted that its report had since been adopted by the House.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a status report on implementation of the Committee's recommendations within three months of adoption of this report.

1280. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs. 8,043,589,992 and Kshs. 7,186,423,848 respectively resulting in receipts shortfall of Kshs. 838,109,791 or 10% of the budget.

Similarly, the State Department expended Kshs. 7,188,905,509 against approved budget of Kshs. 8,043,589,992 resulting to an under expenditure of Kshs. 854,684,483 or 11% of the budget.

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

Submission by the Accounting Officer

The under - performance of AIA collection was majorly contributed by under collection of AIA from MDAs / SAGAs under the Government Advertising Agency (GAA). The under collection led to the non- payment of bills under GAA which has triggered the State Department to request the National Treasury to provide funding for the settlement of the bills.

Committee Observations and Findings;

The Committee observed that the government policy of centralizing advertisements through Government Advertising Agency) may have the effect of laddening the state department with unpaid bills that are not prioritized by other government agencies

Committee Recommendation;

The Committee recommends that the government re-looks at the centralization policy, and consider shifting its advertisements to other media, including the digital space, to cut on unnecessary costs.

1281. Incomplete Fixed Assets Register

Annex 4 to the financial statements reflects fixed assets balance of Kshs. 452,462,119. However, the provided fixed asset register omitted details on date of purchase, supplier details, payment voucher number, make or model of the asset, serial number, registration details for motor vehicles, the location of the asset, officer responsible, status/condition of the asset, cost, date of disposal among other details. In addition, the land and buildings register did not have details such as reference of the conveyance, address, approximate area, dates of acquisition, disposal or major change in use, capital expenditure and leasehold terms. This is contrary to Regulation 143 of the Public Finance Management (National Government) Regulations, 2015. Further, the assets were not tagged with unique identification numbers for ease of traceability and accountability.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

Updating of the Fixed Asset Register is ongoing. To fast track the process, the State Department has constituted an Assets and Liabilities Unit and Committee of Assets and Liabilities Management that is working on Land and Buildings Register for purposes of updating the Fixed Assets Register.

Committee Observations and Findings;

The Committee noted the explanation provided by the Accounting Officer.

Committee Recommendations;

i. **The Committee reprimands the Accounting Officer for failing to keep an updated fixed assets register contrary to Regulation 143 of the Public Finance Management (National Government) Regulations, 2015.**
ii. **The Accounting Officer to prepare a complete fixed assets register and submits to the Committee within three (3) months of adoption of this report.**

1282. Irregular Leave Commutation

The statement of receipts and payments reflects compensation of employees amounting to Kshs. 470,195,643 as disclosed in Note 5 to the financial statements. The balance includes Kshs. 6,702,725 paid as leave commutation for officers who were unable to proceed on leave due to exigencies of service. However, the authority, justification, approval and basis of paying leave commutation was not provided for audit review.

In the circumstances, regularity and value for money on leave commutation of Kshs. 6,702,725 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

Kshs 6,702,725.00 was paid as leave commutation to officers who were unable to proceed on leave due to exigencies of service.

The authorized officer (Cabinet Secretary) vides our Internal Memo Ref No. MIYA/HRM/G.3/12(112) of 7th June 2022 granted approval for the commutation of leave days for

the affected officers in accordance with the authority vested on him as per Section E.4 of the HRM Manual Resource Procedure and Policy Manual (2016).

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

1283. Non-compliance with the One-third of Basic Salary Rule

Review of payrolls for the year ended 30 June, 2022 revealed that twenty (20) employees earned a net salary of less than one third (1/3) of their basic salaries contrary to Section C. 1(3) of the Public Service Commission (PSC) Human Resource Policies and Procedures Manual, 2016. The Management did not give explanation for failure to comply with the policy.

In the circumstances, the State Department contravened Section C.I(3) of the Public Service Commission (PSC) Human Resource Policies and Procedures Manual, 2016 and this may expose the staff to pecuniary embarrassment.

Submission by the Accounting Officer

20 employees earned a net salary less than 1/3 of their basic pay. This was occasioned by the abrupt stoppage of payment of special duty allowances by the Public Service Commission and the stoppage of Tax relief measures by the Government after covid-19. The stoppage of field administration allowance for officers deployed from Executive Office of the President also contributed.

However, this was noted and letters issued to officers to advise them to reschedule their loans with the respective Financial Institutions to comply with section C. 1 (3) of the Human Resource Policies and procedures Manual (2016).

Committee Observations and Findings;

i) The Committee noted the explanation given by the Accounting Officer.

ii) The Committee found that the matter was resolved.

1284. Salaries Paid Outside Integrated Personnel and Payroll Database (IPPD) System

The statement of receipts and payments reflects compensation of employees amounting to Kshs. 470,195,643 as disclosed in Note 5 to the financial statements. Records provided for audit review and payment details revealed that expenditure amounting to Kshs. 17,861,462 was paid outside the Integrated Personnel and Payroll (IPPD) system. This contravened The National Treasury Circular No. 9/2017 which requires personnel emoluments to be controlled in the public personnel database and supported by IPPD.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

It is true that Kshs.17, 861,462 was paid outside the Integrated Personnel and Payroll (IPPD) system due to the following: -

i. Leave commutation; This was processed way after the closure of payroll in June 2022 given that June payroll is processed earlier than other months of the year. However necessary approvals were obtained and respective PAYE remitted.
ii. Court Award to casuals — the beneficiaries were not on IPPD
iii. Payment of half-salary of a deceased officer to the beneficiary -who was not on the payroll

Committee Observations and Findings;

The Committee noted the explanation given by the Accounting Officer.

Committee Recommendation

The Committee recommends that the State Department for Public Service configures the IPPD system to capture all payable employee costs/ allowances, including miscellaneous expenses within three (3) months of adoption of this report.

4.26 VOTE 1132: STATE DEPARTMENT FOR SPORTS

Eng. Peter Tum, the Principal Secretary and Accounting Officer for the State Department for Sports and the Arts appeared before the Committee on 13th September 2023, 6th December 2023 and 30th January 2024, accompanied by the following officers:

i.	Mr. Evans Achoki	Secretrary Administration
ii.	Mr. Anthony Njenga	Head of Accounting Unit
iii.	Mr. Givinal Ejilo	Head of Supply Chain Management
iv.	Mr. James Murigu	Deputy Chief Architect
v.	Ms. Beatreace Mwihaki Njuguna	Senior Principal Finance Officer
vi.	Mr. June Jerico	Personal Assistant to the PS

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1286: Unsupported Repairs and Maintenance Expenditure

The statement of receipts and payments and as disclosed in Note 5 to the financial statements reflects use of goods and services expenditure of Kshs.79,809,368 as at 30 June, 2022. The expenditure includes an amount of Kshs.2,246,588 in respect to routine maintenance of vehicles and other transport equipment which further includes amounts totalling Kshs.596,667 which was issued to an officer to facilitate motor vehicles service and repairs. However, review of records revealed that motor vehicles underwent mechanical repairs without pre and post inspection reports, and details of repairs were not entered in the motor vehicle maintenance logbooks.

In the circumstances, the completeness, accuracy and validity of the expenditure of Kshs.596,667 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

It is true that the motor vehicles pre and post inspections reports and maintenance log books were not provided to the auditors during audit since they had been misplaced. However, the inspection reports have since been retrieved and submitted for review, copies have beenavailed. Copies of the motor vehicle maintenance log books where details of the repairs we entered have also been provided for review. The state department has since put in place a proper record keeping system that would make is easy to trace all documents and provide them as and when needed.

Committee Observations and Findings;

The Committee observed that the failure to avail basic requisite documentation on time, during the audit cycle, was tantamount to mischief or negligence. Moreover, vehicle maintenance ought not be facilitated through cash imprests, compounded by the fact that the officer took multiple imprests without surrender, contrary to section 93 (5) of the PFM (National Govt.) Regulations.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that he takes administrative action on the specific officers who were responsible for custody of the documentation, within one (1) month of adoption of this report by the House.

1287: Unsupported Fuel, Oil and Lubricants Expenditure

The statement of receipts and payments and as disclosed in Note 5 to the financial statements reflects use of goods and services expenditure of Kshs.79, 809,368. The expenditure includes an amount Kshs.2, 711,543 in respect to fuel, oil and lubricants. However, review of the expenditure revealed that the fuel records were not entered in the respective motor vehicle work tickets.

In the circumstances, the completeness, accuracy and validity of the expenditure of Kshs.2, 711,543 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

It is true that there was unsupported expenditure amounting to Kshs.2, 711,543 related to fuel, oil and lubricants. The work tickets where all the fuel drawn was entered have now been provided for review. The state department shall endeavor to provide these documents promptly to the auditors.

Committee Observations and Findings;

As above, the Committee reiterates that the failure to avail basic requisite documentation on time, during the audit cycle, was tantamount to mischief or negligence. Moreover, various control measures including use of fuel registers showing total volume of fuel bought per order and in which petrol station, and a detail order that shows authorization, should have been put in place by the state department.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the Accounting Officer enforces control measures and record keeping henceforth.

1288: Unresolved Prior Year Matters

Various prior year audit issues, including delayed completion of construction of stadiums, remained unresolved as at 30 June, 2022. Although the issues have since been discussed by the Public Accounts Committee (PAC), they remain unresolved as PAC is yet to give their recommendations for implementation.

Submission by the Accounting Officer

PAC is yet to table its report with the various recommendations.

Committee Observations and Findings;

The Committee observed that its report for FY 2020/21 had been adopted by the House with recommendations therein.

Committee Recommendation;

The Committee recommends that the state department ensures implementation contained in the said report, within the given timelines, and avails a status report within three months.

1289: Construction of Wang'uru Stadium in Kirinyaga

The statement of receipts and payments and as disclosed in Note 6 to the financial Statements reflect transfers to other governments units of Kshs.15, 512,365,554. The expenditure includes an amount of Kshs.696,473,751 for construction of Wang'uru Stadium in Mwea, Kirinyaga County. However, contract documents, works programs, site meeting minutes and project status reports were not provided for audit review.

Further, audit verification which was done in September, 2022 revealed that the Project was incomplete. No explanation was provided for the delay in completion of the Project.

In the circumstances, the value for money realized from the expenditure of Kshs.696,473,751 incurred on the Project for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The contract documents, works programs, site meeting minutes and project status reports for construction of Wang'uru stadium in Mwea Kirinyaga County were not provided for audit review and the project was incomplete. These documents have now been submitted for review. The project has since been completed.

Committee Observations and Findings;

The Committee observes that the project is part of a special audit report submitted to it by the Auditor General

Committee Recommendation;

The Committee will make substantive recommendations in its report on the special audit report of the Auditor General on construction of stadia across the country.

1290: Construction of Kiringiti Stadium in Kiambu County

The statement of receipts and payments and as disclosed in Note 6 to the financial statements reflects transfers to other governments units of Kshs.15,512,365,554. The expenditure includes an amount of Kshs.1,091,031,466 for construction of Kiringiti Stadium in Kiambu County. However, contract documents, works programs, site meeting minutes and project status reports were not provided for audit review.

Further, audit verification done in November, 2022 revealed that the Project was incomplete. No explanation was provided for the delay in completion of the Project.

In the circumstances, the value for money realized from the expenditure of Kshs.1,091,031,466 incurred on the Project for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The contract documents, works programs, site meeting minutes and project status reports for Kiringiti Stadium in Kiambu County were not provided for audit review and the project was

incomplete. The documents have now been submitted. Phase one of the project is complete while phase two is 80% complete as indicated in the project status report.

Committee Observations and Findings;

The Committee observes that the project is part of a special audit report submitted to it by the Auditor General

Committee Recommendation;

The Committee will make substantive recommendations in its report on the special audit report of the Auditor General on construction of stadia across the country.

1291: Posta Sports Ground

The statement of receipts and payments and as disclosed in Note 6 to the financial Statements reflect transfers to other governments units of Kshs.15, 512,365,554. The expenditure includes an amount of Kshs.1,190,971,897 for construction of Posta Sports Ground in Nairobi County. However, audit verification of the Project done in November, 2022 revealed that the Project duration had lapsed and works were still ongoing. No explanation was provided for the delay in completion of the Project.

In the circumstances, value for money may not be realized from the delayed Project.

Submission by the Accounting Officer

The works were still ongoing despite the project duration having lapsed. This is because the contractors had sought for extension of time citing delays in clearance and approval from Kenya Forestry service to pave way for the construction of the perimeter wall, Delays in shipping of flood lights due to Covid 19 outbreak among other reasons. The extension of time was reviewed and recommended by the project implementation team and approved by the Accounting officer as per now availed documentation. The project has since been completed as per the status report.

Committee Observations and Findings;

The Committee visited the grounds on 18th April 2024 and observed that;

i) **The grounds had since been taken over by a contractor to construct theTalanta Stadium;**
ii) **The grounds were not open to the public;**
iii) **The initial works had seen two pitches currently substantially affected by the new construction;**
iv) **The State Department submitted that the Department of Defence were responsible for the tender process, supervision and execution of the new project.**

Committee Recommendation;

The Committee recommends that in light of the overlapping scope of the two (initial posta grounds project and Talanta stadium), the Auditor General conducts a comprehensive audit once construction is complete.

1292: Unauthorized Use of Fuel Cards

Review of the Ministerial Human Resource Management Advisory Committee minutes dated 19 January, 2021 revealed deliberations on unauthorized use of fuel card in the Sports registers office totalling to Kshs.1, 479,232. The Committee recommended to the Authorized Officer that a Ministerial Human Resource Advisory Sub-Committee comprising two Officers and Internal Auditor be formed to investigate the incident and submit a report of its findings for consideration. However, documents supporting the action taken against the concerned staff were not provided for audit review.

In the circumstances, the effectiveness of the system of internal control on the management of fuel cards could not be confirmed.

Submission by the Accounting Officer

It is true that the documents indicating the action taken were not ready during the audit since the Ministerial Human Resource Management Advisory Committee had recommended formation of MHRMAC Sub-committee to look in to the matter. However, the officer had been asked to show cause why disciplinary action should not be taken against him through a show cause letter. The officer was later interdicted vide letter Ref: 2008004317/(68). The Ministerial Human Resource Management Advisory Committee (MHRMAC) in its sitting on 16th November, 2023 recommended that the officers' interdiction be lifted. That he be severely reprimanded and surcharged 25% of Ksh 1,479,232 amounting to Ksh 369,808 with effect from 1st January, 2024 in reasonable installments until the amount is paid in full.

Committee Observations and Findings;

The Committee observed that the disciplinary process took inordinately long to conclude, with a show cause letter issued on 4th December 2018 while the intention for dismissal was communicated on 15th October 2020, almost two years later.

Committee Recommendation;

The Committee recommends that due process be completed within three (3) months of adoption of this report and all lost monies recovered.

4.27 VOTE 1134: STATE DEPARTMENT FOR CULTURE AND HERITAGE

Ms. Ummi Bashir, the Principal Secretary and Accounting Officer for the State Department for Culture and Heritage appeared before the Committee on 12th February and 30th April 2024, accompanied by the following officers:

i.	Mr. Henry Mayabi	DAG Deputy Acc. General
ii.	Mr. Beldine Omolo	Chief Finance Officer
iii.	Mr. Christine Lugongo	Assistant Director Supply Chain Mng Service
iv.	Ms. Nancy Wachira	Deputy Director HRM
v.	Mr. Odonga Edward	Accountant Intern

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1293. Inaccuracy in the Statement of Cash Flows

The statement of cash flows reflects balances of Ksh.331,578,996 and Ksh.31,314,849 in respect to cash and cash equivalent for the year ended 30th, June 2022 and the comparative balance respectively. However, re-casting the accuracy of the statement revealed balances of Ksh.332, 050,904 and Ksh.48, 470,617 respectively. Resulting to unexplained and unreconciled variance of Ksh.471,908 and Ksh. 17,155,768. Further, the auditor noted that the figure for cash and cash equivalent of Ksh.10,897,687 for the financial year 2020/2021 differs with the comparative negative balance of Ksh.6,258,081reflected in the audit statement 2020/2021 resulting to reconciled and unexplained variance of Ksh.4,639,606.

Submission by the Accounting Officer

The re-casted figures of Ksh.332,050,904 in casand Ksh.48, 470,617 by the auditor are true. However the balances as shown by the financial statement of Ksh.331,578,996 for 2021/2022 and 31,314,849 for the comparative year 2020/2021 are correct. The error arose while editing after the figures from excel worksheet had been transferred to the word template resulting to figures of Ksh.300, 736,055 for 2021/2022 and 10,897,687 for 2020/2021 as net increase in cash and cash equivalent. The error figures however did not affect the correct figures of cash and cash equivalent at the end of the year as had been computed on excel worksheet. The right figure have since been restated in the financial statements for the year 2022/2023.

The figure of Ksh.10, 897,687 being net increase in cash and cash equivalent for the comparative year 2020/2021 was also a typing error. The right figure is a negative figure of Ksh.6,258,081 as stated by the auditor and as shown in the audited statement for 2020/2021. Therefore the variance of Ksh.4, 639,600 did not affect the cash and cash equivalent at the end of the year 2021/2022, as the negative figure of Ksh.6,258,081 is what was taken into consideration when in arriving at Cash and cash equivalent at the end of the year. The error is regrettable and the comparative figures for net increase in cash and cash equivalent have been correctly restated in the financial statements for the year 2022/2023.

Committee Observations and Findings;

The Committee observed that the reconciliations had been belatedly done.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to keep proper accounting records, as required by sections 81 & 83 of the PFM Act 2012.

1294. Long Outstanding Third-Party Deposits and Retention

As disclosed in Note 11 to the financial statements, the statements of assets and Liabilities reflects third party deposits and retention balance of Ksh.303,169,095 which includes Ksh.4,544,668 and Ksh.14,208,351 in respect to retention and deposits amounts respectively having remained outstanding since November,2015. No explanation was provided for the delay in settling the obligation.

In the circumstances, the accuracy and completeness of the third-party deposits and retention balance of Ksh.303,169,095 could not be confirmed.

Submission by the Accounting Officer

These were deposit bank balances transferred to the State Department for Culture and the Arts after the Ministry of Sports was split into two departments. The amount of Ksh.4,544,668, relates to retention money and the Ksh.14, 208,351relates to general deposit received from various National entities to facilitate various activities in the department.

The State Department vide letters REF.SDCH/AC/13 VOL.1(15) dated 13th November,2019,REF:SDCH/AC/13 VOL.(31) dated 14th September,2020,REF:SDCH/AC/13 VOL.I(45) dated 19th January,2021 wrote to the State Department for Sports seeking for information including Miscellaneous Receipts to facilitate payment of the long outstanding retention monies. In the absence of the response from the other party we could not be able to settle the obligation to the beneficiaries. However in line with the Public Finance Management Regulation 106, the National Treasury vide letter Ref:AG.3/88Vol.7/ (24) dated 15th February, 2023 authorized us to transfer any deposits held for more than 5 years into the Exchequer Account.

The process of transferring the amount which has been held in the bank account for more than five years to the National Treasury had now been finalized.

Committee Observations and Findings;

The Committee observed that the Accounting Officer had failed to transfer the long held retention funds to the Consolidated Fund as required by regulation 106 of the PFM Regulations, but had since done so.

Committee Recommendation;

The Committee recommends that the Accounting Officer always ensures timely remittance of retention funds.

1295. Pending Accounts Payable

Note17.1 to the financial statements reflects pending accounts payable balance of Ksh.48,170,965 which includes Ksh.36,377,706 for supply of services. However, review of Annex 1 to the financial statements on the analysis of pending accounts payable revealed that amounts to

ksh.14,596,148 for supply of various services have been outstanding since 2019/2020 financial year. No explanation was provided for the delay in settling the amount.

In the circumstances, the completeness and accuracy of the balance of Ksh.36, 377,706 in respect to pending accounts payable could not be confirmed.

Submission by the Accounting Officer

The amount of Ksh.14,596,148 relate to a pending bill due to the Standard Group Limited dating back to financial year 2014/2015 when the State Department had not been established .On examination of the pending bill it was realized that it was not supported by duly executed contract agreement, hence could not be paid. The Accounting officer wrote to the Office of the Attorney General vide letter Ref: SDCH 5/2 Vol.IV(26) on the advice of the Auditor General to seek for further direction. So far we have not received any response. However the same bill has been forwarded to the pending bills committee appointed by the president vide Gazette Notice No.13355 of 30th September 2023.

Committee Observations and Findings;

The Committee observed that;

(i) The State Department had initially paid two instalments, i.e Kshs. 6,782,758 on 27th June 2017 and Kshs. 3,773,600 on 21st August 2014. It was therefore unsatisfactory that accompanying documents to pay the balance were unavailable;

(ii) The Attorney General was also yet to respond to the letter from the State Department seeking his advice.

Committee Recommendation;

The Committee recommends that the Attorney General accords his opinion to the State Department within three (3) months of adoption of this report, and the Accounting Officer concludes on the matter.

1296. Incomplete Fixed Assets Register

Annex 2 to the financial statements reflects total assets balance Ksh.300,852,285 as at 30th June,2022.However,Management of provided an Assets register which did not include information on date of acquisition, current values and dates of disposal of the assets. Further, the assets were not tagged, but instead, manufacturers' serial numbers were used for identification purposes. No explanation was provided for the anomaly.

In the circumstances, the accuracy and completeness of fixed assets balance of Ksh.300, 852,285 for the year ended 30June, 2022 could not be confirmed.

Submission by the Accounting Officer

The asset register has since been updated to current status to include information on date of acquisition, their values and serial numbers of the assets and the same was availed to the auditors for verification in the financial year 2022/2023.

However, with regard to tagging of assets the process has not been done due to lack of funds.

Committee Observations and Findings;

The Committee observed that the State Department had availed a fixed assets register and what was outstanding was tagging of the assets.

Committee Recommendation;

The Committee recommends that the Accounting Officer has in place a complete fixed assets register within three (3) months of adoption of this report by the House.

1297. Unutilized Sports Arts and Social Development Funds

The statement of assets and liabilities reflects a balance of Ksh.303, 169,095 as third party deposits and retention as detail in Note 11 to the financial statements which includes a balance of Ksh.284, 416,076 in respect to deposits from Sports Arts and Social Development Fund to cater for various operations and activities. However, the balance remained un-Utilized as at the close of the financial year. No explanation was provided for failure to utilize the available funds.

In the circumstances, under-Utilization of the funds affected the planned activities and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

Ksh.303,69,095 was the consolidated balance as at 30th June 2022 for both Sports Arts and Social Development Fund and General Deposits. However, of the Kshs.303, 169,095, the Kshs.284, 416,076 as observed by the auditors related to sports Arts and Social Development fund and Kshs18,753,019 relates to General Deposit. The un-utilized balance of Kshs.284,416,076 are monies that were received relating to various activities towards the end of the month of June 2022.

It should be noted that the monies have since been spent on their respective activities and as at the end of the financial year 2023 the balance was Kshs.63,904,803.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General confirms status in subsequent audit.

1298. Unresolved Prior Year Matters

In the audit of the previous year, several issues were raised. Management has not resolved the issues or provided reasons for the delay in resolving the prior year audit issues as rewuired by the Public Sector Accounting Standards Board template and the National Treasury's circular Ref: AG/4/16/3/Vol.3(66) dated 6 July 2022.

Submission by the Accounting Officer

The State Department was incrementally addressing the prior year matters.

Committee Observations and Findings;

The Committee observed that its report of the previous financial year had since been adopted by the House.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report on implementation of its recommendations for the financial year 2020/21 within three (3) months of adoption of this report.

4.28 VOTE 1152: STATE DEPARTMENT FOR ENERGY

Mr. Alex K. Wachira, the Principal Secretary/Accounting Officer for the State Department for Energy appeared before the Committee on 5th December 2023, 20th & 27th August, 15th & 26th September, 15th & 29th October and 22nd November 2024, accompanied by the following officers:

i.	Mr. Paul Ngugi	Managing Director, GDC
ii.	Dr. John Mativo	Managing Director, KETRACO
iii.	Dr. Rose Mkalama	CEO, REREC
iv.	Eng. Joseph Siror	CEO, KPLC
v.	Mr. Stephen Njue	Senior Chief Finance officer
vi.	Ms. Rose Baraza	Head of Accounts
vii.	Ms Margaret Ratemo	Director, HRM
viii.	Eng. Benson Mwakina	Director, Renewable Energy
ix.	Mr. Tom Imbo	GM Finance, KETRACO
x.	Mr. Stephen Busyenei	GM Finance, GDC
xi.	Mr. Stephen Vikiru	GM Finance, KPLC
xii.	Dr. John Ngemo	GM Supply Chain, KPLC
xiii.	Mr. Kennedy Owino	Ag. GM Infrastructure Development, KPLC
xiv.	Mr. Davis Cheruiyot	GM Finance & ICT
xv.	Mr. Rodney Sultani	Deputy Head of Accounts
xvi.	Mr. Chrispin Lupe	Chief Geologist
xvii.	Mr. Peter Macharia	Principal Supply Chain Mngt
xviii.	Mr. Henry Choge	MPA, KETRACO
xix.	Ms Margaret Kigano	Communication, PS Office

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1301. Unsupported Expenditure on Legal Fees

During the year under review, the Ministry had budgeted to spend an amount of Kshs. 50,000,000 on legal fees which was later revised to Kshs. 25,000,000 through a supplementary budget. However, although no legal services were procured during the year, an expenditure of Kshs. 12,847,512 was incurred under the budget item while commitments amounting to Kshs. 4,080,205 were made in the vote book and remained outstanding as at 30 June, 2022. Further, records held at the legal department indicated that all Ministry's legal matters were being handled by the Office of the Attorney General.

In the circumstances, the regularity of the expenditure of Kshs. 12,847,512 and commitments of Kshs. 4,080,205 could not be confirmed.

Submission by the Accounting Officer

The expenditure relates to Domestic travel and not Legal expense and it was therefore erroneously charged in the Legal fee item. The error has since been corrected. In the current year comparative amounts on Legal fees have been restated to reflect the correct position.

Committee Observations and Findings;

The Committee noted the admission of breach by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer.

1302. Budgetary Control and Performance

The statement of comparison of budget and actual amounts indicates that the Ministry's revenue budget for the year under review amounted to Kshs. 65,603,541,425 but actual receipts amounted to Kshs. 36,330,679,896 resulting to a revenue shortfall of Kshs. 29,272,861,529 or 45% of the approved budget. Similarly, the Ministry's budgeted expenditure amounted to Kshs. 65,603,541,425 but actual spending amounted to Kshs. 35,754,825,649 resulting to an under expenditure of Kshs. 29,848,715,776 or 45% of the budget.

In the circumstances the underfunding and under expenditure affected the planned programme outputs for the year and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The reason for the under receipt of Kshs. 29,848,715,776 or 45% was as result late approval of Supplementary Estimates No.2 budget which made the State Department not able process direct payment from our donor which forms most of our receipts. The state department was not able to realize all the budgeted AIA local, grants and donor.

The same also affected implementation of activities in State Department the implementation of work plan lagged behind resulting into under absorption of the approved budget.

Further the late approval of Supplementary Budget No, 2 for FY 2020/21 affected implementation of the activities in the work plan.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

1303. Non-Compliance with the Approved Establishment

Review of the human resource records revealed that the Ministry's approved establishment was one hundred and fifty-nine (159) members. However, the Ministry had three hundred and ninety-three (393) members of staff, exceeding the approved establishment by two hundred and thirty-four (234) members of staff. Management has explained that the variance was occasioned by a review of the Ministry's organizational structure and staff establishment which was undertaken by

the Public Service Commission in 2021 which determined the optimal staff establishment as one hundred and fifty-nine (159) members. The actual officers in post at the date of the review was more than the defined optimal level. Although, Management has appealed the decision of the Public Service Commission, no response had been received as at the time of audit. In the circumstances, the Ministry is over staffed and expenditure on compensation of employees may not be effective use of public resources.

Submission by the Accounting Officer

The State Department experienced challenges after the re-organization of the government since it did not address the transition process on how to handle staff whose offices were abolished and merged with other functions. There have been efforts to comply. In the previous year the State Department was over established with 230 offices. This financial year the over establishment is 98 officers. The State Department is waiting for the approval of the organizational Structure and staffing level to rationalize the staff establishment. The State department of Energy initially had an approved staff Establishment of 822. The Executive Order 1 of 2020 issued on 14th January 2020 re-Organization of the Government of the Republic of Kenya separated the Ministry of Energy and Petroleum to Ministry of Energy and Ministry of Petroleum and Mining respectively. In May 2021 the Public Service Commission approved a New Establishment with approved staff Establishment of 159 vide letter PSC/EMCS/14/TY/(2) dated 12th May 2021.The State Department however appealed for the review of the Approved Staff Establishment from 159 to 531 as outlined below;

SN	Chronology of appeals
1	The State Department for Energy appealed to the Public Service Commission for the review of the Organizational Structures and staffing level to be reviewed from 159 to 531 vide letter. Ref. No MOE/CONF/2/13 dated 27th September 2021.
2	In August 2022 the State Department wrote a reminder letter on the review of the approved organizational Structure and staff establishment vide letter MOE/CONF/2/13. Vol.IV dated 22nd August 2022
3	In October 2022, the State Department wrote another reminder letter on review of the approved organizational structure and staff establishment vide letter MOE/CONF/2/13. Vol.IV dated 14th October 2022
4	In November 2022, the Head of Public Service wrote to all Ministries and Departments to review their organizational Structures and staffing levels in line with Executive Order No.1 of 2022 The State Department prepared a comprehensive report on Organizational Structure and Staffing levels and forwarded it to the Public Service Commission for review, vide Ref MOE/CONF/2/13 dated 29th June 2023, The commission is yet to review the structure.
5	In September 2023 the Ministry of Public Service and Affirmative Action, State Department for Public Service vide letter Ref. No. MPSG/DPSM/MIN.22/1 dated 5 th September,2023 submitted the final report on the Organizational Structure and staffing for forwarding to Public Service Commission. The State Department vide letter Ref. No. MOE/CONF/2/13 dated 12th September2023 forwarded the final Organizational Structure to the Commission to determine the Staffing level. The Commission is yet to review the structure.

6	In December, 2023 the State Department vide letter Ref. No. MOE/CONF/2/38 dated 6th December, 2023 wrote to the Commission and sought for an appointment with the Commission to discuss the Structure with a view to finalizing the matter. The Commission is yet to respond.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer liaises with the Public Service Commission and aligns its staffing to approved establishment, within three (3) months of adoption of this report.

1304. Non-Compliance with the Executive Order No.2 of 2018

Review of procurement records revealed that the Ministry has not fully adopted the E-procurement platform as required by Part IV of the Executive Order No. 2 of 2018. Management has explained that bids for standard goods and services procured through Request for Quotation (RFQ) are shared with bidders in the procurement module of the Integrated Finance Management Information System (IFMIS) using the standard RFQ document issued by Public Procurement Regulatory Authority (PPRA). The bidders would then download the document and submit both the bids through the system or manually as the physical documents are then used in evaluation by the Evaluation Committee, even though manual submissions are not allowed.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

Tendering and submission of applications were taken online. It's only the evaluation and awarding that was handled manually because of online evaluation challenges. However, we have since addressed the challenges and we are now fully automated.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General confirms compliance in subsequent audit.

1305. Framework Agreement on Development of Sustainable Green Industries

The Ministry entered into a Framework Agreement with an Australian Company for development of sustainable green industries in the country on 4 November, 2020. Review of the Agreement revealed the following unsatisfactory matters;

i. No documentations or explanations were provided in support of the sourcing and ultimate procurement of the private company in line with the provisions of the Public

Procurement and Asset Disposal Act, 2015.

ii. The basis of identification of the need for the development of green industries was not documented or supported by any policy document.

iii. Due diligence on the company was conducted by members of a taskforce appointed to oversee the implementation of the Agreement from 29 April, 2022 to 16 May, 2022, eighteen (18) months after the Agreement had been signed. This was contrary to the provisions of the Public Procurement and Asset Disposal Act, 2015 which requires that due diligence be conducted prior to award of tender by the Evaluation Committee.

iv. The Agreement was implemented through a taskforce whose appointment was not gazetted and the terms of reference for the appointment of the taskforce members was not documented.

v. Whereas Section 8.4 of the agreement provided that each party must nominate at least 3 representatives to the taskforce within 7 days from the date of the Agreement, the Government appointed its representatives on 17 November, 2020, 13 days after the Agreement.

vi. It was also stated in the appointment letters that the taskforce was to develop its Terms of Reference (TORs) for approval. However, the Taskforce had not developed the TORs two (2) years after the signing of the Agreement and the implementation of the Framework Agreement had commenced.

In the circumstances, Management was in breach of the Agreement.

Submission by the Accounting Officer

M/S Fortescue Future Industries (FFI) having expressed interest to the Government of Kenya to undertake studies to ascertain the feasibility of developing Green Industries in Kenya, entered into a Framework Agreement following negotiations between representatives of the Government of Kenya and FFI. The Attorney General, vide letter dated 6 November, 2020 communicated outcome of the negotiations to the Ministry of Energy and Petroleum.

It's true at the time the country did not have any green hydrogen policy. The decision to consider development of green industries was arrived at following proposal received by Government of Kenya from FFI, as already indicted above. However, the Ministry has since development and launched a Green Hydrogen Strategy and Roadmap for Kenya.

The letter from the Attorney General dated 6 November, 2020 directed that pursuant to clause 14 of the Framework Agreement, the Ministry of Energy undertakes a physical due diligence of Fortescue Future Industries in Australia. The clause listed the documents required for the purpose of undertaking the due diligence.

Due to travel restrictions occasioned by the COVID-19 Pandemic, it was not possible for a team to travel to Australia. The Ministry did attempt to have the due diligence undertaken firstly through the Kenya Embassy in Australia.

The Kenya Embassy in Australia responded indicating it did not have capacity and only limited itself to only confirming on the registration of Fortescue Future Industries in Australia.

Following the waiver on travel restrictions, the Ministry undertook the physical due diligence from 29 April-15 May, 2022 and compiled the report in two parts.

Clause 8.4 of the Agreement provided that Kenya and FFI were to each nominate at least three (3) representatives each to the Taskforce within seven (7) days from the date of the Agreement. Each of the entity nominated the members to form the taskforce which performed its role as spelt out in Clause 8.2 of the Agreement that was "to act as a central coordinator for all liaison required with the Government of Kenya and other community representatives for the purposes of progressing the Studies" though it was not gazzetted.

It's true that the appointment of the taskforce members by the Principal Secretary, Ministry of Energy was inadvertently beyond the seven (7) days as stipulated in the Agreement. It was noted that the Attorney General vide his letter dated 6 November, 2020 nominated his members. The Ministry of Energy request for nominees from the identified ministries vide a letter dated 9 November, 2020. The late appointment was occasioned by delays in receiving responses from the respective agencies which was not anticipated.

It's true the appointment letters indicated that the taskforce was to develop ToRs. Clarifications on scope and role of taskforce was identified and included as an agenda item in the first virtual meeting of the taskforce. In the meeting, the matter was discussed and the role of the taskforce was re-emphasized.

Committee Observations and Findings;

The Committee noted the late submission of evidence by Accounting Officer to the Auditor General.

Committee Recommendation;

The Committee reprimands the Accounting Officer for breach of section 62 of the Public Audit Act.

1306. Failure to Surrender Unspent Balances

Review of the records indicated that the Ministry received back an amount of Kshs. 32,000,000 in the development account on 23 June, 2021. The amount was transferred from the account to the deposit account on 30 June, 2021 instead of being surrendered to the National Exchequer as unspent funds. Subsequently, the amount was transferred from the deposit account to the recurrent account as AIA on 11 August, 2021 and formed part of other receipts income for the financial year under review. Further, the Ministry received an amount of Kshs. 35,202,551 in the development account on 1 July, 2021, this amount was transferred from the account to the deposit account on 7 July, 2021 instead of being surrendered to the National Exchequer.

In addition, the amount was transferred from the deposit account on 30 November, 2021 to the recurrent account and formed part of the taxes receipts during the year under review. Although Management explained that the funds related to current year and was appropriately accounted for during the year, no evidence was provided to show that the amount was budgeted for and related to the financial year. This was contrary to Section 49 of the Public Finance Management Act, 2012.

Submission by the Accounting Officer

Even though these monies were received in the FY 2020/21 it was meant for FY 2021/22 as budgeted by the parliament, they were an advance receipt hence it was prudent enough for State Department to keep it in the Deposit Account and later include them in the correct financial year. In 2021/2022 the Financial Statement recognized these monies as part of AIA (royalties).

Committee Observations and Findings;

The Committee noted that the Accounting Officer admitted failure to remit unspent balances.

Committee Recommendation;

The Committee reprimands the Accounting Officer for breach of section 49 of the Public Finance Management Act, 2012.

1307. Long Outstanding Balance - Third Party Deposits and Retention

The statement of assets and liabilities as at 30 June, 2022 reflects third party deposits and retention balance of Kshs. 118,639,252. The third-party deposits and retention balance comprise of retention fees and deposits balances of Kshs. 114,705,507 and Kshs. 3,933,745, respectively. However, Annex 5 of the financial statements revealed that the bulk of the retention fees have been outstanding for a long period with some dating back to financial year 2017/2018. Management has explained it has requested the relevant technical departments to fast track the refund process and provided a schedule of the progress status but no evidence has been provided to confirm the action taken.

In the circumstances, the existence of an effective procedure to ensure clearance of outstanding obligations could not be ascertained.

Submission by the Accounting Officer

The respective contractors have failed to claim their retentions as some have not completed their works to satisfaction and others have failed to remedy on defects. The authority has been granted to advertise in the print media to inform the respective contractors to claim their retentions failure to which the funds shall be forfeited to the National Treasury.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer provides a status update within three (3) months of adoption of this report.

DONOR FUNDED PROJECTS

KENYA ELECTRICITY MODERNIZATION PROJECT (IDA CR. NO. 5587KE)

REPORT ON THE FINANCIAL STATEMENTS

1309. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects budgeted receipts of Kshs. 90,000,000 and actual receipts of Kshs. 378,595,551 resulting to overfunding of Kshs. 288,595,551 or 320%. According to Management, the overfunding was as result of the project erroneously receiving funds meant for another entity, which was subsequently refunded to The National Treasury. Similarly, the Project budgeted for Kshs. 90,000,000 under purchase of goods and services but incurred an expenditure of Kshs. 45,750,188, equivalent of 51% utilization.

The Management attributed the under-utilization to the complexity of the procurement procedures for consultancy services set out in the financial agreement, which led to the low absorption. In the circumstances, the under absorption of the budget may have resulted in non-implementation of the Project's planned activities, thus slowing down achievement of the intended goals and objectives.

Submission by the Accounting Officer

It is true the Project achieved 51% utilization of its budgeted amounts in the year 2021/22. In order to ensure completion of implementation of all the planned project activities, the State Department for Energy (SDE), through the National Treasury, requested the World Bank for an extension of the project closing date from 31st December 2022 to 30th June 2023. This was granted vide a letter dated 13th December 2022 from the World Bank's Country Director, and the SDE was able to complete all the planned project activities.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

KENYA OFF-GRID SOLAR ACCESS PROJECT – IDA CR. NO. 6135 KE

REPORT ON THE FINANCIAL STATEMENTS

1313. Budgetary Control and Performance

The statement of comparison of Budget and actual reflects receipts budget and actual comparable basis of Kshs 586,000,000 and Kshs 257,355,767 respectively resulting in underfunding of Kshs 328,644,233 or 56% of the budget. The underfunding affected the planned activities and may have impacted negatively on services delivery to the public.

Submission by the Accounting Officer

It is true that the project was underfunded by Kshs 328,644,233 or 56% of the budget. This was due to implementation challenges. The Ministry requested the National Treasury for an extension of the project and now it's on course.

Committee Observations and Findings;

The Committee observed that the submission by the Accounting Officer was unsatisfactory.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to ensure effective project management, and recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

1314. Project Implementation Status

According to the Projects Monitoring and evaluation progress report and the annual work plan, the project was behind schedule considering that the expected completion date was agreed to be 30th June and significant works still remains to be done.

According to the Management, the delay was attributable to slow implementation of Component 1, 2 and 3 of the Project and by Kenya Power and Lighting Company PLC, Rural Electrification and Renewable Energy Corporation and Key facility managers which in turn affected the overall performance of the Project.

Under the circumstances, the Project may not be completed as planned, and may lead to delayed service delivery to the public and costs overruns.

Submission by the Accounting Officer

It is true that the project was behind schedule and this was due to;

i. Challenges in the implementation of the preparatory activities, which were key in the full implementation of the project. These included a delay in the land acquisition process for 120 mini grid sites due to lack of GOK counterpart financing, and a requirement by the World Bank that the bidding documents for the mini grids incorporate key social safeguard issues that could only be established upon completion of 120 Environmental and Social Impact Assessments (ESIA) studies for the mini grid sites.
ii. Effects of COVID-19 and a prolonged drought in the 14 underserved counties also impacted negatively on households purchasing power which slowed the uptake of Solar home systems and clean cooking solutions.

However, the Ministry in consultation with KPLC, REREC and the National Treasury prepared a proposal to restructure the project with the key highlights being: the extension of the project completion date from 30th June 2023 to 31st May 2025.

Committee Observations and Findings;

The Committee observed that the submission by the Accounting Officer was unsatisfactory.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to ensure effective project management, and recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

1315. Partial Payment of Tax on Undisclosed Pending Bills

During the year under review, an amount of Kshs. 38,022,541 was paid to Kenya Revenue Authority (KRA) as partial settlement of withholding tax due to a consultant, an International Development Organization, following an assessment against the Project of Kshs.88,669,239, in respect to a result based financing and debt facilities management consultancy services. Review of the contract between the Ministry of Energy and the consultant revealed that the consultant was required to submit for remuneration and reimbursement, an itemized quarterly statement and invoices to the Project Management. However, the consultant did not submit invoices as at 30 June, 2022. A letter from the consultant to the Principal Secretary, Ministry of Energy, in March, 2020 indicated that during negotiation for the services, it had been disclosed that the consultant was governed by a Host Country Agreement which exempted them from income taxes, a position disputed by The National Treasury.

Further, the consultant sought clarification from the Ministry of Foreign affairs on treatment of Project related taxes, further delaying issuance of invoices. As at the time of KRA's assessment and payment of partial taxes, the matter had not been resolved, and no payment had been made to the consultant. In addition, no pending bills were disclosed in the financial statements.

In the circumstances, the basis of the assessment and the partial payment of the taxes could not be confirmed.

Submission by the Accounting Officer

It is true a partial payment was made to Kenya revenue Authority. The consultant had issued invoices, which were still not accepted by the Ministry due to review of the deliverables. In addition, the consultant had taken long to submit the invoices until Kenya revenue Authority requested them to do so. As soon as they submitted the invoices, the ministry based on the invoices received a demand letter from Kenya Revenue Authority to pay the tax due. The consultant was paid on 30th June 2023 and the advance paid to Kenya Revenue Authority has been reconciled accordingly.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

1316. Non-Compliance to Loan Disbursement Guidelines

Review of the projects operations revealed that the implementation of the project commenced in the year 2019. However, as at 30 June, 2022, which was approximately three years after commencement, no subsidiary agreement between the receipt of the funds and the implementation entities had been signed as required by the terms of the financing agreement.

In the circumstances, management did not comply with terms of the financing agreement.

Submission by the Accounting Officer

The preparation and execution of the Subsidiary Agreement with KPLC and REREC was a condition precedent to the effectiveness of the project. These agreements were executed on 2nd March 2018.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

KENYA OFF-GRID SOLAR ACCESS PROJECT FOR UNDERSERVED COUNTIES (KOSAP SNV NETHERLANDS DEVELOPMENT ORGANIZATION)

REPORT ON THE FINANCIAL STATEMENTS

1319. Budgetary Control and Performance

The Statement of Comparison of Budget and actual amounts reflects a receipt budget of Kshs. 521,462,008 and actual on comparative basis of Kshs 143,890,765 resulting in underfunding of Kshs 377,571,234 or 73%. Similarly, the Project spent of Kshs 69,295,237 against an approved budget of Kshs. 521,462,008 resulting to an under absorption of Kshs 452,166,771 or 87% of an approved budget.

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

Submission by the Accounting Officer

This budget is an estimate of sales that were anticipated to be made by the service providers hence the disbursement of funds. However, the performance of component is a market driven and depends on the purchasing power of communities in the 14 underserved counties. This led to the low uptake of the solar home systems. The project is now on course.

Committee Observations and Findings;

The Committee noted that the submission by the Accounting Officer was unsatisfactory as the underperformance demonstrated lack of/ inadequate feasibility study.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to ensure proper project design, implementation and management.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1320. Non-Compliance with the Terms for Subsidiary Agreements

The Ministry of Energy entered into a management consultancy contract with an International Development Organization for result-based and debt facilities management on behalf of the Kenya Off-Grid Solar Project. According to the contract, the period to be accorded to the Solar Service Providers (SSPs) was not to exceed the management consultancy services period. However, review of subsidiary financing agreements signed by the consultant in June, 2020 revealed that four (4)

SSPs with a total allocation of Kshs. 174,223,339 had their contracts extended to 30 April, 2023 which was later than the consultancy period of 31 May, 2022. The extension was attributed to the providers' inability to meet the desired targets under the market survey component.

In addition, the Management signed new subsidiary agreements in the second phase of the component with an implementation date of 31 May, 2023, contrary to the consultancy contact's terms of reference. Further, the Project was expected to end on 30 June, 2023 and therefore, the new contracts did not allow for a one-year monitoring period by the Ministry as required in the financing agreement. The new SSPs may also not be able to absorb the 10% sustainability funding which is to be deployed upon verification of functioning of systems and honor of warranties within one year of deployment.

In the circumstances, the Management did not comply with the terms of the contract.

Submission by the Accounting Officer

The initial completion date of the contract with SNV Netherlands Development Organization was 23rd July 2023 and not 31 May 2022. The end dates of the contracts signed with the SSPs did not, therefore, go beyond the consultancy period.

The World Bank approved an extension of the project end date from 30th June 2023 to 31st May 2025. Subsequently the end date of the contract with SNV Development Organization was extended to 22nd April 2025. This will allow for the one year monitoring period by the Ministry as required in the Financing Agreement. The new SSPs will also be able to absorb the 10% sustainability funding which is to be deployed upon verification of functioning of systems and honor of warranties within one year of deployment. The goal of the project to sell solar home systems to at least 250,000 households will also be realised.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a status report of the project within three (3) months of adoption of this report.

1321. Non-Compliance with the Project's Financing Agreement

The Project Financing agreement provides that the Ministry of Energy is to implement Component 2 of the Project which entails Solar Service Providers Facility Sub-Projects, Debt Facility Sub-Projects and clean cooking solutions Providers (CCSP) facility Sub-Projects.

According to Schedule 2, Section 1.D of the agreement, the recipient is required to prepare and adopt, in form and substance acceptable to the lender, a Project Implementation Manual (FIM) and thereafter ensure that the Project is carried out in accordance with the arrangement and procedures set out in the PIM and FIM. However, no PIM was provided for audit in respect of the three facilities implemented under part 2 of the Project.

In addition, a consultant engaged to implement component 2 of the Project on behalf of the Ministry prepared the FIMs. However, no evidence was provided to indicate that the FIMs were

adopted by the recipient and that they were in form and of substance acceptable to the lender, the International Development Association (IDA).

In the circumstances, management did not comply with terms of the financing agreement.

Submission by the Accounting Officer

During the Audit review, the PIM was not provided to the Auditor. However, KPLC and REREC prepared PIMs for their respective project components which were approved by the World Bank. This was one of the two conditions for project effectiveness. The Ministry of Energy was not required to prepare a PIM.

The FIMs were adopted by the Ministry confirming that they were in form and of substance acceptable to the lender, the International Development Association(IDA) vide a letter dated 16th April 2019 from the PS to the World Bank's Task Team Leader (TTL) for the project requesting for the World Bank's approval of the FIMs. The World Bank's approval of the FIMs was provided via a letter from the TTL dated 18th April 2019.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

1322. Long Outstanding Receivable

Review of debt facility agreement revealed that one Solar Service Provider Debt facility under project signed on 29 September, 2020 for a commitment funding of Kshs. 50,000,000 at 18% interest per annum was in default. The funds which were to be utilized in developing solar facilities for households in Underserved in Counties were disburse in two installments with the first disbursement of Kshs. 19,245,512 of the funds released on 11 November, 2020, and had maturity date of 30 March, 2023. However, the provider defaulted on the loan from September,2021 when the balance was Kshs 8,510,207 comprising Kshs 1,293,140.22 in the principal amount and interest respectively

In the circumstances, the recoverability of the loan was in doubt.

Submission by the Accounting Officer

It is true that funds of Kshs. 19,245,512 were issued to the service provider and subsequently; they defaulted after making partial refund. The Ministry through the Facilities Manager have taken action to recover the funds in full in the acquisition process.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the Accounting Officer submits confirmation of full settlement within three (3) months of adoption of this report.

1323. Delay in Implementation of the Project

As disclosed under Paragraph 1.6 of Project Information, the Project was earmarked to close on 30th June 2023. However, Paragraph 1.10 on funding summary indicates that the Donor had made a commitment amounting to EUR 42,800,000 equivalent to Kshs 4,700,000,000 as June 2022. However, actual drawdown during the project life amounted toEUR 20,000,000 equivalent of Kshs 2,223,466.000 leaving out Kshs 2,476, 534,000 or 53% of committed funds undrawn with only 12 months' project closure. Management did not provide for audit review, mitigation measures to absorb remaining funds of secure an extension the Project from the donor.

In addition, the Ministry appointed a Consultant on 28 November 2018 to implement on its behalf the result based financing and debt facilities. Review of the Contract and Implementation Status of the Contract revealed the following anomalies;

i. The contract sum for the consultancy was set at 6,081,947.28 USD, inclusive of taxes. However, as at 30th June, 2022, the amount invoiced by the consultant amounted to USD 1,346,407.62 representing 22.1% of the contract sum with only 11% of the contract duration remaining.

ii. An Independent Verification Agent (IVA), was contracted by the Ministry on 17th December, 2021 at a cost of USD 1,041,643.35 equivalent to Kshs. 98,004,498.20. The IVA was to review and report on compliance of the Solar Service Providers (SSPs) with terms of Result Based Financing (SSP RBF) and Debt Facility agreements.s. However, the contract was entered into long after the commencement of the Project on 17th December 2021 (with and effective period of 14 days), 37 months after the project had started, thereby affecting disbursed by the consultant and monitoring of compliance by IVA.

iii. As at 30th June 2022, a total of Kshs. 111,426,656 had been disbursed out of Kshs 2,223,466,000 drawn under the Project comprising of Kshs. 92,181,144; Kshs. 19,245,512 in respect of result-based financing and debt facility respectively. The amount disbursed translated to 5% of the amount drawn while 78.2% of the Project duration has elapsed and 2.4% of the total budget under component 2 of the Project financing has been absorbed.

iv. A joint technical mission of Ministry of Energy and World Bank which conducted an evaluation of the project in June 2022 recommended to stop further disbursements beyond 31st August 2022, owing to below expectations performance of the debt facility. This therefore, casts doubt on the attainment of the project objectives and utilization of Kshs. 3,000,000,000 initially earmarked for debt facility

In the circumstances, the Project objective may not be achieved.

Submission by the Accounting Officer

It is true that SNV Netherlands Development Organization (Facilities manager) has a contract with the Ministry of energy and has invoiced 62.3% of the contract sum with 78.9% of the contract duration having elapsed. With regard to the low absorption of the fund, this has been caused by the low sales with the service providers due to low purchasing power of the households and low awareness on clean cooking. This was adversely affected by the effects of the COVID 19 due to restriction of movements and economic empowerment. Although disbursements are low performance is modest e.g. the objective for the SSP RBF facility is to sell 250,000 Solar Home

Systems. As at 30th June 2022, 96,409 Solar Home Systems have been sold. The Contract was extended to 31st May 2025.

The procurement of IVA consultant took longer than anticipated. This was occasion by bidders quoting above allocated budget amount resulting to an extra step of the Ministry seeking a NO objection from the World Bank. We hereby confirm that the Facilities Manager began the implementation of component 2 with the supervision of the Ministry of Energy. Currently, the sales have been verified by the IVA and disbursement of funds are being made on the basis of the verification report.

The Ministry in consultation with KPLC, REREC and the National Treasury prepared a proposal to restructure the project with the key highlights being: the extension of the project completion date from 30th June 2023 to 31st May 2025;

The Ministry in consultation with KPLC, REREC and the National Treasury prepared a proposal to restructure the project with the key highlights being: the extension of the project completion date from 30th June 2023 to 31st May 2025; and the closure of the non-performing Debt Facility and transferring the unused US$ 29.5 million to other project components that did not have sufficient financing.

Committee Observations and Findings;

The Committee noted that the State Department was not prepared to utilize funds as at time of committing to the loan.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

BOGORIA SILALI GEOTHERMAL PROJECT (LOAN NO.2013.66.103) - GEOTHERMAL DEVELOPMENT COMPANY LIMITED

REPORT ON THE FINANCIAL STATEMENTS

1325. Unreconciled Bank Balances

The statement of financial assets reflects cash and cash equivalents balance of Kshs.1,253,215,000. Included in the balance is an amount of Kshs.17,997,000 held in an escrow account in respect of land compensation. However, review of the bank reconciliation statement and the certificate of balance for the account revealed a bank balance of Kshs.96,220 resulting in unreconciled variance of Kshs.17,900,780. Further, note 10.9 to the financial statements reflects a balance of Kshs.151,819,000 in respect of Co-operative current account (A/c. No.01136160857600) while the bank reconciliation statement reflects a cash book balance of Kshs.46,458,182 resulting in unreconciled variance of Kshs.105,360,818. In the circumstances, the accuracy and completeness of the cash and cash equivalents balance of Kshs.1,253,215,000 could not be confirmed.

Submission by the Accounting Officer

Reconciliation of the escrow account of Kshs.17,997,000;

		Amount (Kshs.)
	Balance as per financial statements	17,997,000
	Represented By:	
	GDC Land compensation Escow a/c -1290052360	96,220
	GDC Land compensation Escow a/c-1290052360	17900,000
	Rounding Differences	780
	Total	**17,997,000**
	Variance/Difference	**NIL**

As a condition for disbursement of the second financing tranche KfW insisted on the finalization of land compensation, which could not be done because the land adjudication was not complete. The parties subsequently agreed that the Company shall open an escrow account and deposit the funds for land compensation for the respective communities.

The land adjudication process took longer than expected. Management, to preserve the funds, placed the funds in a call account while awaiting conclusion of the adjudication process.

Co-operative current account (A/c. No.01136160857600) cash book balance of Kshs.46,458,182. The balance represented the net amount of funds held in the Co-operative Bank account for Menengai, Bogoria-Silai Project and Head office broken down as below:

Vote Head	Cashbook Amount (Kshs.)
Bogoria Silali Project	151,818,953.08
Menengai project	-949,881,091.71
Head Office	844,520,320.49
TOTAL	**46,458,181.86**

The Company receives its funding from the exchequer, Development Partners and appropriations in aid (A-I-A). Steam Charge payments from Kengen constitute a large portion of the Company's funding. These funds are received in the Co-operative Account line with the assignment agreement and distributed to the respective projects and Head Office (recurrent) in line with the printed estimates.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendations

The Committee recommends that the Auditor General ascertains balances in subsequent audit.

1326. Under Absorption of Capital Budget

The statement of comparison of budget and actual amounts reflects an expenditure budget of Kshs. 1,442,555,000 for acquisition of non-financial assets against an actual expenditure to Kshs. 854,349,000 resulting to an under absorption of Kshs.588,206,000 or 41%. Acquisition of non-financial assets is directly linked to the rate of project implementation and thus some of the planned

activities during the year were not implemented, which therefore, impacted negatively on service delivery to citizens. In the circumstances, the objective of the project may not be achieved.

Submission by the Accounting Officer

Funding for the project in the year was Ksh 2.725 billion from the below funding sources:

Source	Amount
KfW	1,380,000
GRMF	495,000
Exchequer/A-I-A	850,000
TOTAL	**2,725,000**

The under absorption of Kshs 588,026,000 or 41% under acquisition of non-financial assets was a result of the following factors:

- *Delay in disbursement of KFW funding*

The request for release of Eur.7.1 million was made to the National Treasury on 05 April 2022 and funds were received in GDC project account on 23 May 2022. The delay impacted on the absorption of funds.

- *Delay in disbursement of GRMF Funds.*

Disbursement of the balance of Kshs 112 million out of the allocated budget of Kshs 495 million could not be made because of the funding conditions which included

i) a requirement on bank rating which could not be met by any of the local banks.
ii) No objection by KfW regarding the fulfillment of all E&S requirements especially with regards to land acquisition.

- Garnishee order on GDC bank accounts
  A garnishee order was placed on the KfW Steam Field Development Bogoria-Silali Project Bank Account in favor of Lantech Africa impacting transactions in the project account.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1327. Irregular Investment of Project Funds

Review of banking records provided for audit revealed that an amount of Kshs.17,900,000 was in invested in a Call Account at a local bank on 24 June, 2022. The funds were drawn from the bank's Land Compensation account. The investment was contrary to The National Treasury Circular No.14/2018 which provides that no State Corporation should invest surplus funds in any financial institution/bank without prior approval of The National Treasury other than where the investment is in Treasury bills or bonds. Further, no evidence was provided for audit to confirm that the

investments were approved by the Board of Directors of the Company. In the circumstances, Management was in breach of The National Treasury circular.

Submission by the Accounting Officer

KfW was providing the main funding for the project in the year. A condition from them for further disbursement was compensation to landowners for land taken for use by the project. Due to the long period of time required to finalize adjudication and acquisition of the land by the National Land Commission, a compromise was agreed that the Company opens an escrow account and deposits funds adequate for land compensation.

Management obtained the approval of the Board and the National Treasury to open an account at KCB Bank for the purpose of keeping the funds earmarked for compensation of landowners in the Bogoria-Silali project area.

The land adjudication process that would have paved the way for compensation took longer due to the need for extensive engagement between the stakeholders.

To preserve the funds, Management requested the bank to place the funds on call to earn interest while awaiting conclusion of the adjudication process. The adjudication process concluded in 2024, and the Company has transferred the funds to the National Land Commission for purposes of compensating the landowners.

Committee Observations and Findings

The Committee found that the submission by the Accounting Officer was unsatisfactory as the investment contravened Treasury circular No.14/2018.

Committee Recommendations

The Committee reprimands the Accounting Officer.

1328. Failure to Open and Maintain a Separate Project Bank Account

Review of financial records revealed that the Company operated an account for the Project during the year under review. However, several transactions relating to the Project were made through other Company accounts which is contrary to Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015. In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The project is funded by the ex-chequer, A-I-A (company contributions) and funds from Development partners.

For Bogoria project, the company has designated the bank accounts below for its activities:

• Kenya Commercial Bank - Marigat [A/c No 166553671]
• Kenya Commercial Bank of Kenya-Kipande [A/c 1119615208]
• KfW NCBA [A/c No 4761090015]
• KCB Land Compensation Escrow [A/c No. 290052360]

- Co-operative Bank of Kenya GRMF [A/c No. 01141160857601]

The company contributions (Steam Charge receipts) are received through the Co-operative Bank Account in line with the assignment agreement. Transfers are then made to the respective accounts for Bogoria and Head office.

However, payment of staff payroll costs (project and recurrent) is done centrally from the co-operative account.

Committee Observations and Findings

The Committee noted that the submission by the Accounting Officer was unsatisfactory.

Committee Recommendations

The Committee reprimands the Accounting Officer for failure to maintain a separate project bank account contrary to Regulation 76(1) of the Public Finance Management (National Government), 2015.

1329. Stalled Geothermal Development at Silali Prospective Site

As previously reported, the amended Loan Agreement between the German Development Bank (KfW) and the Government of Kenya dated 26 August, 2020 for steam field development at Bogoria-Silali geothermal block provided that the loan would finance drilling exploration and appraisal wells carried out by GDC mobilization and demobilization of drilling rigs for up to 20 wells in the Bogoria-Silali Block. Paragraph 1.3 of the annual report containing project information and overall performance report indicates that geothermal development under the Project was to be carried out in three prospective areas: Korosi, Paka and Silali. However, review of the Project status revealed that drilling had only been carried out in two (2) of the prospected areas namely Korosi and Paka. The Management indicated that GDC had requested for approval and authorization for geothermal development and associated projects from the County Government of Turkana vide letter dated 27 May 2015. Despite the Company's follow-up efforts through the Principal Secretary, Ministry of Energy in May, 2021, no response had been received as at the time of audit in October, 2022. 429 Lack of approval and authorization from the County Government of Turkana has occasioned delay in commencement of drilling activities at the Silali prospected site thus impacting negatively on the Project.

Submission by the Accounting Officer

The delay in commencement of drilling activities in the Silali was due to delay in obtaining consent from the Turkana County, which was a condition placed by the project financier. At the time of the audit, drilling activities had not commenced due to this requirement.

Following various engagements with the county government of Turkana, management has now commenced drilling activities in Silali.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendations

The Committee recommends that the Accounting Officer avails a status report within three (3) months of adoption of this report by the House.

1330. Failure to Prioritize Payments of Pending Bills

As disclosed in Note 11 to the financial statements, the Project had pending bills amounting to Kshs.227,774,000. Examination of documents provided for audit revealed that bills amounting to Kshs.33,938,773 were brought forward from 2020/2021 financial year and ought to have been paid as a first charge in 2021/2022 financial year as required by The National Treasury Circular No.10/2020 dated 16 June, 2020. The Management indicated that invoices relating to the pending bills for supply of goods and services were received after year end and hence could not be settled in the year. However, the ageing analysis provided indicated that invoices for all the pending bills had been received by the Company by 30 June, 2022. No explanation was provided for the failure to prioritize prior year pending bills. In the circumstances, Management was in breach of The National Treasury Circular.

Submission by the Accounting Officer

In line with the National Treasury Circular No 10/2020 dated 16 June 2020 management has given priority to settlement of pending bills that don't have queries.

The pending bills were not paid due to the following reasons:

Reason for non-payment	Amount	Current status
Under litigation (Tamani construction)	10,011,966	Resolved and paid
Under reconciliation (Various)	2,022,886	Resolved and paid
Awaiting approval from treasury	303,921	
Held due to scrapping of ESIA licenses (NEMA)	21,600,000	To be written off
TOTAL	**33,938,773**	

Of the pending bills of Ksh 33,938,773, Ksh 21,600,000 to M/s National Environmental Management Authority (NEMA) was not settled in the year due to the suspension of the requirement for the ESIA license for the project by the government. The matter is awaiting resolution.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendations

The Committee recommends that the Accounting Officer settles the outstanding matter with NEMA within three (3) months of adoption of this report.

MULTINATIONAL - KENYA SECTION OF INTERCONNECTION PROJECT OF ELECTRICITY GRIDS OF NILE EQUATORIAL LAKES COUNTRIES (ADF LOAN NO.2100150022643) - KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED

REPORT ON THE FINANCIAL STATEMENTS

1333. Expiry of the Loan Agreement

As reported in the previous years, the Loan Agreement between the Republic of Kenya and African Development Bank expired on 31 December, 2017. However, the Project stalled at 61% level of completion after the Company terminated the services of the main contractor for non-performance in April, 2016. Further, no funds have been received from the Bank since 2016. Analysis of the project cash and pending bills records as at 30 June, 2022 revealed a funding shortfall of Kshs.423,530,240. There was no evidence that the Loan Agreement had been renewed or other sources of funds had been identified. In the circumstances, it has not been possible to confirm whether or when the project will be completed.

Submission by the Accounting Officer

The African Development Bank financing agreement expired and was cancelled/closed in December 2017. At the time of loan expiry the undrawn balances amounted to Kes equivalent 2,720,466,827. The financing agreement is not to be extended. KETRACO has engaged The National Treasury through Ministry of Energy to seek alternative financing for completion of the project. This will allow for the completion of the project hence realization of the investment.

However, the project site cannot be accessed until the arbitral award has been settled. The National Treasury advised Kenya Electricity Transmission Company Limited to seek alternative funding to settle the arbitration award to the contractor, and therefore be able to engage another contractor to finalize the project.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer and the National Treasury pursue alternative financing arrangements within the next financial year.

1334. Outstanding Arbitration on Terminated Contract

As reported in the previous years, an arbitration case was filed on 1 April, 2016 between the contractor and the Kenya Electricity Transmission Company Limited in relation to termination of contract for works which had not been finalized. On 20 July, 2020, the tribunal, which was the arbitrator on the matter, issued an award in favor of the contractor for Euro 37,365,690 equivalent Kshs.4.5 billion. However, Management was of the opinion that the decision made by the arbitrator was against public policy and made an appeal to have the award set aside in the High Court. The High Court upheld the tribunal award. The Company has since appealed to the Court of Appeal. In the circumstances, it is not possible to confirm when the matter will be resolved and how the cost in terms of legal fees that the Company will incur will be reflected in the financial statements.

Submission by the Accounting Officer;

The contracts with the main contractor (Inabensa) for the project were terminated in April 2016 due to non-performance. An arbitration tribunal was instituted in 2019.The arbitration case was delivered in July 2019 in favour of the contractor. KETRACO appealed to the High Court for setting aside of the arbitral award to Inabensa. The High Court delivered their ruling in February 2021 upholding the arbitral award. KETRACO appealed the case in the Court of Appeal. The Court of appeal on 19th November 2021 delivered their ruling upholding The High Court ruling. The Court of appeal ruling was subjected to an appeal petition at The Supreme Court. The Supreme Court delivered their ruling upholding the Court of Appeal ruling.

The legal cost has been included in as contingent liability and pending bills in the financial statements for financial year 2021/2022.

Management has engaged The National Treasury through Ministry of Energy to finance completion of the project. KETRACO is also seeking alternative means of raising the arbitration settlement funds, this will allow for completion of the project hence realization of service delivery to the intended beneficiaries. Multisectoral committee has been set up whose role is to find how to settle the arbitral award.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer and the National Treasury pursue alternative financing arrangements to settle the awards and complete the project within the financial year 2025/26.

1335. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects actual receipts of Kshs.510,419,583 against the budgeted amount of nil resulting to over collection of Kshs.510,419,583. Similarly, the statement reflects final expenditure budget of Kshs. Nil against the actual expenditure of Kshs.197,540,810 resulting to unauthorized expenditure of Kshs.197,540,810. In the circumstances, it was not possible to confirm whether the over collection of Kshs.510,419,583 and unauthorized expenditure of Kshs.197,540,810 was lawful.

Submission by the Accounting Officer

The funds received had been approved in the budget for FY 2020/2021, but the funds were received after the financial year closing date of 30th June 2021. During the FY 2021/2022, the project did not receive any approved budget during the year under consideration. The funds had been budgeted for settling the wayleave compensation, The receipts of Ksh 510,419,583 is enumerated below;

(i) The 4th quarter receipts from GOK amounting to KShs 500,000,000 for financial year 2020/2021 were received in July 2021.

(ii) The movement in miscellaneous receipts relates to the interest income of Ksh 10,419,583 from the bank balance held in financial institutions.

The expenditure of Ksh 197,540,810 are payments made from accruals from the previous year FY 2020/2021, but paid in the FY 2021/2022, since the Projects financial statements are prepared in cash basis, the KETRACO corporate accounts are prepared on accrual basis, therefore the difference.

Cabinet approval for Public Sector to move to accrual accounting as per Kenya Gazette Vol. CXXVI-No. 135 will help clear the differences in budgetary control and performance.

Committee Observations and Findings

i) The Committee noted that transition to accrual accounting would settle the matter.
ii) The Committee found that the matter was resolved.

1336. Pending Bills - Goods and Services

As reported in the previous year, the Project Management contracted works and services amounting to Kshs.2,816,492,044 as disclosed in Annex 2A. The amount certified as payable totaled to Kshs.2,155,196,560 out of which Kshs.2,125,650,186 has cumulatively been paid leaving a balance of Kshs.29,546,374 as pending bills. In the circumstances, failure to settle bills during the year in which they relate to distorts the financial statements and adversely affects the budgetary provisions in the subsequent years as they form a first charge.

Submission by the Accounting Officer

The amounts of pending bills of Kshs.29,546,374 concern payment to the project Consultant M/S. Aecom. The payment could not be processed due to an ongoing court case between KETRACO and the Consultant Aecom. The case is still not resolved

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee recommends that the matter awaits court resolution.

1337. Long Outstanding Wayleave Compensation

As reported in the previous year, the expected and certified compensation to landowners for wayleaves acquired since inception of the Project amounted to Kshs.1,717,769,975 as disclosed in Annex 2B to the financial statements with an amount of Kshs.1,717,769,975 having been cumulatively certified at the close of the year under review. Management has cumulatively paid Kshs.1,412,234,562 leaving an unpaid amount of Kshs.305,535,413. Management has attributed failure to pay the amount to lack of budgetary allocation from The National Treasury and lengthy land valuation negotiations due to absentee landowners coupled with various court injunctions on disputed cases. In the circumstances, it is not clear what measures Management has put in place to obtain funding, identify absentee landowners and finalize court cases to successfully implement the Project and deliver services to Kenyan citizens.

Submission by the Accounting Officer

The project has been adequately funded to facilitate acquisition of right of way, however the project has suffered from absence of certified landowners. KETRACO through its team of Land economists and the legal officers have engaged with the persons affected by the project to expedite the requisite land documentation to facilitate settlement of wayleave compensation. Subsequently

Kenya Electricity Transmission Company Limited has settled majority of the wayleave compensation along the project wayleave trace.

Committee Observations and Findings

i) **The Committee observed that the explanation provided by the Accounting Officer was satisfactory.**
ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1338. Legal Costs on Termination of Contract and Loan Interest Costs

The Project stalled upon the termination of the main contractor in April, 2016. Since then, the Project has accumulated legal costs amounting to Kshs.293,840,788 on a court case in which the Management lost at the Arbitration and High Court level with the two courts granting compensation to the contractor amounting to Euros 37,365,690. The Management has moved to the Court of Appeal to challenge the judgement. Further, the loan already disbursed to the project continues to attract unquantified amount of interest even though the asset that was to be acquired out of the loan and possibly enable repayments remains incomplete and unused. In the circumstances, there is potential loss in excess of Kshs.4.5 billion if the judgement is upheld at the next level and it is not possible to confirm if there is value for money obtained from the project.

Submission by the Accounting Officer

The contracts with the main contractor (Inabensa) for the project were terminated in April 2016 due to non-performance (Attached: Termination Letter). An arbitration tribunal was instituted in 2019.The arbitration case was delivered in July 2019 in favour of the contractor. KETRACO appealed to the High Court for setting aside of the arbitral award to Inabensa. The High Court delivered their ruling in February 2021 upholding the arbitral award. KETRACO appealed the case in the Court of Appeal. The Court of appeal on 19th November 2021 delivered their ruling upholding The High Court ruling. The Court of appeal ruling was subjected to an appeal petition at The Supreme Court. The Supreme Court delivered their ruling upholding the The Court of Appeal ruling.

KETRACO has engaged The National Treasury through Ministry of Energy to seek alternative financing for completion of the project. This will allow for the completion of the project hence realization of the investment.

However, the project site cannot be accessed until the arbitral award has been settled. The National Treasury advised Kenya Electricity Transmission Company Limited to seek alternative funding to settle the arbitration award to the contractor, and therefore be able to engage another contractor to finalize the project.

Committee findings and observations;

The Committee noted the response by the Accounting Officer.

Committee recommendation;

The Committee recommends that the Accounting Officer and the National Treasury pursue alternative financing arrangements to settle the awards and complete the project within the financial year 2025/26.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1339. Manual Interventions in the Financial Reporting Process

Review of the financial reporting process revealed significant manual interventions. Although the subledgers and ledgers are extracted from the Intelligence Business Reporting Module of the SAP System, the processing of the trial balance and financial statements is done manually on excel worksheet. Consequently, the manual interventions may result in errors in the financial statements.

Submission by the Accounting Officer

The company is in the process of fully automating the projects reporting system (Project services module in SAP) and integrating SAP with Integrated Location Intelligence System (ILIS). This will ensure end to end processing of the project financial information in the system and reporting. Subsequently, KETRACO has engaged BI experts who are helping in full automation of the projects module in the SAP.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

MULTINATIONAL KENYA-TANZANIA POWER INTERCONNECTION PROJECT (KENYAN COMPONENT) (ADF LOAN NO.2100150032846) - KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED

REPORT ON THE FINANCIAL STATEMENTS

1342. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects a total income budget of Kshs.803,000,000 against actual receipts of Kshs.1,014,573,409 resulting to over collection of Kshs.211,573,409. The statement also reflects a total expenditure budget balance of Kshs.803,000,000 against actual expenditure of Kshs.1,253,771,158 resulting to unauthorized over expenditure of Kshs.450,771,158. In the circumstances, it was not possible to confirm whether the overcollection of Kshs.211,573,409 and over expenditure of Kshs.450,771,158 was lawful.

Submission by the Accounting Officer

The reduction in the printed estimates was done after commitments being incurred in the project. In addition, Kes. 50M for FY 2020/2021 was disbursed in July 2021 and recognized in 2022 being the difference between accrual and cash basis accounting.

The over expenditure of Ksh 450,771,158 were payments made from accruals from the previous year FY 2020/2021, but paid in the FY 2021/2022, the funds had been budgeted and received in the previous financial year 2020/2021. The financial statements are prepared in cash basis, hence the difference.

Cabinet approval for Public Sector to move to accrual accounting as per Kenya Gazette Vol. CXXVI-No. 135 will help clear the differences in budgetary control and performance.

Committee Observations and Findings

i) The Committee noted that transition to accrual accounting would settle the matter.
ii) The Committee found that the matter was resolved.

1343. Delay in Project Implementation

The Project started on 14 February, 2017 with an expected completion time of April, 2020 which was later extended to 31 December, 2022. As at 30 June, 2022, the Project was at 93% completion with over 100%-time lapse. Though Management has explained that delays were caused by delay in acquiring wayleaves, long negotiation for land compensation and protracted legal cases, it is clear that delay in project implementation could lead to cost overruns and the Project may not be able to utilize the available loan funding.

Submission by the Accounting Officer

The project delay was as a result of inadequate budget allocation from the National Treasury to cater for wayleave compensation for the project affected persons. This contributed to challenges in acquiring the right of way for the contractor to work. Management requested additional funding in the new FY 2023/2024 budget (Kes. 676M AIA and Kes. 559M Counterpart) to finance wayleave and contractual works. The project is currently complete, and it is expected to be commissioned in FY 2024/2025.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

1344. Pending Bills - Goods and Services

As reported in the previous year, the total value of the works and services contracted under the Project amounted to Kshs.3,455,587,779 as disclosed on Annex 2A of the financial statements. The amount certified as payable totalled Kshs.2,687,604,960 out of which payments totalling Kshs.2,643,019,770 were made over the years leaving an unpaid balance of Kshs.44,585,190. Delay in settling pending bills may result to wasteful expenditure on interest, penalties and litigation costs.

Submission by the Accounting Officer

The balance of KShs 44,585,190 is as a result of invoices received at the end of the FY and had already been processed and forwarded to the Ministry of Energy in June 2022 for submission to Treasury and ADB.

These payments were settled in September 2022.

Committee Observations and Findings;and Finding;

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1346. Automation of the Financial Reporting Process

Review of the financial reporting process revealed significant manual interventions. Although the subledgers and ledgers are extracted from the Intelligence Business Reporting Module of the SAP System, the processing of the trial balance and financial statements is done manually on excel worksheets. Consequently, the manual interventions may result in errors in the financial statements.

Submission by the Accounting Officer

The company is in the process of fully automating the projects reporting system (Project services module in SAP) and integrating SAP with Integrated Location Intelligence System (ILIS). This will ensure end to end processing of the project financial information in the system and reporting. Subsequently, KETRACO has engaged BI experts who are helping in full automation of the projects module in the SAP.

Committee Observations and Findings

i) The Committee noted that transition to accrual accounting would settle the matter.
ii) The Committee found that the matter was resolved.

LAST MILE CONNECTIVITY PROJECT I (LOAN NO.2100150032195) – THE KENYA POWER AND LIGHTING COMPANY PLC

REPORT ON THE FINANCIAL STATEMENTS

1349. Pending Bills

Note 11.1 and Annex 2 to the financial statements reflects pending accounts payables totaling Kshs. 89,064,000 as at 30 June 2022. Management indicated that the bills relate to Contracts, which were terminated due to non-performance. However, failure to settle bills during the year in which they relate adversely affects the budgetary provisions for the subsequent year as they form a first charge. Further, the Project is at risk of incurring significant interest costs and penalties with the continued delay in payment.

Submission by the Accounting Officer

The pending bills relates to disputed contract for M/s AEE Power (Lot 2& Lot 4) whose contract was terminated due to Non- Performance. The contractor failed to complete the project within the contract period of 18 Months and this necessitated further extensions totaling up-to 40 months.

Even after the said period extensions, use of various subcontractors and several engagements with the contractor, there was still no improvement in performance. KPLC had no any other option but to exercise its contractual rights by terminating the contract and encashment of the Performance Bank Guarantees.

AEE being disgruntled by KPLC's decision on liquidation its bank Guarantees, escalated the matter to Center for International Arbitration in London as provided under the contract.

KPLC filed its defense and counter claims against AEE's claim for consideration and determination by the Arbitral Tribunal. The arbitral proceedings are at their advanced stage with the Arbitral Tribunal having issued procedural order No.5 directing Parties to make their final clarification and post hearing submissions by 24th November 2024.

The invoices could not be settle as they were a subject matter in the ongoing Arbitrations at the International Chartered Institute of Arbitrators. Upon determination of Arbitration, the final settlement will be made.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendations

The Committee recommends that the matter awaits outcome of the arbitration.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1350. Failure to Open and Operate a Project Bank Account

Review of project receipts and expenditure records revealed that the Management did not open and operate a Project bank accounts and Project's funds were commingled with 434 Company's Funds. This was contrary to Regulation 76(1) of the Public Finance Management (National Government) Regulations, 2015 which provides that, for the purpose of disbursement of Project funds, a Project account for every project should be opened and maintained at the Central Bank of Kenya unless it is exempted by the Cabinet Secretary in writing, into which all funds should be kept and such an account shall be in the name of the Project for which it is opened. In the circumstances, the Project's Management was in breach of the law.

Submission by the Accounting Officer

As per the Fund flows arrangement of the project adopted the direct disbursement method. Under direct disbursement method, KPLC prepares the Payment documents and submits to the Ministry of Energy for further processing. MOE then forwards the approved documents to the National Treasury for onward Transmission to the Financier for Payment. The Financier then makes payment directly to the supplier/Contractors Bank Account.

Therefore, in the funds flow arrangement of the project, the financier does not transfer Advance (funds) to KPLC for administration, and therefore it is not necessary to have a designated bank account. Hence, whereas the PFM Act regulation 76(1) provides for the use of the Designated Bank Account, the funds flow arrangement of the Project as defined in the Financing agreement did not require use of the Project Account.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendations

The Committee recommends that the Accounting officer henceforth seeks National Treasury exemption from opening bank accounts, if deemed unnecessary.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1351. Delays in Payment Processing

The terms of payments in the signed contracts with suppliers required payments to be processed within sixty (60) days after receiving contractors' invoices. However, review of pending bills as at 30 June, 2022 revealed significant delays in processing of payments. As a result, payments due to suppliers and contractors remained outstanding for more than sixty (60) days, with the pending bills of Kshs. 89,063,531 outstanding for more than one year. Late payments to suppliers and contractors exposes the Project to interest charges and penalties on outstanding balances.

Submission by the Accounting Officer

The pending bills relates to disputed contract for M/s AEE Power (Lot 2& Lot 4) whose contract was terminated due to Non- Performance. The invoices could not be settle as they are a subject matter in the ongoing Arbitrations at the International Chartered Institute of Arbitrators. Upon determination of Arbitration, the final settlement will be made.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendations

The Committee recommends that the matter awaits outcome of the arbitration.

1352. Delay in Project Delivery

Despite the Project having connected 209,700 customers, which is 93% of the total targeted customers of 224,952 as reflected in the statement of performance against Project's predetermined objectives, there was slow progress in achieving the set targets under Lot 2 and 4. The Management attributed the slow progress in achieving set targets to a dispute with the contractor who underperformed on the contract. The Kenya Power and Lighting Company PLC attempted to terminate the contract, but the contractor went to court to challenge the termination, a case whose decision was made on 28 November, 2019, allowing the contract to be terminated.

Submission by the Accounting Officer

The Project was successfully implemented with Eight(8) out of the Ten(10) Completed achieving 93% of the targeted project connectivity, however, the contract for Lot 2 and Lot 4 executed by M/s AEE Power was terminated due to Poor Performance thus adversely affected implementation progress. Upon termination of the Contract, M/s AEE Power refered the dispute to the Chartered Institute of Arbitrators (London) for determination and final settlement.

Consequently, KPLC requested for the extension of the financing agreement to 31 December 2024 to allow finalization of the pending works and connect more households.

The implementation progress of the Project as at 30th June 2024 was as follows.

SN	Item Description	Unit	Quantity	Status of Execution	% Achieved
1	LV route length	km	11,906.09	11.351	95%
2	Customer	PC	224,952	215,966	96%

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendations

The Committee recommends that the matter awaits outcome of the arbitration.

LAST MILE CONNECTIVITY PROJECT II LOAN NO.2000200000152 – THE KENYA POWER AND LIGHTING COMPANY PLC

REPORT ON THE FINANCIAL STATEMENTS

1355. Pending Bills

Note 11.1 to the financial statements reflects pending bills of Kshs.263,218,943 as at 30 June 2022. Management did not provide explanations for non-payment of the bills and the Project is at risk of incurring significant interest costs and penalties with the continued delay in payment of the bills. Further, failure to settle bills during the year to which they relate adversely affects the budgetary provisions for the subsequent year as they form a first charge.

Submission by the Accounting Officer

The pending bills relates to certified invoices at various stages of payment processing as at end year. The invoices are current and within the terms of payment, limits thus might not attract much penalties and interest.

The invoices had been processed and accounted within the current year's budget but were outstanding since the disbursement had not been effected at year-end by the Bank. The invoices were however paid in the subsequent year as follows

LOT NO.	COMPANY	INVOICE NO.	CURR	AMOUNT	KES. EQUIV.	DATE PAID
LOT 1	GIZA CABLES	037-LOT1	KES	18,178,515.67	18,178,515.67	05.07.2022
LOT 1	GIZA CABLES	036-LOT 1	USD	229,823.04	28,488,869.00	03.08.2022
LOT 12	ANNIHI/NIRAV	221221/2	USD	279,748.41	34,898,614.15	04.07.2022
LOT 2	GIZA CABLES	040-LOT 2	USD	297,072.95	35,351,681.05	03.08.2022
LOT 2	GIZA CABLES	039-LOT 2	KES	25,213,868.63	25,213,868.63	21.07.2022

LOT 4	TRANSRAIL LIGHTING	RTN/KSH/01B	USD	433,368.10	54,062,670.48	07/10/2022
LOT 5	SINOTEC CO.LTD	INV0043/009 & INV0043/010	KES	21,950,131.81	21,950,131.81	05.07.2022
LOT 6	ESIKO NGC JV	LMCP-ESIKO-17	KES	39,758,736.23	39,758,736.23	05.07.2022
LOT G1	SHENZHEN CLOU	CL200607	USD	45,905.48	5,315,854.58	04/07/2022
					263,218,941.60	

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1356. Meter Tampering and Illegally Bypassed Connections

Field visits to Kirinyaga and Kisii Counties revealed at least eleven (11) instances of meter tampering. The tampering ranged from direct connection from Last Mile Connectivity Project poles to changing of live and neutral wires to distort the flow of electricity. In addition, meter tampering and illegal connections led to loss of revenue to the Company and contributed to supply inefficiency.

Submission by the Accounting Officer

The company continuously undertakes system and meter inspection as part of O&M operations. For cases found to be in violation of the norms, appropriate actions are taken including the prosecution of the perpetrators and instituting recoveries of the lost income.

Additionally, the Company is leveraging on technology and innovation by implementing numerous system improvement initiative such as smart metering, Automated Metering Infrastructure and Automated Distribution Management System. These initiatives together with others are expected to improve the system efficiency and seal revenue leakages.

Further, the enactment of the Energy Act 2019 has provided broad policy and legal framework in management of the Energy Infrastructure and has stringent penalties for those found violating the law. The Company is leveraging on the same to ensure safety and security of its installation.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1357. Delays in Payment Processing

The terms of payments in the signed contracts with suppliers required payments to be processed within sixty (60) days after receiving contractors' invoices. However, review of pending bills as at 30 June, 2022 revealed significant delays in processing of payments. As a result, payments due to suppliers and contractors remained outstanding for more than sixty (60) days, with some outstanding for more than one year. The delay was attributed to a long payment process involving several stages outside KPLC Control such as management consultant, Project Implementation Team (PIT), Ministry of Energy, The National Treasury, and the Donor. Late payments to suppliers and contractors exposes the project to interest charges and penalties on outstanding balances.

Submission by the Accounting Officer

The Payment Process for the Project involves several Stakeholders. The Project Supervision Consultant will do the measurement and Certification. KPLC will then verify the document and forwards them to the Ministry of Energy for further Processing. The Ministry of Energy would then process the payment, update IFMIS and forward to the National Treasury for onward transmission to the Financier for Payment.

There was also cases of disputed invoices where the contract/supplier had not duly supported the Payment and/ or cleared the recommended snags for payments to be made. Further, the Budget cuts during the supplementary reviews and exchequer release delays also affected the payment processing.

However the all the issues were resolved and invoices paid. The Project was successfully completed and closed.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

EASTERN ELECTRICITY HIGHWAY PROJECT (IDA CREDIT NO. 5148- KE; AFD LOAN NO.CKE 1030 01B AND ADF LOAN NO.2100150027845) - KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED

REPORT ON THE FINANCIAL STATEMENTS

1360. Pending Bills

Note 12.1 and 12.2 to the financial statements reflect pending bills and other pending payables balances totalling to Kshs.297,893,743 and Kshs.375,078 respectively. However, Management has not provided explanations for not settling the bills totalling to Kshs.298,268,821. Failure to settle bills during the year they were incurred distorts the financial statements and adversely affects the

budget provision for the subsequent year as they form the first charge. In addition, the Project could incur interest costs and penalties with the continued delay in payment.

Submission by the Accounting Officer

These were invoices in progress that had not been paid as at the cutoff date of 30.6.2022. Out of the Ksh 297,893,743, invoices amounting to Ksh 292,367,289.62 have been processed in the FY 2022/23 and have now been settled.

Kshs. 375,078 relates to a PAP (Projected Affected Persons) who is serving custodial sentence and those not paid due to incomplete documentation. Compensation will be settled when advised by the PAPs and all supporting documents have been provided.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

1361. Undrawn Fund Balance

As reported previously, the Project had an approved budget of US$ 441,000,000, AU 75,000,000, EUR 54,556,082 and counterpart funding by the Government of Kenya of Kshs.8,585,000,000, all equivalent to Kshs.74,208,027,626. The Project completion date is 31 December, 2022. However, as at 30 June, 2022 there was an undrawn balance of Kshs.25,520,124,033 or approximately 34% of the Project funding with total pending bills of Kshs.298,268,821. It is likely that the undrawn balance may not be absorbed. In the circumstances, the Project objectives may not be achieved and the benefits accrued to the citizens.

Submission by the Accounting Officer

The IDA financing structure has been revised and USD 97,628,476.4 was cancelled and redirected to finance the Green Phase II/STATCOM project. Additional loan utilisation has since occurred and the current undrawn balance is zero.

The African Development Bank financing savings of UAC 17,760,000 is financing construction of Mariakani substation and the Nanyuki Rumuruti underground cable projects. The current ADB undrawn balance is zero due to additional utilisation and cancellation of the savings.

AFD EUR 13,500,000 is financing the completion of Nairobi Ring Project.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

1362. Budgetary Control and Performance

The statement of comparison of budget and actual amounts for the year ended 30 June, 2022 reflects actual receipts of Kshs.2,023.081,508 against final budget of Kshs.5,821,000,000 resulting to a shortfall of Kshs.3,797,918,492. Further, the actual expenditure for the year amounting to Kshs.2,292,766,536 against the final budget expenditure of Kshs.5,728,000,000 resulting to an under absorption of Kshs.3,435,233,464. The underfunding and underperformance affected the

planned activities of the Project and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The under absorption of Lot 6 was affected by delay in wayleave acquisition due to limited exchequer funding, lack of proper documentation and further the converter substation was delayed because of non-fulfilment of contractual obligations by the contractor. However, the project was completed in December 2022 and is operating on Monopolar configuration awaiting commissioning of ground electrode.

Cabinet approval for Public Sector to move to accrual accounting as per Kenya Gazette Vol. CXXVI-No. 135 will help clear the differences in budgetary control and performance.

Committee Observations and Findings

i) The Committee noted that transition to accrual accounting would settle the matter.
ii) The Committee found that the matter was resolved.

1363. Long Outstanding Wayleave Compensation

As reported in the previous year, the expected compensation to landowners for wayleaves acquired since inception amounted to Kshs.2,615,896,273 out of which an amount of Kshs.2,608,142,520 was certified as payable. The Project Management had so far paid an amount of Kshs.2,607,767,442 leaving a balance of Kshs.375,078 unpaid. The Management has attributed the failure to pay the amount to lack of budgetary allocation from The National Treasury and lengthy land valuation negotiations due to absentee landowners and various court injunctions on disputed cases.

Submission by the Accounting Officer

Kshs. 375,078 relates to a PAP who is serving custodial sentence and those not paid due to incomplete documentation. Compensation will be settled when advised by the PAPs and all supporting documents have been provided.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

1364. Delay in Project Deliverables

Review of Project deliverables revealed that the Project was behind schedule with respect to the completion of the Lot1 being at 99.5% overall and commissioning phase is at 66% with the Project duration expected to lapse in December, 2022. Consequently, delays in completion of the Project may result in escalation of projected costs or expiry and withdrawal of funding by Project financiers.

Submission by the Accounting Officer

The delay in project completion was as a result of right of way issues and COVID 19 pandemic.

The project was completed and commissioned in December 2022 to operate on Monopolar configuration awaiting commissioning of ground electrode, draw down of funding from financier was done in good time and is at 100% and the relevant invoices settled.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1366. Non-Automation of the Financial Reporting Process

Review of the financial reporting process revealed significant manual interventions. Although the subledgers and ledgers were extracted from the Intelligence Business reporting module of the SAP system, the processing of the trial balance and financial statements is done manually on excel worksheet. In the circumstances, the manual interventions may result in errors in the financial statements.

Submission by the Accounting Officer

The company is in the process of fully automating the projects reporting system (Project services module in SAP) and integrating SAP with Integrated Location Intelligence System (ILIS). This will ensure end to end processing of the project financial information in the system and reporting. Subsequently, KETRACO has engaged BI experts who are helping in full automation of the projects module in the SAP.

Committee Observations and Findings

i) The Committee noted that transition to accrual accounting would settle the matter.
ii) The Committee found that the matter was resolved.

RURAL ELECTRIFICATION IN FIVE REGIONS PROJECT (CR. NO.11/597KE, CR. NO.1407PKE) - RURAL ELECTRIFICATION AND RENEWABLE ENERGY CORPORATION

REPORT ON THE FINANCIAL STATEMENTS

1369. Low Absorption of Project Funds

Note 1.7 on funding summary indicates that both the Donor and the Government of the Republic of Kenya had made commitments amounting to Kshs.5,856,180,000 (USD 57,000,000). The actual amount received during the Project's period totaled to Kshs.2,791,482,423 (USD 27,301,255) of the funding, leaving a balance of Kshs.3,064,697,577 (USD 29,698,745) undrawn. The Project has been ongoing for eight years and nine months and only remains with an implementation period of six months. However, with the extended Project's closing date of 31 December, 2022, the credit may lapse without being fully utilized and the objectives and planned deliverables may not be realized. The Management has not provided any documentary evidence to demonstrate mitigation against credit lapse before implementation of all project activities.

Submission by the Accounting Officer

The project is financed by a consortium of Arab development partner, including the Arab Bank for Economic Development in Africa (BADEA), the OPEC Fund for International Development (OFID), the Saudi Fund for Development (SFD), the Abu Dhabi Fund and the counterpart funding by Government of Kenya.

The total financing from the four foreign financiers amounts to USD 47,000,000, which is matched by the Government of Kenya's contribution of USD 10,000,000, bringing the total funding to USD 57,000,000.

The financing agreement was finalized on September 23, 2013. However, the project contracts were only signed in 2016, and actual project implementation did not commence until 2019 - three (3) years after the contract signing.

Low absorption of project funds was affected by the following delays in project implementation:

i) Difficulties in meeting financier conditions for letters of credit delayed procurement of key materials and equipment by the contractors and project activities, pushing back the timeline and disrupting project momentum. As a result, actual work begun years after the initial agreements and overall productivity and delivery schedules were affected.

ii) Requests for price variations by the contractors were made due to the time lapse between the signing of the contracts and the issuance of the way forward on the establishment of Letters of Credit. This was communicated to the financiers, who declined the request, citing contract terms that disallow price variations. This further delayed project implementation, impacting budget absorption.

iii) The COVID-19 pandemic caused significant delays in the project by disrupting material manufacturing, supply chains and logistics, and by complicating inspections and testing. These issues extended the project timeline and led to overall setbacks. This was resolved through virtual factory acceptance tests.

iv) The lack of Government of Kenya (GoK) counterpart funding for the past two financial years has hindered project progress. Since GoK funding covers 72.89% of installation costs and Opec Fund, external funding covers 27.11%, the absence of GoK funds has led to pending bills totaling to Kshs. 183 million thus far, causing cash flow challenges for contractors and delaying project advancement.

Mitigation Measures;

- To speed up project implementation, the Corporation has increased supervision with regular updates, fast-tracked inspections and commissioning, and streamlined invoicing and payment processes to reduce delays.
- The Corporation made efforts by requesting for extension of the credit availability period, which was successfully granted until December 31, 2024. The current status of progress on site installation works and overall project progress summary is outlined in Table 1and 2 below:

Table 1: The Current Status of Progress of site installation works:

Progress of Site Installation Works	Total	Completion (%)
Commissioned	**170**	**42%**
In progress	**30**	**7%**
Not started	**171**	**43%**
Awaiting TX	**3**	**1%**
Awaiting Commissioning/Shutdown	**25**	**6%**
Wayleave issues	**3**	**1%**
Total	**402**	**100**

Table 2: The current overall project progress summary is as follows:

Summary	%
Material delivery progress	97%
Progress of site works	52%
Overall Project Progress	**74%**

Credit Absorption;

To date, approximately Kshs. 4.1 billion has been paid, representing 71% of the total contract value of about Kshs. 5.7 billion. Additional invoices for installation services have been processed, approved by the National Treasury, and dispatched for payment. The Corporation is actively coordinating with financiers to facilitate the ongoing processing of these invoices.

Conclusion;

Despite significant challenges, the project has achieved notable progress. Measures such as enhanced supervision, expedited inspections, and streamlined payment processes are actively addressing delays and boosting efficiency. The Corporation remains dedicated to overcoming the remaining obstacles and is focused on ensuring the successful and timely completion of the Rural Electrification Projects by December 31, 2024, which also marks the project's credit closure.

Committee Observations and Findings

The Committee noted that;

i) **Implementation of the project was extremely slow. The project commenced three years after signing of contracts, and another three years after signing of the financing**

agreement;

ii) **National Treasury failed to provide counterpart funding for two years;**

iii) **Reasons for delay cited by the Accounting Officer should have been foreseen.**

Committee Recommendation

The Committee reprimands the Accounting Officer for poor project management and recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

1370. Delayed Project Implementation

Financial records provided for audit indicated that the Government of Kenya entered into Financing Agreement with four (4) financiers for implementation of rural electrification projects in five (5) regions at a total cost of Kshs.5,856,180,000. According to the Agreements, the projects were to commence in September, 2013 with an expected completion date of December, 2022. The statement of receipts and payments indicates that an amount of Kshs.2,791,482,423 had been incurred on the 439 projects, which amounts to 48% of the total funding. However, out of the project timelines of 111 months, 105 months which is equivalent to 95% of the time, had lapsed. Management did not explain how they intend to fast track the implementation of the projects. In the circumstances, delay in project implementation has affected the project's planned activities and therefore impacting negatively on service delivery to the public.

Submission by the Accounting Officer;

The reasons for low absorption of project funds are the same as for delayed project implementation as follows;

i) Difficulties in meeting financier conditions for letters of credit delayed procurement of key materials and equipment by the contractors and project activities, pushing back the timeline and disrupting project momentum. As a result, actual work begun years after the initial agreements and overall productivity and delivery schedules were affected.

ii) Requests for price variations by the contractors were made due to the time lapse between the signing of the contracts and the issuance of the way forward on the establishment of Letters of Credit. This was communicated to the financiers, who declined the request, citing contract terms that disallow price variations. This further delayed project implementation, impacting budget absorption.

iii) The COVID-19 pandemic caused significant delays in the project by disrupting material manufacturing, supply chains, and logistics, and by complicating inspections and testing. These issues extended the project timeline and led to overall setbacks. This was resolved through virtual factory acceptance tests.

iv) The lack of Government of Kenya (GoK) counterpart funding for the past two financial years has hindered project progress. Since GoK funding covers 72.89% of installation costs and Opec Fund, external funding covers 27.11%, the absence of GoK funds has led to pending bills totaling to Kshs. 183 million thus far, causing cash flow challenges for contractors and delaying project advancement.

Mitigation Measures:

i) To speed up project implementation, the Corporation has increased supervision with regular updates, fast-tracked inspections and commissioning, and streamlined invoicing and payment processes to reduce delays.

- Credit Extension: The Corporation made efforts by requesting for extension of the credit availability period, which was successfully granted until December 31, 2024. The current status of progress on site installation works and overall project progress summary is outlined in Table 1and 2 below:

Table 1: The current status of progress of site installation works:

Progress of Site Installation Works	**Total**	**Completion (%)**
Commissioned	**170**	**42%**
In progress	**30**	**7%**
Not started	**171**	**43%**
Awaiting TX	**3**	**1%**
Awaiting Commissioning/Shutdown	**25**	**6%**
Wayleave issues	**3**	**1%**
Total	**402**	**100**

Table 2: The current overall project progress summary is as follows:

Summary	**%**
Material delivery progress	97%
Progress of site works	52%
Overall Project Progress	**74%**

With the extended credit period until December 31, 2024, and subject to the availability of budgetary allocations, management is confident that the project will be completed successfully and its objectives will be achieved.

Committee Observations and Findings

The Committee noted that;

i) **Implementation of the project was extremely slow. The project commenced three years after signing of contracts, and another three years after signing of the financing agreement;**

ii) **National Treasury failed to provide counterpart funding for two years;**

iii) **Reasons for delay cited by the Accounting Officer should have been foreseen.**

Committee Recommendation

The Committee reprimands the Accounting Officer for poor project management and recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

1371. Pending Bills

Annex 3A to the financial statements reflects pending bills totaling to Kshs.501,424, 309 as at 30 June, 2022. The Management did not explain reasons for non-settlement of the bills and therefore the project is at the risk of incurring significant interest costs and penalties with the continued delay in payment. Further, failure to settle bills during the year to which they relate distorts the financial statements and adversely affects the budgetary provisions for the subsequent year as they form a first charge.

Submission by the Accounting Officer

As observed at the time of the audit, the Corporation had submitted invoices totaling Kshs. 501,424,309 at various points throughout the financial year to different financiers for payment. Despite these submissions, as of June 30, 2022, these invoices had not yet been settled by the financiers to the contractors.

The Corporation made the required disclosure of this situation. This disclosure was crucial for maintaining transparency and ensuring that stakeholders were informed of the pending financial obligations.

Despite these pending payments, the budget allocated for them remained intact and available. The funds had already been committed within the budget, so the settlement of these outstanding amounts in the subsequent financial year, 2022/23, did not have any additional budget implications. The only pending issue was the release of payments by the various project financiers. This ensured that the project's financial obligations were met without impacting the budget of the subsequent fiscal year.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1372. Failure to Open and Maintain a Separate Project Bank Account

The statement of receipts and payments reflects total receipts of Kshs.935, 490,440 comprising of Kshs.784,334,227 and Kshs.151,156,213 in respect of payments made by third parties as loans from external development partners and transfers from Government entities respectively. However, no separate bank account was opened and operated by the Project. Project funds were commingled in Corporation's bank accounts where project payments and receipts are recorded. No evidence of exemption by the Cabinet Secretary was provided against opening a project account. In the circumstances, Management was in breach of the law and did not comply with requirements of the financing agreement.

Submission by the Accounting Officer

As observed in the audit, the Corporation did not operate a separate bank account for the Rural Electrification in Five Regions Project. Article IV (Particular Covenants), Section 4.01 of the loan agreement with the Lead Financier (BADEA) states as follows: The borrower shall ensure that REA, with respect to the project, will (i) keep separate accounts for the project, (ii) have these accounts audited annually in accordance with sound auditing principles consistently applied, by

independent auditors acceptable to BADEA, (iii) furnish to BADEA, as soon as available but no later than six months after the end of each fiscal year, (A) certified copies of the audited financial statements and (B) the auditor's report, in such scope and detail as BADEA may reasonably request, and (iv) provide any additional information concerning the accounts, financial statements, and audits as BADEA may reasonably request from time to time (Annex 6: Loan Agreement Rural Electrification in five areas project between the Republic of Kenya and BADEA).

Additionally, Section 76(1) of the Public Finance Management (National Government) Regulations, 2015, stipulates for the purpose of disbursement of project funds, there shall be opened and maintained a project account for every project at Central Bank of Kenya unless it is exempted by the Cabinet Secretary, in writing, into which all funds shall be kept and such an account shall be known by the name of the project for which it is opened and each project shall maintain only one bank account.

The payment arrangement for this project involves the use of letters of credit through special commitments, as well as direct payments. In this instance, all payments by the donors, except for the Government of Kenya (GoK) counterpart funding, are processed by the financiers upon submission of the requisite documentation through the Ministry of Energy and the National Treasury. Each financier - Arab Bank for Economic Development in Africa (BADEA), OPEC Fund for International Development (OFID), Saudi Fund for Development (SFD), and Abu Dhabi Fund for Development (ADFD) operates a unique disbursement system and processes. Therefore, no cash equivalents are expected to be received by the Corporation, the Ministry of Energy, or the National Treasury from the financiers for the purposes of payment.

Regarding GoK counterpart funding, the Corporation, Ministry of Energy, and National Treasury typically budget for it as Exchequer Development to fund the electrification of public facilities. There is no specific line item or vote for BADEA funds approved through the National Treasury. The National Treasury releases exchequer funds to the Corporation via the Ministry of Energy on a quarterly basis as consolidated amounts. These funds are not separated by specific or special projects, including GoK counterpart funding for BADEA.

Our interpretation of the financing agreement and the Public Finance Management (National Government) Regulations, 2015, as stated earlier, is that the requirement to establish a separate bank account pertains to situations where actual cash is disbursed by donors to finance specific projects. In this case, neither the Corporation, the Ministry of Energy, nor the National Treasury anticipated receiving such funds. Therefore, the Corporation did not violate or contravene any law by not establishing a separate bank account.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

OLKARIA-LESSOS-KISUMU TRANSMISSION LINES CONSTRUCTION PROJECT (JICA LOAN NO. KE-P28) - KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED

REPORT ON THE FINANCIAL STATEMENTS

1375. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects a total income budget of Kshs.1,800,000,000 against actual receipts of Kshs.2,006,536,296 resulting to excess collection of Kshs.206,536,296. The statement also reflects a total expenditure budget balance of Kshs.1,800,000,000 against actual expenditure of Kshs.1,841,137,918 resulting to unauthorized expenditure of Kshs.41,137,918. In the circumstances, it was not possible to confirm whether the excess collection of Kshs.206,536,296 and unauthorized expenditure of Kshs.41,137,918 was lawful.

Submission by the Accounting

The excess vote of 206,536,296 on total receipts is attributed to the final disbursement from exchequer of Ksh 300Million for FY 2020/2021 received in FY 2021/2022.

Whereas the additional expenditure of Kshs 41,137,918 was occasioned by Supplementary II budget cuts that was done after expenditure had been incurred.

Cabinet approval for Public Sector to move to accrual accounting as per Kenya Gazette Vol. CXXVI-No. 135 will help clear the differen5tces in budgetary control and performance.

Committee Observations and Findings

i) The Committee noted that transition to accrual accounting would settle the matter.
ii) The Committee found that the matter was resolved.

1376. Pending Bills

As disclosed in Annex 2 to the financial statements, the Project Management contracted works and services amounting to Kshs.13,654,462,843. The amount certified payable as at 30 June, 2022 amounted to Kshs.10,389,802,034 out of which Kshs.9,257,439,393 was paid leaving a balance of Kshs.1,132,362,641 as pending bills. In the circumstances, failure to settle bills during the year in which they relate to distorts the financial statements and adversely affects the budgetary provisions in the subsequent years as they form a first charge.

Submission by the Accounting Officer

The balances outstanding as at 30th June 2021 was attributable to outstanding invoices for services rendered. The invoices were not settled because they were delivered at the end of the financial year. The invoices were settled in the subsequent financial year as outlined below.

Nippon-Kshs. 67,032,248 – See statement attached, Nari-Kshs.204,372,296.15 See statement attached, Kalpataru- Kshs. 181,100,244.85.

However, a balance of Ksh 668,587,903 is still outstanding, KETRACO has made a request for funding through the budgetary process.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer settles all pending bills as first charge as per the provisions of Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

1377. Long Outstanding Wayleave Compensation

As disclosed in Annex 3 to the financial statements, the expected compensation to landowners amounted to Kshs.5,319,679,198 for wayleave acquired since inception of the Project in February 2016. The amount certified amounted to Kshs.3,203,743,567 and the amount paid to date amounted to Kshs.3,179,516,042 leaving a balance of Kshs.24,227,525. Management attributed failure to pay the amount to lack of budgetary allocation from The National Treasury and lengthy land valuation negotiations due to absentee landlords and various court injunctions. Management has not put in place appropriate measures to obtain funding, identify absentee landlords and identify alternative dispute resolution mechanism to successfully implement the project and deliver services to Kenyan residents. In the circumstances, the long outstanding wayleave compensation has negatively affected the Project's planned activities thus impacting negatively on service delivery to the public.

Submission by the Accounting Officer

The major challenge with outstanding wayleaves compensation is lack of budgetary allocation. Management has included the balance in the pending bills and requested for budgetary from the National Treasury.

The project was completed and energised in June 2021. The transmission line is supplying power to the Western region of Kenya and has enhanced power supply stability and connection of more households in the region.

Committee Observations and Findings

The Committee observed that KETRACO had completed the project and launched it without compensating landowners in breach of sections 111, 115 and 117 of the Land Act.

Committee Recommendations;

The Committee reprimands the Accounting Officer for failing to compensate the landowners and thus directs that the Accounting Officer settles wayleave compensation and submit a status report within three (3) months upon adoption of this report by the House.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1379. Lack of Automation in the Financial Reporting Process

Review of the financial reporting process for the project revealed that there is significant manual intervention in preparation of financial reports. Whereas the sub-ledgers are extracted from SAP System through the Business Intelligent Reporting Module, the processing of trial balance and

financial statements is done manually on excel. Consequently, the manual intervention may result in errors in the Project financial statements.

Submission by the Accounting Officer

The company is in the process of fully automating the projects reporting system (Project services module in SAP) and integrating SAP with Integrated Location Intelligence System (ILIS). This will ensure end to end processing of the project financial information in the system and reporting. Subsequently, KETRACO has engaged BI experts who are helping in full automation of the projects module in the SAP.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

220KV AND 132KV TRANSMISSION LINES AND SUBSTATIONS (EXIM BANK OF INDIA FUNDED) PROJECTS - KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED

REPORT ON THE FINANCIAL STATEMENTS

1382. Liquidation of Contractor

As reported in prior years, the contractor of Lot 1A 220KV Turkwel-Ortum-Kitale Substations was contracted on 16 April, 2013 at a contract sum of US$19,972,680 that was later revised to US$18,100,120. As at the time of the contract termination, the contractor had achieved overall completion status of 73%. Liquidation orders were issued against the contractor in July, 2018 by the courts in India resulting in challenges in completing the project due to lack of financing. According to Management, another contractor is in the process of being identified to take over the remaining works. In the circumstances, the Project may not be completed on time and may also experience cost overruns. My opinion is not modified in respect of this matter.

Submission by the Accounting Officer

The initial contract awarded to Jyoti Structures Limited was terminated in 17th September 2018. KETRACO procured a new contractor to complete the Ortum and Kitale substations. The contractor, Shyama Power Limited of India whose contract became effective on 2nd June 2022 is currently carrying out civil works and equipment installation at Kitale and Ortum Substations. The Ortum substation was completed in 30th April 2024. The Kitale substation is expected to be completed and commissioned in September 2024.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendations

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report by the House.

1383. Delay in Project Completion

The Lot 1A -220KV Substation at Turkwel, Ortum and Kitale and Lot 3A- 132/33KV Machakos, Konza-Kajiado - Namanga Transmission line reported 78% and 90% completion rates respectively, by 30 June, 2022. Lot 1A of the Project is currently suspended and significant works remain undone. Further, construction works are yet to commence at the main strategic substation in Turkwel and this may result in underutilization of the Project. In addition, Lot 3A was expected to be completed by 30 December, 2019, but as at 30 June, 2022 the completion rate was 90%. In the circumstances, the Project deliverables may not be realized and hence delay delivery of benefits to the intended beneficiaries.

Submission by the Accounting Officer

LOT 1A

The contract faced delays due to termination of the initial contract by Jyoti structures. KETRACO procured a new contractor M/S Shyama Power Limited of India to complete the Ortum and Kitale substations.

The Ortum substation was completed in 30th April 2024. The Kitale substation is expected to be completed and commissioned in September 2024. The Turkwel substation was descoped.

LOT 3A (Machakos Konza, Kajiado Namanga Transmission Line)

The project was completed and energised on 14th February 2024. The transmission Lines has strengthened power supply in Machakos, Konza Isinya and Namanga and its environs.

Committee Observations and Findings

i) The Committee noted the submission by the Accounting Officer.
ii) The Committee found that the matter was resolved.

1384. Pending Accounts Payable

Note 12:1 to the financial statements reflects pending accounts payables totalling to Kshs.147,332,347. Management did not explain why the bills were not paid during the year they were incurred. The Project is therefore at risk of incurring significant interest costs and penalties with the continued delay in payment. Failure to settle bills during the year they relate to distorts the financial statements and adversely affects the budgetary provision of the subsequent year as they form the first charge.

Submission by the Accounting Officer

The pending bills amounting to KSh.133,882,114 relates to payments due to M/S Shyama Power as a result of the 30th June 2022 cut-off date. These were settled in the subsequent years. The balance of KSh 13,450,260 relates to Jyoti Structures limited that was declared bankrupt. The legal proceedings to determine the case is yet to be finalized.

Committee Observations and Findings

The Committee noted the explanation given by the Accounting Officer.

Committee Recommendation

The Committee recommends that the matter awaits court outcome.

1385. Other Pending Payables

Note 12.2 to the financial statements reflects other pending payables totaling to Kshs.37,878,102. The amount relates to compensation of landowners for wayleave acquired since inception of the Project. Management attributed failure to pay the amount to lack of budgetary allocation from The National Treasury and lengthy land negotiations between the landowners, the Kenya Electricity Transmission Company and the County Government of Kajiado. In the circumstances, delayed resolution of compensation, may hinder timely delivery of the Project's objectives.

Submission by the Accounting Officer

The major challenge with outstanding wayleaves compensation is lack of adequate budgetary allocation. Management has included the balance in the pending bills and in the subsequent years, continued to request for budgetary support from the National Treasury through the budgeting process.

Committee Observations and Findings

The Committee observed the failure of the Accounting Officer to prioritize compensation to landowners, in breach of sections 111, 115 and 117 of the Land Act.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to compensate landowners and directs that the landowners be compensated promptly, and a status report on the same submitted within three (3) months of the adoption of this report by the House.

1386. Budgetary Control and Performance

The statement of comparison of budget and actual amounts for the year ended 30 June, 2022 reflects actual receipts of Kshs.574,848,172 against the budgeted receipts of Kshs.464,000,000 resulting in excess receipts of Kshs.110,848,172 or 24% of the final receipt budget. Further, the actual expenditure for the year amounted to Kshs.430,227,771 against the budgeted expenditure of Kshs.464,000,000 resulting to under expenditure of Kshs.33,772,229 or 7% of the final expenditure budget. Management attributed the under expenditure to late disbursement of funds from The National Treasury and reduced proceeds from borrowing due to termination of contractual works. In the circumstances, the regularity of the excess receipts and under expenditure could not be confirmed.

Submission by the Accounting Officer

The excess receipts of Kshs.110,848,172 was occasioned by Quarter 4 disbursement of Ksh 238,875,000 for FY 2020/2021 that was received on 6th July 2021, against exchequer budgeted receipts of Ksh 100Million. A draw down of Ksh 235,973,173 was made against a budgeted receipt of Ksh 364 Million therefore resulting Ksh 128,026,827 of undrawn funds, the net effect resulted to a excess receipts of Ksh 110,848,172.

The under expenditure of KShs.33,772,229 was occasioned by delay in project implementation activities by the contractor.

Cabinet approval for Public Sector to move to accrual accounting as per Kenya Gazette Vol. CXXVI-No. 135 will help clear the differences in budgetary control and performance.

Committee Observations and Findings

The Committee noted that transition to accrual accounting would settle the matter.

Committee Recommendation

The Committee recommends that the Auditor Generalm ascertains progress in subsequent audit.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1387. Purchase of Goods and Services

The statement of receipts and payments reflects purchase of goods and services totaling to Kshs.8,903,324 as disclosed under Note 11.3 to the financial statements. However, review of records provided for audit revealed that the Project stalled in 2018 after the contractor went under liquidation. The Management has not provided explanations for incurring expenditure on a stalled project. In the circumstances, the propriety and validity of purchase of goods and services expenditure of Kshs.8,903,324 for the year ended30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

Two projects are funded by the Exim Bank of India: -

- Turkwel – Ortum – Kitale Transmission Line and substations
- Machakos – Konza – Kajiado – Namanga Transmission Line and substations.

In 2021/2022, Transmission Equipment was procured as follows: -

	FY 2021/22		
	Turkwel-Ortum-Kitale	Machakos-Konza-Kajiado-Namanga	Total
	KShs	**KShs**	**KShs**
Professional fees	-	6,110,000.00	6,110,000.00
Other operating expenses	36,500.00	-	36,500.00
Site travel	2,756,824.00	-	2,756,824.00
Total	**2,793,324.00**	**6,110,000.00**	**8,903,324.00**

The professional fees were incurred in the Machakos-Konza-Kajiado-Namanga TL which was being implemented by Shyama Power and not MS. Jyoti Structures Limited, being the bankrupt entity as indicated on the issue above, the contractor had a valid active contract, and the consultancy was based on progress of works being undertaken.

In the 2021/2022 financial year, a new contractor had been engaged to complete the Ortum-Kitale Substation and preliminary costs were incurred to allow for commencement of completion works.

Committee findings and observations;

The Committee noted that the response by the Accounting Officer.

Committee recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report by the House.

1388. Transfers to Olkaria – Lessos - Kisumu Transmission Line

As reported in the previous year, Kshs.128,315,126 was transferred to Olkaria Lessos – Kisumu Transmission Construction Project. However, the financial statements for Olkaria-Lessos – Kisumu Transmission Line Project have not disclosed any receipt from this Project. Consequently, the accuracy, completeness and validity of the transfers to Olkaria Lessos – Kisumu Transmission Construction Project totalling to Kshs.128,315,126 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

In 2020/2021, Kshs 128,315,126 was transferred from the Machakos-Konza-Kajiado-Namanga TL to the Olkaria-Lessos-Kisumu TL. In the Olkaria-Lessos-Kisumu TL accounts, the receipt was shown under Note 11.2.

Committee Observations and Findings

i) **The Committee noted the submission by the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

1389. Purchase of Transmission Equipment

Note 11.4 to the financial statements reflects transmission equipment payments amounting to Kshs.314,705,511. However, the contractor stopped working on the project in July, 2018 after they went into liquidation and the contract was terminated. The Management has not provided details of the expenditure on transmission equipment. Under the circumstances, the propriety and validity of expenditure on transmission equipment totalling Kshs.314,705,511 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The two projects below are funded by the Exim Bank of India:-

- Turkwel – Ortum – Kitale Transmission Line and Substations
- Machakos – Konza – Kajiado – Namanga Transmission Line and Substations

In 2021/2022, Transmission Equipment was procured as follows: -

	FY 2021/22		
	Payments made by the entity in cash	Payments made by third parties	Total payments
	KShs	KShs	KShs
Turkwel-Ortum-Kitale	78,732,338.00	165,124,037.88	243,856,375.88
Machakos-Konza-Kajiado-Namanga	-	70,849,134.53	70,849,134.53
Total	**78,732,338.00**	**235,973,172.41**	**314,705,510.41**

The Kshs 243,856,375 incurred on Turkwel-Ortum-Kitale was payment for 2 invoices for contractual works done by M/s KEC International Ltd for Ksh 60,841,336.28 for the transmission line which was completed on 30th March 2020. The balance of Ksh 183,015.039.60 was advance payment to M/s Shyama Power India Limited for the completion of Ortum and Kitale Substations.

Kshs 70,849,134.53 was made in the Machako-Konza-Kajiado-Namanga TL to M/s Shyama Power India Limited which is an active line and for which the contractor has a valid contract.

Committee Observations and Findings

i) **The Committee noted the submission by the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1390. Manual Intervention in the Financial Reporting Process

As reported in the previous year, a review of the financial reporting process of the Project revealed significant manual interventions. Although the sub-ledgers are extracted from SAP system through the business Intelligence Reporting Module, the compilation of the trial balance and financial statements is done manually on excel worksheet. Consequently, the manual intervention exposes the project reporting to risk of misstatements.

Submission by the Accounting Officer

The company is in the process of fully automating the projects reporting system (Project services module in SAP) and integrating SAP with Integrated Location Intelligence System (ILIS). This will ensure end to end processing of the project financial information in the system and reporting.

Subsequently, KETRACO has engaged BI experts who are helping in full automation of the projects module in the SAP.

Committee Observations and Findings

The Committee noted that transition to accrual accounting would settle the matter.

Committee Recommendation

The Committee recommends that the Auditor General reviews progress of transition to accrual accounting in the next audit cycle.

ETHIOPIA – KENYA ELECTRICITY HIGHWAY PROJECT (ADB LOAN NO. 2000200003502 – MARIAKANI SUBSTATION PROJECT ID NO: P-ZI-FA0-162) - KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED

REPORT ON THE FINANCIAL STATEMENTS

1392. Delay in Project Deliverables

Review of project deliverables revealed that the Project was behind schedule with respect to the completion of the engineering works at 99%, procurements at 98%, construction works at 82% and testing and commissioning at 0%. As at 30 June, 2022 the activities executed were valued at Kshs.1,893,723,322 or 56% to the contract sum of Kshs.3,357,298,517. This was despite having the completion date reviewed to December 2022. In the circumstances, delays in completion of the Project may result in escalation of projected costs or expiry and withdrawal of funding by project financiers.

Submission by the Accounting Officer

There was a global delay in the shipment of critical items such as the Shunt Reactor due to the COVID- 19 Pandemic. There has since been an ease in shipments and materials have been delivered to site. The Project is at 99% completion rate and is due to be commissioned in December 2024.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report by the House.

1393. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects a total income budget of Kshs.911,765,710 against actual receipts of Kshs.646,168,025 resulting to underfunding of Kshs.265,597,685. The statement also reflects a total expenditure budget of Kshs.650,645,225 which differed with the income budget of Kshs.911,765,710 resulting in unbalanced budget by Kshs.261,120,485. In the circumstances, the revenue shortfall affected the planned activities and may have impacted negatively on service delivery to the public. Further, the project's budget was not balanced and Management was in breach of the law.

Submission by the Accounting Officer

The implementation of the project was delayed due to procurement challenges because of the COVID-19 pandemic. This has been majorly due to the delay in manufacturing and shipment of the Shunt Reactor which is critical to the project completion. The enumerated factors caused the underexpenditure/drawdown during the financial year. The shunt reactor has since been delivered to site and installed.

Management put in place contingent measures to monitor the project milestones and ensure completion of the project by December 2024.

Cabinet approval for Public Sector to move to accrual accounting as per Kenya Gazette Vol. CXXVI-No. 135 will help clear the differences in budgetary control and performance.

Committee Observations and Findings

The Committee noted that transition to accrual accounting would settle the matter.

Committee Recommendation

The Committee recommends that the Auditor General reviews progress of transition to accrual accounting in the next audit cycle.

1394. Pending Bills - Goods and Services

The project management contracted works and services amounting to Kshs.3,357,298,517 as disclosed in Annex 2A. The amount certified as payable amounted to Kshs.1,893,723,322 out of which an amount of Kshs.1,399,345,104 had been cumulatively paid leaving a balance of Kshs.494,378,218 as pending bills. The unpaid bills are likely to attract interest and penalties and or litigation and related legal expenses. In the circumstances, failure to settle bills during the year in which they relate to distorts the financial statements and adversely affects the budgetary provisions in the subsequent years as they form a first charge.

Submission by the Accounting Officer

The pending bills amounting to 494M were outstanding due to the contractor's inability to pay Withholding tax within the stipulated time. Subsequently the withholding tax was paid in the financial year 2022/2023 and invoices have been fully settled

Committee Observations and Findings

i) **The Committee noted the submission by the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

1395. Low Absorption of Funds

The Project duration of three and half years started in June, 2019 with an expected completion date of December, 2022 and total funding of Euro 26,510,000 equivalent of Kshs.3,199,086,297. As at 30 June, 2022, only Kshs.1,297,514,976 had been drawn leaving a balance of Kshs.1,901,571,321 or 59% undrawn with only six months remaining. The Project may not absorb all its funds with the limited time denying citizens the benefits of the loan. Further, the amount received as per project information (funding summary) under Note 1:7 of Kshs.1,297,514,976 was at variance with cumulative loans from development partners balance of Kshs.1,399,345,104 reflected in the

statement of receipts and payments resulting to unexplained variance of Kshs.101,830,128. In the circumstances, the cumulative loan receipts balance of Kshs.1,297,514,976 could not be confirmed.

Submission by the Accounting Officer

The funding under the supplementary is financing two projects being; Mariakani substation undertaken by China Camc Engineering Co. Ltd and the underground cable undertaken by Ms Dec- Hanhe Consortium as shown below:

Supplementary financing for Ethiopia Kenya 2000200003502

Loan amount	rate	ratio(%)	26,510,000	% of allocation
Mariakani Substation	Euros	54%	14,315,400	
Underground Cable	Euros	46%	12,194,600	
Total			26,510,000	
Cumulative Amount disbursed under supplementary for Mariakani as at 30.06.2023 in Euros			14,310,601	99.97%
Amount disbursed under supplementary for Mariakani as at 30.06.2023 in Kes			1,847,850,354	
Amount to be utilized for Underground Cable in Kes	153.34		1,869,898,014	

The draw down for Mariakani substation had been fully utilized under the supplementary loan as of 30 June 2023. The proportion utilized under the Main Loan for Mariakani was Euros 14,310,601 which represents 99.97% of its allocation while the balance will be utilized by the underground cable project which is expected to be completed by June 2025.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1396. Project Commitment Without Funding

According to the Project's work plan attached to the subsidiary agreement, procurement in respect of the Project was done on 25 January, 2016 which was also indicated as the contract commencement date. Further, review of the financing agreement and implementation agreement indicates that they were signed on 19 June, 2019 and 18 August, 2020 respectively. It appears that the procurement for the Project was done way before the financing agreement was signed which was contrary to Section 45(3)(a) of the Public Procurement and Asset Disposal Act, 2015. The section requires that all procurement processes be within the approved budget of the procuring entity and be planned by the procuring entity concerned through an annual procurement plan. In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Mariakani project is financed by two AfDB funds which were signed at different times. The main loan 2100150027845 was signed on 19th September 2012 while the Supplementary loan 2000200003502 was signed on 19th June 2019. The procurement was based on the main loan signed in 2012.

Committee Observations and Findings

i) **The Committee noted the submission by the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1397. Automation of the Financial Reporting Process

Review of the financial reporting process of the Project revealed significant manual interventions. Although the subledgers are extracted from SAP system through the Business Intelligence Reporting Module, the processing of the trial balance and financial statements was done manually on excel worksheets. In the circumstances, the manual intervention could result in errors in the preparation of financial statements.

Submission by the Accounting Officer

The company is in the process of fully automating the projects reporting system (Project services module in SAP) and integrating SAP with Integrated Location Intelligence System (ILIS). This will ensure end to end processing of the project financial information in the system and reporting. Subsequently, KETRACO has engaged BI experts who are helping in full automation of the projects module in the SAP.

Committee Observations and Findings

The Committee noted that transition to accrual accounting would settle the matter.

Committee Recommendation

The Committee recommends that the Auditor General reviews progress of transition to accrual accounting in the next audit cycle.

KENYA ELECTRICITY MODERNISATION PROJECT (IDA CREDIT NO.5587-KE) - RURAL ELECTRIFICATION AND RENEWABLE ENERGY CORPORATION

REPORT ON THE FINANCIAL STATEMENTS

1399. Delay in Project Implementation

As disclosed in paragraph 1.2 of the Project information and overall performance, the Project was earmarked to close on 30 December, 2022 following a one (1) year extension of the initial end date of 30 December 2021. In addition, Paragraph 1.7 on funding summary indicates that the Donor had made commitment amounting to Kshs.1,013,000,000 equivalent of USD 10,000,000 as at 30 June, 2022. However, the Project had drawn a total of Kshs.218,065,903 equivalent to USD 2,131,523 leaving Kshs.894,934,097 or 80% of Donor commitment undrawn. In the

circumstances, the Project may not fully utilize the credit within the remaining Project duration and the Project's planned objectives may not be achieved.

Submission by the Accounting Officer

The Kenya Electricity Modernization Project (KEMP), funded by the World Bank, commenced in October 2019. The project has experienced several delays, primarily due to COVID-19 Pandemic - The pandemic significantly impacted material manufacturing and delivery. Lockdowns and restrictions led to the temporary closure or scaling down of operations in major manufacturing hubs, particularly in China. This disruption delayed the procurement and delivery of essential materials required for the project.

To address this challenge, the project's withdrawal rights were extended to June 30, 2023, with a disbursement deadline of December 31, 2023. This extension permits the disbursement of funds through December 31, 2023, specifically for work completed by June 30, 2023.

Currently, four mini-grids have been pre-commissioned or commissioned as follows:

1. Wasini/Mkwiro in Kwale County - Commissioned on November 2, 2023
2. Mageta Island in Siaya County - Commissioned on August 30, 2024
3. Ngodhe Island in Homa Bay - Pre-commissioned on December 4, 2023
4. Takawiri Island in Homa Bay - Pre-commissioned on December 5, 2023

The pre-commissioning was conducted to test the system while addressing major snags. Customers are now metered and receiving supply. Non-critical works/snags are ongoing, with the operation and maintenance agreements being finalized with Kenya Power and Lighting Co. Ltd.

Additionally, the Solar Power Generation Plan (SPGP) and low voltage Power Distribution Network (PDN) have been installed at Kaeris and Kerio in Turkana County, and Dabel in Marsabit County. Pending Medium Voltage Network (MV) system installation (Sub-station, step-up and step-down transformers which are under procurement awaiting delivery of the transformers) for the three mini-grid sites is in progress.

The current absorption rates are 62.13% for the grant (US$4,660,434 received against a total commitment of US$7,500,000) and 50.98% for the loan (US$1,274,400 received against a total commitment of US$2,500,000), resulting in an overall absorption rate of 59.35% (US$5,934,834 received against a total commitment of US$10,000,000), as outlined in table 3 below.

Table 3: The Current Absorption rate

Source of funds	Donor Commitment		Amount received to date		Undrawn balance to date	
	USD	Kshs	USD	Kshs	USD	Kshs
	(A)	(A')	(B)	(B')	(A)-(B)	(A')-(B')
(i) Grant						
International Development Association - IDA	7,500,000	759,750,000	4,660,434	573,722,018	2,839,566	186,027,982
(ii) Loan						
International Development Association - IDA	2,500,000	253,250,000	1,274,400	129,083,976	1,225,600	124,166,024
Total	**10,000,000**	**1,013,000,000**	**5,934,834**	**702,805,994**	**4,065,166**	**310,194,006**

Committee Observations and Findings

i) **The Committee noted that the submission by the Accounting Officer was satisfactory.**
ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1400. Irregular Payment of Supply of Solar Power Generation Plants

The statement of receipts and payments reflects expenditure of Kshs.19,976,926 in respect of acquisition of non-financial assets. The expenditure includes two payments of Kshs.5,163,253 and Kshs.14,813,673 to an international company as advance payments and invoice settlement for supply of materials for a solar photovoltaic power generation plant respectively. Review of the payments and other contract documents revealed the following anomalies;

(i) The contract between the Corporation and the Supplier provided that the effective date of the contract will be after fulfilment of conditions which included execution of contract by both parties, submission of performance security by the contractor, advance payment to the contractor and submission of documentary credit to the contractor. In addition, the contract provided that if the conditions are not fulfilled within two months from the date of the contract because of reasons not attributable to the Contractor, parties shall discuss and agree on equitable adjustment to the contract. However, the conditions were not fulfilled and an adjustment to the contract in form of an addendum to the Contract was signed on 15 July, 2021, which was over 20 months from the date of the contract, extending the contract period to 31 July, 2022. Further, reasons for non-execution of the contract within two months from the contract date and a notice of extension were not provided for audit review.

(ii) Management paid an advance amount of Kshs.5,163,253 on 30 June, 2022, which was 10% of the total contract sum. However, the contract provided for 10% advance payment on total Carriage and Insurance Paid (CIP) amount. According to subsequent invoices from the contractor, only equipment valued at Kshs.14,799,596 had been invoiced as at 30 June, 2022, therefore an advance payment of Kshs.1,479,960 was due

to the Contractor. The resultant variance of Kshs.3,683,293 was not supported by invoices and shipping documents.

(iii) The contractor was paid full invoice amount of Kshs.14,799,596 in respect of equipment delivered, despite an earlier payment of 10% advance on the total contract sum, and the contract requirement to withhold 10% of the invoice amount until issuance of a completion certificate. Further, no withholding tax was deducted and remitted to the Kenya Revenue Authority (KRA). Consequently, the Contractor was overpaid by an amount of Kshs.2, 959,914 in respect of the deliveries invoiced in June, 2022.

In the circumstances, Management was in breach of the contract and the law in respect of withholding tax retention.

Submission by the Accounting Officer

Management submitted their response as follows:

i) The original contract was signed on October 9, 2019, for a duration of 12 months. Therefore, the addendum dated July 15, 2021, was for the extension of the contract and not for the fulfillment of its effectiveness.

ii) Advance Payment Error: An advance payment of Kshs. 5,163,253.00 made on June 30, 2022, was based on 10% of the contract price instead of the total carriage and insurance paid (CIP), this was fully secured through an advance payment guarantee/security which was valid until January 15, 2023. Full recovery of the advance payment has since been completed.

iii) Tax Exemption: The project benefits from a tax exemption on the importation of solar materials and equipment. The government provides tax exemptions on the importation of solar materials and equipment to promote the adoption of renewable energy solutions. This exemption applies to components such as solar panels, batteries, inverters, and other essential equipment. The tax exemption reduces the overall cost of importing these materials, making solar energy projects more financially viable. For the KEMP, this policy significantly lowers procurement expenses, allowing more funds to be directed towards project implementation and expansion, thereby enhancing access to clean and sustainable energy in underserved regions. This was approved through a KRA letter ref no. KRA/5/1002/5(6013).

Committee findings and observations;

The Committee noted that the advance payment was irregular.

Committee recommendation;

The Committee reprimands the Accounting Officer.

NAIROBI RING TRANSMISSION LINE PROJECT (AFD CREDIT NO. CKE6012.01, AFD CREDIT NO. CKE 1068 01, AFD CREDIT NO. CKE 1030.01B, EIB CREDIT NO.25.367/KE AND GOK) - KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED

REPORT ON THE FINANCIAL STATEMENTS

1403. Idle Bank Balances

The statement of financial position reflects bank balance of Kshs.2,105,417,426 as at 30 June, 2022. However, out of the opening bank balance of Kshs.2,712,090,024 only Kshs.606,672,598 was utilized during the year under review to finance project activities. This is an indication that the project secretariat may not have the capacity to utilize loan revenue. In the circumstances the Government of Kenya incurred commitment fees and loan interest on idle bank balances.

Submission by the Accounting Officer

The funds which represent Revenue from AFD, was drawn to KETRACO accounts as the financing was coming to an end, the funds were scheduled to be spend within three years, to the completion of the project in Financial Year 2023/2024. The amount of Kshs.606,672,598 was spent during the financial year 2021/2022.

KETRACO will give an account of the remaining funds as they are utilized pending the contract completion and payment of retention fee.

Committee Observations and Findings

1. **The Committee noted that the submission by the Accounting Officer was satisfactory.**
2. **The Committee found that the matter was resolved.**

1404. Long Outstanding Wayleave Compensation

As previously reported, the expected compensation to landowners for the wayleave acquired since inception of the project in October, 2012, amounted to Kshs.2,558,971,379 as disclosed in Annex 2B to the financial statements. However, out of the balance, an amount of Kshs.2,436,063,243 has been paid leaving an outstanding balance of Kshs.122,908,136 remaining unpaid. Management has attributed failure to pay the amount to the lack of budgetary allocation from The National Treasury and lengthy land valuation negotiations due to absentee landowners and various court injunctions on disputed court cases. In the circumstances, it is not clear when way leave acquisitions shall be completed to facilitate the project implementation to its successful completion.

Submission by the Accounting Officer

The matter as raised above shows the position as per the FY 2020/2021.The current position based on the draft financial statements is as indicated below.

Name	Brief Transaction Description	Original Amount	Date Payable Contracted	Amount of Certified Work To-Date	Amount Paid To-Date	Outstanding Balance FY 2021/22	Outstanding Balance FY 2020/21	Comm
		a	b	c	d	e=c-d		
Amounts due to Third Parties		Kshs		Kshs	Kshs	Kshs	Kshs	
Project Affected Persons	Wayleaves compensation	2,524,748,905	2012-2020	2,524,748,905	2,401,840,769	122,908,136	159,410,110	(i)
Total		**2,524,748,905**		**2,524,748,905**	**2,401,840,769**	**122,908,136**	**159,410,110**	

Therefore, the correct balance is ksh.122,908,136. The major challenge with outstanding wayleaves compensation is lack of budgetary allocation. Management has included the balance in the pending bills and requested for budgetary support in the FY 2022-2023 supplementary budget and the FY 2023/2024 budget.

Committee Observations and Findings

The Committee noted the inordinate delay in compensation of landowners, in breach of sections 111, 115 and 117 of the Land Act.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to prioritize compensation of landowners and directs that the Accounting submits a payment status report within three (3) months of the adoption of this report by the House.

1405. Delay in Project Implementation

The Project implementation report indicated that the project was behind schedule with respect to the completion of the Kimuka Sub-Station being at 99% and Malaa Sub-Station being at 90%. This was despite having the completion date reviewed three times from May, 2020 to November, 2022. In the circumstances, the delay in completion of the Project may result in escalation of project costs and withdrawal of funding by financiers.

Submission by the Accounting Officer

Delays in completion of Malaa substation were due to delayed site hand over for the substation in June 2018. In addition implementation delayed due to procurement challenges because of the COVID-19 pandemic. This has been majorly due to the shortage of containers globally delaying supply of equipment and material to the substations.

Management has ensured that the project is adequately funded and the escalation of project costs is less probable. This included the advance drawdown of funds to ensure adequate financing is available for project completion. Kimuka Sustation has since been completed and commissioned in July 2024. The substation has strengthened power supply in Kajiado, Nairobi and Parts of Kiambu Counties.

Committee Observations and Findings

1. **The Committee noted that the submission by the Accounting Officer was satisfactory.**
2. **The Committee found that the matter was resolved.**

1406. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects actual final receipts budget of Kshs.1,387,000,000 against actual receipts of Kshs.10,230,537 resulting to financing deficit of Kshs.1,376,769,463 or 99%. The statement also reflects a final expenditure budget of Kshs.1,387,000,000 against actual expenditure of Kshs.616,903,135 resulting to budget under absorption of Kshs.770,096,865 or 56% of the approved budget. The revenue shortfall and under expenditure affected the planned activities and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

Based on reviewed financial statements the actual final receipt is KShs 10,230,537 against final receipts budget of KShs 1,387,000,000 resulting to financing deficit of KShs 1,376,769,463.

Further, actual budgeted receipts of KShs 10,230,537 against the actual expenditure of KShs 616,903,135 equivalent to 44% of the budget resulting to expenditure of KShs 606,672,598.

The expenditure of KShs 606,672,598 is not an overpayment but relates to payments made from an advance drawdown of AFD financing amounting to KShs 3,100,000,000 to the project account in the FY 2020/2021 which had been budgeted for during the said period (Attached Printed Estimates & Supplementary FY 2020/2021.

The advance drawdown to the project account was as a result of the risk of expiry of the loan in FY 2020/2021 without actual draw down.

Cabinet approval for Public Sector to move to accrual accounting as per Kenya Gazette Vol. CXXVI-No. 135 will help clear the differences in budgetary control and performance.

Committee Observations and Findings

The Committee noted that transition to accrual accounting would settle the matter.

Committee Recommendation

The Committee recommends that the Auditor General reviews progress of transition to accrual accounting in the next audit cycle.

1407. Pending Bills - Goods and Services

As previously reported, the Project Management contracted works and services amounting to Kshs.8,318,448,742 as disclosed in Annex 2A. The amount certified as payable amounted to Kshs.6,615,149,049 out of which Kshs.6,484,816,499 has been cumulatively paid leaving a balance of Kshs.130,332,550 as pending bills. The unpaid bills are likely to attract interest and penalties and litigation and related legal expenses which are wasteful expenditure. Failure to settle bills during the year in which they relate to distorts the financial statements and adversely affects the budgetary provisions in the subsequent years as they form a first charge.

Submission by the Accounting Officer

The pending bills amounting to KShs. 130,332,550 were as a result of the 30th June 2022 cut-off date. These were settled in July & August 2022 of the subsequent year. The balance of KShs

58,363,937 relate to Jyoti for the completed Transmission Line, however Jyoti Structures Limited was declared bankrupt. The legal proceedings to determine the case is yet to be finalized.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the matter awaits court ruling, and the Accounting Officer to provide a status report within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1409. Lack of Automation of the Financial Reporting Process

During the year under review, the Project's financial reporting process continued to have significant manual intervention. Whilst the subledgers and ledgers are extracted from Intelligence Business Reporting Module, the completion of the trial balance and financial statements is done manually on excel spread sheet. The manual intervention exposes the Project reporting to a greater risk of errors.

Submission by the Accounting Officer

The company is in the process of fully automating the projects reporting system (Project services module in SAP) and integrating SAP with Integrated Location Intelligence System (ILIS). This will ensure end to end processing of the project financial information in the system and reporting. Subsequently, KETRACO has engaged BI experts who are helping in full automation of the projects module in the SAP.

Committee Observations and Findings

The Committee noted the admission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer avails a status report within three (3) months of adoption of this report.

POWER TRANSMISSION SYSTEM IMPROVEMENT PROJECT (ADF LOAN NO.2100150023752) - KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED

REPORT ON THE FINANCIAL STATEMENTS

1411. Delay in Project Implementation

As reported in the previous year, a review of the project status revealed delay in implementation of the Project as detailed below: Line Foundations Erections Stringing Olkaria – Narok 100% 78.63% 96% Lessos – Kabarnet 100% 100% 66% Nanyuki – Rumuruti 100% 100% 66% Kitui-Wote 87% 61% 11% The Project whose completion date was 30 June, 2019 was rescheduled to April, 2020, following the engagement of another contractor for the remaining works on the Project which were significant. Further, it was observed that the Project's funding from the African Development Bank (AfDB) was terminated when the main contractor was declared insolvent in

his home country. In the circumstances, this Project may not be completed within schedule, resulting in delayed provision of expected services to the stakeholders.

Submission by the Accounting Officer

The initial contractor for Transmission lines M/S Jyoti Structures Limited was terminated on 19TH September 2018 due to bankruptcy. A new contractor M/S China CAMCE ltd was engaged. The AfDB financing was cancelled on July 2017.

The delay in the completion of the project has been caused by insufficient exchequer budgetary allocation to finance contractual works and wayleaves acquisition. The management requested additional financing in FY2022/2023 and FY 2023/2024 and FY 2024/2025 budget. However, the budgetary allocation has been inadequate and continues to hamper the completion of the project.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer in liaison with National Treasury prioritizes completion of the project.

1412. Budgetary Control and Performance

The statement of comparative of budget and actual amounts reflects actual receipts totaling to Kshs.136,792,701 against the budgeted receipts of Kshs.90,000,000 resulting in excess funding of Kshs.46,792,701. Further, actual expenditure for the year amounted to Kshs.447,805,244 against the budgeted amount of Kshs.90,000,000 resulting to an over expenditure of Kshs.357,805,244. Management attributed the over expenditure on utilization of brought forward funds from the previous year and slow implementation of the work plan in the previous year. However, no authority for utilization of the brought forward amounts or approval for implementation of the activities from previous year was provided for audit review. In the circumstances, it was not possible to confirm whether the over-expenditure was lawful.

Submission by the Accounting Officer

The excess receipts of Ksh Kshs.46,792,701 disbursements for the last financial year (FY2020/2021) received in July of (FY 2021/2022). The expenditure of Ksh 447,805,244 reflects payments to the contractor based on accrual basis, this accrued expenditure had been budgeted and funds received for in the previous financial years. The difference is as a result of cash and accrual basis of report of project financial statements as per the requirement of IPSAS.

Cabinet approval for Public Sector to move to accrual accounting as per Kenya Gazette Vol. CXXVI-No. 135 will help clear the differences in budgetary control and performance.

Committee Observations and Findings

The Committee noted that transition to accrual accounting would settle the matter.

Committee Recommendation

The Committee recommends that the Auditor General reviews progress of transition to accrual accounting in the next audit cycle.

1413. Pending Accounts Payable

Note 12.1 to the financial statements reflects pending accounts payable totalling Kshs.306,174,079. Management had not explained why the pending bills were not settled during the year in which they occurred. The Project is therefore at the risk of incurring significant interest on unpaid bills together with penalties thereon. Failure to settle bills during the year they relate to distorts the financial statements and adversely affects the budgetary provision for the subsequent year as they form the first charge.

Submission by the Accounting Officer

The amount of Ksh 306,174,079 is amount due to Jyoti Structures Limited, the contractor was declared bankrupt in 2017, they have not finalized their bankruptcy issues and therefore the amount has remained pending since then, it included certified works at the time of termination and retention amount at the time.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the matter awaits court outcome.

1414. Other Pending Payables

Note 12.2 to the financial statements reflects other pending payables totaling Kshs.67,256,878 relating to expected compensation to landowners for wayleaves. Management attributed failure to pay the amount to lengthy negotiations due to absentee owners and court injunctions. In the circumstances, delayed resolution of compensation may hinder delivery of the Project's objectives.

Submission by the Accounting Officer

The amount of Kshs.67,256,878 being pending wayleave compensation is occasioned by insufficient budget allocation to settle pending bills. KETRACO has continuously made requests for budgetary allocation to The National Treasury through the budgeting process.

Committee Observations and Findings

The Committee noted the inordinate delay in compensating landowners, in breach of sections 111, 115 and 117 of the Land Act.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to compensate landowners directs that the Accounting Officer to submit a status report within three (3) months of the adoption of this report by the House.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1416. Manual Intervention in the Financial Reporting Process

Review of financial reporting process revealed significant manual interventions. Although the ledgers and sub-ledgers are extracted from SAP through the Business Intelligence 452 Reporting Module, the processing of the trial balance and financial statements is done manually on excel spread sheets. In the circumstances, the manual intervention may result to errors in the Project's financial statements.

Submission by the Accounting Officer

The company is in the process of fully automating the projects reporting system (Project services module in SAP) and integrating SAP with Integrated Location Intelligence System (ILIS). This will ensure end to end processing of the project financial information in the system and reporting. Subsequently, KETRACO has engaged BI experts who are helping in full automation of the projects module in the SAP.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

MENENGAI GEOTHERMAL PROJECT AGREEMENT NO.CKE 1038.01K - GEOTHERMAL DEVELOPMENT COMPANY LIMITED

REPORT ON THE FINANCIAL STATEMENTS

1418. Cash and Cash Equivalents

The statement of financial assets reflects cash and cash equivalents balance of Kshs.336,889,000 comprising of bank balances in one (1) foreign currency account, two (2) local currency accounts and one guarantee deposit (escrow) account all held at a local bank. However, the balance excludes funds held in a deposit account and an escrow account with a balance of Kshs.36,257,453 (USD 305,197.42) and Kshs.1,002,000 (USD 8,434.34) respectively. In the circumstances, the accuracy and completeness of the cash and cash equivalents balance of Kshs.336,889,000 could not be confirmed.

Submission by the Accounting Officer

*i) Funds held in the call account of Kshs.*36,257,453 *(USD 305,197.42)*

In line with the steam receipts assignment agreement between GDC and Co-operative bank, all steam charges receipts are received through the Co-operative bank account number 02120160857600. There is a sweeping arrangement of funds from this account to the call account number 021501608576.

At the end of the year, the amount of Ksh 36,257,453 (USD 305,197.42) in the call account was in respect of the portion of steam charge receipts belonging to Head office and Bogoria Silali project operations. None of the funds were for Menengai project hence the exclusion as per the cashbook summary below:

Vote Head	Cashbook Amount (KES)
Bogoria Silali Project	28,987,720
Menengai project	-
Head Office	7,269,733
TOTAL	**36,257,453**

The funds for Bogoria and Head office had not been transferred to the respective bank accounts in ABSA and KCB Kipande due to the garnishee order.

ii) *Funds held in the escrow account of* Kshs.1,002,000 *(USD 8,434.34)*

The Company holds funds in the Escrow account in line with the agreement with Co-operative Bank for settlement of the term loan.

At the end of the year, the amount held in the Escrow account of Kshs.1,002,000 (USD 8,434.34) related to the interest portion the loan. The interest is disclosed in the Company's main accounts and not charged to the Menengai project.

Committee Observations and Findings

i) **The Committee noted that the submission by the Accounting Officer was satisfactory.**
ii) **The Committee found that the matter was resolved.**

1419. Long Outstanding Imprest

As disclosed in Note 10.13A to the financial statements, the statement of financial assets reflects imprest and advances balance of Kshs.1,176,000. Review of imprest and advances records revealed that imprests amounting to Kshs.469,000 had been outstanding for more than five (5) years making recovery doubtful while the balance had remained unsurrendered for over two years. This is contrary to Regulation 93(5) and (6) of the Public Finance Management (National Government) Regulations, 2015 which requires that a holder of temporary imprests shall account or surrender imprest within seven (7) working days, and in the event the holder fails to account for an imprest on due date, the Accounting Officer shall take immediate action to recover the full amount from the salary of the defaulting officer. Management explained that some of the officers have since separated with the Company and hence legal action for recovery was being considered. However, Management did not provide evidence on commencement of legal action. In the circumstances, the accuracy and valuation of the debts amounting to Kshs.1,176,000 could not be confirmed.

Submission by the Accounting Officer

The outstanding imprest of more than five years of Ksh.469,000 related to separated staff who have not cleared with the Company to facilitate offset of the outstanding imprest from their dues.

Enforcement measures have been instituted with demand letters being sent to the separated staff. This recovery process has started bearing fruit with collections from some of the separated staff.

Committee Observations and Findings

The Committee noted that the submission by the Accounting Officer was unsatisfactory.

Committee Recommendations

The Committee reprimands the Accounting Officer and recommends that legal action be taken on ex-staff with outstanding imprest, and submits a status report within three (3) months of adoption of this report.

1420. Unsupported Expenditure

The statement of receipts and payments and as disclosed in Note 10.8 to the financial statements reflect purchase of goods and services amounting to Kshs.657,006,000. Included in the amount is Kshs.34,123,000 incurred in respect of insurance expenses. However, the terms and conditions of the insurance policy cover provided for audit verification was for the Company and not specific to the Project. In addition, Management did not provide the approved work plan to confirm whether the expenses related to the Project. Further, the balance includes a balance of Kshs.488,106,777 in respect of operating expenses, out of which an amount of Kshs.105,316,316 was incurred on medical expenses. However, Management did not provide an approved project workplan to confirm whether the expenditure related to the Project. Further, an amount of Kshs.12,470,258 paid to a supplier was not supported by contract agreements, invoices, goods received notes and inspection and acceptance committee report. In the circumstances, the accuracy and regularity of expenditure amounting to Kshs.151,129,000 could not be confirmed.

Submission by the Accounting Officer

Menengai project is an ongoing project which was approved for implementation in the company's annual budgetary allocation.

Insurances

The Company's insurances are budgeted for on an annual basis and incorporated in the procurement plan. The company apportions insurance expenses to the project in line with the GDC fixed assets capitalization & management policy clause 6.13. The amount of Ksh 34,123,000 related to various insurance policies allocated to the Menengai project.

Staff medical

The Company's staff medical expenses are budgeted for on an annual basis under staff costs. The Company's fixed assets capitalization & management policy clause 6.13 stipulates that 'Employees costs directly and indirectly attributable to development of projects are Capitalized'. Ksh. 105, 316,316 related to medical expenses for Menengai project staff.

Kshs.12,470,258 paid to a supplier.

The amount of Ksh 12,470,258 was paid to M/s EIM solutions in respect of Microsoft Licenses.

Committee Observations and Findings

i) **The Committee noted the submission by the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

1421. Unsupported Expenditure on Acquisition of Non-Financial Assets

The statement of receipts and payments reflects expenditure on acquisition of non-financial assets of Kshs.450,493,000 which as reflected in Note 10.10 to the financial statements, includes expenditure on purchase of specialized plants and equipment's and exploration and evaluation activities amounting to Kshs.168,289,000 and Kshs.189,986,000, respectively. According to Management, the expenditure on exploration and evaluation activities related to land lease, rent and rates, security expenses and Geothermal Advisory Board consultancies. However, supporting documents for the expenditure, such as lease agreements and contracts, were not provided for audit review Similarly, the expenditure on purchase of specialized plants and equipment was not supported with contract agreements, invoices and inspection and acceptance committee reports. In the circumstances, the accuracy and propriety of expenditure amounting to Kshs.450,493,000 on acquisition of non-financial assets could not be confirmed.

Submission by the Accounting Officer

Expenditure on acquisition of specialized plant and equipment of Ksh 168,289,000 related to payments for the steam gathering system and greenhouse modification. Expenditure on exploration and evaluation activities of Ksh 189,986,000 relate to land lease, rent & rates, security, licenses, geothermal advisory Board consultancies among others

Committee Observations and Findings

The Committee noted that the Accounting Officer failed to avail lease agreement and inspection & acceptance reports.

Committee Recommendations

The Committee reprimands the Accounting Officer and recommends that the Auditor General reviews the documents in subsequent audit.

1422. Unauthorized Expenditure

Review of the statement of comparative budget and actual amounts revealed that an amount of Kshs.657,006,000 was incurred on purchase of goods and services against a budget of Kshs.591,915,000 resulting in unapproved over-expenditure of Kshs.65,091,000 or 9% of the budget. Further, an amount of Kshs.450,493,000 was incurred on acquisition of non-financial assets against a budget of Kshs.273,365,000, resulting to an over-expenditure of Kshs.177,128,000 or 65% of the budget. Management explained that the over-expenditure was as result of payment of invoices which had been budgeted for and accrued in the previous year. The expenditure were not budgeted for in the year under review.

Submission by the Accounting Officer

Un-approved expenditure of Ksh 65 million

The variance of Kshs.65,091,000 arose due to overlap in loan repayment between two financial years whereby the quarterly repayment of the loan principal portion for the previous year (period April- June 2021) budgeted for in Fy 2021 which became due and payable in July 2021.

Unapproved expenditure of Ksh 177million
The variance of Kshs 177 million under acquisition of non-financial assets was driven mainly by Kshs 167 million paid to M/s H-Young for the steam gathering system. This cost was budgeted for in FY 2020/21. Payment could not be made in the budget year because authority to pay from European Investment Bank (EIB), the grant financier, was received in FY 2021/22. The funds for this expenditure were received on 20th April 2021. Management requested for authority to spend on 11th June 2021, and EIB granted authority to withdraw from the subsidy account on 29th July 2021.

The National Treasury prescribed Financial Statement Template (Statement of Comparative Budget and Actual Amounts" does not provide an avenue to report budget carry-overs for commitments/pending bills)

Committee Observations and Findings

i) **The Committee noted the submission by the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1423. Delay in Power Plants Development Under Menengai Phase I Project

As previously reported, a Project Implementation and Steam Supply Agreements (PISSA) signed with three (3) Independent Power Producers (IPPs) on 1 November, 2014 for development of a 35 MW geothermal power generating plant in Menengai Geothermal Project area provided that GDC would complete, test and commission the steam gathering system while the three IPPs upon getting partial risk guarantee would finalize the signing of the power purchase agreement and get a letter of support from the Government. The finalization of the IPPs conditions would oblige the lenders to provide the required funds for the Project. Review of implementation status of the IPPs and GDC deliverables as at 30 June, 2022 revealed the following: i. Quantum Power East Africa (QPEA) was yet to obtain a partial risk guarantee from The National Treasury. A request made on 9 October, 2019 was yet to be responded to as at 30 June, 2022. ii. Sosian Menengai Geothermal Power Limited (SMGPL) was awaiting the Kenya Power and Lighting Company PLC to finalize the signing of the Power Purchase Agreement (PPA), with the same still pending as at 30 June, 2022. iii. Orpower Twenty-Two Limited was to yet get a letter of support from the Government of Kenya as an application made on 24 April, 2019 had not been responded to. iv. The Company had sunk 52 wells, out of which 21 are productive after being completed, tested, and commissioned but the IPPs were yet to fulfil any of their obligations. Failure by the parties to fulfil their contractual obligations has led to delay in the Project implementation by over eight (8) years, risking the investment made by GDC of Kshs.69,055,342,000 on steam wells and associated infrastructure. Further, it was not certain when the Project would be completed since the effective

start date was indicated to be the date the IPPs take-over the sites. In addition, the amount spent continues to attract significant interest charges with no income generation. Management indicated that M/s Sosian Menengai Geothermal Power Limited's Power Purchase Agreement became effective on 23 September, 2021 and that it was mobilizing funds to start construction. However, no works had commenced while the status of the other two IPPs remained the same. In the circumstances, the public did not obtain value for money on expenditure of Kshs.69,055,342,000 on development of steam wells and associated infrastructure.

Submission by the Accounting Officer

The status is as below:

	Independent Power Producer	**Status at the point of Audit**	**Current status**
1	M/s Sosian Menengai Geothermal Power Limited	Power plant construction	Power plant is operational
2	M/s QPEA GT Menengai Limited	Financial Closure	Power plant construction
3	M/s Orpower 22	Awaiting issuance of the Government Letter of Support	Management is still pursuing with the Ministry and National Treasury and Economic Planning

Committee Observations and Findings

The Committee visited the site of the project and noted progress.

Committee Recommendations

The Committee recommends that the Accounting Officer submits a status update within three (3) months of adoption of this report by the House.

1424. Long Outstanding Pending Bills

Annexes 2A and 2B to the financial statements reflects pending bills totalling to Kshs.480,653,000 which were outstanding as at the end of the financial year. According to the pending bills ageing analysis provided for audit, bills totalling to Kshs.151,628,000 were outstanding from 2019/2020 and earlier years. However, review of expenditure records revealed payments made for current year's supplies before settlement of pending bills, implying that Management did not treat pending bills as a first charge during the financial year 2021/2022, contrary to The National Treasury in Circular No.10/2020 issued on 16 June, 2020. No explanation was provided for the failure prioritize payment of pending bills during the year under review. In the circumstances, Management was in breach of regulations.

Submission by the Accounting Officer

Management has given due regard to the issue of pending bills in compliance with the National Treasury Circular. Measures in place include the inclusion of pending bills as a standing agenda of the Board.

Regarding the below bills, some of the invoices relating to pending bills for supply of goods and services were not paid during the year due to cash flow challenges arising from delayed requisite approvals (authority to withdraw from the project account by European Investment Bank (EIB) for development partner commitments, unresolved issues around disputed amounts and litigations.

Below table gives an insight into the specifics for delayed /partial payment and actions thereof:

Payee	Date Contracted	Amount Outstanding as at 30/6/2022	Remarks on the bill	Submission by the Accounting Officer	Current Status
Pending bills with disputes					
Anchor Flour Millers Co. Ltd	5/12/2015	53,000	Subject to reconciliation	The reconciliation was completed. The balance as at 30th June 2022 was Nil	Closed
Lantech (Africa) Ltd	6/30/2015	938,000	Supplier in dispute with KRA over taxes	The amount is subject to the KRA orders and litigation which is yet to be finalized	Pending as it is subject to litigation
Ps- Ministry of Energy & Petroleum	1/11/2016	19,483,000	Awaiting finalization on issues around the license	The issue around geothermal license is yet to be finalized. The company has so far made partial payment of Ksh 5 million. The balance of Ksh 14.6 million to be settled upon finalization of the matter	Open
Sabco Millers Ltd	7/1/2015	1,109,000	Supplier dispute with the company	The matter is under litigation hence awaiting conclusion of the matter.	Pending
Hatari Security Guards	12/2/2019	46,896,000	The payment was subject to determination of the litigation.	The matter was concluded and amount payable determined. The company entered into a payment plan for settlement of the amount determined in instalments. The balance	Closed

Payee	Date Contracted	Amount Outstanding as at 30/6/2022	Remarks on the bill	Submission by the Accounting Officer	Current Status
				as at 30th June 2022 was Kes 31,657,000.	
Zonge International Inc	7/1/2015	165,000	Reconciliation item	The balance was subject to a reconciliation.	Open
Archamo Holdings	3/27/2018	72,000	Reconciliation item	The outstanding balance as per the financials was nil. The previous year's balance was Kes 72,000 which was cleared.	Closed
Great wall Drilling Company Ltd	6/29/2012	70,288,000	There is a dispute with the supplier on his claims with the company.	Management had made partial settlement with the supplier. The outstanding balance as per the financial statements is Kes 64,771,369. The balance is subject to conclusion of the matter	Outstanding balance has since been settled.
Pending bills with cash flow challenges					
Odex Chemicals Ltd	3/31/2019	12,624,000	Tax exemption not granted by KRA for drilling detergents financed by development partners.	Management has negotiated a payment plan with the supplier for partial settlement from exchequer disbursements. The outstanding balance as per the financial statements is Kes 11,624,000.	Outstanding balance has since been settled.
TOTAL		**151,628,000**			

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendations

The Committee recommends that the Accounting Officer submits a status update within three (3) months of adoption of this report by the House.

1425. Commingling of Funds

Review of bank records and cash books for the Project revealed that funds for Bogoria Silali Geothermal Project and the Company amounting to Kshs.251,767,495 and Kshs.1,102,744,123 respectively were held in Menengai Geothermal Project account, contrary to Regulation 76(1) of the Public Finance Management (National Government), 2015 which requires a project account to be opened, maintained, and operated solely for the purpose for which it was opened. In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Company receives all steam charge receipts from KENGEN through the Co-operative bank account number *02120160857600* in line with the assignment of steam charge receipts agreement which is a designated bank account for the Menengai project.

The funds are then allocated to the projects (Menengai and Baringo) and Head office in proportion with the budget allocation of A-I-A. The company's payroll costs are paid centrally from the Co-operative Kenya shillings bank account with refunds beings made from the respective projects. Additionally, the issue of the garnishee order at the end of the year hampered refunds to Bogoria and Head Office.

Committee Observations and Findings

The Committee noted that the Accounting Officer failed to operate a separate project bank account.

Committee Recommendations

The Committee reprimands the Accounting Officer for breach of Regulation 76(1) of the Public Finance Management (National Government), 2015.

KENYA DEVELOPMENT OF SOLAR POWER PLANT IN GARISSA PROJECT (GCL NO.2015 (10) -RURAL ELECTRIFICATION AND RENEWABLE ENERGY CORPORATION

REPORT ON THE FINANCIAL STATEMENTS

1428. Disputed Ownership of Land for the Solar Power Plant

Review of financial records for the Project revealed that Kshs.13,385,625,939 was incurred in the construction of a 50 MW Solar Power Plant during the financial year 2019/2020. However, the land on which the power plant is located was claimed by a Community Trust Group. Further, the group had instituted a legal suit against Rural Electrification and Renewable Energy Corporation (REREC) seeking to be compensated for the 220 acres of land. According to Management, compensation of the affected community was to be done through the County Government of Garissa. However, the payment from the County Government was rejected by the Trust Group who sought to be compensated directly by REREC. In addition, the amount claimed by the Trust Group was not quantified. In the circumstances, the ownership of land where the Solar Power Plant currently valued at Kshs.13,385,625,939 is constructed could not be confirmed.

Submission by the Accounting Officer

The court hearing was set for April 24, 2023. The court record revealed that the plaintiffs failed to appear on two occasions when the suit was scheduled for hearing, implying that the plaintiffs have lost interest in the suit. The court in the premises dismissed the plaintiff's action for non-attendance and lack of prosecution and gave the defendants the expenses of the suit.

However, following the dismissal of the case on the Solar Plant Land the Corporation wrote a letter to the County Government of Garissa dated July 7, 2023 on fast track formalization of the allocation of land, who hold in trust the unregistered community land on behalf of the communities.

The County Government responded on 23rd February, 2024 requesting for budget for formalization of the land for the power plant. The Corporation facilitated the budget and consequently carried out formalization of the land. The County Government is currently processing the part development plans (PDP) and certificate of ownership.

Committee Observations and Findings

The Committee noted that the Accounting Officer failed to obtain costs from the plaintiff as awarded by court.

Committee Recommendations

The Committee recommends that the Accounting Officer ensures receipt of the costs from the plaintiff and submits a status report on recovery of the award within three (3) months of adoption of this report by the House.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1429. Failure to Pay Pending Bills

Note 1 of other important disclosures reflects pending bills balance due to a contractor of Kshs.15,570,404 which has been brought forward from the financial year 2020/2021. Management did not explain why the pending bills were not budgeted for or paid during the year in compliance with the Treasury Circular No. 10-2020 of 16 June, 2020 requiring prioritization of pending bills by State Corporations and Semi-Autonomous Government Agencies, and Section 42(1)(b) of the Public Finance Management Act, 2012 which requires debt service payments to form first charge. In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The 50MW Solar Power Plant in Garissa was financed through a concessional loan from the EXIM Bank of China. In the FY 2021/22, there was a pending bill related to certificates no. 13 and 14, which pertained to final technical services. The credit period for the EXIM Bank of China lapsed before these certificates could be issued, making it impossible to include the pending bill as a first charge in the FY 2021/22 budget submitted to the National Treasury in January 2022. Subsequently, while preparing the FY 2022/23 budget, the Corporation included a pending bill of Kshs. 16,826,400 as a first charge.

A pending bill of Kshs. 16,826,400, related to final technical services (Certificates Nos. 13 and 14), was addressed in the FY 2022/23 budget. The Corporation initially allocated Kshs. 15,570,404

to cover this bill. The difference of Kshs. 1,255,996 between the allocated amount and the actual pending bill reflects forex exchange differences. The Corporation prioritized this adjusted amount in its budget, and payment for the full bill has now been settled.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendations

The Committee recommends that the Accounting Officer treats pending bills as first charge.

KENYA OFF-GRID SOLAR ACCESS PROJECT FOR UNDERSERVED COUNTIES (IDA CR.NO.6135-KE) - RURAL ELECTRIFICATION AND RENEWABLE ENERGY CORPORATION

REPORT ON THE FINANCIAL STATEMENTS

1432. Project Performance

Review of the Project Financing Agreement and the Project supporting documentation revealed that Kenya Off-Grid Solar Access Project for the Underserved Counties had a total funding of Kshs.3,500,000,000 and was to be implemented within six (6) years from July, 2017 to 30 June, 2022. As at the end of the financial year 2021/2022, the total amount drawn was Kshs.110,868,972 which remained unspent. The amount drawn as at 30 June, 2022 represents 3.17% of the total funds committed for the project under the financing agreement while the project period lapsed on 30 June, 2022. Management did not provide evidence of extension of the Project period. Further, the Management did not provide an approved work plan for audit review. In the circumstances, the Project may not be completed as planned and the Project objectives may not be achieved against the work plan could not be confirmed.

Submission by the Accounting Officer

The financing agreement provided a closing date of June 30, 2023, rather than June 30, 2022, so the agreement remained effective. Additionally, the closing date has been extended to May 30, 2025. Discussions with the World Bank are ongoing to further extend the project credit beyond this current deadline. The proposed extension aims to ensure the project successfully delivers electricity and clean energy solutions to underserved communities.

As noted, the approved work plan was not provided during the audit. The Corporation has implemented measures to ensure regular updates to the work plan. The Project Appraisal Document (PAD) contains the approved work plan and is updated regularly.

The Kenya Off-Grid Solar Access Project (KOSAP) aims to enhance access to electricity and clean cooking solutions in underserved areas. The project comprises several key components:

1. Mini-Grids: The tender evaluation process, initially planned for 59 sites, was revised to 31 sites due to budget constraints. This revised scope was finalized and implementation will proceed accordingly.

2. Standalone Solar Systems & Clean Cooking Solutions: The project will deploy 250,000 solar systems and additional clean cooking solutions for households.

3. Solar Water Pumps & Systems: This includes the installation of 473 solar systems and 380 water pumps for community facilities.

4. Implementation Support: Focuses on consumer education and capacity building

Challenges:

i) Land Acquisition: There have been delays in compensating for unregistered community land. However, early entry has been granted.

ii) Tender Processes:

- Solar Water Pumps: The tender experienced delays and was re-tendered twice. The first re-tendering was due to the initial tender document lacking operation and maintenance arrangements. The second re-tendering occurred because of non-responsiveness caused by the delay in issuing a no-objection from the World Bank, which led to the expiration of bid securities.
- Mini-Grids: The tendering process faced delays, and the project scope was revised due to budget constraints, reducing the number of mini-grids from 48 to 31. The tendering process is now complete, pending the no-objection to award from the World Bank.
- Environmental Impact Assessment (EIA): Delays in Environmental Impact Assessment (EIA) approvals and procedures have affected the project timeline. The National Environment Management Authority (NEMA) experienced delays in clearing the EIA.

Current Status: The above challenges have been addressed.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendations

The Committee recommends that the Accounting Officer avails a status report within three (3) months of adoption of this report by the House.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1433. Non-Implementation of Project Activities

The Project received a loan totaling Kshs.110,868,972 in the financial year 2020/2021 which has been in the bank since then without being utilized for Project activities. Further, the amount has not earned any interest to date yet the financier continues to change interest on the drawn amount. In the circumstances, the continued accrual of interest against the loan and the non-utilization of the Project funds is inefficient utilization of public resources.

Submission by the Accounting Officer

The Kenya Off-Grid Solar Access Project (KOSAP) received an allocation of Kshs. 110,868,972 in the financial year 2020/2021 to enhance access to electricity and clean cooking solutions in underserved regions. However, the disbursement of these funds was impacted by unforeseen procedural and logistical challenges, including delays in land acquisition, tendering processes, and

Environmental Impact Assessment (EIA) approvals. These delays have significantly impeded our ability to utilize the allocated funds as initially planned.

The funds for the project are held in a dedicated project account designated for preparatory activities. According to the World Bank's regulations, these funds cannot be placed into call or fixed deposit accounts where they might accrue interest. This restriction ensures that the funds remain readily available for immediate project-related expenditures and helps to prevent potential conflicts of interest or misuse of the funds. This approach upholds the funds' intended use for the project and ensures compliance with the financial management standards established by the World Bank.

Committee Observations and Findings;and Finding;

The Committee noted the response by the accounting officer.

Committee Recommendation

The Committee recommends that the Accounting Officer avails a status report within three (3) months of adoption of this report by the House.

KENYA ELECTRICITY EXPANSION PROJECT (OFID CR NO.1487P) - RURAL ELECTRIFICATION AND RENEWABLE ENERGY CORPORATION

REPORT ON THE FINANCIAL STATEMENTS

1436. Low Budget Absorption

As disclosed in paragraph 1.7 of the funding summary, the Donor had made commitment of USD 15,000,000 equivalent to Kshs.1,500,000,000. However, with the Project targeted completion date set for 31 December, 2022, actual drawdowns amounted to USD 5,459,208 equivalent to Kshs.643,271,589 leaving Kshs.856,728,411 or 57% of Donor commitment undrawn. With over 95% of the Project duration passed, the credit is set to lapse without being fully utilized and the Project's planned deliverables earmarked for completion using the funding may not be realized. Management did not provide documentary evidence for audit review to indicate whether any mitigation measures were taken to secure an extension of the Project from the Donor. In the circumstances, the Project objectives may not be achieved.

Submission by the Accounting Officer

The Kenya Electricity Expansion Project (KEEP), financed by the Opec Fund for International Development (OFID), began implementation in June 2020 with three contractors.

Low absorption of project funds and delay in project implementation:

i) The COVID-19 pandemic caused significant delays in the project by disrupting material manufacturing, supply chains, and logistics, and by complicating inspections and testing. These issues extended the project timeline and led to overall setbacks. This was resolved through virtual factory acceptance tests.

ii) Lack of Budgetary Allocation:

In the FY 2023/24 approved budget estimates, there was no budget allocation for the project. The Corporation submitted a request seeking authority to incur expenditure of Kshs. 243 million under Article 223 of the Constitution. This request was made through a letter Ref No: REREC/S&BD/BD/OFID/1, dated July 31, 2023. The Ministry of Energy (MoE) supported this request vide letter Ref No. MOE/SDE/ERD/22-23/002, dated August 4, 2023, addressed to the National Treasury. The National Treasury granted approval through letter Ref No. DV/ES 1152/23/01/A/ (22), dated September 26, 2023, in the context of FY 2023/24 supplementary No. 1.

However, the project was not allocated any funding in the approved Supplementary No. 1 in both the GIMIS and IFMIS systems.

In the FY 2024/25 approved estimates, despite the Corporation including a budgetary allocation for the project in its budget estimates request, the project was again not provided for. This led the Corporation to submit another request for authority to incur expenditure under Article 223 of the Constitution through a letter Ref No. REREC/S&BD/KEEP/MOE/24/7/18/1/wn, dated July 18, 2024, which was supported by the Ministry of Energy.

This has now been granted by the National Treasury, which provided approval through letter Ref No. RES 1152/24/01/A (26), dated August 30, 2024, indicating approval within the context of FY 2023/24 Supplementary Estimates No. II.

Insecurity in the Turkana, Samburu, and Mandera regions has significantly hindered project implementation, causing delays and disruptions. The instability forced contractors to demobilize from the project sites, further impeding progress. The Corporation has engaged with local administration, the Ministry of Interior, and the Coordination of National Government to enhance security and address these challenges.

Budget Absorption Summary:

Currently, with the efforts of management to mitigate the challenges faced, the project has made progress as follows:

i) Current Payments: Payments are structured to cover materials, representing approximately 70% of project costs, with installation and other services accounting for the remaining 30%. To date, 90% of payments for materials have been executed, while the Factory Acceptance Testing (FAT) is ongoing for the remaining materials, with a goal to achieve 100% material procurement.

ii) Credit Absorption: Approximately US$8.7 million has been paid out of a total commitment of US$15 million, representing a 58% absorption rate.

iii) Outstanding Invoices: As of the end of June 2024, unpaid invoices total Kshs. 75.2 million, which remain outstanding due to the lack of budgetary allocation in the FY 2023/24 and FY 2024/25

Table 4: The current status of project implementation:

	Progress Of Site Installation Works	**Total**	**Percentage**
No.	**Contractor**	**Projects (No.)**	**%**
1	Commissioned	12	28%
2	Complete Over 90%	15	35%
3	In Progress	11	26%
4	Not Started	4	9%
5	Wayleave Issue	1	2%
6	**Total**	**43**	**100**

Table 5: Materials delivery status:

Summary	**Percent (%)**
Material delivery progress	93.47%
Progress of site works	71.98%
Overall Project Progress	**82.7%**

Mitigation Measures:

i) Virtual Factory Acceptance Tests (FAT): Recognizing the impact of travel restrictions and the COVID-19 pandemic on the timely execution of physical inspections, the Corporation adopted virtual FATs.

ii) Engagement with Contractors: Regular project meetings with Contractors to expedite the work.

iii) Dedicated Supervision Team: A specialized team has been established to oversee the project's progress closely. Led by Regional Managers supported by County Supervisors, this team is responsible for daily progress reporting and conducting monthly meetings with contractors. This enhanced supervision is aimed at accelerating project implementation and ensuring that any emerging issues are addressed promptly.

iv) Extension of Withdrawal Rights: To facilitate the completion of the project and ensure full utilization of the allocated credit, the Corporation has requested an extension of withdrawal rights until December 31, 2024. This extension is critical for accommodating the delays experienced and allows additional time for the completion of all project activities.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer avails a status report within three (3) months of adoption of this report by the House.

1437. Delay in Implementation of the Project

The statement of receipts and payments reflects cumulative payments amounting to Kshs.643,271,589 in respect of acquisition of non-financial assets, representing approximately 49% of the total contracted value of works totaling Kshs.1,304,225,859 for the three (3) lots under the Project. The contracts were signed in June, 2020 and were expected to be completed by June, 2022. In addition, the Project was set to close on 31 December, 2022 with over 52% of the contract not executed despite contract period having lapsed. In the circumstances, it could not be confirmed whether the Project objectives would be achieved.

Submission by the Accounting Officer

The Kenya Electricity Expansion Project (KEEP), financed by the Opec Fund for International Development (OFID), began implementation in June 2020 with three contractors.

The reasons for the low absorption of the budget are similar with those causing delays in project implementation, as follows:

i) The COVID-19 pandemic caused significant delays in the project by disrupting material manufacturing, supply chains, and logistics, and by complicating inspections and testing. These issues extended the project timeline and led to overall setbacks. This was resolved through virtual factory acceptance tests.

ii) Lack of Budgetary Allocation:

In the FY 2023/24 approved budget estimates, there was no budget allocation for the project. The Corporation submitted a request seeking authority to incur expenditure of Kshs. 243 million under Article 223 of the Constitution. This request was made through letter Ref No: REREC/S&BD/BD/OFID/1, dated July 31, 2023.

The Ministry of Energy supported this request via letter Ref No. MOE/SDE/ERD/22-23/002, dated August 4, 2023, addressed to the National Treasury. The National Treasury granted approval through letter Ref No. DV/ES 1152/23/01/A/ (22), dated September 26, 2023, in the context of FY 2023/24 supplementary No. 1.

However, the project was not allocated any funding in the approved Supplementary No. 1 in both the GIMIS and IFMIS systems.

In the FY 2024/25 approved estimates, despite the Corporation including a budgetary allocation for the project in its budget estimates request, the project was again not provided for. This led the Corporation to submit another request for authority to incur expenditure under Article 223 of the Constitution through a letter Ref No. REREC/S&BD/KEEP/MOE/24/7/18/1/wn, dated July 18, 2024, which was supported by the Ministry of Energy.

This has now been granted by the National Treasury, which provided approval through letter Ref No. RES 1152/24/01/A (26), dated August 30, 2024, indicating approval within the context of FY 2023/24 Supplementary Estimates No. II.

iii) Insecurity in the Turkana, Samburu, and Mandera regions has significantly hindered project implementation, causing delays and disruptions. The instability forced contractors to demobilize from the project sites, further impeding progress. The Corporation has engaged with local administration, the Ministry of Interior, and the Coordination of National Government to enhance security and address these challenges.

Table 6: The Overall Project Progress:

Summary	**Percent (%)**
Material delivery progress	93.47%
Progress of site works	71.98%
Overall Project Progress	**82.7%**

With the extended credit period now running until December 31, 2024, coupled with the available budget, management remains confident that the project will not only meet its key milestones but also achieve its overall objectives.

Committee Observations and Findings

i) **The Committee noted the submission by the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

4.29 VOTE 1162: STATE DEPARTMENT FOR LIVESTOCK

Hon. Jonathan Mueke, CBS, the Principal Secretary and Accounting Officer for the State Department for Livestock appeared before the Committee on 4th December 2023and 30th January 2024, accompanied by the following officers:

i.	Mr. Joseph Nyamora	Deputy Accountant General
ii.	Ms. Rachel Ndungu	Assistant Accountant General
iii.	Ms. Angelyne Kabasa	Principal Accountant
iv.	Mr. Peter Mbugua	Parliamentary Liaison Officer
v.	Mr. Nahum Nyawira	Senior Principal Finance Officer

and submitted as follows;
REPORT ON THE FINANCIAL STATEMENTS

1440. Failure to Account for Revenue from Institutes

The statement of receipts and payments reflects total receipts of Kshs. 4,272,464,652 which excludes Kshs. 96,356,604 collected from four (4) training institutes. However, these receipts were spent at source. In addition, the institutes do not have the requisite governance structures in the form of a board or management teams which are necessary for the establishment of controls on budget and actual collections and respective expenditures.

In the circumstances, the accuracy and completeness of receipts of Kshs. 96,356,604 could not be confirmed.

Submission by the Accounting Officer

The receipts under consideration were from our training institutions as follows;

S/No.	Institution	Amount
1	Ahiti Nyahururu	14,167,050
2	Ahiti Ndomba	23,733,745
3	Dairy Training Institute	52,090,809
4	Meat Training Institute	6,365,000
	TOTAL	**96,356,604**

The funds collected include; caution money, student's practical attachment fees and insurance for students. The funds were collected under deposit account opened with authority from the National Treasury at various National sub-counties Treasuries. The purpose of the funds is to facilitate students in the course of their learning. The funds could not be included in the Financial Statement because of the following reasons.

The funds were only held in the accounts in trust for students undertaking various courses at Institutions for short period of time.

There was no budgetary allocation in the approved budget passed by the National Assembly hence including the receipts in our financial statements would have overstated our annual receipts.

Going forward, annual budget for 2023/24 will have the budget line for A.I.A collection from institutions and expenditure items for the same line provided for.

In addition, the Accounting Officer has appointed a care taker committee for the running of the institutions. The management of these institutions will further be fully operational once the Livestock Bill before the Cabinet is finalized. The Livestock Bill spells clearly that the institutions will be run by Management Board.

Committee Observations and Findings;

i) **The Committee observed that the explanation and documents submitted by the Accounting Officer were satisfactory; and**
ii) **The Committee found that the matter was resolved.**

1441. Unsupported Prior Year Adjustments

The statement of assets and liabilities reflects prior year adjustments amounting to Kshs. 11,422,646 as disclosed in Note 13 to the financial statements. However, the nature and details of the adjustment were not provided for audit. Whereas significant accounting policy No.4(j) states that prior period adjustments are disclosed in Note 26 to the financial statements explaining the nature and amounts of the adjustment, the Note is non-existent.

In the circumstances, the accuracy of the prior year adjustments of Kshs. 11,422,646 could not be confirmed.

Submission by the Accounting Officer

The prior year adjustment reported in the financial statement for the year 2021-2022 resulted from system errors which has now been cleared with the assistance of a team The National Treasury and has since been reconciled in the financial year 2022-2023.

Committee Observations and Findings;

The Committee noted the response of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General confirms that the adjustments were done in the subsequent audit.

1442. Unsupported Accounts Payables - Retentions

The statement of assets and liabilities reflects accounts payables-retentions balance of Kshs. 39,879,975 as disclosed in Note 11 to the financial statements. Review of the retentions schedule revealed that amounts totalling to Kshs. 21,922,067 have been long outstanding with some dating as far back as the year 2015. Management did not explain why these retention monies were not released to the respective contractors.

In the circumstances, the accuracy and completeness of the accounts' payables (Retentions) balance of Kshs. 39,879,975 could not be confirmed.

Submission by the Accounting Officer

It is true that the statement of Assets and Liabilities reflected Accounts payable of Kshs. 39,879,975 as at 30th June, 2022 in form of deposits.

However, the Principal Secretary National Treasury through memo dated 15th February, 2023 directed that all deposit funds held for more than five years be surrendered to Treasury. The State Department for Livestock surrendered the same amounting to Kshs. 7,878,839.55 on 30th June, 2023.

The remaining balance of Kshs. 32,001,136 had not yet been claimed by the respective contractors. The payment will be done immediately its requested for.

Committee Observations and Findings;

The Committee noted that the State Department had all records of contractors it had engaged over the years and their explanation was unsatisfactory.

Committee Recommendation;

The Committee recommends that the Accounting Officer pro-actively settles the outstanding dues and/or remits to Treasury if they exceed five years.

1443. Unaccounted for Long Outstanding Imprests

The statement of assets and liabilities reflects imprests and advances of Kshs. 15,494,070 which, as disclosed in Note 10 to the financial statements includes an amount of Kshs. 2,112,100 relating to imprest advanced to an officer on 26 February, 2020 who deserted without surrendering the imprest.

In the circumstances, the recovery of the amount of Kshs. 2,112,100 could not be confirmed.

Submission by the Accounting Officer

The imprests were issued to Mr. Mukundi as follows;

Imprest No.	Date	Amount Issued	Amount recovered	Balance
3774156	30/9/2019	30,000	30,000	Nil
3939566	3/3/2020	2,082,100	20,042.45	2,062,057.55

The officer had been issued with an imprest Number 3939566 to undertake training for milk coolers operator in Naivasha. However, the training did not take place due to restrictions imposed by the Ministry of Health regarding meeting to curb the spread of COVID-19. It was expected that once the restrictions were lifted the training would take place however, the officer deserted duties after the recovery of 50,042.45.

The matter was elevated to Ministerial Human Advisory Committee for deliberation. The recommendation was that the officer's final dues be attached to recover the un-surrendered imprests and be dismissed from duty.

The State Department for Livestock Development has communicated to the Pension Department not to process the officer's final dues until he clears with the State Department for Livestock.

In response, the Pensions Department has advised the Department for Livestock Development to proceed and recover the same from the retirement benefits due to Mr. Mukundi via letter Ref:TNT/PENS/1/1 Vol 3/ (14) received on 20th November, 2023.

Committee Observations and Findings;

i) **The Committee noted that the State Department had not sufficiently followed up on the recovery of amounts due from a Mr. Paul Mukundi as imprest amounts;**
ii) **The Committee observed that the Accounting Officer acted in contravention of Regulation 93(8) of the PFM (National Government) Regulations, 2015 which states that an Accounting Officer or AIE holder shall ensure that no second imprest is issued to any officer before the first imprest is surrendered or recovered in full.**

Committee Recommendation;

i) **The Committee reprimands the Accounting Officer for acting in breach of Regulation 93(8) of the PFM (National Government) Regulations, 2015 on imprest management;**

ii) **The Committee recommends that the Accounting Officer liases with the DCI and ensures prosecution and recovery of outstanding amounts from Mr. Paul Mukundi.**

1444. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects approved receipts budget and actual on comparable basis of Kshs.7,728,149,669 and Kshs.4,272,464,652 resulting in an underfunding of Kshs.3,455,685,017 or 45% of the budget.

The underfunding of the budget affected planned activities and may have negatively impacted on service delivery to the public.

Submission by the Accounting Officer

It is true that the budget comparison and actual approved receipts reflects underfunding. The underfunding is as a result of non-reporting of AIA collected by the SAGAs. The National Treasury directed MDAs to include AIA collected by SAGAs into the ministerial budgets during the FY 2021/2022. However, the same has been effected in subsequent periods. Further the underfunding arose as a result of non-funding of exchequer requests especially under capital expenditure.

Committee Observations and Findings;

i) **The Committee observed that the explanation and documents provided by the Accounting Officer was satisfactory.**

ii) The Committee found that the matter was resolved.

1445. Delay in Payment of Court Awards

Annex 7 to the financial statements reflects contingent liabilities amounting to Kshs 4,030,406,440 relating to three cases that have been awarded to plaintiffs and which Management has not settled the amounts. Management explained that the matter had been forwarded to The National Treasury for guidance.

In the circumstances, the State Department risks being charged interest for non-payment.

Submission by the Accounting Officer

i) Halal Meat Products – 4 Billion

Halal is a protracted legal suit whose court determination amounted to 5.242 Billion and out of court negotiations final amount of 4 Billion after a cap of all interests. The matter was submitted to the National Treasury (Pending bill closing committee) for final settlement.

The National Treasury vide letter Ref RES1162/1801(15) advised to State Department for Livestock to submit the request to the sector working group undertaking MTEF for financial year 2019/2020 and the medium term. The State Department for Livestock submitted the request to the sector working group as advised by the National Treasury however due to the huge financial resources required to settle the issue and the tight fiscal framework the court award has not been settled to date.

Further the matter has since been escalated to the office of chief of staff for further guidance.

ii) Associated Architects - Kshs.25,953,160.13

The Ministry of Agriculture on 17th July 1987 entered into a contract for preparation of pre contract documentation (including design of proposed Mifugo House) with architects.

The Ministry of Agriculture paid the contract sum but due to delayed payment a sum of Kshs. 25.95 Million was charged as interest.

The State Department has received approval for budgetary allocation and will pay after loading of the Supplementary (I) budget for FY 2023-2024.

Committee Observations and Findings;

The Committee noted that the submission from the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer and National Treasury prioritizes settling of the outstanding award since it was no longer contingent, i.e not appealed.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1446. Irregular Engagement of Temporary Employees

The statement of receipts and payments reflects compensation of employees' expenditure of Kshs.1,515,199,973 out of which an amount of Kshs.319,892,661 relates to payments to temporary employees. However, examination of documents provided for audit revealed that the State Department has been engaging casuals laborers for more than three months on renewable terms contrary to Section 37 of the Employment Act, 2007 (Revised 2012) which requires conversion of the casual employment to term contract.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The above-mentioned employees comprise of cadres of workers in the ministry farms and lower level workers of training institutions who undertakes duties of milking, grazing, dipping, cleaning of animal houses, taking care of laboratories of animals, security provision, cooks, housekeepers among others. The employees are engaged for three months and take one month break. This is necessary since the chores cannot be carried out by new people from time to time.

However, The State Department had sought authority to employ and fill the various vacant cadres in the authorized establishment; and the Public Service Commission has given approval vide letter Ref No.PSC/12(14) dated 2nd August, 2023to recruit these cadres of officers.

Committee Observations and Findings;

The Committee observed the inordinate delay by the Accounting Officer to regularize the employments as advised by PSC in 2021; the process was now ongoing with advertisements having been made.

Committee Recommendation;

The Committee reprimands the Accounting Officer and urges that the process be expedited by end of the current financial year.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1447. Failure to provide Adequate Resources to the Eldoret Butterfat Station

Audit inspection conducted at Eldoret Butterfat Station revealed inadequate funding as only Kshs.238,538 was disbursed during the year under review. It was also noted that the staffing level was low thus hindering the operations of the Station.

In the circumstances, the Station may not achieve its mandate.

Submission by the Accounting Officer

Eldoret Station had inadequate funding and low staffing levels for the Financial Year under review. The low funding is attributed to the decline of budgetary allocation for operations across Ministries over the years. Throughout all the budget cycles, allocated resource ceiling for operations is

inadequate to optimally fund all the stations under the purview of the State Department. Notably, the State Department recurrent budget allocation under Laboratory services is shared among seven butterfat stations (Naivasha, Eldoret, Voi, Karatina, Maseno, Recording Centre-Naivasha, and Nakuru). Further, every Financial Year operational budget lines under recurrent vote are susceptible to austerity measures like in the case of FY2021/22.

Committee Observations and Findings;

The Committee observed the critical function had been starved of resources.

Committee Recommendation;

The Committee recommends that the Accounting Officer prioritizes the service with adequate resources during allocation of resources.

1448. Asset Management

1448.1 Fixed Assets Registers not Updated

As disclosed at Annex 4 to the financial statements, the summary of fixed assets register reflects a balance of Kshs.5,765,141,436. However, the asset registers provided for audit reflected a balance of Kshs.419,418,842 resulting in a variance of Kshs.5,345,722,594. Further, the asset registers include ICT equipment with a balance of Kshs.44,547,692, but the summary of fixed assets register in the financial statements reflects a Nil balance for the same item.

In addition, the Management did not disclose the values of land owned by the State Department and other details of the assets such as purchase/ original cost, tag, asset codes for specific assets and motor vehicle registration numbers. The registers also had a total of three hundred and two (302) assets that were either obsolete/expired, unserviceable and grounded motor vehicles but had not been disposed.

In the circumstances, the completeness of the assets register could not be confirmed.

Submission by the Accounting Officer

The State Department has undertaken measures to ensure that its Assets are safeguarded as analyzed below;

1448.1 Biological Asset Register not updated	**Issues raised-** Difference in financial statement balance in the asset register	**Response** Updating of asset register is a continuous process. The state department has embarked on digitalizing the asset register to achieve more accurate book value of the assets. However, manual asset register has since been updated
	Non-Disclosure of land owned by SDL	A cross cutting taskforce was constituted which undertook the exercise to establish the status on land throughout the country and came up with a report available for review.
	Lack of Asset Tagging	Asset tagging had been planned for in previous procurement plan but has not been actualized due to austerity measures and pending bills

		which are a first charge in the subsequent F/Y. Digitalization of the asset register is one of the activities in the digitalization of the asset register a process that the SDLD has commenced.
	Asset Register had obsolete/expired assets not disposed	The asset register for 2021/2022 include obsolete assets that have since been disposed in FY 2022/2023

Committee Observations and Findings;

The Committee observed digitization was in progress.

Committee Recommendation;

The Committee recommends that the Accounting Officer fast-tracks the process, including tagging of assets, and submits a complete assets register within three (3) months of adoption of this report.

1448.2 Incomplete Biological Asset Register

The assets register provided for audit disclosed biological assets with a historical cost of Kshs.26,994,050. However, the assets comprised of different farm animals from six (6) stations compared to fifteen (15) stations disclosed as at 30 June, 2022 leaving undisclosed assets from nine (9) stations.

Further, review of the annual report for Bachuma Sheep and Goats Station revealed that the Station did not maintain biological assets register and individual animal records as required under Appendix K of The National Treasury Guidelines on Asset and Liability Management in the Public Sector.

In the circumstances, the completeness of the State Department's assets could not be confirmed.

Submission by the Accounting Officer

Animal registers are maintained by the various farms. The biological assets registers from 14 farms have been updated.

Committee Observations and Findings;

The Committee observed that the register had now been updated.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to keep updated registers, and availing them to auditors for verification during audit.

1448.3 Failure to Maintain Works in Progress Register

Review of the expenses on acquisition of assets indicated that the State Department incurred expenses on acquisition of assets totallingKshs.985,473,121 in the year under review. However, a report on the statuses of the contracts in the year under review was not provided for audit

verification. Further, field verification of sampled projects indicated that a number of projects were in progress as at 30 June, 2022. This was contrary to the National Treasury Guidelines on Assets and Liability Management in the Public Sector of March 2020, paragraph 67(8) and Appendix 6(l) which requires the public entities to prepare works in progress register for each category of assets.

In the circumstances, the existence of an effective internal controls mechanism on assets management could not be established.

Submission by the Accounting Officer

Individual WIP registers are kept for individual contracts and are periodically updated by a contract implementation team as per Section 151 of the PPADA, 2015. This has since been updated.

Some projects extended into subsequent fiscal year.

Committee Observations and Findings;

The Committee observed that the works-in-progress register had now been updated.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to keep updated works-in-progress registers, and availing them to auditors for verification during audit.

1449. Weakness in Control on Fuel Oil and Lubricants

The statement of receipts and payments reflects expenditure on use of goods and services expenditure of Kshs.1,247,799,677 which, as disclosed in Note 5 to the financial statements, includes an amount of Kshs.39,354,390 relating to fuel, oil and lubricants. Review of documents maintained revealed that no reconciliations between supplier fuel statements and fuel registers were done. Further, the supplier fuel statements did not include registration details of the vehicles that drew fuel.

In the circumstances, the existence of an elaborate system on fuel management could not be confirmed.

Submission by the Accounting Officer

The State Department has taken austerity measures and introduced fuel cards which must be approved by the divisional heads as a way of controlling usage and for accountability purposes unlike period when bulk fueling was in place. The register is available for perusal.

Committee Observations and Findings;

The Committee observed that the reconcilliations had now been done and registers availed.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to ensure live use of fuel cards and updated registers.

DONOR FUNDED PROJECTS

REGIONAL PASTORAL LIVELIHOOD RESILIENCE PROJECT (IDA CR. NO KE 53880)

REPORT ON THE FINANCIAL STATEMENTS

1451. Unpaid Insurance Claim for Project Vehicles

As reported in the previous year, an insurance company was paid an amount of Kshs.18,549,675 as premium for the insurance cover of all the project vehicles. However, two (2) project vehicles; GKB O38R and GKB 412R belonging to West Pokot County Project Implementation Office Unit got burnt by fire suspected to have originated from one of the food kiosks adjacent to the offices. Although compensation lodged was certified payable on 30 July, 2020 by the insurance company, the claims had not been settled or paid as at October, 2022 yet the project ended in December, 2021.

Submission by the Accounting Officer

Africa Merchants Assurance Company has not paid an outstanding claim of Kshs.3,474,000 for GKB 038R and Kshs.7,650,000 for GKB 412R. The matter was handed over to the State Counsel at the ministry. The State Counsel wrote to AMACO insurance on the same.

Committee Observations and Findings;

The Committee observed that there was inordinate delay by the State Department to ensure full settlement for the claim, with correspondence going back two years.

Committee Recommendation;

The Committee recommends that;

i) **The Accounting Officer ensures that the claim is settled within one (1) month of adoption of this report, failure to which the Attorney General commences legal action; and**

ii) **The insurer and its directors be then blacklisted from providing service to government entities forthwith.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1460. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.178,000,000 and Kshs.123,539,557 respectively resulting to an underfunding of Kshs.54,460,443 or 31% of the budget. Similarly, the project spent an amount of Kshs.110,380,958 against an approved budget of Kshs.178,000,000 resulting to an under expenditure of Kshs.67,619,042 or 38% of the budget.

The underfunding and underperformance affected the planned activities and might impact negatively on service delivery to the public

Submission by the Accounting Officer

There was variance between the approved estimates and actual expenditure for the project. The variance however, was due to non-funding of exchequers requests under the GoK component. However, the donor component was fully financed and activities undertaken according to the work plan.

Committee Observations and Findings;

i) **The Committee deemed the submission by the Accounting Officer satisfactory.**
ii) **The Committee found that the matter was resolved.**

1461. Irregular Reallocation of Expenditure

The statement of receipts and payments reflects expenditure on purchase of goods and services totallingKshs.104,163,216 which as disclosed in Note 4 to the financial statements includes consultancies costs amounting to Kshs.85,736,591. Review of the expenditure against approved budget revealed that contracted technical services and contracted professional services sub-items had a combined approved budget of Kshs.12,680,000 resulting to an over expenditure of Kshs.73,056,591 or 557% of the budget. Management did not provide an explanation for incurring the expenditure over and above the budgetary provision. In addition, no approval for the reallocation was provided for audit review.

In the circumstances, Management was in breach of law.

Submission by the Accounting Officer

Expenditure amounting to Kshs.73,056,591 was incurred. These expenditures comprises of amounts transferred to service providers KWTA (Kenya Water Towers Authority, WRA (Water Resource Authority) and NDMA (National Drought Management Authority) who were undertaking activities for component II of the project. These expenditures were undertaken under the budget line items as per the work plan.

Committee Observations and Findings;

The Committee observed that the amounts should have been classified as 'transfers to other government agencies' to avoid the confusion arising from misclassification.

Committee Recommendation;

The Committee recommends that the Accounting Officer in liaison with National Treasury correctly classifies all expenditure, even for donor projects, in subsequent financial years.

1462. Unsupported Pending Accounts Payables

As disclosed in Note 12 to the financial statements on other important disclosures under Annex 3, the Project had pending accounts payable amounting to Kshs.23,550,345 as at 30 June, 2022 comprising payables for supply of goods of Kshs.14,054,888, supply of services of Kshs.7,095,457 and civil works of Kshs.2,400,000. However, these payables were not supported with the relevant documents including contracts, invoices, delivery note, stores received notes (S13), inspection and acceptance committee reports and contractor's certificates for work completed.

In the circumstances, the regularity and validity of the pending bills totaling Kshs.23,550,345.00 could not be confirmed.

Submission by the Accounting Officer

The expenditure amounting Kshs.23,550,345.00 was comprising payables for supply of goods amounting to Kshs.14,054,888.00, supply of services amounting to Kshs.7,095,457.00 and civil works of Kshs.2,400,000.00. The necessary documents have been provided for review.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

4.30 VOTE 1166: STATE DEPARTMENT FOR FISHERIES, AQUACULTURE AND THE BLUE ECONOMY

Ms. Betsy M. Njagi, the Principal Secretary and Accounting Officer for the State Department for Public Service, appeared before the Committee on 28th August 2024, accompanied by the following officers:

i.	Mr. Simon Kiriiba	_	Head of Accounting Unit
ii.	Mr. Martin K. Wamwea	_	Senior Chief Finance Officer
iii.	Ms. Jane Macharia	_	Director, HRM Development
iv.	Mr. Sammy Okonji	_	Deputy Director Supply Chain Management
v.	Mr. Mathew Ouko	_	Deputy Director Accounting Unit
vi.	Ms. Beryl Odhiambo	_	Programme Accountant
vii.	Ms. Ruth Achola	_	Accountant I
viii.	Mr. Barasa Kelvin	_	Accountant I

And submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1465. Variances Between Financial Statements and Supporting Schedules

Review of the financial statements provided for audit revealed unexplained variances with supporting schedules as detailed below:

Component	Note	Financial Statements Amount (Kshs.)	Supporting Schedules Amount (Kshs.)	Variance (Kshs.)
Account Payables – Deposits	10	125,446,639	23,064,091	102,382,548
Transfers to other Government Units - Kenya Fisheries Advisory Council (KFAC)	5b	4,981,711	5,036,311	(54,600)

In the circumstances, the accuracy and completeness of the account payables and transfers to other government units - KFAC of Kshs.125,446,639 and Kshs.4,981,711, respectively could not be confirmed.

Submission by the Accounting Officer

The variance of Kshs.102,382,548 was due to reconciliation process at the time of audit; they were later availed for audit verification.

The variance of Kshs.54,600 was as a result of an erroneous charge which were later reversed this was reflected in the following financial year statements.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that administrative action be taken on negligent officers, and submits evidence of this within three (3) months of adoption of this report.

1466. Misclassification of Expenditure

The statement of receipts and payments reflects expenditure on use of goods and services of Kshs.844,611,256 and acquisition of assets of Kshs.1,453,902,755. However, review of the ledger accounts revealed misclassified expenditure totaling Kshs.153,187,487 and Kshs.34,076,557 on use of goods and service and acquisition of assets, respectively. Further, disclosed in the ledgers were payments in respect of construction and civil works reversal transactions totaling Ksh.34,307,200 whose journal vouchers and other supporting documents were not provided for audit verification.

In the circumstances, the accuracy and completeness of the expenditure on use of goods and services of Kshs.844,611,256 and acquisition of assets of Kshs.1,453,902,755 could not be confirmed.

Submission by the Accounting Officer

The misclassification of the expenditure noted of Kshs.153,187,487 and Kshs.34,076,557 under use of goods and acquisition of assets respectively was occasioned by budget cuts of 2 billion implemented after the commitments were made. This was to avoid the huge pending bill tag on the expenditure in question.

The journal entries totaling to Kshs.34,307,200 were made to correct erroneously charged transactions which were later reversed this was reflected in the following financial year statements.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that administrative action be taken on negligent officers, and submits evidence of this within three (3) months of adoption of this report.

1467. Inaccurate Retention and Witholding Tax Amounts

Review of payment documents at the Kisumu regional office revealed that, an amount of Kshs.248,300,722 was paid to contractors during the year under review. However, amounts withheld as retention and withholding tax differed with the prescribed rates of 10% and 3% respectively. The actual amounts withheld were Kshs.20,763,078 and Kshs.6,421,523 instead of the recalculated amounts of Kshs.24,830,072 and Kshs.7,449,021 resulting to unexplained variances Kshs.4,066,994 and Kshs.1,027,448 respectively.

In the circumstances, the accuracy and regularity of the retention and withholding tax amounts totaling to Kshs.27,184,601 could not be confirmed.

Submission by the Accounting Officer

Kshs.248,300,722 was paid to Contractor for the Construction of Kisumu Regional Office. It is worth noting that in construction, there are three deductions made, two taxes (Vat 16% and Withholding Income Taxes of 3%) and 10% Retention fee. Retentions Money are deducted after deduction of Vat and Withholding Taxes.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee recommends that the matter is resolved .**

1468. Inaccuracy of Expenditure on Purchase on Purchase of Certified Seeds, Breeding Stock and Live Animals

The statement of receipts and payments and Note 7 to the financial statements reflects expenditure on acquisition of assets amounting to Kshs.1,453,902,755. The expenditure includes payments relating to purchase of certified seeds, breeding stock and live animals amounting to Kshs.23,649,998. However, the payment excludes an amount of Kshs.1,739,034 for the supply of fingerlings. In addition, the ledger provided for audit included an unexplained reversal of wrongly charged expenditure journal of Kshs.6,000,000 which was not supported.

In the circumstances, the accuracy of the expenditure of Kshs.23,649,998 on certified seeds, breeding stock and live animals could not be confirmed.

Submission by the Accounting Officer

The statement of receipts and payments reflects an expenditure of Kshs.23,649,998 on certified seeds, breeding stock and live animals. The payment vouchers for Kshs.1,739,034 for the supply of fingerlings and journal showing the reversal of Kshs. 6,000,000 this was reflected in the following financial year statements and has now been availed.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to keep proper accounting records contrary to section 68 (2)(b) of the PFM Act 2012, recommends that administrative action be taken on negligent officers, and submits evidence of this within three (3) months of adoption of this report.

1469. Unsupported Payments Outside Integrated Personnel and Payroll Database (IPPD)

The statement of receipts and payments and Note 3 to the financial statements reflects expenditure on compensation of employees amounting to Kshs.164,489,606. However, review of the payroll data indicated expenditure on compensation of employees amount of Kshs.153,850,231, resulting to a variance of Kshs.10,639,375 which relates to amounts paid outside the IPPD system. Management did not provide details of these payments.

In the circumstances, the accuracy and completeness of the compensation to employees' expenditure of Kshs.10,639,374 could not be confirmed.

Submission by the Accounting Officer

The statement of receipts, payments, and Note 3 to the financial statements reflects a variance of 10,639,374 that relates to amounts paid outside the IPPD system.

The payments noted of Kshs. 10,639,674 done outside payroll were for the commutation of leave paid to the staff and service gratuity of our officer on a local contract with the state department.

Committee Observations and Findings;

The Committee noted that the 'exigencies' alluded to by the Accounting Officer as the basis of leave commutation was not demonstrated and may have been an abuse of the allowance.

Committee Recommendation;

The Committee recommends that the Accounting Officer recovers in full irregularly paid sums within three (3) months of adoption of this report.

1470. Unsupported Expenditure

The statement of receipts and payments reflects expenditure on use of goods and services of Kshs.844,611,256 and social security benefits of Kshs.5,481,210. However, included in these amounts are sampled expenditures of Kshs.121,831,349 and Kshs.5,031,738, respectively which were not supported with verifiable documentary evidence.

In the circumstances, the accuracy and completeness of the sampled expenditure totaling Kshs.126,863,087 could not be confirmed.

Submission by the Accounting Officer

Documentary evidence and payment vouchers relating to payment of goods and services totaling to Ksh.121,831,349 and kshs. 5,031,738 has now been availed.

Committee Observations and Findings;

The Committee noted that the Accounting officer belatedly availed documentation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for late submission of documentation and recommends that the Auditor General reviews the documentation in subsequent audit.

1471. Unsupported Prior Year Adjustments

The statement of assets and liabilities reflects prior year adjustments of Kshs.30,974,377. However, these adjustments were not supported with verifiable documentary evidence.

In the circumstances, the accuracy and completeness of the prior year adjustments of Kshs.30,974,377 could not be confirmed.

Submission by the Accounting Officer

The statement of assets and liabilities reflects prior year adjustments of Kshs. 30,974,337. Prior Year Adjustments comprised of Bank Account Balances of Kshs. 569,027 and Receivables

(District Suspense) of Kshs.30,405,350 as shown in the table below and was cleared during End of Year Adjustment Period.

The budget cuts were implemented after the initial District AIEs were issued in the previous financial years hence resulting in balances carried forward. Therefore, the adjustment was made to avoid carrying over the implication caused by the budget cuts in the next subsequent financial years. The Bank balances were swept by Treasury back to the Exchequer Account.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General confirms the adjustments in subsequent financial year audited financial statements.

1472. Unsupported Pending Bills

Included in Note 16 to the financial statements on other important disclosures are pending accounts payable amounting to Kshs.112,169,309 all relating to the year under review.

However, only pending bills amounting to Kshs.10,757,339 were verified while supporting documents for the balance of Kshs.101,411,970 were not provided for audit.

Further, the reporting template issued by the Public Sector Accounting Standards Board requires the State Department to disclose in Annex 1 analysis of pending accounts payables, the original contract amount, date contracted, amount paid to-date, outstanding balances and any comments on the same. However, Management did not provide this information making it difficult to establish the ageing information of these payables.

Failure to settle bills in the year to which they relate adversely affects the subsequent year's budget to which they have to be charged.

Submission by the Accounting Officer

At the time of audit, the pending bills were still being reviewed by internal audit, However, they were verified by internal auditor and submitted for external audit for review.

Committee Observations and Findings;

The Committee noted that the submission by the Accounting Officer was unsatisfactory.

Committee Recommendation;

The Committee recommends that the Accounting Officer takes administrative and disciplinary action on officers who processed payments with incomplete documentation and overstated amounts, and submits a report to the Committee within three (3) months of adoption of this report.

1473. Delay in Operationalization of Two Agencies

The statement of receipts and payments and Note 5 to the financial statements reflects transfers to other government units of Kshs.4,222,602,040 which included transfers to Kenya Fishing Industries Corporation (KFIC) of Kshs.9,977,600 and Kenya Fisheries Advisory Council (KFAC) of Kshs.4,981,711 all totaling Kshs.14,959,311. However, the entities continue to account and report expenditure under the State Department from their respective dates of establishment instead of preparing their own financial statements for audit. In addition, the Management did not provide supporting documentation for the transfers to these entities.

In the circumstances, the regularity of the transfers of Kshs.14,959,311 could not be confirmed.

Submission by the Accounting Officer

Kenya Fishing Industries Corporation (KFIC) had a board but Kenya Fisheries Advisory Council (KFAC) did not have substantive board of directors in place. Therefore, they would not prepare their own Financial Statements of Kshs.14,959,311.

The KFIC board of directors was later constituted on date 04th October and 28th October 2021 through Gazette Notice NO. 10598 & 11494. The Corporation will therefore prepare their own Financial Statements and will be audited independently in the financial year 2022/2023.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1474. Irregular Expenditure on Initiation and Construction of Ulta-Modern Tuna Fish Hub at Liwatoni Complex

The statement of receipts and payments and Note 7 to the financial statements reflects expenditure on acquisition of assets totaling Kshs.1,453,902,755. The amount includes an expenditure on construction and civil works of Kshs.1,160,919,983 out of which Kshs.500,000,000 relates to AIEs sent to Kenya Fishing Industries Corporation (KFIC) for construction of Liwatoni Ultra-Modern Tuna Fish Hub. The State Department did not provide for audit user requisition for the project, feasibility study report, bill of quantities, technical drawings or architectural designs, environmental and social impact assessment reports and approvals from statutory bodies such as National Construction Authority (NCA), National Environmental Management Authority (NEMA) and County Government of Mombasa. Consequently, it could not be confirmed whether the project cost was realistic and based on up-to-date information on economic and market conditions and if the project was compliant with requirements of the users and the other statutory bodies.

In addition, the contract period for the project was twenty-six (26) weeks and which lapsed on 10 October, 2022.

Further, physical verification exercise undertaken in October, 2022, revealed that the Project was not complete and the contractor was demolishing works that had been undertaken in the sections of fresh and frozen rooms as well as cold rooms leading to wastage of resources and losses.

In the circumstances, the value for money on the expenditure of Kshs.500,000,000 on construction of the Ultra-Modern Tuna Fish Hub could not be confirmed.

Submission by the Accounting Officer

The State Department initiated procurement of construction of Ultra Modern Tuna Fish Hub at Liwatoni Complex to enable processing of tuna fish and other species from Kenya exclusive economic zones, create employment opportunities and boost our fish exports.

The scope of this project included the following;

	FACILITY	Scope of Installation
1	Jetty Fixtures	Design only, no installations
2	Flake ice making plant	Design only, no installations
3	Cold storage facilities. Design and build	Total 1,000 MT cold storage capacity
4	Fresh and frozen fish processing plant. Design and build	Plant for 50 MT raw material capacity per day
5	Tuna loining and canning plant. Design and	Plant for 25 MT fish loins/fish ready for canning per day
6	Fish meal & feed plant	Design only, no installations
7	Fish market	Design only, no installations
8	Wastewater treatment plant	Design only, no installations
9	Water treatment and storage facility	Design only, no installations
10	Roads, drainage, CCTV, fire protection and	Design only, no installations
11	Power Reticulation and Distribution	Design for the entire hub but Installation for Phase 1only
12	Solar Power Generation	Design only, no installations
13	Power Supply substation	Design for the entire hub but Installation for Phase 1only
14	Standby Power generators	Design for the entire hub
15	Fishing nets repair facility	Design only, no installations
16	Diesel fuel bunkering and supply facility	Design only, no installations

The contractor/ supplier was to provide designs of architectural layout, structural and other engineering designs of the buildings and equipment layout for all plants in the hub. The supplier was expected construct the buildings to comply with approved drawings. All designs, buildings and installed plant should be compliant to HACCP (Hazard Analysis Critical Control Point) System.

The procurement process began with pre-qualification of firms that have experience in the construction of such facilities as outlined in section 93 of the Public Procurement and Asset Disposal Act, 2015. Seven firms out of the thirteen that applied for pre-qualification were pre-qualified and issued with the tender documents. After tendering and evaluation the successful bidder was awarded the contract.

The user requisition which was in the subject file for pre-qualification has been availed.

This was an improvement of an existing facility hence did not require feasibility study.

The procurement of these construction was design and build using standard tender documents provided by Public Procurement Regulatory Authority (PPRA) and in such procurement the procuring entity describes the scope of work without attaching bill of quantities on the tender document to allow the bidders to come up with their own designs and layouts from which bills of quantities would be generated upon approval.

The unbundling of bill of quantities by the contracts is done later after employer and contractor agree on the designs and specifications of all items that would be supplied and installed. The unbundled bill of quantities has been availed.

As stated at the time of audit the technical drawings and architectural designs were at the approval stage and are now available and attached. This project is a national project supervised by the State Department for Public Works as project managers and was duly approved by the state department's engineers and architects hence does not require National Construction Authority approval. State Department for Public Works is the mother department for NCA.

Being an improvement of an existing facility NEMA approval was not required.

The contract period of this project was extended thrice the last revised completion period being 31st December, 2023 as per the attached extension of time letter.

As earlier stated the contract was for design and build and therefore the contractor was to align the existing structures with the master plan that had been approved thus the minor demolitions witnessed.

That of the kshs.500m spent on the project included advance payment of 20% of the contract sum and part payment of equipment on letter of credit.

Committee Observations and Findings;

The Committee noted that the matter had been a subject of litigation and public notoriety.

Committee Recommendation;

The Committee recommends that the EACC expeditiously conducts investigations into the entire project.

1475. Stocking of Unspecified Dams, Ponds and Aquaponics Units with Fingerlings

The statement of receipts and payments and Note 7 to the financial statements reflects an expenditure on acquisition of assets of Kshs.1,453,902,755 which included an amount of Kshs.23,649,998 relating to purchase of certified seeds, breeding stock and live animals. In the year under review, a contract for supply of fingerlings to various unspecified dams, ponds and

aquaponics units was awarded to a firm at a contract price of Kshs.1,738,500. The procurement was done through request for quotations and two payments of Kshs.796,800 and Kshs.996,000 were made towards the purchase of 16,000 and 20,000 catfish fingerlings, respectively. These two payments were not however supported with the opening and evaluation minutes of the quotations and there was no indication of where the catfish fingerlings were delivered.

In the circumstances, the value for money for on the payment of fingerlings worth Kshs.1,738,500 could not be confirmed.

Submission by the Accounting Officer

The two payments for Kshs.796,800 for 1,600 fingerlings and Kshs.996,000 for 20,000 catfish fingerlings totaling to Kshs.1,738,500 are now supported with all the procurement documents that have now been attached and provided to auditors for verification.

Committee Observations and Findings;

The Committee noted that the submission by the Accounting Officer was unsatisfactory as date of delivery was 14th December 2021 before the professional opinion Ref: KGA/W/PW/GEN/1/178 issued on 25th November 2022.

Committee Recommendation;

The Committee recommends that the EACC expeditiously conducts investigations into the matter and that the Accounting Officer surcharges and initiates disciplinary action on those involved, and avails evidence of the same within three (3) months of adoption of this report.

1476. Irregular Stocking of Fingerlings in Kisumu Region

Examination of expenditure returns of the Kisumu regional office for the year under review revealed that expenditure totaling Kshs.1,099,996 was incurred on stocking of fingerlings at Kamura and Sironga Girls' Schools dams. The criteria used to select the dams or the schools for this activity could not be verified because there was no documentation to support the selection exercise.

In addition, records provided indicated that Kamura Dam was stocked with 17,000 tilapia and 13,491 catfish fingerlings in November, 2021 and March, 2022, respectively. During field verification exercise in October, 2022, it was observed that Kamura Dam sits on a private land and is not fenced or protected with predator nets. Those in charge could not provide documentation to support that the stocking was actually done. It was also observed that the local community uses the water in the dam for other activities like feeding livestock and washing which is likely to lead to pollution and thus endangering the survival of the fish.

Further, Sironga Girls' School received a total of 6,000 fingerlings stocked in four different dams out of which 3,000 fingerlings died due to drying of two (2) dams into which the fish was stocked. The school did not have a record of delivery of the fingerlings and thus confirmation for the same was not possible.

In the circumstances, the value for money on the expenditure of Kshs.1,099,996 incurred on the fingerlings stocking could not be confirmed.

Submission by the Accounting Officer

The State Department has been stocking fingerlings in various dams all over the country in an effort to boost national food security and enhanced nutrition. It is in this regard that expenditure totaling to kshs.1,099,996 was incurred in restocking fingerlings in Kamura and Sironga dams. The criteria used to select dams was through requests made by community organisations followed by assessment to ascertain their sustainability.

The criteria used to select Kamura and Sironga Girls' Schools dams have now been availed to auditors for verification. The criteria were;

KAMURA Dam

1. Criteria Used to select the dam

On the 6th October 2021, the regional office received a request letter for support to stock Kamura Community Dam in Kologi Ward through Kakumu Fish and Farmers Self Help Group.

The regional office then organized for a site verification visit on 23rd November 2021 to establish the suitability. A site visit report was done on 24th November, 2021.

2. Sitting on private land

A preliminary survey during the verification visit by the regional team, the community said that the dam was constructed after the Kamura Dam community agreed through Kakumu Farmers Self Help Group to come up with a dam that will objectively serve the community, thus and therefore it has been taken as a public facility to objectively serve the interest of the community as this was equally confirmed by the area Chief for South Kanyamwa Location Mr, Samwel Were, the area Assistant Chief for K'Achola Sub Location Mr. Richard Otieno Omolo and the Kawere Village Elder. A copy of the Kakumu Fish and Farmers Self Help Group Certificate of Serial No. AA 48110 has been availed.

3. The regional office did the stocking of the dam involving members of the Kamura Community Dam. A copy of Inspection and acceptance certificates and attendance list for the stocking has been availed.

Sironga Girls' Schools

1. Criteria for selection

On the 7th October 2021, the regional office received a request letter for support from Sironga Girls to develop fisheries, aquaculture and blue economy project site; Sironga Girls National High School through the School Principal. A copy of the request letter has been availed.

The regional office further did a site and verification visit for on the 15th October, 2021. A copy of the site verification and feasibility report compiled on 18th October 2021 has been availed.

The regional office considered the school based on the request letter and the site verification visit.

2. Records of delivery of fingerlings by the school.

During delivery and stocking of the fingerlings, a teacher in charge of Agriculture at Sironga girls National School, attached to the school farm formed part of the inspection and acceptance

committee. A copy of the Inspection and acceptance certificate as well as attendance list has been availed.

The regional office further advised the school and the farm manager/Teacher responsible during the inspection visit to seek for regular fisheries and aquaculture extension services from the County fisheries office, County Government of Nyamira.

Committee Observations and Findings;

The Committee noted that;

i. **The distribution to Sironga Girls School and Kakumu Self Help Group was whimsical and had no demonstratable criteria as these two entities purpotedly requested for the fingerlings (curiously at the same time), with no demonstration of how they knew of the fish availability in the first place;**

ii. **The distribution to Sironga was barely within 10 days of request; there was no demonstration of the fast procurement process;**

iii. **Land ownership documents for Kamura dam were not availed.**

Committee Recommendation;

The Committee recommends that the EACC expeditiously conducts investigations into the matter and that the Accounting Officer surcharges and initiates disciplinary action on those involved, and avails evidence of the same within three (3) months of adoption of this report.

1477. Irregular Procurement for Supply and Delivery of Fingerlings

Review of procurement records revealed that tender No. NG/KW/FISH/21/2021/2022 for supply and delivery of 2,040,000 fingerlings to twenty-four (24) dams in various counties was awarded to a firm at Kshs.101,592,000. Each dam was to receive 85,000 fingerlings. However, the capacity of each dam had not been assessed and mentioned in any report to confirm if each of the said dams had the capacity for 85,000 each for fingerlings. There was also no contract with the firm detailing the modalities of supplying and delivery of the fingerlings. During the year under review, the amount paid for this tender was Kshs.15,200,254. In addition, tender No. NG/KW/FISH/24/2021/2022 for supply and delivery of 255,000 fingerlings to three dams in various counties was awarded to another firm at Kshs.12,367,500. A payment of Kshs.2,449,978 for the delivery of 50,515 fingerlings to the three (3) dams was made during the year under review. The capacity of each dam had not been assessed to confirm if each of the said dams had the capacity for 85,000 fingerlings. There was also no contract with the firm detailing the modalities of supplying and delivery of the fingerlings.

In the circumstances, the value for money on the expenditure of Kshs.17,650,232 for supply and delivery of fish fingerlings could not be confirmed.

Submission by the Accounting Officer

The State Department has been carrying out restocking of water bodies with fingerlings to increase fish production, national food security and nutrition.

The restocking program was based on a report "carrying capacity for small water bodies the Aquaculture Assessment Report of 2020. The following documents have been availed for review;

i. Requisitions and Quotations
ii. The contract with the firm
iii. Appointment letters for opening & evaluation committees
iv. Opening and evaluation Minutes
v. Professional Opinion
vi. Delivery notes
vii. Inspection and acceptance report

The identity and location of the water bodies including evidence of stocking has been availed.

Committee Observations and Findings;

The Committee observed that the entire project was ill conceived as there was no verifiable mechanism to track the maturity and harvest of fish towards the 'food security' justification submitted by the Accounting Officer. Value for money could therefore not be ascertained.

Committee Recommendation;

The Committee recommends that the EACC expeditiously conducts investigations into the matter and that the Accounting Officer surcharges and initiates disciplinary action on those involved, and avails evidence of the same within three (3) months of adoption of this report.

1478. Unsupported Over-Expenditure

The statement of receipts and payments and Note 4 to the financial statements reflects a total expenditure of Kshs.844,611,256 on use of goods and services. Included in this expenditure is training expenses of Kshs.496,568,171 out of which an Authority to Incur Expenditure (AIE) of Kshs.408,000,000 was issued Kenya Marine and Fisheries Research Institute (KMFRI) for hire of training facilities and equipment. However, a payment of Kshs.144,000,000 was made on 29 October, 2021 towards leasing of vessel for training of fish crews but the available balance of the AIE at the time of the payment was Kshs.142,889,701. It was not explained how the difference of Kshs.1,110,299 was funded. In addition, the Institute issued imprest amounting to Kshs.414,400 for flagship of the vessels in Mombasa, which was not budgeted for under the vote.

In the circumstances, the State Department was in the breach of the law.

Submission by the Accounting Officer

The Institute has been receiving funds transferred in form of an AIE from the parent Ministry SDFA&BE for Marine Fish Crew Training. To facilitate accounting and payments processes, the marine crew funds received by the Institute are always credited to the KMFRI Research Vessel Account.

At the beginning of the FY, the balance of Fish Crew Training Funds in the bank account was KShs.143,304,101 whereupon the Institute made a payment of KShs.414,400 in form of imprests to Ministry officers for launch of the training and KShs.144,000,000 in part payment of invoice no.202107002 to Pweza Fisheries Limited. It is true that this resulted in a difference of Kshs.1,110,299 which was debited to the Institute's KMFRI Research Vessel Account, given that the AIE and RV Mtafiti funds are in the same account and institute had balance on account to pay the same.

KMFRI had already processed an exchequer requisition of Kshs.100 million in AIE in April 2022 to fund balance of invoices from Pweza Fisheries Limited and the difference of KShs.1,110,299 was refunded to the Institute upon the receipt of the AIE from the Parent Ministry's SDFA&BE.

The total AIE received amounted to Kshs. 408M which utilised as below;

Funds for Marine Stock assessment	Receipt No.	Kshs.
Disbursement of funds – 28/04/2022	A785	100,000,000
Disbursement of funds (Receivable) – 30/06/2022	A808	308,000,000
Total AIE received		408,000,000
Expenditure Analysis		
	Chq. No	
Pweza Fisheries Limited Invoice No. '202107004	007178/07649	151,467,209
Pweza Fisheries Limited Invoice No. '202107003	007673	151,467,209
Pweza Fisheries Limited Invoice No. '202107002	007177/006492	33,838,698
Balance committed as per contractual obligation		71,226,884
Total Accountability		408,000,000

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General confirms the refund of Kshs.1,110,299 in subsequent financial year audit.

1479. Failure to Account for All the Fishermen Trained Under a Presidential Directive

During the year under review, there was a Presidential directive to train one thousand (1000) fishermen to be able to fish using deep sea vessels. The training was done in two (2) stages, the first part of the training was undertaken at Bandari Maritime Academy where eight hundred and fourteen (814) fishermen were trained according to 2020/2021 reports by Kenya Fisheries Services (KeFS) but the list provided of fishermen who were accredited in the seaman's book reflected only 412 fishermen. The second part of training involved a contract signed on 1 March, 2021 for facilitating hire of vessels to be used in training the fishermen in the deep sea undertaken by KMFRI where a total of four hundred and thirty-seven (437) persons were to be trained under the contract. However, it is not clear how many fishermen were trained at Bandari Maritime Academy and further went for the deep-sea training since the numbers quoted in the two training components differ by three hundred and seventy-seven (377) and also differ with Presidential directive numbers of one thousand (1000) fishermen.

In the circumstances, Management was in breach of the Presidential directives and value for money on the training expenses of Kshs.408,000,000 could not be confirmed.

Submission by the Accounting Officer

During the year under review, there was a Presidential directive to train one thousand (1000) fishermen to be able to fish using deep sea vessels. The Fish crew training was in two (2) Stages, the first stage was at Bandari Maritime academy where 814 fishers were trained. The second stage

involved Practical boarding of the Deep-Sea Vessels and accreditation with Seamans books. The Deep-Sea vessels have limited capacity that accommodates 20 fishers per trip. In the circumstances the difference in the number of trainees who not been accredited with Seaman's book was brought about by the limited capacity on the deep-sea vessels. The difference has been accounted for after all trainees boarded the vessels and were accredited with Seamans books. So far, a total of 853 fishers have undergone the Standards of Training, Certification and Watch-keeping for Seafarers (STCW) training at Bandari Maritime academy and Boarded the Deep-Sea vessels.

Committee Observations and Findings;

The Committee noted that;

i. **The cost per student as submitted by the Accounting Officer at Kshs. 187,000 was high considering the training was for 30 days;**

ii. **Copies of the seaman's books were not availed to the Committee despite the Accounting Officer being directed to do so.**

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to justify the training, and recommends that the Auditor General examines the seaman's books in subsequent financial year audit.

1480. Construction and Civil Works

The statement of receipts and payments and Note 7 to the financial statements reflects expenditure on acquisition of assets amounting to Kshs.1,453,902,755. Included in this expenditure is an amount of Kshs.1,160,919,983 relating to construction and civil works.

However, review of records revealed several issues as detailed below.

1480.1. Construction of Lwanda K'Otieno Fish Landing Site in Siaya

During the year under review, an amount of Kshs.121,510,101 was paid for construction of Lwanda K'Otieno landing sites. The following observations were made upon examination of related records and physical verification at the project sites:

i. Technical drawings for the landing sites were not provided for audit review. In addition, during the procurement process, amendments were made on the initial Bills of Quantities (BOQ) that had been approved. However, it was not clear what necessitated the revision of initial bills of quantities. Further, the Bills of Quantities included an amount of Kshs.9,282,000 relating to payment for particular preliminaries that was not supported.
ii. The payment vouchers included certificate No.2 which included Utility Block -, Gate House and Provisional Sum costing Kshs.5,219,570, Kshs.756,760 and Kshs.59,300,000 that were not supported by the Bills of Quantities.
iii. There were no ramps on the paths leading to the washrooms for persons with disability, the pavements from the jetties had cracks, the gate houses were yet to be done and there was no electricity making the landing sites not to be used.
iv. Luanda K'Otieno was commissioned on 4 August, 2022 yet the works were not complete.

Submission by the Accounting Officer

The State Department initiated construction of Lwanda Kotieno fish landing site in Siaya County. The main objective being to reduce fish post harvest losses and improve sanitation.

The technical drawings were not provided during audit because the drawings had not been availed to the management by the project management team from state Department for Public Works. The drawings have been availed.

The amendment of the Bills of quantities was made to convert prime cost sum to provisional sum and there was no change in quantities. This was necessitated by the need to have domestic sub-contractors under one contractor. There was no change in quantities.

Bill of quantities included amount of Kshs. 9,282,000 particular preliminaries which are costs associated with project management and include transport, allowances and stationery for project management and supervision of the project. This is supported by correspondences between the project manager and the contractor and schedules of allowances have been availed.

Access ramp leading to the washroom for persons with disability was fabricated and provided.

Cracks noted were rectified during the defects liability period, gate house was done and is in place and electricity was installed on 6th January, 2023 as per the attached letter by the regional coordinator.

The works were practically complete by the time of commissioning and the defects and minor works were addressed during the defects liability period.

Committee Observations and Findings;

i) **The Committee noted that the project was noted as complete in its report for the financial year 2020/21.**

ii) **The Committee found that the matter was resolved.**

1480.2. Construction of of Fish Landing Site at Sori Beach in Migori County

During the year under review, an amount of Kshs.126,790,621 was paid for construction of Sori landing sites. However, examination of related records and physical verification at the project sites revealed the following:

i. Technical drawing for the landing site were not provided for audit. During the procurement process, amendments were made on the initial BOQ that had been approved. It was however not clear what necessitated the revision of initial bill of quantity. In addition, included in the bills of quantities was an amount of Kshs.9,790,000 relating to payment for particular preliminaries that was not supported with relevant documentation.
ii. The provisional sum stated in the bills of quantities was Kshs.61,300,000 and included mechanical works, electrical works, generator and solar platform that formed part of the payment certificate No.3. However, detailed analysis and specifications of the items were not provided for audit.
iii. Quoted in the bills of quantities were seven stainless steel handrails for the assisted washroom valued at Kshs.56,000. However, the washroom had five handrails that were of

different material other than the quoted one. Further, there was only one washroom facility for people with disability and the entrance did not have a ramp.

iv. An amount of Kshs.115,200 was quoted in the bills of quantities for provision of thick steel casement double leaf double swinging door sizes for the utility block. However, the external door put were made of wood and not steel.

v. The BOQ specifications included gutters and rainwater drainage pipes at the gate house. However, the same had not been installed.

vi. Sori fish landing site was commissioned on 4 August, 2022 yet the works were not complete. There was no electricity making the landing site not to be used.

Submission by the Accounting Officer

During the year under review, kshs.126,790,621 was paid for construction of Sori Fish Landing Site. Technical drawings were not provided during audit because the drawings had not been availed to the management by the project management team from State Department for Public Works. The drawings have been availed.

The amendment of the Bills of quantities was made to convert prime cost sum to provisional sum and this was necessitated by the need to have domestic sub-contractors under one contractor. There was no change in quantities.

Particular preliminaries of kshs.9,790,000 is costs associated with project management and include transport, allowances and stationery for project management and supervision of the project and this is supported by correspondences between the project manager and the contractor and schedules of allowances.

Breakdown provisional sum, mechanical works, electrical works, generator and solar platform are provided;

- A ramp at the entrance of PWDs washroom has been constructed and one washroom was sufficient for PWDs given the ration of PWDs and other users.
- Utility door made of wood instead of steel casement double leaf double swinging door was done as per instructions issued by the consultant architect.
- Installation of gutters and rain water drainage pipes at the gate house done.
- Electricity installed on as per letter attached.
- The project was commissioned on 4th August, 2022 because it was practically complete.

Committee Observations and Findings;

i) **The Committee noted that the project was noted as complete in its report for the financial year 2020/21.**

ii) **The Committee found that the matter was resolved.**

1480.3. Renovations and Rehabilitation Works at Fish Quality Control Laboratory Kisumu

During the year under review, an amount of Kshs.9,020,466 was paid for the proposed renovation and rehabilitation works at the Kisumu Fish Quality Control Laboratory. The works paid for included CCTV installation and electrical works. Examination of related records and physical verification at the project site in October, 2020, revealed the following unsatisfactory matters:

i. The handover by the contractor was done in July, 2022. However, the power connection and lighting system were faulty and power would go off when some of the machines were switched on. In addition, electrical works were also incomplete with switches not fixed on the wall.
ii. Waste pipe to the sentry had not been done and the septic tank was yet to be completed. The door knobs were of poor quality and the CCTV cameras were also not functional as the control room which should be situated at the gate was not complete.
iii. A freezer that was to be used in the laboratory had not been relocated to the appropriate room and the generator in the laboratory was not working. The laboratory also lacked reagents hence hampering analysis.
iv. The air extraction system was producing foul smell in the whole laboratory and the ventilation system in the laboratory was not functional.
v. Most of the equipment in the laboratory were not operational as some were yet to be fully installed.
vi. There were two generators belonging to Ogal and Nyandiwa landing sites in Kisumu Regional Office compound that had been poorly stored.

Submission by the Accounting Officer

During the year under review the state department made payments amounting to Kshs.9,020,486 towards renovations and rehabilitation works at fish quality control. The scope of the works for renovations did not include laboratory lighting system and machinery because the said works were under a different contract. The scope of the contract under review was construction of electrical boundary fence and CCTV camera installation only. The guard house was completed and CCTV Camera fixed and functional. Storage of generators was advised by technical team from State Department for Public Works. Out of the four generator sets three have been dispatched to respective landing sites and are functioning well. The defects noted though from a different contract have since been addressed.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

1480.4. Renovations and Rehabilitation Works at the Gazi Fish Landing Site, Kwale County

Included in the expenditure on construction and civil works for the year under review is a payment of Kshs.40,126,027 for works at the Gazi Fish Landing Site. However, field verification carried out in October, 2022 indicated that the area floods during high tides, which may cause destruction of materials as well as mechanical and electrical works.

There was no sea wall constructed to prevent flooding of the site. Although the electrical works and CCTV installations were complete, the site was not in use since there was no power source or connection.

Submission by the Accounting Officer

The State Department paid kshs.40,126,027 towards construction and civil works at Gazi landing site mainly for construction of drying sheds for sea weed and storage facility for the same. The scope for the works that were under review did not include construction of sea wall. However, procurement of sea wall has been finalized and the contractor is on site.

Electricity connection was applied for but we had challenges with landowners owing to wayleave. The state department is still pursuing the issue with the locals and Kenya Power on possible alternatives. In the meantime, a generator has been installed to provide the needed power.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

1480.5. Renovations and Rehabilitation Works at Ngomeni Fish Landing Site, Kilifi County

A payment of Kshs.12,699,332 was made for rehabilitation works at the Ngomeni Fish Landing Site during the year under review. However, works done including; working tables/tops, generator house, ice flake section and installation of water tank were not in the original contract. It was not clear who instructed the contractor to execute the extra works. Further, there was no access of the fish landing site from the ocean and it was not clear how the fishermen would be offloading fish.

- Works done including working tables/tops, generator house, ice flakes section and installation of water tanks were not in the original contract. Who instructed the contractor to execute the extra works.
- No access of the fish landing site from the ocean, how would the fishermen be offloading their fish.

Submission by the Accounting Officer

The State Department has been putting up fish landing sites at the coast to reduce fish post-harvest losses, enhance nutritional and national food security and increased income to the fisher fork.

Some items such as working tables/tops, generator house and installation of water tank were not part of the scope of works but were necessary and therefore the project manager representative from State Department for public works issued instructions to the contractor to provide aforementioned items to make the landing site functional. The budget available then could not accommodate construction of jetty to help the fishermen access the fish landing site easily. However, this has been factored in the second phase subject to availability of funds.

Currently the works are completed and handed over.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

1480.6. Rehabilitation at the Kichwa Cha Kati Fish Landing Site, Kilifi County

An amount of Kshs.10,070,046 was paid for rehabilitation works at Kichwa Cha Kati Fish Landing Site in the year under review. However, review of the project progress report revealed the works to be at 75% completion despite the fact that the contract period had lapsed as of October, 2022. In addition, although the contractor was given extra works of cutting off sand around the fish landing site. There was no evidence that a quantity surveyor visited the site to quantify the amount of work to be done by the contractor. Also, Management did not provide the instruction for extra works for audit verification. Further, the landing site did not have power supply/connection and may not be in use once completed.

Submission by the Accounting Officer

The State Department spent kshs.10,070,046 on construction of Kichwa cha Kati fish landing site based in kilifi county during the year under review.

By the time the audit was conducted works had not been completed mainly due to delayed payment of certified works and covid 19 pandemic during the contract period. Application for power from KPLC had been done but the facility had not been connected during the audit but we can confirm now that power has been connected to the facility.

The instructions to cut off sand around the site was issued by the project manager representative from State Department for Public Works. All instructions are quantified by the Project quantity surveyor from State Department for Public Works. The project was completed and handed over.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

1480.7. Proposed Construction of National Mariculture Resource Centre at Shimoni, Kwale

During the year under review, a firm was awarded a contract for proposed construction of National Mariculture Resource Centre at Shimoni, Kwale at contract sum of Kshs.734,002,095. As detailed in the engineer's report, the certified amount was Kshs.378,893,781 and that the works were 60% complete as of 30 June, 2022. However, the contractor was granted extension of contract to 4 June, 2022 but there was no evidence that performance bond which expired on 30 November, 2020 was renewed to cover the extended project period.

Further, the following observation were made during audit verification in October, 2022:

i. Although the contractor did not have pending certificates, the contractor had abandoned the site and no works were ongoing.

ii. According to payment certificates, the engineers had certified walling works as 50%. However, during the physical verification it was noted that walling works was below the certified percentage.
iii. The subcontractor for installation of CCTV had delivered material to the site despite the fact that the main works was still in progress exposing the materials to damage or theft.
iv. The subcontractor for air conditioning installation works had delivered materials to the site but the works could not continue since the main contractor had pending works. The materials could be damaged or stolen.
v. Expenditures under preliminaries in bills of quantities totaling Kshs.26,890,000 could not be confirmed as no evidence was provided for audit verification.

In the circumstances, value for money on expenditure of Kshs.1,160,919,983 relating to construction and civil works could not be confirmed.

Submission by the Accounting Officer

The State Department initiated the construction of National Mariculture Resource Center at Shimoni to enhance research in Mariculture and increase fish production from marine and increase income to fisher folk.

The State Department had at one time delayed paying the contractor due to insufficient budget allocation but after the payment was made the contractor who had abandoned site due to delayed payment did not resume works as noted by the audit.

The project manager issued the contractor with warning letter and default notice. When the contractor failed to resume works the contract was terminated.

- Sub-contractors for CCTV and mechanical works and air conditioning had delivered air conditioning materials in anticipation that the main works will be concluded within the contract period;
- Currently, the materials are in good custody of the client and stored in the same building manned by the fisheries officers on the ground.
- Preliminary expenditure of Kshs.26,840,000 are expenses associated with project management..

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

1481. Irregularities in Procurement of Supplies

The statement of receipts and payments and Note 4 to the financial statements reflects expenditure on use of goods and services amounting to Kshs.844,611,256. Included in this expenditure is an amount of Kshs.173,150,741 incurred for specialized materials and services, out of which Kshs.59,099,986 relates to AIEs sent to Kirinyaga West. However, review of the payment vouchers totaling Kshs.20,312,750 and procurement correspondences revealed that firms that were not in the list of registered suppliers were awarded contracts and there were no requisitions and

correspondences on how firms were invited to bid. Further, LPOs were issued to firms before user requisitions were made.

In the circumstances, Management was in breach of Section 71(4) of the Public Procurement and Asset Disposal Act, 2015.

Submission by the Accounting Officer

The State Department dispatched AIEs to Kirinyaga West for use among others procurement of various supplies.

Registration of suppliers is provided for in Section 57 of the Public Procurement and Asset Disposal Act, 2015. Section 57(2) provides that submission of names shall be continuous and registration list shall be updated periodically. During the time of audit the suppliers register had not been updated and thus missing some names. The register has since been updated and provided for review.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed the list of suppliers, LPOs and Delivery Notes.

Committee Recommendation;

The Committee reprimands the Accounting Officer for late submission of auditable documents contrary to section 62 (1)(c) of the Public Audit Act.

1482. Issuance of Overlapping Imprest

The statement of receipts and payments and Note 4 to the financial statements reflects expenditure on use of goods and services amounting to Kshs.844,611,256. Included in this expenditure is travelling and subsistence allowance expenditure of Kshs.186,906,488. Analysis of the imprests register revealed that officers with overlapping imprests had received a total of Kshs.174,736,904 before surrender of the previous imprests contrary to Regulation 93(4) of the Public Finance Management (National Government) Regulations, 2015.

In the circumstances, the Management was in breach of the law.

Submission by the Accounting Officer

The officers were issued with additional imprests before surrendering the previous ones. The imprest issued were not immediately funded due to lack of exchequer resulting an officer undertaking various activities/work assignments before the imprests are paid. All the imprests however were surrendered at the end of the financial year. Imprest register with a nil balance has been availed for verification.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1483. Unsupported Contract Termination at Liwatoni Complex

In the year under review, the State Department terminated all the contracts that were running at Liwatoni Complex. However, the Management did not provide information or documentation stating reasons for termination, contractual grounds and the cost of termination details.

In the circumstances, contracts terminated without following due process may lead to litigation.

Submission by the Accounting Officer

The State Department had ongoing contract for construction of 1000MT of cold room which together with sub-contractors were wound up mutually after agreeing with the employer. The mutual winding up of these contracts was meant to give way to the new contractor for construction of HACCP Compliant Ultra-Modern Tuna Fish Hub.

The winding up process was mutually agreed on and followed the procedure in the contract and due process was followed as per the contract.

The due process was followed in winding up the contracts and all parties involved signed the agreements.

Committee Observations and Findings;

The Committee noted that the submission by the Accounting Officer was unsatisfactory.

Committee Recommendation;

The Committee recommends that the EACC expeditiously conducts investigations into the entire project as recommended in paragraph 1473 above.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1484. Non-Compliance with the One-Third of Basic Salary Rule

Analysis of the payroll for the year ended 30 June, 2022 revealed that fifteen (15) employees had overcommitted their salaries and were earning less than a third of their basic salary. This was contrary to Section C.1.(3) of the Human Resource Policies and Procedures Manual for the Public Service, 2016.

In the circumstances, the Management was in breach of the law.

Submission by the Accounting Officer

Analysis of the payroll for the year ended 30th June, 2022 reveled that fifteen (15) had overcommitted their salaries and were earning less than a third of their basic salary.

Reasons for violation of 1/3 basic rule were as follows:

- Implementation of the mandatory Superannuation Pension Scheme with effect from 2021 of 2%,2022 of 5% and 2023 of 7.5% respectively
- Transfers both internal and external that affect house allowance or allowances

The officers violated the 1/3 rule because the IPPD system could not automatically adjust the 3rd party deductions to accommodate the changes to the statutory deductions. The division has now ensured compliance of the rule.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1485. Lack of Assets Ownership Documents

Annex 1 to the financial statements on summary of fixed assets register reflects historical cost balance of Kshs.7,158,878,844 as at 30 June, 2022. However, review of the fixed asset register for audit revealed that ownership documents for all parcels of land acquired over the years were not provided for audit review. In addition, the asset register indicated that State Department owned a total of 114 motor vehicles and but 30 logbooks were provided for audit. Further, asset register lacked key details like the acquisition cost, location of the asset, depreciation rate and the date of acquisition. Most of the land details did not indicate the acreage and vehicles registration number, chasis number and engine number were also not indicated.

In the circumstances, the effectiveness of controls relating to management of fixed assets could not be confirmed.

Submission by the Accounting Officer

Annex 1 to the financial statements on summary of fixed assets register reflects historical cost balance of Kshs.7,158,878,844 as at 30 June, 2022.

- Ownership documents for motor vehicles (logbooks) and vessel licenses acquired during and over the years have been availed to the auditors for verification
- The State Department is working on modalities of carrying out an audit of all its lands and subsequently processing of the ownership documents. Reports on securing Fish Landing Sites within Kenya Coastal and Lake Victoria Counties dated March, 2019 have been availed together with Report on Survey of Fish Landing sites in Mombasa and Kwale counties dated July, 2019
- The state department is currently in the process of updating the asset register as the title deeds are received.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a complete fixed assets register within three (3) months of adoption of this report by the House.

1487. Revenue Management

1487.1. Delay in Banking of Revenue

The statement of receipts and disbursements reflects other receipts of Kshs.125,504,664 which includes revenue amounting to Kshs.1,392,925 collected by the National Aquaculture Technology Development and Innovation Transfers Centre (NADC). However, review of revenue records held by the training department of NADC in Sagana revealed that revenue amounting to Kshs.51,400 was banked at least three days after the date of collection. In addition, the records revealed that total revenue collected during the year under review was Kshs.543,550 while total revenue banked was Kshs.584,040 resulting to unexplained over banking of Kshs.40,490.

The late banking and overbanking of revenue may be an indication of teaming and lading.

Submission by the Accounting Officer

There was delay in banking of revenue amounting to kshs. 51,400. this was due to collection that was done over the weekends and therefore banking delayed up-to the following week Monday. This challenge has now been overcomed by the introduction of e-citizen.

The unexplained banking of kshs.40,490 was caused by banking in one of the stations but the return had not been received at the headquarters by the time of writing the report. This was later adjusted.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1487.2. Delay in Remitting Revenue to the Receiver of Revenue

Kenya Fishing Industries Corporation (KFIC) collected revenue on behalf of the State Department from security and electricity charges at Liwatoni fishing port. Audit of Liwatoni fishing port revealed that an amount of USD.6,321 was credited directly to KFIC's USD bank account for electricity charges on 17 June, 2022 by a shipping agent. The amount had, however, not been surrendered to the State Department as at 30 June, 2022.

This was contrary to Section 76(2) of the Public Finance Management Act, 2012 which states that any public officer, other than a receiver or collector of revenue for the National Government, who collects revenue for that National Government shall, not later than three days after receiving it, deliver the revenue to a receiver or collector of revenue for the National Government.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

Kenya Fishing Industries Corporation (KFIC) collected revenue on behalf of the State Department from security and electricity charges at Liwatoni fishing port.

The collections initially were considered as revenue and a request for approval from The National Treasury was made.

The Corporation remitted the revenue as per now availed banking slip and statement.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1488. Lack of a Tenancy Agreement

Audit of the fisheries projects in Kisumu County in October, 2022 revealed that a private company dealing in manufacture of water buses was hosted on land belonging to the State Department for Fisheries, adjacent to the fisheries offices in Kisumu. Although the Management explained that the company had leased the land since the year 2014 at a monthly rent of Kshs.30,000 no documentary evidence including a signed contract or lease agreement and valuation report was provided for audit.

In the circumstances, the basis and validity of revenue received from the company could not be confirmed.

Submission by the Accounting Officer

Regarding leasing the premises to the private company which manufactures water buses being hosted in the State department's property, a valuation report from the department of lands Ref: Val.142/NP/KSM/Vol.2/12 dated 22nd May 2014 recommended a monthly rent valued at Ksh30,000.00.

The private company wrote to the Director General through the Regional office vide a non-referenced letter dated 10th February 2021 requesting for a lease for fisheries yard, letter availed to the auditor.

Revenue from Rent is banked directly by client to CBK Account. Copies of Banking Slips and Extracts of the Bank Statements have been availed.

Committee Observations and Findings;

The Committee noted that the Accounting Officer failed to act upon its recommendations by obtaining current valuation, and continued to rely on one done in 2014.

Committee Recommendation;

The Committee;

i. **Severely reprimands the Accounting Officer for failure to act on its recommendations and recommends that the Accounting Officer makes good the loss, within three (3) months of adoption of this report;**
ii. **The Accounting Officer obtains current market valuation and adjusts the rent in a new tenancy agreement, within one (1) month of adoption of this report.**

1489. Controls Over Collection of Revenue

1489.1. Under-Collection of Revenue in Kenya Fishing Industry Corporation (KFIC)

During the year under review, Kenya Fishing Industry Corporation collected revenue amounting to Kshs.2,358,014 and remitted the same to the revenue account of the State Department. The revenue collected by the Corporation included fish offloading charges and security charges in Liwatoni, Mombasa. However, there were seventy-seven fish landing sites along the coast line of Kenya where the Corporation did not collect revenue from the fishermen.

The Management explained that the revenue was not being collected from the seventy seven sites due to lack of adequate resources to enforce the collection. In addition, the Corporation invoiced the clients using the rates approved in dollar rate but during payment, some clients remitted their charges in Kenya Shillings with a standard conversion rate of USD.100, while the daily conversion rate during the period under review ranged from Kshs.107.7 to Kshs.115.87, resulting to loss of revenue.

In the circumstances, it was not possible to confirm the effectiveness of internal controls on revenue collection.

Submission by the Accounting Officer

KFIC has not been collecting revenue from the seventy-seven fish landing sites which are under the management of the County government and the National Government only collects revenue from the fishing ports.

During the year under review, Kenya Fishing Industry Corporation collected revenue amounting to Kshs.2,358,014 from Liwatoni fishing port and remitted the same to the revenue account of the State Department.

Committee Observations and Findings;

The Committee noted that the submission by the Accounting Officer on undercollection through irregular rate conversion was unsatisfactory.

Committee Recommendation;

The Committee reprimands the Accounting Officer for abrogation of duty and negligence, and recommends that the Accounting Officer audits all payments made in the financial year and invoices and recovers the conversion rate differences to the debtors, and submits a status report to the Committee within three (3) months of adoption of this report.

1489.2. Delay in Collection of Revenue

Audit review and a physical inspection in October, 2022 revealed that the Kenya Fishing Industry Corporation had outstanding revenue debtors amounting to USD.119,282 (approximately Kshs.13,932,138 at an exchange rate of 116.80), relating to security and electricity charges for various vessels that had docked at the Liwatoni fishing port. One of the clients had outstanding amounts since 7 August, 2020 and 19 October, 2020 of USD.34,150 and USD.44,982, respectively all totaling to USD.79,132 (approximately Kshs.9,242,618). Although the Management had

written demand letters, the client did not respond and the client's ship was still docked at Liwatoni and accumulating more charges.

In the circumstances, it was not possible to confirm the effectiveness of internal controls on revenue collection.

Submission by the Accounting Officer

The Corporation had been following up with the owner of the vessel to make the payment. It was realized that the owner of the vessel was under financial constraints and was not even replying to the demand letters. Since the vessel is still docked at Liwatoni Fishing Port, all measures have been put place to ensure it could not leave the port until it meets it all the outstanding debt obligations to the Corporation. Finally, The Corporation approached the Office of the Attorney General - Mombasa since 26th November 2021 to follow up on legal measure to recover it outstanding debts on behalf of Corporation.

Currently, the corporation is following up the case for consultation with the office of the Attorney General. The case is live in court.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits status of the court proceedings within three (3) months of adoption of this report.

DONOR FUNDED PROJECTS

KENYA MARINE FISHERIES AND SOCIO-ECONOMIC DEVELOPMENT PROJECT (IDA CREDIT NO.65400-KE)

REPORT ON THE FINANCIAL STATEMENTS

1491. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual amounts on comparable basis of Kshs.1,347,000,000 and Kshs.575,146,858 respectively resulting to an underfunding of Kshs.771,853,142 or 57% of the budget.

Similarly, the Project expended an amount of Kshs.734,024,414 against an approved budget of Kshs.1,347,000,000 resulting to an under expenditure of Kshs.612,975,586 or 46% of the budget. The underfunding and underperformance affected the planned activities and may impact negatively on delivery of goods and services to the public.

Submission by the Accounting Officer

The project is operating on a roll over basis with balances from IDA loan revenue carried forward to the next financial year. The project had an opening balance of Kshs 459,305,624 this therefore reduces budget underfunding to Kshs 312,547,518 from Kshs 771,853,142. The under-funding was as a result of the project not making exchequer requests to The National Treasury reason being no funds in the Designated Account. The project operates on statement of expenditure with a

withdrawal limit of not less than half the disbursement limit as provided for in the Disbursement and Financial Information letter (DFIL). The project did not make application for withdrawal since the balance held was more than half the application.

On the other hand, the project had planned to undertake among others major infrastructural activities under sub component 1.3 and pre-funding engagements for community livelihoods for coastal communities grants under sub component 2.1. The stringent procurement requirements and approval processes within the project delayed the implementation and different approval process within the bank. Other stakeholder's consultations requirements and engagements for both the environmental and social safeguards for approvals had also delayed implementation of the projects planned activities mostly the projects that required Environmental and Social Impact Assessment.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

AQUACULTURE BUSINESS DEVELOPMENT PROGRAMME (IFAD LOAN NO.2000002052 & 2000002614)

REPORT ON THE FINANCIAL STATEMENTS

1495. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on a comparable basis of Kshs.3,858,365,836 and Kshs.2,317,418,805, respectively resulting to an underfunding of Kshs.1,540,947,031 or 39.94% of the budget. Similarly, the Programme spent an amount of Kshs.2,297,639,602 against a final budget of Kshs.3,858,365,836 resulting to an under expenditure of Kshs.1,560,726,234 or 40.45% of the actual receipts.

The underfunding and under expenditure affected the planned activities and might have impacted negatively on the delivery of goods and services to the public.

Submission by the Accounting Officer

This was occasioned by delay in the recruitment of transactional advisor who was to take a lead role in supporting the Aquaculture Value Chains Development that involves structuring of business plans for Aquaculture Small Enterprises as well contracting Aquaculture Independent Aggregators to support in feeds and fingerlings distribution.

The Start and Improve Your Own Business Model was also not implemented as the contractual process was also not complete.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1496. Irregular Recruitment of Monitoring and Evaluation and Knowledge Management Officer

The Programme advertised for the position of a programme coordination unit staff on 28 September, 2021 in the Daily Nation with stated minimum requirements. However, the shortlisting scorecard had the following inconsistencies from the shortlisting team:

i. The panel prepared a shortlisting criterion in which all the advert requirements were included. However, the report of the shortlisting panel for the recruitment dated 17 February, 2022 differed from the advert requirements such that, there were no marks assigned for a Master's Degree in Economics, Statistics or in a related field in the shortlisting report.
ii. The shortlisting scorecard was not well prepared and the total marks assigned were 105 marks instead of 100 marks.
iii. The shortlisting team members did not append their signatures in each scorecard to the process.
iv. There were a lot of cancelations which were not countersigned by the person shortlisting.
v. Original marks assigned for certificate of good conduct, clearance certificate from the Higher Education Loans Board, tax compliance certificate, clearance from the Ethics and Anti-Corruption Commission and report from an approved Credit reference bureau were 5 marks each. However, the shortlisting panel changed the weighting to 2 marks each. No explanation was provided on what necessitated the change.
vi. The shortlisting team members in their scorecards left some cells blank without filling a mark.
vii. Further, the successful candidate's application did not have a valid certificate of good conduct and clearance certificate from the Higher Education Loans Board as both documents had expired on 31 January, 2021 eight (8) months prior to the job advertisement. Valid tax compliance certificate and report from an approved credit reference bureau were not attached. However, all 5 members of the shortlisting team awarded the candidate with full marks for the above.

The above shortcomings were in in contravention of Section B.5 of the Human Resource Policies and Procedures Manual for the Public Service, 2016 which states that recruitment will be undertaken on the basis of fair competition and merit, representation of Kenya's diverse communities, adequate and equal opportunities to all gender, youth, members of all ethnic groups, persons with disabilities and minorities.

In the circumstances, Management was in breach of the Human Resource Policies and Procedures Manual for the Public Service, 2016.

Submission by the Accounting Officer

There was recruitment process of a Monitoring, Evaluation, and Knowledge Management Officer.

i. Please note that the first report of the shortlisting panel for the Monitoring & Evaluation and Knowledge Management officer dated 25th November, 2021 had assigned twenty (20) marks for Master's program. However, the committee reviewed the first report when IFAD insisted that the shortlisting criteria should be based on the approved TORs of which

Master's degree was not considered as a mandatory requirement as per letter of No Objection availed.

ii. The shortlisting score cards were working sheets for compilation.

iii. It is true the scoresheets were not signed & the shortlisting team did not countersign cancellations for they were working sheets for compilation. However, after the compilation of the report the team signed the final report.

iv. It is true the committee reduced the weights assigned to chapter six from five to two marks, for the same committee members realized that the weights allocated to chapter six was the same as that of experience thus the committee adjusted the weights.

v. The Employment Amendment Bill No. 79 of 2019 had just been passed. The Bill amended Section 9 of the Employment Act by introducing a provision to stop employers from requiring the provision of mandatory clearance certificates from job applicants during recruitment. The amendment provided that an employer shall not require a job applicant to procure clearance certificates for which the applicant must pay unless the employer intends to employ the applicant. The team thus did not penalize any officer at the shortlisting stage however all candidates produced the clearance certificates during the interview.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

1497. Irregular Evaluation and Award of Tender for Pond Materials

The statement of receipts and payments reflects an expenditure on purchase of goods and service of Kshs.1,573,098,494 and which as disclosed in Note 6 to the financial statements include payments for specialized materials and services - pond materials amounting to Kshs.863,487,130. Review of procurement documents provided for audit revealed that individual scoresheets had inconsistencies, where some evaluators would give a negative score in certain criteria while others would give a positive on the same. In addition, changes in preliminary evaluation and other changes were being made in the scoresheets without counter-signing for the same, hence adherence to evaluation criteria stipulated in the bid documents could not be verified.

Further, Management did not provide for audit, evidence of appointment and report of inspection and acceptance committee. This is contrary to Section 48.(1) of the Public Procurement and Assets Disposal Act, 2015 which requires an Accounting Officer of a procuring entity to establish an ad-hoc committee known as the inspection and acceptance committee to ensure that the correct quantity of the goods have been received.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

Procurement of Fishpond Materials

Procurement of pond materials, namely Pond liners, Predator Nets and bird nets was carried out under framework contract. This meant that, the first phase was procurement of framework contracts with several vendors. Thereafter, a mini competition normally through a request for quotation. The respective request for quotation therefore becomes a stand-alone procurement.

Framework Contract Procurement process was done as follows;

i. Purchase Requisition was written by the component 1 lead and approved by the PC
ii. Bidding document: Written and No Objection obtained from IFAD on 2nd December 2020.
iii. Advertisement made on the Standard Newspaper of 8th December 2020 and on the Programme website.
iv. Appointment of bid opening and evaluation committees: the Opening committee was appointed via Programme Coordinator memo Ref MOALFI/SDFA&BE/ABDP/PROC2020/SM/11-01 Dated 29th December 2020 and evaluation committee appointed via letter dated 11th January 2021 Ref MOALFI/SDFA&BE/ABDP/PROC2020/SM/11-01
v. Tender Opening: Tenders were opened on 4th January 2021 and minutes written and signed by committee members and shared with all the bidders via email.
vi. Evaluation: Evaluation was carried out from 12th January 2021, minutes signed on 26th January 2021. where the same recommended shortlisting of 16 vendors under category 1 and 6 vendors under category 2. The evaluation report received IFAD No objection on 1st March 2021.
vii. Notice of Intent to Award was forwarded to all bidders on 4th March 2021.
viii. Draft contract received IFAD No objection on 31st March 2021.and same signed on various dates in April 2021. Contracts are valid for three years from the date of signing.

There were no deliveries from the contracts, however deliveries were made after the mini competition. The deliveries from the subsequent mini competition were received and inspected by Inspection and Acceptance committees at the county.

i. Evaluation was done on a pass and fail basis.
ii. There was formal inspection and acceptance committees and the same was done for each delivery.

The individual score sheet analyses by the audit culminate to evaluation report which all members signed.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

1498. Purchase of Motor Vehicles

1498.1. Lack of Individual Scoresheets for the Members of Procurement Evaluation Committee

The statement of receipts and payments reflects an expenditure on acquisition of non-financial assets of Kshs.46,953,392 which as disclosed in Note 8 to the financial statements include purchase of vehicles and other transport equipment – 124 motorcycles at a cost of Kshs.33,137,931. Review of procurement documents revealed that the Accounting Officer appointed evaluation committee team that issued an evaluation report, however, the individual member scoresheets were not provided for audit verification. Hence, it was not possible to confirm if the evaluation was done in

line with Regulation 31.(1) and (2) of Public Procurement and Assets Disposal Regulations, 2020 which states that each member of the evaluation committee shall evaluate independently from the other members prior to sharing his or her analysis questions and evaluation including his or her rating with the other members of the technical evaluation committee and the individual score sheets shall be kept as records of a procurement proceeding.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The programme adopted IFAD procurement procedures as follows:

i. Purchase Requisition was written by the component 1 lead and approved by the PC
ii. Bidding document: Written and No Objection obtained from IFAD
iii. Advertisement made on the Standard Newspaper of December 8,2020 .and also on the IFAD and UNOP portal.
iv. Appointment of bid opening and evaluation committees: the Opening committee was appointed via Programme Coordinator memo Ref MOALFI/SDFA&BE/ABDP/PROC2021/SM/11-01 Dated 19th January 2021 and evaluation committee appointed via letter dated 26th January 2021 Ref MOALFI /SDFA&BE /ABDP /PROC2021/SM/11-01
v. Tender Opening: Tenders were opened on 26th January 2021 and minutes written and signed by committee members and shared with all the bidders via email.
vi. Evaluation: Evaluation was carried out from February 3, 2021, minutes signed on 5th May 2021 where the same recommended award to Kibo Africa for a total value of 33,137,931.10. The evaluation report received IFAD No objection on 20th April 2021.
vii. Notice of Intent to Award was forwarded to all bidders on 21st April 2021. There was no request for debrief or protest received within the 10 stand still period.
viii. Notice of award was issued to the recommended bidder, M/S Kibo Africa on 11th May 2021 and performance bond received on 15th May 2021 valid till 12th September 2021.
ix. Draft contract received IFAD No objection on 11th May 2021.and same signed on 21st May 2021 valid until 20th August 2021
x. The contract was extended on 21st August 2021 valid until 11th December 2021.
xi. Delivery: All motorcycles were delivered by 3rd December 2021.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

1498.2. Delay in Delivery of Motorcycles

Review of contract records revealed that the supplier was to deliver the 124 motorcycles within three (3) months upon signing the contract on 12 May, 2021. However, sixty-five (65) motorcycles were delivered on 17 February, 2022 five (5) months after the contract lapsed on 13 August, 2021 and expiry of performance guarantee. Management did not provide an explanation for the delays in delivery and it could not be confirmed whether there were changes to the contract, hence part deliveries were made without a valid contract in place.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Motorcycles were procured under IFAD regulations using the International competitive bidding. The process adopted was as follows.

i. Purchase Requisition was written by the component 1 lead and approved by the PC
ii. Bidding document: Written and No Objection obtained from IFAD
iii. Advertisement made on the Standard Newspaper of 8th December 2020 and on the Programme website.
iv. Appointment of bid opening and evaluation committees: The Opening committee was appointed via Programme Coordinator and evaluation committee appointed
v. Tender Opening: Tenders were opened and minutes written and signed by committee members and shared with all the bidders via email.
vi. Evaluation: Evaluation was carried out minutes signed. where the same recommended shortlisting of 16 vendors under category 1 and 6 vendors under category 2. The evaluation report received IFAD No objection
vii. Notice of Intent to Award was forwarded to all bidders
viii. Draft contract received IFAD No objection and signed

The initial contract period was at the height of COVID -19 Lockdown. This affected both the production and the shipping line. The vendor vide the attached letter requested for contract extension which was accepted by the Programme and contract was extended. The Performance bond was also renewed. See Performance bond dated October 1, 2021. By the time the last delivery was made, the performance bond was valid and the same was within the revised contract period which was signed on 20th August 2021. None of the motorcycles were delivered in 2022. There was an issue with one motorcycle where the number plate was that of a vehicle. This took time to resolve until 2022 but the motorcycle itself had been delivered within the contract period.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

4.31 VOTE 1169: STATE DEPARTMENT FOR CROP DEVELOPMENT AND AGRICULTURAL RESEARCH

Dr. Paul Kipronoh Ronoh, the Principal Secretary and Accounting Officer for State Department for Agriculture, appeared before the Committee on 23rd May 2024, accompanied by the following officers:

i.	Mr. Samuel Ndungu	Ag. MD NCPB
ii.	Mr. Douglas Mutemi	Senior Deputy Accountant General
iii.	Ms. Rosemary Nyamu	Director Kenya Sch. Of Agriculture
iv.	Mr. Harun Khetor	Secretary Administration
v.	Mr. Kipkirui Kemboi	Ag. Chief Accountant
vi.	Mr. Samuel Cuto	National Project Coordinator
vii.	Mr. Stanley Ikao	Assistant Accountant
viii.	Mr. Boniface Njugu	Office Assistant -Accounts
ix.	Mr. Gregory Munyao	Office Assistant- Accounts

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1501. Irregularities in Use of Goods and Services

The statement of receipts and payments reflects an expenditure on use of goods and services amounting to Kshs.5,243,881,007 as disclosed in Note 6 to the financial statements. However, the following unsatisfactory matters were observed;

1501.1. Payment for Incomplete Works at Kilimo House

The balance includes an amount of Kshs.348,490,555 in respect of routine maintenance- other assets out of which an amount of Kshs.4,833,700 was paid in respect of a contract awarded to a local contractor for the refurbishment of the main reception at Kilimo House. According to the Bill of Quantities (BQs), the works included the installation of a gypsum ceiling at the entire reception area at a cost of Kshs.3,183,700. However, physical verification of the works confirmed that no gypsum works were carried out as specified in the contract yet the contractor was paid for the works.

Submission by the Accounting Officer;

It's true the that no gypsum works were carried out as specified in the contract yet the contractor was paid for the works. This was due to Public Works advising that the gypsum ceiling as required by the Ministry was not appropriate. They recommended that there was need for change in ceiling specifications from gypsum to the suspended acoustic ceiling as this was going to allow for ease of repairs incase of leakages from rain-water at the front of the reception areas. Further, they assured that there was going to be no change in terms of the cost.

Committee Observations and Findings

i) **The Committee observed that public works varied the works at 'no-cost'.**

ii) **The Committee found that the matter was resolved.**

1501.2. Domestic Travel and Subsistence

Further, the balance includes an expenditure of Kshs.1,169,614,130 in respect of domestic travel and subsistence out of which an amount of Kshs.50,985,229 was issued as Authority to Incur Expenditure (AIEs) to various institutions. However, review of records revealed that the AIEs were expensed immediately at the point of payment before any funds were spent by the respective institutions. This was a departure from the normal Government treatment of AIEs whereby the State Department should have held them in a suspense account and expensed them as the beneficiary institutions provided the expenditure returns of the funds sent to them. Any balance not accounted for should then have been treated as a receivable balance from the institutions in the books of the State Department.

Submission by the Accounting Officer;

It's true that the AIEs were expensed immediately at the point of payment before any funds were spent by the respective institutions. This was due to delay in creating geographical location codes for respective institutions in the IFMIS system which enables AIE transfer through general ledger from the state department to the respective institution. The state department did a reminder letter to IFMIS department National Treasury for the creation of geographical location codes for the respective institutions which they did during the financial year 2022/23 and the AIES were captured correctly.

However, the corresponding expenditure returns for the Authority to Incur Expenditure (AIEs) issued to the institutions have been availed to the auditor for review.

Committee Observations and Findings

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1501.3. Unsupported Expenditure on Specialized Materials and Services

In addition, the balance includes an amount of Kshs.512,860,946 in respect to specialized materials and services out of which an amount of Kshs.16,576,411 was in form of Authority to Incur Expenditure (AIEs) for which corresponding expenditure returns were not provided for audit review.

Submission by the Accounting Officer;

The AIEs were issued to Agricultural Technology Development and Testing Stations which are engineering directorate at the county levels.

The state department organized respective institutions and gathered all the corresponding expenditure returns for the Authority to Incur Expenditure (AIEs) issued to the institutions.

Committee Observations and Findings

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1501.4. Variances between State Department's Expenditure and Projects' Expenditure

Included in the expenditure for domestic travel and subsistence of Kshs.1,169,614,130 is an amount of Kshs.183,504,669 relating to four (4) donor funded Projects. However, review of the Projects' financial records revealed that seven (7) donor funded Projects under the State Department had a total domestic travel and subsistence expenditure of Kshs.292,164,530 as detailed in the table below;

Donor Funded Project	State Department Financial Statements (Kshs.)	Donor Funded Projects' Records (Kshs.)	Variance (Kshs.)
ELRP	149,704,439	169,772,450	(20,068,011)
AGRA	-	40,015,780	(40,015,780)
SIVAP	-	1,486,405	(1,486,405)
ASDSP II	830,000	256,320	573,680
NARIG	25,764,399	49,454,617	(23,690,218)
CADREP	7,205,831	9,956,263	(2,780,432)
EYKP	-	21,222,695	(21,222,695)
Total	**183,504,669**	**292,164,530**	

In the circumstances, the accuracy and completeness of the expenditure on use of goods and services amounting to Kshs.5,243,881,007 could not be confirmed.

Submission by the Accounting Officer;

It's true that there were variances between the reported expenditure under domestic travel and subsistence in donor funded projects financial statements and the state department financial statements.

This was caused by misclassification in the budget lines of training allowance which has different sub economic items all facilitating the training; which are travel allowance, hire of training facilities, book allowance, accommodation allowance, research allowance, production and printing, tuition fees allowance and trainee allowance among others.

The projects classified travel allowance under domestic travel allowance (code - 2210300) while the state department classified the same - travel allowance under training expense (code-2210700).

The misclassification is highly regretted and the state department instituted measures to ensure the donor funded projects expenditure are harmonized with state departments expenditure before submitting the financial statements to the Office of the Auditor General.

This affected only the two expenditure lines but the overall expenditure for the projects is as reported by the state department.

In the subsequent financial year 2022/23 there were no variances experienced between the donor funded projects and the state department.

Committee Observations and Findings

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1502. Pending Bills

Note 19.2 to the financial statements reflects pending bills amounting to Kshs.9,396,775,821 as at 30 June, 2022 which were not settled in the year under review but were carried forward to the 2022/2023 financial year. Further, as disclosed in Annex 1 to the financial statements, the balance includes bills amounting to Kshs.7,109,099,006 and Kshs.14,626,689 in respect to fertilizer subsidy and supply of goods and services, respectively. However, the bills were not supported with relevant documents and authority as required under Regulation 104 of the Public Finance Management (National Government) Regulations, 2015.

Review of the previous year's pending bills closing balances revealed that the State Department had reported pending bills of Kshs.8,536,661,169 payable to National Cereals and Produce Board for fertilizer subsidy. However, Annex 1 to the financial statements reflects the debt owed to the National Cereals and Produce Board (NCPB) of Kshs.5,352,575,015 resulting to an unsupported and unexplained variance of Kshs.3,184,086,154.

Further, the unaudited financial statements of NCPB for the year ended 30 June, 2022 reflected Government debtors – Ministry of Agriculture fertilizer account balance of Kshs.4,735,666,409 in respect of the amount receivable from the State Department for fertilizer subsidy. The resultant variance of Kshs.616,908,606 was not explained.

In addition, review of Annex 1 to the financial statements revealed that pending bills relating to the recurrent vote of Kshs.1,959,118,454 and development vote of Kshs.7,109,099,006 all totaling Kshs.9,068,217,460 had been outstanding from the financial year 2018/2019 and earlier years. Management did not provide an explanation why the long outstanding pending bills had not been settled.

Failure to settle bills in the year to which they relate adversely affects the subsequent year`s provisions to which they have to be charged.

Submission by the Accounting Officer;

It's true that the documents supporting pending bill balances of Kshs.7,109,099,006 and Kshs. 14,626,689 were not availed to the Office of the Auditor General. This is because the documents were and are maintained and kept at the NCPB headquarters.

These documents were also verified by the internal auditors (copy attached). The state department liaised with the NCPB and the documents were availed to the auditors.

Fertilizer subsidy outstanding bills as at 30 June 2021 of Kshs.8,536,661,169. comprises of outstanding KCB loan as per attached statement of Kshs.6,729,563,152.29 and Export trading company debt of Kshs.1,756,523,990.39 and interest expense. The National treasury authorized NCPB vide letter Ref: TNT/ZZ40/64/011TY4 dated 30th June 2021 to use Kshs.2,657,852,918.29 of fertilizer proceeds towards part payment of the KCB credit facility. KCB waived interest expense and penalties leaving a loan balance of Kshs.3,671,710,234 and NCPB handling cost of Kshs.1,680,864,781.28 giving a total of Kshs.5,352,575,015 as debts owed by state department to NCPB.

The unaudited financial statements of NCPB reflected government debtors Ministry of Agriculture fertilizer account balance of kshs.4,735,666,409 as at 30th June 2022 while the figure of Kshs.5,352,575,015 reflected under Annex 1 Financial statement for State department for crop development and agricultural research as debts owed to NCPB. The difference of Financial Statement of NCPB and state department figure as at 30th June 2022 was because state department figure comprised of structured loan balance of Kshs.3,671,710,234 and NCPB handling cost expense of Kshs.1,680,864,781.28 while NCPB reflected the actual loan ledger bank balance before restructuring

The pending bill of development vote of Kshs.7,109,099,006 as at 30th June 2022 is in respect of fertilizer subsidy program. The National Treasury and KCB group negotiated the loan amount from the then figure of Kshs.5,035,677,857.25 to Kshs.3,700,000,000 as per the attached letter REF.TNT/ZZ 40/64/011 (51) Dated 24th August 2023.The state department paid Kshs.1,000,000,000 on 01.12.2023 as first installment and kshs.1,250,000,000 on 21.12.2023 and Kshs.1,450,000,000 on 06.03.2024 as last installment, resulting to whole outstanding KCB Loan debt being fully paid. The total outstanding pending bill in relation to fertilizer subsidy is Kshs.3,437,388,771.67 comprising of Kshs.1,756,523,990.39 payable to Export Trading Company and Kshs.1,680,864,781.28 payable to NCPB as a result of handling cost and interest expense incurred by NCPB in relation to fertilizer subsidy.

Out of recurrent vote pending bill of Kshs.1,959,118,454, which is in relation to maize subsidy programme, Kshs.1,048,769,250.97 had been paid by March 2024. The total outstanding pending bill in relation to maize subsidy is Kshs.910,349,203 relating to Kshs.712,244,568 payable to NCPB and Kshs.198,104,635 payable to Export Trading Company.

The State Department has continually requested the National Treasury to provide adequate budget to clear these pending bills.

Committee Observations and Findings

The Committee noted the submission from the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer ensures that the NCPB clears the pending bills attributable to interest.

1503. Construction of Buildings

The statement of receipts and payments reflects expenditure on acquisition of assets of Kshs.2,816,490,955 which as disclosed in Note 10 to the financial statements includes an amount of Kshs.130,965,575 relating to construction of buildings. However, the following unsatisfactory matters were observed;

1503.1. Delayed Erection and Completion of Administration Offices/Hostels Block

The State Department awarded the contract for erection and completion of administration offices/hostels block at the proposed School of Agriculture in Ainabkoi, Uasin Gishu County at a contract sum of Kshs.239,428,873. The project commenced on 17 October, 2015 for a contract period of 52 weeks with an expected completion date of 17 October, 2016. However, the Project was not completed on time and the contractor was awarded several extensions of time revising the expected completion date to 23 December, 2020.

Further, as a result of fundamental breach of the contract by the contractor, the contract was terminated on 22 October, 2022. At the time of contract termination, physical progress of works was at 75% and the contractor had been paid a total amount of Kshs.164,792,291 including Kshs.25,411,132 paid during the year under review. However, the State Department does not seem to have a recourse since the performance guarantee submitted by the contractor has already expired.

Submission by the Accounting Officer;

It is true that this project commenced on 17th October 2015 for a contract period of 52 weeks with an expected completion date of 17th October, 2016. It is also true that the project was not completed on time despite extending the contract period severally. Due process was followed to terminated the contract vide project manager letter Ref: D116/9996A/VOLII/72 dated 21st June 2022 and client letters ref: MOA/INST/6/2/12 VOL.1 dated 19th July, 2022 and MOA/INST/6/2/12 Vol.1/(64) dated 14th October 2022 .The works were about 75% complete at the time of contract termination. The contractor complained of delayed settlement of payment certificates and issued a Notice of Default vide letter Ref: VEL/SOA/AINABKOI/1/29/09/2021 dated 29th September, 2021.

Delayed payment of the said certificates totaling to Kshs. 25,098,973.63 occurred during 2020/21 FY following non issuance of Development Funds to Kenya School of Agriculture. These delayed payments were however paid in December 2021 using 2021/2022 FY Development Allocation.

The termination was later rescinded vide contractors' letter, Ref. VEL/SOA/AINABKOI/1/03/11/2022 dated 3rd November 2022. The contractor requested for extension of time of twenty eight (28) weeks to complete outstanding works Vide letter Ref: VEL/SOA/AINABKOI/16/10/2023-003 dated 16th October, 2023. This request was granted following concurrence by Project Manager (PS, State Department for Public Works) and Client's (PS State Department for Agriculture) letters Ref: D116/9996A/VOL.3/06 dated 18th October 2023 and MOALD/SDCD/SCM/1/VOL 1(265) dated 27th November, 2023.

In order to reinstate and formalize the contract, an addendum was drawn between the Contractor and the client, with a revised completion date of 9th August 2024. The contractor has provided a valid performance bond and has since resumed the works.

Committee Observations and Findings

The Committee noted the submission from the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer avails a status report on the project within three (3) months of adoption of this report.

1503.2. Stalled Construction of Laare Miraa Markerting Shed

The contract for construction of Laare miraa marketing shed was awarded to a local contractor at a cost of Kshs.23,502,066. The contract was for twelve (12) months (48 weeks) with the completion date being 3 October, 2021 which was later revised to 19 February, 2022.

An audit inspection of the Project carried out on 26 July, 2022 revealed that the contractor had abandoned site and the Project had stalled at 60% completion, with the contractor having been paid an amount of Kshs.11,683,432.

In the circumstances, the value for money on the Kshs.176,475,723 incurred on the two

(2) projects could not be confirmed.

Submission by the Accounting Officer;

It is true that Laare Ultra-Modern Miraa Market Shed is incomplete and it is 60% complete. This has been occasioned by delayed payment, insufficient exchequer allocation despite available budget and escalating price changes of the construction materials. However, the State Department has endeavored to valid the contract to enable completion of the building by varying the Contract Sum by Kshs.5,639,626.52 (From Kshs.23,502,066.10 - Initial Contract Sum to Kshs.29,141,692.62).The contract has since been varied, contractor issued with new Contract Addendum for a period of 12 months and resumed works at the site on 11th March, 2024.

In 2019/2020 Financial Year, the State Department for Agriculture, Ministry of Agriculture and Livestock Development awarded Contract for Construction of Laare Ultra-Modern Miraa Market Shed in Meru County to M/S Rangico Construction Limited.

During Contract implementation numerous challenges occurred which hampered the smooth implementation of the project not as envisaged leading to delay and eventual stalling and inability of not proceeding with the works. The main issues which the Contractor sighted as having necessitated the stalling includes;

1. The COVID-19 which restricted assembly and therefore works stopped for a period of two (2) years;

2. The delayed payment of interim certificates affected our cashflow leading to stoppages of the scheduled works;

3. The escalation of prices of construction materials especially steel and cement which almost doubled affected implementation of the works within contract sum; and

4. Emergence of extra works which were not envisaged in the tender document but were necessary for facelift and improve the aesthetic value of the building.

In the endeavor to deliver on the project, the contractor presented the above issues and proposed contract variation to the Supervision Team during a Site Management Meeting which was held on 2nd February, 2023. The Supervision Team and the Project Management Committee (PMC) deliberated on the issues and resolved the reasons for the proposed Contract Variation Sum of Kshs.5,639,626.52 are valid and worth for presentation to the State Department for Agriculture, Contract Implementation Team (CIT) for deliberation. (Minutes of Site Management Meeting dated 2nd February, 2023)

On 14th September, 2023, the Contract Implementation Team (CIT) held a Site Management Meeting at the site and deliberated on the proposed Contract Variation Sum of the Contract. In realization of the fact that the contractor had been on site for over two (2) years and had done bulk of the work as was envisaged in the Contract and that the works were 60% complete, there was need to consider the request so that the Government realizes value for money. The Contract Implementation Team (CIT) observed the reasons given, which led to stalling of the works were valid and consistent with the prevailing situation in the market. In this regard the Contract Implementation Team (CIT) recommended for the said Variation of Kshs 5,639,626.52 to be executed once funds were available for implementation of miraa projects under the Miraa Industry Revitalization Project (MIRP).

Therefore, in pursuant of Clause 139 Part (4) of the Public Procurement and Asset Disposal Act, 2015 and in the spirit of ensuring value for money is realized, the Contract Implementation Team (CIT) recommended the variation of the contract sum as per the committee report dated 14th September, 2023.

The CIT report was submitted to the Accounting Officer, State Department for Agriculture and the Variation Sum of Kshs.5,639,626.52 (Kenya Shillings Five Million, Six Hundred Thirty-Nine Thousand, Six Hundred Twenty-Six and Fifty-Two Cents) was approved on 30th January, 2024 raising the initial cost of Contract Sum from Kshs.23,502,066.10 to Kshs. 29,141,692.62 an increment of 24% which is consistent with Clause 139 Part (4) of the Public Procurement and Asset Disposal Act, 2015.

The State Department for Agriculture notified the contractor on contract variation approval by the accounting officer vide a letter Ref No. MOALF/ENG/MISP/VOL.III (127) on 9th February, 2024 requesting for acceptance and affirmation for concurrence with the approved contract variation.

The Contractor vide a Letter dated 13th February, 2024 accepted and affirmed concurrence on the approved contract variation.

Further, the State Department for agriculture vide a letter Ref No. MOALF/ENG/MISP/VOL.III (131) dated 19th February, 2024 wrote to the Contractor requesting to resume works and provide work schedule for the pending works. The Supervision

Team, Project Management Committee (PMC) and the Contractor held a Consultative Meeting on 6th March, 2024 to agree on pending works and work resumption modalities.

The Contractor mobilized to the site and resumed work on 11th March, 2024. The State Department for Agriculture has engaged the contractor and extended the contract for a period of Twelve (12) months from 30th January, 2024 to 30th January, 2025 at "No Cost Implications" to avoid any further claims from the contractor.

Committee Observations and Findings

The Committee noted the submission from the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer avails a status report on the project within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1504. Failure to Maintain a Fixed Assets Register

Annex 2 to the financial statements reflects a summary of fixed assets register with a historical cost balance of Kshs.20,329,209,971 as at 30 June, 2022 (2021- Kshs.17,512,719,015). However, the State Department did not maintain an updated fixed assets register which could have indicated details such as type of assets, code for identification, name tags, cost of acquisition and location among others relevant details.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer;

It's true that the asset register was not up to date as required by Regulation 143 of the Public Finance Management Regulations 2015 at the time of Audit. I wish to state that the updating of asset register is ongoing. However, the state department is awaiting availability of funds to enable it identify a valuer to carry out asset valuation, tagging and proper location of all the assets.

Committee Observations and Findings

The Committee noted the submission from the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer avails a complete register within three (3) months of adoption of this report.

DONOR FUNDED PROJECTS

KENYA CEREAL ENHANCEMENT PROGRAMME - CLIMATE RESILIENT AGRICULTURAL LIVELIHOOD WINDOW (EU GRANT NO.2000000623, GRANT NO.2000001522, GRANT NO.2000003493, GRANT NO.2000001122 AND IFAD LOAN NO.2000001121)

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1506. Non-Compliance with the One-Third of Basic Salary Rule

Analysis of the staff payroll summaries revealed that for the twelve (12) months in the year under review, five (5) members of staff were paid net salaries that fell below a third of their basic salary. This is contrary to Section 19(e) of the Employment Act, 2007 which states that, "without prejudice to any right of recovery of any debt due and notwithstanding the provisions of any other written law, the total amount of all deductions which under the provisions of sub-section (1) may be made by an employer from the wages of his employee at any one time shall not exceed two thirds of such wages or such additional or other amount as maybe prescribed by the Minister either generally or in relation to a specified employer or employee or class of employers or employee or any trade or industry".

In the circumstances, the Management was in breach of the law and this may expose the staff to pecuniary embarrassment.

Submission by the Accounting Officer;

It is true that five (5) members of staff were paid net salaries that fell below a third of their basic salary in the financial year ended 30th June 2022. The affected staff had over committed their contributions to the SACCOs. The Programme took note of the concern by the auditors and corrective measures were put in place in October 2022 to reduce the contributions of all the affected staff to the SACCOs and ensure their net earnings are not below one third of their basic pay as required by the Human Resource Procedures manual.

Committee Observations and Findings

The Committee noted the submission from the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer ensures incremental compliance.

MULTI-NATIONAL DROUGHT RESILIENCE AND SUSTAINABLE LIVELIHOODS PROGRAMME IN THE HORN OF AFRICA (ADF LOAN NO. 2100150028345)

REPORT ON THE FINANCIAL STATEMENTS

1509. Unreconciled Expenditure Figures

The statement of receipts and payments reflects total expenditure of Kshs.684,828,256 while the corresponding IFMIS ledgers reflects total expenditure of Kshs.725,118,957 resulting to unreconciled variance of Kshs.40,290,701.

In the circumstances, the accuracy and completeness of the expenditure figures included in these financial statements could not be confirmed.

Submission by the Accounting Officer;

It's true that there was unreconciled variance of Kshs.40,290,701 between the total expenditure and the corresponding IFMIS ledgers.

This was occasioned by direct payments vouchers in the IFMIS system which had been posted for payment by the AfDB. These payments were forwarded to the National Treasury for processing and subsequent forwarding to the AfDB. However, due to timelines AfDB approved the payments in the subsequent financial year thus the payment had to be reversed from the IFMIS system thus reducing the expenditure.

The total expenditure now corresponds with the IFMIS ledgers in the statement of receipts and payments.

The state department has put in place strict measures to the projects and in the year 2022/23 no variances were experienced.

Committee Observations and Findings

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1510. Unsupported Government Counterpart Funding

The statement of receipts and payments reflects purchase of goods and services amount of Kshs.118,664,693 out of which an expenditure totalling to Kshs.40,879,238 was incurred by the Parent Ministry on behalf of the project as Government counterpart funding. However, ledgers and payment vouchers to support the expenditure were not provided for audit review.

In the circumstances, the accuracy and completeness of the Government counterpart funding and related expenditure of Kshs.40,879,238 on purchase of goods and services could not be confirmed.

Submission by the Accounting Officer;

It's true that the ledgers and payment vouchers to support the expenditure were not provided for audit review.

The project spends its GOK counterpart through the parent ministry development bank account as per the budget allocation and approval.

Committee Observations and Findings

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1511. Unapproved Reallocation of Expenditure

The statement of receipts and payments reflects acquisition of assets amount of Kshs.548,663,563 and which as disclosed in Note 8 to the financial statements includes an expenditure of Kshs.64,844,756 relating to research, feasibility studies, project preparation and design, project supervision. Review of the expenditure against the budgeted expenditure by item revealed unapproved over expenditure of Kshs.36,094,756 or 126% of the budgeted amount of Kshs.28,750,000.

No evidence of approval for the reallocations of the expenditure as required by Section 43(2) of the Public Finance Management Act, 2012 has been provided.

In the circumstances, the Management was in breach of the law.

Submission by the Accounting Officer;

It's true there was unapproved over expenditure under research, feasibility studies, project preparation and design, project supervision when preparing the financial statements for the period ended 30th June 2022. This was due to budget supplementary cuts which was instituted after the expenditures were already incurred.

Committee Observations and Findings

The Committee observed that the submission by the Accounting Officer was unsatisfactory since the law provides for clear guidelines for reallocation.

Committee Recommendation

The Committee reprimands the Accounting Officer for breach of section 43(2) of the PFM Act 2012.

1512. Stalled Projects

The project status report provided indicates that sixteen (16) contracts with a cumulative contract sum of Kshs.713,929,357 had been terminated for varying reasons after having paid Kshs.145,863,129. Further, review of records revealed that three (3) of the contractors whose contracts were terminated had been awarded more than one contract all of which failed to perform as detailed in the table below;

Contract No.	Description of Works	Total Contract Value (Kshs.)	Amount Disbursed (Kshs.)
MOALF/DRSLP/T041/2019-2020	Construction of Lol Kunyani Livestock Sale Yard in Samburu County	11,393,136.84	6,291,710.30
MOALF/DRSLP/T040/2019-2020	Construction of Kurungu Livestock Sale Yard in Samburu County	9,899,921.05	7,482,192.13
MOALF/DRSLP/T007/2017-2018	Drilling and Equipping of Kalikwon Shallow Well in West Pokot County	5,517,327.60	3,923,099.91
MOALF/DRSLP/T006/2017-2018	Drilling and Equipping of Chiloi Shallow Well in West Pokot County	5,594,811.00	3,190,396.03
MOALF/DRSLP/T002/2017-2018	Drilling and Equipping of Kasirma Borehole in Baringo County	8,230,544.00	2,498,275.86
MOALF/DRSLP/T004/2017-2018	Drilling and Equipping of Chepel Borehole in West Pokot County	8,118,914.65	2,640,755.95
Total		**48,754,655.14**	**26,026,430.18**

No reason was provided for failure by Management to surcharge the contractors for non-performance as provided for in the contracts.

In the circumstances, value for money on the expenditure of Kshs.26,026,430.18 incurred on the projects could not be ascertained.

Submission by the Accounting Officer;

It's true that out of the cumulative total contract value of Kshs.713,929,357 for the 16 No. Contracts, Kshs.145,863,129 had been paid to the contractors for works done in each of the sites after joint works measurement before termination. This is because all the contracts funded by Loans from AfDB are admeasurement contracts (contracts measured and paid according to value of works done) as per section VII, General Conditions of the Contracts, sub-section 4.1.1 on payments of admeasurement contracts.

It's also true that the some of the contractors whose contracts were terminated had been awarded more than one contract. This is because they were the Lowest Evaluated Bidders after the evaluation of bids given that the open tender system was used to advertise as recommended by the AfDB through the No objection to award. Nonetheless, going forward, the state department will engage the AfDB so that a contractor is not awarded more than two contracts for contracts advertised at the same time.

It's also true that the contractors were not surcharged the Liquidated damages because their payments were also delayed by the Project and they had claimed interest on the delayed payments. This was done through mutual understanding after engaging the affected contractors. They were paid their dues for work done after carrying out Joint measurements.

The construction of Kurungu and Lolkuniyani Livestock Markets (Sale yards) in Samburu County were re-advertised under the Program to Build Resilience for Food and Nutrition Security Project (BREFONS) on 5th December, 2023 and re-evaluated and are currently awaiting No Objection to award from the AfDB.

The other shallow wells and boreholes in West Pokot and Baringo Counties which had been terminated were re-advertised and re-awarded have since been completed and the beneficiary communities are using the facilities as planned.

Contract No.	**Description of Works**	**Total Contract Value (Kshs.)**	**Amount Disbursed (Kshs.)**	**Current Status**	**Completion Date**
MOALF/DRSLP/T04 1/2019-2020	Construction of Lol Kunyani Livestock Sale Yard in Samburu County	11,393,136.84	6,291,710.30	Contract terminated at 60% completion and has since been re-advertised under BREFONs Project on 5th December 2023. The bids are currently	August 2024

				under evaluation. Works contracts estimated to be completed by August 2024 after defects liability period of 1 no. Months.	
MOALF/DRSLP/T040/2019-2020	Construction of Kurungu Livestock Sale Yard in Samburu County	9,899,921.05	7,482,192.13	Contract terminated at 60% completion under BREFONs Project on 5th December 2023. The bids are currently under evaluation. Works contracts estimated to be completed by August 2024 after defects liability period of 1 no. Months.	August 2024
MOALF/DRSLP/T007/2017-2018	Drilling and Equipping of Kalikwon Shallow Well in West Pokot County	5,517,327.60	3,923,099.91	The contract was terminated at 70% completion and re-advertised and re-awarded to a	December 2023

				new contractor In June 2022 for a sum Ksh 6,504, 677.37. The new contract is 100% completed, handed over and the community benefiting from the Shallow well.	
MOALF/DRSLP/T006/2017-2018	Drilling and Equipping of Chiloi Shallow Well in West Pokot County	5,594,811.00	3,190,396.03	The contract was terminated at 60% completion and re-advertised and re-awarded to a new contractor in June 2022 for a sum Ksh 9,874,588.47. The new contract is 100% completed, handed over and the community benefiting from the Shallow well.	December 2023
MOALF/DRSLP/T002/2017-2018	Drilling and Equipping of	8,230,544.00	2,498,275.86	The contract was terminated at 40% completion	December 2023

	Kasirma Borehole in Baringo County			and re-advertised and re-awarded to a new contractor in June 2022 for a sum Ksh 8,437,809.72. The new contract is 100% completed, handed over and the community benefiting from the Borehole.	
MOALF/DRSLP/T004/2017-2018	Drilling and Equipping of Chepel Borehole in West Pokot County	8,118,914.65	2,640,755.95	The contract was terminated at 40% completion and re-advertised and re-awarded to a new contractor in June 2022 for a sum Ksh 7,447,079.03. The new contract is 100% completed, handed over and the community benefiting from the Borehole.	December 2023
Total		**48,754,655.14**	**26,026,430.18**		

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer avails a status report of the outstanding projects, within three (3) months of adoption of this report.

1513. Unsupported Procurement of Contracts

The Project Management awarded a contract for construction of the Sinende Hayshed in Baringo County on 29 June, 2021 effective from 23 September, 2021 with a completion date of 4 March, 2022 at a contract sum of Kshs.12,545,148. As at 30 June, 2022 an amount of Kshs.9,288,538 had been paid for the works.

However, Management did not provide for audit review procurement records including the tender registers, bids submitted and evaluation reports and individual scoring sheets by the tender evaluators.

In the circumstances, it was not possible to determine if the contract had been awarded in accordance with the applicable law and regulations and if stakeholders obtained value for money in the procurement of the contract.

Submission by the Accounting Officer;

It's true that the various procurement records including the tender registers, bids submitted and evaluation reports and individual scoring sheets by the tender evaluators were not submitted to the auditors for review. However, the documents have since been availed for audit review and verification.

The said contract has since been fully completed and handed over to the beneficiaries.

Committee Observations and Findings

The Committee noted the submission from the Accounting Officer.

Committee Recommendation

The Committee reprimands the Accounting Officer for late submission of documentation.

1514. Poor Workmanship in the Construction of Hay Shed at Koiket in West Pokot County

The Project Management awarded a contract for proposed Construction of Hay Shed in West Pokot County on 8 October, 2020 at a contract sum of Kshs.8,516,180 commencing on 02 February, 2021 and a revised completion date of 9 September, 2021.

Review of records revealed that the project was complete and an amount of Kshs.4,620,247 had been paid to the contractor as at 30 June, 2022. However, audit inspection of the project in the month of September, 2022 revealed that the hayshed had never been utilized by the community. Further, the concrete base holding the two 10,000 litre tanks and the plastered corners of the super structure had cracked and had begun to chip off. The wooden racks upon which the harvested hay would be laid while in storage were poorly made with low quality joints which caused

disintegration and with wide spaces through which the hay bales would fall through. No explanation was provided by Management of the failure by the contractor to rectify the defects.

In the circumstances, the stakeholders may not obtain value for money on the project.

Submission by the Accounting Officer;

It's true that the Audit Inspection team in September 2022 noted the above highlighted defects during project audit. The Project Manager wrote to the Contractor instructing them to "Make good the defects" that had been noted by the audit inspection team. The contractor made good the defects as directed by the Project Manager. The community has since utilized the facility after the harvest of pastures in January-February 2023 and completion and handing over.

Committee Observations and Findings

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

SMALL-SCALE IRRIGATION AND VALUE ADDITION PROJECT - (ADF LOAN NO. 2000130014530 AND GRANT NO.557015000751)

REPORT ON THE FINANCIAL STATEMENTS

1518. Slow Rate of Funds Absorption

The financing agreement and other project information accompanying the financial statements reflects donor commitment of USD 24,000,000 and USD 39,546,000 in respect of grant and loan respectively, totaling USD 63,546,000 or approximately Kshs.6,053,387,712 and a project closure date of 30 June, 2022. However, review of the project report status as at 30 June, 2022 revealed that grant and loan amounting to Kshs.873,235,436 (USD 9,032,944) and Kshs. 2,005,108,943 (USD 20,740,454) only being 38% and 52% of the donor commitment respectively had been absorbed.

The slow rate of absorption of funds implies that some activities in the project will not be implemented and this will negatively impact on achievement of the goals of the project.

Submission by the Accounting Officer;

It's true that as at 30th June 2022, the grant absorption was at 38% while the loan absorption was at 52% as a result of number of challenges such as slow procurement of contracts and associated procurement delays and effects of Covid-19 pandemic through restrictions of movement and Lockdowns resulting in work stoppages. The procurement delays were mainly as a result of projects and irrigation schemes feasibility studies and designs taking too long to be completed. The design challenges and County challenges tied to devolution cumulatively delayed the project by two years before commencement.

It's also true that after the above challenges were addressed, the grant and loan absorption by the project as at today is 100% while the loan absorption is at 71% against a commitment of

100% for the grant and 95% for the Loan. Furthermore, the project has instituted measures to fast-track project implementation and funds absorption before project closure on 30th June 2024.

Committee Observations and Findings

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1519. Stalled and Delayed Completion of Projects

Examination of contract records and documents revealed that Management had awarded various contracts for the construction of irrigation schemes and dams in various targeted Counties. Review of project status report and Project Coordination Unit minutes revealed delayed completion of projects with contract sums totalling Kshs.803,675,951 out of which an amount of Kshs.395,191,410 or 49% had been paid as at 30 June, 2022. An audit inspection exercise of the construction of earth sub surface dams and boreholes carried out in the month of September, 2022 in seven (7) sampled counties revealed that the dams were incomplete, did not have compactions reports as required in the bill of quantities and siltation had occurred in some dams while some had been vandalised.

In the circumstances, stakeholders may not obtain value for money for the resources already spent on these projects and the objectives of the projects may not be achieved.

Submission by the Accounting Officer;

It's true that out of the cumulative total contract value of Kshs.803,675,951 for the 12 No. Contracts, Kshs.395,191,410 had been paid to the contractors for works done in each of the sites after joint works measurement by the time of the Project Audit. This is because all the contracts funded by Loans from AfDB are admeasurement contracts (contracts measured and paid according to value of works done) as per section VII, General Conditions of the Contracts, sub-section 4.1 .1 on payments of admeasurement contracts.

It's also true that the some of the contracts for earth dams and boreholes were incomplete, some had defects as noted by the Audit teams in September 2022. The Project Management Team instituted measures to fast track the works by bringing on Board Graduate Engineers to assist the Resident Engineers and the Project Managers in the day to day supervision of the Projects. This measure has resulted in the Substantial completion of Six (6 No.) contracts, re-tendering of 4 No. contracts and termination of 2 No. contracts. The Noted defects by auditors during inspection were corrected by the contractors and siltation issues addressed in the earth dams through planting of suitable grass in the dam embankments as required to reduce erosion.

Furthermore, the beneficiaries have also taken charge of operations and maintenance of the structures through the relevant committees to ensure sustainability. This has greatly reduced cases of vandalism of the structures as communities have "owned" the projects. The operations and maintenance sub-committee have taken charge of dam operations and maintenance of any resultant damages as result use of the project.

Committee Observations and Findings

The Committee noted the submission from the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report.

1520. Abandoned Projects

Examination of contracts and payment records revealed that the Project Management awarded six (6) contracts for drilling of boreholes in various Counties to various contractors at combined contract sums totalling Kshs.51,063,955 out of which an amount of Kshs.16,715,286 had been paid as at 30 June, 2022. Review of the project status report and physical inspection of the works in the month of September, 2022 revealed that the projects had been abandoned. Further, three (3) boreholes with total contract sum of Kshs.25,187,904 had dried up, two (2) boreholes with contract sums amounting to Kshs.15,412,102 were found to have water unsuitable for consumption and one (1) borehole with a contract sum of Kshs.10,463,949 had yielded insignificant amount of water. Although, the Project Management had incurred costs on feasibility studies and hydro-geological studies and reports done recommending drilling of the boreholes, the costs incurred did not translate to benefits to the public. It is also not clear how Management intends to resolve the need to provide water to the targeted beneficiaries as initially envisaged where these boreholes, dams and surface dams have been abandoned.

In the circumstances, the public did not obtain value for money on the projects.

Submission by the Accounting Officer;

It's true that out of the cumulative total contract value of Kshs.51,063,955 for the 6 No. Contracts, Kshs.16,715,286 had been paid to the contractors for works done in each of the sites after joint works measurement by the time of the Project Audit. This is because all the contracts funded by Loans from AfDB are ad-measurement contracts as per section VII, General Conditions of the Contracts, sub-section 4.1 .1 on payments of admeasurement contracts.

Some of the areas where the Boreholes were found to be dry, new Hydrogeological studies were conducted afresh and drilling conducted by the same contractors. This yielded results for Wechakoni Shallow well which is now 100% completed while the new site for Makila Borehole in Machakos County was identified, drilled but again just like the first site, the volume of water was insignificant for development.

For Kajiado and Bomet boreholes which were meant to supply the grading sheds with fresh water for produce handling, the aquifers have high salinity levels and hence the Project Management in consultation with the beneficiaries have identified alternative fresh water sources to be connected to the grading sheds.

Furthermore, the Hydro-geological studies are usually not 100% accurate in as far as confirmation of presence of underground water or aquifers is concerned but just probabilities that the identified points have a high chance of striking water if and when drilled. In carrying out these studies, we use qualified Licensed Experts from the Ministry of Water and Irrigation and they use various modelling techniques and machines to locate probable points for water drilling.

The Current summary of the identified contracts is as per the table below;

County	Contract Name	Contract No.	Contractor	Amount	Total Paid	Remarks & Submission by the Accounting Officers
Tana River	Drilling and equipping Wechakoni Shallow Well	MOALF/SIVAP/T040/2020-2021	Octagon Builders & General Services	8,292,987.00	1,996,603.00	The site was drilled and the yield was very low (Dry). A new site was identified and drilled. Status - 100%. Certificate of completion, certificate of hand over and certificate of making good defects availed
Tana River	Drilling and equipping Bohoni Shallow Well	MOALF/SIVAP/T039/2020-2021	Export Hydro Pump and Services (Africa) LTD	7,258,045.00	1,236,450.00	Drilled and found to be dry. Alternative water structure to be

						identified to support the community
Kitui	Drilling and Equipping Kithimani Primary School and Mbukoni Community Boreholes in Kitui County	MOALF/ SIVAP/T 018/2019 -2020	Export Hydro Pump and Services Ltd	9,636,872.00	2,923,028.00	Kithimani Pri School BH is 100% complete and in use. Mbukoni Community BH did not yield any water (dry). Alternative water structure to be identified to support the community.
Kajiado	Drilling and equipping of Oleshuru / Oleshonko borehole in Kajiado county	MOALF/ SIVAP/T 042/2020 - 2021	Regional Ventures Ltd	8,421,352.00	2,106,078.00	30% complete. Test pumping yield was 7.0 M3 per hour but the water was found

						unsuitable for consumption. The Management in consultation with the beneficiaries identified a nearby spring (one of the springs supplying water to the irrigation scheme) as the new source of water to the grading shed.
Bomet	Drilling and Equipping of Kaboson Borehole in Bomet County.	MOALF/ SIVAP/T 035/2020 - 2021	Water Leaders (K) Ltd	6,990,750.00	-	40 % complete. Drilled and the Water found to be unsuitable for consumption. The Management in consultation with the

						beneficiaries have identified an alternative source of water for the grading shed.
Machakos	Drilling and Equipping of Kyumbo and Makila Boreholes	MOALF/SIVAP/T002/2019 - 2020	M/S Export - Hydro Pump and Services (Africa) Limited	10,463,949.00	8,453,127.00	Kyumbo BH is 100% complete. Makila BH yielded insignificant volume of water. An alternative water structure to be identified to support the community.
				51,063,955.00	**16,715,286.00**	

Committee Observations and Findings

The Committee observed that the failure rate of the boreholes was too high.

Committee Recommendation

The Committee recommends that the Ministry responsible for water adopts latest technology in mapping out boreholes to reduce failure rates.

1521. Stalled Construction of Kabason Irrigation Scheme in Bomet County

A contract for the construction of Kabason Irrigation Scheme in Bomet County was awarded to a firm at a contract sum of Kshs.257,092,132 for a contract period of twelve months with the expected completion date of October, 2018. Review of the project records revealed that an amount of Kshs.173,740,365 or 68% of the contract sum had been paid while certified works amounted to Kshs.155,538,430 or 60% of the contract sum. Management has not provided an explanation on why payments were made beyond the certified works. Further, an audit inspection in the month of September, 2022 revealed that the construction works had stalled and the contractor was not on site.

In the circumstances, stakeholders may not obtain value for money already spent on the project and further delays in completion may lead to cost escalation.

Submission by the Accounting Officer;

The implementation of the project works at Kabason Irrigation scheme in Bomet County started in September 2017 and that the contract has been implemented with occasional lapse of time due to various unforeseen conditions beyond control of the parties.

The Principal Secretary constituted an Inspection and Acceptance committee to audit the works done by the contractor. The Inspection and acceptance committee undertook the inspection exercise and established that the project was 92% complete as at June 2023 and that additional funds were required to cater for works that were outside the contracted scope which were not envisaged during the tendering process; mainly as result of increased quantities of excavations and on-farm supply pipes due to on-boarding of more farmers to the scheme.

The committee recommended that the contractor be allowed to complete the works rather than being terminated because the remaining works constituted a smaller percentage as compared to what had been done. The process of contract variation was initiated and the the AfDB approved the variation and amended the contract in November 2023 based on the extra works and that the works are currently on-going and expected to be completed by 30th May 2024.

The contract is ongoing and the total disbursement of Kshs.173,740,365 at the time of the Inspection by the Audit team in September 2022. included an advance payment of Ksh 17,000,000 paid to the contractor.

Committee Observations and Findings

The Committee observed that the advanced payment was not recovered in subsequent payments of certificates.

Committee Recommendation

The Committee reprimands the Acounting Officer for failure to recover advanced payments made to the contractor as first charge from his certificates, and recommends that a completion report be availed within three (3) months of adoption of this report.

1522. Omitted Works in Makanyanga Irrigation Scheme Access Roads Project

The Project Management awarded a contract for the construction of Makanyanga Irrigation Scheme access roads in Tharaka Nthi County to a firm at a contract sum of Kshs.34,144,484.

Review of the bill of quantities revealed that it provided for construction of seven (7) roads totalling to twenty-two (22.1) Km connecting the areas within the scheme at a contract sum of Kshs.3,234,000. Further, the bill of quantities provided for construction of two (2) sign boards for each of the seven (7) roads at a cost of Kshs.50,000 per sign board totalling Kshs.700,000 to show the location of irrigation project.

However, physical inspection of the irrigation scheme in the month of September, 2022 revealed that culverts were not in place, erosion was visible on the roads, and no signboards had been erected.

In the circumstances, stakeholders may not obtain value for money if the omitted works are not completed.

Submission by the Accounting Officer;

It's true that at the time of the Audit Inspection in September 2022, some defects were noted by the Audit Team which included culverts not being in place, erosion on road embarkments and signboards had not been erected.

The contractor was instructed to rectify the defects as noted by the Audit team. The contractor has since complied with the instructions and undertaken all the works to correct the defects.

Committee Observations and Findings

The Committee observed that the engineer certified works for payment irregularly before full performance by the contractor.

Committee Recommendation

The Committee and recommends that that Accounting Officer takes administrative action on the engineer responsible within one (1) month of adoption of this report, including reporting to the relevant professional body.

CAPACITY DEVELOPMENT PROJECT FOR ENHANCEMENT OF RICE PRODUCTION IN IRRIGATION SCHEMES IN KENYA (PROJECT GRANT/CREDIT NUMBER 1161001009)

REPORT ON THE FINANCIAL STATEMENTS

1526. Budgetary Control and Performance

The statement of comparison of budget and actual amounts for the year ended 30 June, 2022 reflects final revenue budget and actual amounts on comparable basis of Kshs.54,600,000 and Kshs.27,622,897 respectively, resulting in an underfunding of Kshs.26,977,103 or 49% of the budget. Further, the project spent an amount of Kshs.27,622,897 out of the approved expenditure budget of Kshs.54,600,000, resulting in under expenditure of Kshs.26,622,103 or 49% of the budget.

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

Submission by the Accounting Officer;

During the FY year 2021/2022, JICA (donor) committed to spend Kshs.43,000,000, while GoK approved a budget of Kshs.11,600,000. However, JICA provided Kshs.21,822,897, while GoK disbursed Kshs.5,800,000 to the project. This resulted in underfunding and underspending.

The underfunding by JICA was occasioned by the Economic constraints in the donor country of Japan and the weakening of the Japanese currency (Yen). There was also a budgetary revision by the Government and reduced disbursement to the project.

Committee Observations and Findings

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

NATIONAL AGRICULTURAL AND RURAL INCLUSIVE GROWTH PROJECT (IDA CREDIT NO. 5900-KE)

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1530. Non-Remittance of Counterpart Funds

The statement of receipts and payments as disclosed in Note 11.1 to the financial statements reflects transfer from Government entities - Counties and National Government amount of Kshs.330,979,258. However, review of the transfers schedules and other supporting documents revealed that the National and County Governments had not remitted counterpart funds amounting to Kshs.159,606,369 and Kshs.157,634,404 respectively. This is contrary to schedule 2 of the Project's Financing Agreement which states that IDA and the Government of Kenya (GoK) will Fund 91% and 9% of every year`s activities or expenditure of the Project respectively.

In the circumstances, the non-remittance of the GoK portion of the funding may have impacted negatively on the implementation and development of the programmes hence affecting delivery of goods and services to the public.

Submission by the Accounting Officer;

It's true that review of the transfers schedules and other supporting documents revealed that the National and County Governments had not remitted counterpart funds amounting to Kshs.159,606,369 and Kshs.157,634,404 respectively. However, the management has been and will continue making follow up actions with reminder request letters to the counties. At the national level we are going to ensure that the agreed proportions of the counterpart contribution are provided to the project accounts to ensure full implementation of the project. In the current financial year 2023/24, the project has already received its full year GOK counterpart.

Committee Observations and Findings

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1531. Delay in Implementation of Component Three of the Project

Review of project documents and County project implementation status reports in six sampled counties revealed delays in implementation of twelve (12) projects under component three of the project with a total budgeted cost of Kshs.731,370,592 despite availability of funds.

As at the date of audit inspection in October, 2022 these projects were either still ongoing or not started with no clear indication by the Management on when the projects will be completed.

Consequently, the value for money from the above projects could not be ascertained.

Submission by the Accounting Officer;

The disbursement of NARIGP funds to the Counties and the Community is through the Conditional Grants Disbursement Framework developed by the Senate every year. In Financial year 2021/2022 the framework was approved in May 2022. The late approval of the Framework negatively affected the disbursement of funds to the counties and consequently the implementation of investments at the counties and especially Multi Community Investments under Component Three. The project funds were released to the counties towards the tail end of financial year 2021/2022.

The projects have now been completed and handed over to the community.

Committee Observations and Findings

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1532. Anomalies in the Counties Bank Accounts

Review of County bank balances documents revealed that the County Government of Migori Management had frozen the projects bank accounts from 24 June, 2022. In addition, scrutiny of signatories to the account for County Government of Homa bay revealed that there were five (5) signatories to the account contrary to Section 2.3.2 Paragraph 5 of NARIGP Finance Manual which states that County level signatories to the accounts will be the County project coordinator, County project accountant, and either the Accounting Officer for Finance or Agriculture.

In the circumstances, the delivery of goods and services and project implementation may be inhibited by the inability to access funds for projects. In addition, the Management was in breach of the project's finance manual.

Submission by the Accounting Officer;

It's true that County Government of Migori Management had frozen the projects bank accounts. In addition, scrutiny of signatories to the account for County Government of Homa bay revealed that there were five (5) signatories to the account contrary to Section 2.3.2 Paragraph 5 of NARIGP Finance Manual which states that County level signatories to the accounts will be the County project coordinator, County project accountant, and either the Accounting Officer for Finance or Agriculture.

To ensure compliance on signatories to project accounts, the management through the Council of Governors has committed itself to sensitizing the new county leadership on the provisions of the project documents. Sanctions which include suspension of further disbursements will also be applied to non-complying counties. In Migori County the account was unfrozen on 5 December 2022. The County of Homabay has also complied on the signatories issue as recommended in the project Finance Manual.

Committee Observations and Findings

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1533. Delayed Transfer of Funds from County Revenue Fund

The statement of receipts and payments reflects transfers to County Governments of Kshs.4,310,864,684 as disclosed under Note 11.6 to the financial statements. Examination of County project coordinating units bank accounts and county revenue fund account revealed that as of October, 2022, the County Governments of Kilifi, Homabay and Kiambu had not transferred amounts of Kshs.136,732,417, Kshs.104,639,790 and Kshs.110,216,401 respectively received during the financial year 2021/2022 from the County revenue fund to the projects special purpose accounts.

In the circumstances, the intended beneficiaries did not benefit from the scheduled programmes and projects due to failure by the County Management to release the Project funds promptly.

Submission by the Accounting Officer;

It's true that the County Governments of Kilifi, Homabay and Kiambu had not transferred amounts of Kshs.136,732,417, Kshs.104,639,790 and Kshs.110,216,401 respectively received during the financial year 2021/2022 from the County revenue fund to the projects special purpose accounts.

However, the funds have now been transferred to the projects special purpose accounts.

Committee Observations and Findings

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1534. Idle Assets

The statement of receipts and payments and as disclosed in Note 11.6 to the financial statements reflects transfers to other Government entities of Kshs.4,310,864,684 out of which Kshs.2,423,394,921 was spent by various Counties under the programme. Included in this amount was expenditure for County Government of Meru of Kshs.5,366,600 for the supply of twenty (20) motor cycles. However, physical verification of the stores in the month of October, 2022 revealed that the motor cycles had not been dispatched to the various wards in the County. No satisfactory explanation was provided as to why these motorcycles have not been distributed since the date they were received. In the circumstances, stakeholders may not obtain value for their resources if the motor cycles are not put to their intended use.

Submission by the Accounting Officer;

It's true that the motor cycles had not been dispatched to the various wards in the County.

In Meru County, the delay in dispatch of the motorcycles to the respective ward officers was caused by the long time taken to process the insurance covers which is a responsibility of the County Government of Meru. However, upon receipt of the insurance covers, it was realized that they were third-party covers rather than the required comprehensive covers. This necessitated a repeat of the process which took more time before delivery of the comprehensive insurance covers. All the 20 motorcycles have now been issued to officers with valid riding licenses to comply with riding requirements.

Committee Observations and Findings

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

KENYA CLIMATE SMART AGRICULTURE PROJECT (IDA CREDIT NO.5945-KE)

REPORT ON THE FINANCIAL STATEMENTS

1537. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects Project's expenditure of Kshs.6,023,898,736 against an actual receipt of Kshs.7,552,013,430 resulting to an under absorption of Kshs.1,528,114,694 or 20% of the available funds.

The under absorption of the funds released could have affected the planned activities and negatively impacted on service delivery to the public.

Submission by the Accounting Officer;

It is true that the project had an under absorption of approximately 20%. This was as a result of late approval of the supplementary budget and the disbursement framework.

Committee Observations and Findings

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1538. Irregular Procurement of Assorted Furniture

The statement of receipts and payments reflects an expenditure of Kshs.217,411,414 in respect of acquisition of non-financial assets and which as disclosed in Note 4 to the financial statements includes an amount of Kshs.67,727,389 relating to purchase of office furniture and general equipment. The latter further includes an amount of Kshs.8,743,960 paid for supply and delivery of assorted office furniture at Livestock Training Institute - Wajir. However, the firm was not in the list of registered suppliers contrary to the provisions of Section 106 (2)(a) of Public Procurement and Asset Disposal Act, 2015 which provides that, an Accounting Officer of a procuring entity shall give the request for quotations to such persons as are registered by the procuring entity.

In addition, although the LPO was dated 23 February, 2021 the supplier delivered the goods on 06 May, 2021. This disregards Regulation 53 of Public Finance Management (National Government) Regulations, 2015 which stipulates that a local purchase order or local service order shall be valid for a period of thirty days from the date of issue.

Further, the goods were inspected on 19 August, 2021 by the Ag. School Principal and Project Manager although there was no documented evidence of appointment of the two as members of inspection and acceptance committee by Accounting Officer in accordance with provisions of Section 48 of Public Procurement and Asset Disposal Act, 2015 which states that an accounting officer of a procuring entity may establish an ad hoc committee known as the inspection and acceptance committee.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer;

It is true that the supplier for the furniture queried above was not in the prequalified list of suppliers of the State Department as at the time of audit. This is because the Company falls under the category of Women, Youth and people with disabilities which are normally prequalified at the National Treasury then updated at the other ministry's and the updating is continuous. The supplier has since been updated in the ministry and the revised prequalified list of suppliers is attached for your review.

As regards the late delivery of goods we recall that this were difficult times when Covid 19 was at its peak and many shops and transport systems across counties was shut down. As a result of this there occurred some delays but the supplier eventually managed to deliver the goods in good state and are currently in use.

The appointment letter was availed.

Committee Observations and Findings

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1539. Rehabilitation and Upgrading of Wajir Livestock Institute

The Project awarded Contract No. MOALF&C/SDCDAR/KCSAP/WAJIR/003/2019 for mechanical works, borehole drilling and electrical works to a local contractor on 25 August, 2020 at a total contract sum of Kshs.28,358,800.

However, review of contract records and documents revealed the following unsatisfactory matters:

i) The notification of award of the contract was signed by an officer other than the Accounting Officer and no written delegation of authority was provided for audit.
ii) The contract period had expired and consequently the contractor was implementing the project without a valid contract.
iii) The performance bond had expired and had not been renewed.
iv) There is a low-level tank made of different plates which were bulging outwards, an indication of stress. Evidence of testing of the tank at the factory was not provided for audit review.

In the circumstances, Management was in breach of conditions of the contract and continued delay in the completion of the Project may lead to cost escalations.

Submission by the Accounting Officer;

i) It is true that the notification of award was signed by the head of procurement instead of the accounting officer. We admit that this was wrong and it shall not be repeated again moving forward. The accounting officer had however signed the professional opinion and the contract.

ii) It is also true that the Contract period for the above contract had also expired as at the time of Audit. The contractor never renewed it leading to termination and later awarded to another contractor.

iii) The performance bond was also expired as at the time of audit. The contractor never renewed leading to termination and later awarded to another contractor.

iv) The low-level water tank was also bulging as at the time of audit. This has since been corrected by the contractor and inspected by the project implementation committee. The tank is now in good working condition and serving the institute as intended.

Committee Observations and Findings

The Committee noted the admission by the Accounting Officer for failure to sign the notification of award.

Committee Recommendation

The Committee reprimands the Accounting Officer for breach of section 87 (1) of the PPAD Act 2015.

1540. Irregular Signatories to the Operation Bank Account in Lamu County

Examination of financial records maintained at Lamu County Project Office revealed that the County Chief Officers for Finance and Agriculture were mandatory signatories to the operations account. This is contrary to provisions of Paragraph 42 of Project Finance Manual 2018 which states that each County shall open a County Project bank account in a commercial bank where Government has an interest. Further, that the signatories shall be the County Project Coordinator as the mandatory signatory, the County Project Accountant and the Head of Accounts/Finance.

In the circumstances, the County Management was in breach of the Financing Agreement.

Submission by the Accounting Officer;

According to the Project Implementation Manual (PIM) and the Finance Manual the Coordinator should be the mandatory signatory with the accountant and the head of accounting unit being alternate signatories. The signing mandate is that the Coordinator and either of the alternates can sign. In the case of Lamu the Chief officer (CO) finance, CO Agriculture, Coordinator and the accountant were all mandatory signatories. This made operations difficult even as the National Project Coordination Unit tried to intervene through various sensitizations. As a result of this noncompliance which led to slow absorption the county received the least amount of funds out the 24 counties only receiving Ksh.387 million against the highest which received Ksh.941 million over the six years of implementation. The project officially closed

on 30th November 2023. Lamu County has already closed their bank accounts including the operations account after fully utilizing their funds for the intended purposes.

Committee Observations and Findings

The Committee observed that the matter was under the purview of the Senate.

Committee Recommendation

The Committee recommends that the Auditor General reports the matter to the Senate in the subsequent audit cycle.

1541. Construction of Inaya Irrigation System on Private Land

The County Government of Kakamega awarded a Contract No. CGK/KCSAP/003/2019- 2020 for Construction of Inaya Irrigation System at Inaya Water Pan to a Contractor at a contract sum of Kshs.8,492,680. However, review of documents relating to the contract revealed that the project which is awaiting handover to the local community is constructed on private land. This is contrary to Part 1.2.4 of the National Treasury Guidelines for Management of Specific Categories of Assets and Liabilities, 2020 which provides that no public funds shall be invested on land acquired, through donation or otherwise, where title has not passed to the receiving public sector entity.

In the circumstances, the County Management was in breach of The National Treasury Guidelines.

Submission by the Accounting Officer;

The County Government of Kakamega is in the process of acquiring the title of the said land measuring 0.75 acres out of the parcel LR/No. Marama/Lunza/136. The owner Mr. Saul Lipuku Akala has agreed to donate the land to community at no consideration. The County Government of Kakamega already has an approved Cabinet Memo for this transfer and the survey has also been finalized. The agreement for the transfer is in process.

Committee Observations and Findings

The Committee noted the admission from the Accounting Officer.

Committee Recommendation

The Committee reprimands the Accounting Officer for committing public funds to a project on private property, before acquisition, and recommends that a title in favour of government be availed within three (3) months of adoption of this report.

1542. Failure to Open a Special Purpose Account in Wajir County

Paragraph 2(2) of the Project Implementation Manual on obligation of County Governments required that participating Counties to open a Special Purpose Account (SPA) for payment of project expenditures through the IFMIS system where signatories to the accounts are the Chief Officer (CO) Finance and Chief Officer Agriculture. However, the County Government of Wajir had by 30 June, 2022 not complied with the requirement.

In the circumstances, the County Management is in breach of the Financing Agreement.

Submission by the Accounting Officer;

It is true that as at the time of audit the County Government of Wajir had not complied with the project requirements of opening and operating a special purpose account. The County Government of Wajir has now complied.

Committee Observations and Findings

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1543. Failure to Remit Counterpart Funds by Selected Counties

Review of project documents and records maintained at sampled County Project Offices revealed that five (5) counties, namely Wajir County, Lamu County, Baringo County, West Pokot County and Kakamega County had not remitted counterpart funds amounting to Kshs.15,000,000, 38,811,790, Kshs.5,904,488, Kshs.14,122,076 and Kshs.51,870,018

respectively, all totalling Kshs.125,708,372. These balances relates to accumulated 20% counterpart funds on sub-project implemented and Counties contribution for office utilities and overheads in accordance with Paragraph 34 of Project Appraisal Document which requires that County Governments to contribute at least 20 percent of the total cost of the sub-projects.

In the circumstances, Management of the affected counties were in breach of the Financing Agreement.

Submission by the Accounting Officer;

It is true that the above listed Counties had not remitted their 20% contribution on sub-projects implementation as at the time of the Audit. This is because the sub-projects were still ongoing and the Counties had not yet received their share of revenue allocation. The situation has since changed and the Counties have fully contributed their counterpart funds. The sub-projects have also been completed and the project closed on 30th November 2023.

Committee Observations and Findings

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

ENABLE YOUTH KENYA PROGRAM (ADF LOAN NO.2100150038895)

REPORT ON THE FINANCIAL STATEMENTS

1546. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipt budget and actual on comparable basis of Kshs.947,000,000 and Kshs.118,988,860 respectively resulting in an underfunding of Kshs.828,011,140 or 87% of the budget. Similarly, the Program spent an amount of Kshs.110,731,840 against an approved budget of Kshs.947,000,000 resulting to an under expenditure of Kshs.836,268,160 or 88% of the budget. The underfunding and underexpenditure

might have affected the planned activities and negatively impacted on delivery of goods and services to the public.

Submission by the Accounting Officer;

It is true that the program was underfunded to the amount of Kshs.828,011,140 which was as a result of the supplementary budget cuts implementation.

The under absorptions of funds allocated was as a result almost three-year delay due to delayed project take off in the initial stage and COVID outbreak. This delayed the implementation of planned activities that were expected to consume provided funds.

Furthermore, the delays in completion of rehabilitation works in the Training Centres and late deliveries of equipment by suppliers caused the under expenditure.

The execution of the Subsidiary Loan Agreements between the Ministry and Agricultural Finance Corporation to facilitate the transfer of the Risk Guarantee Funds facility delayed and was finalized in March 2023. Consequently, the 800 Million provided for the facility could not be transferred resulting to under expenditure.

However, the program has fast-tracked the program activities and 845 youths have been incubated for agribusiness financing. Kshs.333 Million has been disbursed to Agricultural Finance Corporation for Youth Funding. Payment of refurbishments works in the training centers and delivery of equipments has been done.

Committee Observations and Findings

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1547. Unsupported Transfers to Other Government Entities

The statement of receipts and payments reflects transfers to other government entities of Kshs.20,000,000, as disclosed in Note 9 to the financial statements, that was disbursed to Agricultural Information Resource Centre in form of Authority to Incur Expenditure (AIEs). However, no documentary evidence was provided to confirm that the expenditure was incurred on activities of the Program. Further, the amount was not budgeted for.

In the circumstances, the regularity of the transfers to other government entities of Kshs.20,000,000 could not be confirmed.

Submission by the Accounting Officer;

The main aim of the objective of the program is to create gainful employment, generate income for the youth and bridge succession gap in agribusiness and related value chain.

In relation to this the program aims to publicize and create awareness to youths across the country through printing and documentation of the success stories of the trained and funded incubates.

Agricultural Information Research Centre (AIRC) is in the State Department which provides documentation and printing and publishing services to the State Department and Programs.

ENABLE Youth Program in collaboration with AIRC documents the success stories printing and publishing of training materials for the youths hence the support through transfer of the KES 20,000,000.

Committee Observations and Findings

i) **The Committee observed that the activity was demonstrated in the work-plan.**

ii) **The Committee found that the matter was resolved.**

1548. Slow Absorption of Project Funds

As disclosed under Note 1.2 of the Project information, the Program is expected to close on 30 June, 2023. Further, Note 1.7 on funding summary indicates commitment made towards the Program amounting to Kshs.3,751,072,500 (USD 36,330,000). However, actual drawdowns as at 30 June, 2022 amounted to Kshs.254,041,538 (USD 2,352,796) leaving a balance of Kshs.3,497,030,962 (USD 33,977,204) undrawn with one (1) year to the project end date.

Consequently, the Program's slow absorption of the funds may affect the planned activities.

Submission by the Accounting Officer;

The program start date was in January 2018 and end on 30th June 2022.

Due to delayed start and Covid pandemic where by the youths could not be admitted for training because of the restrictions, the program planned activities were consequently affected which led to slow absorption of funds. The program has been granted a no cost extension of two years and new end date of June 2024. Annex 1

The absorption of funds has improved with a disbursement of 333 million to Agricultural Finance Corporation for onward lending to the Youths.

The program has also trained 845 Youths, who are due for funding through Agricultural Finance Corporation four contracts on rehabilitation of works in the training centers have been completed paid for and handed over to the program. The program also advertised for training of the youths where 3000 youths applied and after the interviews the program will admit 800 youths who qualified for training in May 2024.

The program absorption has increased from 17% to 26%.

Program activities are also being fast-tracked to ensure that they are implemented within the added timelines.

Committee Observations and Findings

The Committee noted the submission from the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer avails a status report within three (3) months of adoption of this report.

1549. Delayed Implementation of Projects

Review of projects progress reports and contract agreements for ongoing works being implemented by the Program at a total cost of Kshs.69,300,538 revealed overall slow project implementation of seven (7) projects. The contracts were for proposed renovations and rehabilitation of incubation centres for Enable Youth Program at Dairy Training Institute in Naivasha, Eldoret University, Ramogi Institute of Advanced Technology, Kisii University, Regional Pastoral Training Centre in Narok, Kenya School of Agriculture in Nyeri and Pwani University in Kilifi at a contract sum of Kshs.8,977,773, Kshs.8,619,844, Kshs.9,392,601, Kshs.7,946,939, Kshs8,318,517, Kshs.2,786,206 and Kshs.15,297,348 respectively. All the projects were scheduled to begin in November, 2021 and expected to take 12 weeks to completion by end of February 2022. However, it was noted that projects were behind schedule by 43 weeks at 60%, 40%, 95%, 30%, 30%, 10% and 70% completion respectively. Further, actual physical inspection of the sampled projects in the month of October, 2022 revealed the following unsatisfactory matters;

1549.2. Ramogi Institute for Advanced Technology - Kisumu

Site visit to the project revealed the overall percentage of works completed stood at 95%. The scope of works undertaken by the contractor included renovation of classrooms, proposed resource center, a poultry unit and a slaughter slab. In addition, review of the project engineers report disclosed that the resource center and poultry units require additional provisions for construction of drainage works before they can be put to use. The works had not been provided for in the original Bill of Quantities when the works were tendered.

Submission by the Accounting Officer;

It is true that the drainage works provision for the poultry house were inadvertly omitted when the initial planning and BQs was being done.

The omission was noted and is regretted, consequently the program has done a revising the Bill of Quantities to incorporate the drainage so that the poultry house will be in use. A no objection has been sought from the donor for the procurement process of the contracts for the drainage. The bill of Quantities have been provided.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer avails a status report within three (3) months of adoption of this report.

1549.3. Regional Pastoralist Center - Narok

At the time of the audit inspection, renovation works for classrooms had not yet commenced while the resource center building was done to roofing level only and the internal finishing, electrical works, plumbing works and painting had not been done. In addition, the contract included installation of ground level and elevated water tanks which had not been done and the contractor was not on site at the time of audit inspection.

Submission by the Accounting Officer;

It is true that the renovation works for Regional Pastrol Centre in Narok had not commenced during the time of audit. The contractor citing cost of inflation and delays, and notified the client the intention to terminate the contract.

The termination process has been initiated, the State Department of public works has remeasured the incomplete works while the program awaits a no objection from the donor to re- advertise for the remaining works.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer avails a status report within three (3) months of adoption of this report.

1549.4. Dairy Training Institute - Naivasha

A visit to the project revealed the overall percentage of works completed stood at 60%. The scope of works undertaken by the contractor included; feed formulation unit, zero grazing unit, goat houses, poultry units and slaughter slab. Whereas, renovation and refurbishment work to the classrooms, office and resource center and washrooms had not yet commenced the contractor was not on site at the time of audit.

In the circumstances, the Program risks non-achievement of set objectives due to failure to execute and complete scheduled projects within the set timeframes.

Submission by the Accounting Officer;

It is true that the overall percentage of works completed stood at 60% during the time of audit. However, the rehabilitation works have been completed and a partial completion certificate of works has been issued and the project handed over to the program.

The defect liability period of six months has not elapsed since completion for the final completion certificate to be issued.

Committee Observations and Findings

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1550. Delays in Delivery of Goods by Suppliers

Review of procurement contracts entered between the Program and various suppliers revealed delays in delivery of goods by the suppliers with orders totalling Kshs.107,656,475 as indicated below:

i) Three (3) contracts for the supply, delivery, installation and training for pig and beef equipment, for fisheries equipment and for mushroom and vegetables equipment at a contract sum of Kshs.3,965,480, Kshs.16,636,225 and Kshs.31,977,170, respectively

whose expected date of delivery was 20 November, 2021 had been delayed by eleven (11) months as of October, 2022.

ii) Two (2) contracts for the supply, delivery, installation and training for dairy value chain equipment and for poultry equipment at a contract sum of Kshs.41,599,600 and Kshs.13,478,000, respectively with an expected delivery date of 20 February, 2022 had been delayed by eight (8) months as of October, 2022.

No explanation was provided for the non-compliance with the contract agreements.

Submission by the Accounting Officer;

It is true that three contracts for the supply, delivery installation of agricultural equipments had not been delivered by the time of audit, however the delivery and installation of pig and beef has been fully done and paid.

The mushroom and vegetables contract of Kshs.31,977,170 has been partially delivered up to 23,013,250 while that of Kshs.16,636,225 has been delivered up to Kshs.2,685,850. Some of the equipment were not locally available and had to be imported which affected the delivery.

The dairy value equipment at contact sum of 41,599,600 has been supplied up to Kshs. 25,686,600 while the poultry contract has been supplied up to Ksh.12,265,400.

It was noted during the Midterm Review mission by the Donor that there is a risk of the suppliers not being able to fully supply the equipments. The donor advised use of Quotation method for the unsupplied equipment's instead of re-advertising which would be a lengthy process. Inspection and Acceptance reports have been provided.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer avails a status report within three (3) months of adoption of this report.

AGRICULTURAL SECTOR DEVELOPMENT SUPPORT PROGRAMME II (SIDA GRANT NO.51110109)

REPORT ON THE FINANCIAL STATEMENTS

1553. Low Budget Absorption by the Programme

As disclosed in Note 1.2 of the Project information, the Project is earmarked to close on 30 November, 2022. Note 1.7 on funding summary indicates commitment made towards the Project amounting to Kshs.5,692,500,000 (USD 35,590,254). However, actual drawdowns as at 30 June, 2022 amounted to Kshs.4,671,041,957 equivalent to (USD30,693,777) leaving undrawn balance of Kshs.1,021,458,043. In addition, the cumulative expenditure as at 30 June, 2022 amounted to Kshs.3,366,688,345 thus yielding an under absorption rate of Kshs.1,304,353,612 or 30% against actual drawdowns to date of Kshs.4,671,041,957.

In the circumstances, the low absorption might have affected the achievement of Programme objectives and may lead to refund of undrawn balance to the donor at the expense of revitalization of the County's agriculture sector as envisaged in the Programme objectives.

Submission by the Accounting Officer;

The implementation of the programme was affected by the following:

i) Over 95 % of the funds disbursed to the counties are meant for the implementation of Strategic Integrated Value Chain Action Plans (SIVCAPs) through extended capacity building and innovation concepts. Delays in the revision and implementation of innovation concepts contributed low absorption of funds in some Counties.

ii) The programme impact are accessible through the programme links:https://asdspkm.kilimo.go.ke, https://asdsp.kilimo.go.ke/,ASDSPII (@TIMPSPORTAL), https://asdsp.kilimo.go.ke/dashboard

iii) Delays in approval of the legal framework (County Governments Additional Allocations Act, 2022) by Parliament for disbursement of grants/loans lead to late release of Programme Funds to Counties. The programme disbursed funds in Mid-June 2022 and hence most Counties could not have absorbed the funds by close of the FY under review. The funds were carried over for the implementation of the activities in the FY 2022/2023.

iv) Delay in transfer of funds by some County Treasuries from the County Revenue Fund (CRF) to the Programme designated Special Purpose Account (SPA) and to the operational Commercial Bank account affected implementation of Programme activities.

The Programme was extended from 30th November 2022 and it ended on 29th February, 2024. The Donor has provided all the funds and the Programme has absorbed all the funds.

Committee Observations and Findings

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1554. Unauthorized Bank Account - Laikipia County

Examination of documents provided during the field audit revealed that ASDSP II, Laikipia County Programme Secretariat had opened a commercial bank account at Equity Bank Ltd but was now dormant. The Programme opened another commercial bank account at National Bank, which is currently active without closing the initial account opened at Equity Bank. In addition, the County Programme Coordination Unit did not provide for audit authority for opening the dormant bank account or details of the signatories to the account. This is contrary to Regulation 82 (4) of the Public Finance Management (National Government) Regulations, 2015 which stipulates that no Accounting Officer may open a bank account for the deposit, custody or withdrawal of public moneys or other moneys for which he or she is responsible in his or her official capacity or for the transaction of official banking business except with the prior authority of The National Treasury.

In the circumstances, the Management was in breach of the law.

Submission by the Accounting Officer;

The Equity Bank account was opened by the County Executive Committee Member (CECM) responsible for the County Treasury in the FY 2017/2018 but was not used since the Programme operated via IFMIS in FY 2018/19 and FY 2019/2020.

The Account has been dormant and was finally closed on 08th May,2023.

Committee Observations and Findings

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1555. Irregular Appointment of County Chief Officers as Mandatory Signatories to the Operations Bank Account

Review of cash and cash equivalents documents provided for audit revealed that two (2) counties, Isiolo and Meru appointed Chief Officers for Agriculture as mandatory signatories to ASDSP II bank operations accounts. This was contrary to Section C (6) of the Memorandum of Understanding (MoU) between the National Government through the Ministry of Agriculture, Livestock and Fisheries and the County Governments in the year 2018, under obligations of the County Government, which stipulates that the mandatory bank signatories shall be the County ASDSP II Coordinator and the assigned accountant responsible for the Programme.

In the circumstances, the irregularity might lead to impediment of efficient and effective execution of Programme activities through limitation and delays in access of funds.

Submission by the Accounting Officer;

The anomaly was rectified by the two counties. The County Coordinator is a mandatory signatory to the accounts.

Committee Observations and Findings

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

EMERGENCY LOCUST RESPONSE PROJECT (IDA CREDIT NO.6648-KE)

REPORT ON THE FINANCIAL STATEMENTS

1558. Budgetary Control and Performance

The statement of comparison budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.1,362,000,000 and Kshs.1,027,505,630 respectively resulting to a budget shortfall of Kshs.334,494,370 or 25% of the budget. Similarly, the Project expended an amount of Kshs.696,009,708 against an actual receipt of Kshs.1,027,505,630 resulting to an under expenditure of Kshs.331,495,922 or 32% of the actual receipts. The underfunding and under-

absorption affected the planned activities and impacted negatively on goods and services delivery to the public.

Submission by the Accounting Officer;

During the year ended 2021/2022, there was a delay in the approval of the County Governments Additional Allocation Bill Approval was done in April 2022.

This limited time available for project implementation at the County level hence under-expenditure on the budget.

Committee Observations and Findings

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

MULTI-NATIONAL RURAL LIVELIHOODS' ADAPTATION TO CLIMATE CHANGE IN THE HORN OF AFRICA (ADB/ADF GRANT NO.5550155001201)

REPORT ON THE FINANCIAL STATEMENTS

1561. Variances Between Financial Statements and IFMIS Ledger

The statement of receipts and payments reflects total payments of Kshs.68,815,652 as detailed in Note 6 and 8 to the financial statements. However, some reported expenses had variances with the IFMIS ledger as tabulated below;

Item	Actuals as per Financial Statements (Kshs.)	Actuals as per IFMIS Ledger (Kshs.)	Variances (Kshs.)
Printing, Advertising and Information Supplies and Services	1,127,800	0	1,127,800
Training Expenses	8,618,341	21,204,538	(12,586,197)
Specialized Materials and Supp	8,281,552	9,189,652	(908,100)
Office and General Supplies and Services	1,354,607	490,000	864,607
Fuel Oil and Lubricants	1,437,800	2,669,500	(1,231,700)
Other Operating Expenses	9,997,098	10,069,558	(72,460)
Routine Maintenance – Vehicles	4,259,400	2,743,340	1,516,060

Use of Goods Total	**35,076,598**	**46,684,035**	
Research, Feasibility Studies, Project Preparation and Design, Project Supervision	16,243,960	26,960,385	(10,716,425)
Acquisition of Assets Total	**16,243,960**	**26,960,385**	

In the circumstances, the accuracy and completeness of use of goods and acquisition of assets amounts of Kshs.35,076,598 and Kshs.16,243,960 respectively for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer;

It's true that some reported expenses had variances with the IFMIS ledgers. This was due to some reconciliation which had not been completed successfully between the state department and the project.

The state department has put in place strict measures and timelines to the donor funded projects to ensure that this doesn't recur. In the subsequent financial year 2022/23 there were no variances between the reported expenditures and IFMIS ledger.

Committee Observations and Findings

The Committee observed that the reconciliations had since been done.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to keep proper accounting records.

1562. Misclassifications under Training Expenses

The statement of receipts and payments reflects purchase of goods and services amount of Kshs.35,644,045 which, as disclosed in Note 6 of the financial statements, includes training expenses amounting to Kshs.8,618,341. Included in the training amount are payments totaling Kshs.1,116,900 incurred on supervision of projects and postage that have been wrongly classified under training. Consequently, the accuracy and completeness of training expenses of Kshs.8,618,341 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer;

It's true that included in the training amount are payments totaling Kshs.1,116,900 incurred on supervision of projects and postage that had been classified under training. These payments related to supervision of project activities which were correctly charged under 2210707 and 2210709 - Project allowance and Research allowance respectively which are sub economic items under training expenses.

Committee Observations and Findings

i) **The Committee noted that the submission by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

1563. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects approved receipts budget and actual on comparable basis of Kshs.168,000,000 and Kshs.33,821,497, respectively resulting to an underfunding of Kshs.134,178,503 or 20% of the budget. Similarly, the statement reflects an approved expenditure budget of Kshs.168,000,000 and an actual amount of Kshs.68,815,652 resulting to under expenditure of Kshs.99,184,348 or 59% of the budget.

Further, the statement reflects approved budgeted amounts for purchase of goods and services and acquisition of assets of Kshs.97,527,500 and Kshs.70,472,500 which vary with the approved budget amounts of Kshs.73,527,500 and Kshs.94,472,500 respectively. However, no explanation was given for the variances.

In the circumstances, the underfunding and underexpenditure of the budget affected planned activities and could have negatively impacted on the delivery of goods and services to the public.

Submission by the Accounting Officer;

The project have put in place necessary measures to fast track project activities to ensure 100% absorption before the project closed on 30th November 2023. The project has achieved this and fully utilized the resources at 99.98% absorption at the closure date.

The variance between approved budgeted amounts for purchase of goods and services and acquisition of assets of Kshs.97,527,500 and Kshs.70,472,500 vary with the approved budget amounts of Kshs.73,527,500 and Kshs.94,472,500 respectively.

This was a misclassification of the budget lines which only affected the budget in reporting. The expenditure of the project is as per the approved budget.

The misclassification is highly regretted and the state department has instituted measures with the donor funded projects to ensure the budget figures are reported as per the approval before submitting to the Office of the Auditor General.

For the subsequent financial year 2022/23 there were no variances experienced between the approved budget and the reported budget.

Committee Observations and Findings

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1564. Delay in Completion of Kanaodong Producer Group Shallow Well Project

A contract for the construction of Kanaodong Producer Group Shallow Well in Turkana County was awarded at a contract sum of Kshs.2,843,341 for an initial contact period of two (2) months commencing on 18 June, 2021 which was later extended to 4 September, 2021. Physical inspection of the works in the month of September, 2022 revealed that works were incomplete with works valued at Kshs.1,125,000 still pending and the contractor was not on site.

In the circumstances, stakeholders may not obtain value for money for the expenditure incurred on the project.

Submission by the Accounting Officer;

It is true that there was delay in completion of Kanaodong Producer Group Shallow Well Project in Turkana County which was occasioned by insecurity in the surrounding areas. Insecurity challenge made transportation of the Materials impossible hence delayed the project has since been fully completed and handed over to the beneficiaries for utilization.

Committee Observations and Findings

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

STRENGTHENING FERTILIZER QUALITY AND REGULATORY STANDARDS IN KENYA PROJECT (AGRA GRANT NO. 2013 SHP 001)

REPORT ON THE FINANCIAL STATEMENTS

1568. Failure to Hand over Project Assets

Schedule II of the Grant Agreement dated 23 July, 2014 indicated the project completion date as 30 June, 2017 which was extended to 19 February, 2018 through a letter from the donor (AGRA). However, there was no evidence that assets with cumulative value of Kshs.5,473,400 reflected in the statement of receipts and payments which comprises of motor vehicles and ICT equipment had been handed over to the State Department for Crops Development and Agricultural Research.

In the circumstances, the existence and ownership of assets worth Kshs.5,473,400 could not be confirmed.

Submission by the Accounting Officer;

It is true that the project was completed in 2018 and had assets of Kshs.5,473,400. The Motor Vehicle was reverted to the State Department for Crop Development where it is currently in operation. A copy of the logbook has been availed.

The ICT Equipment (Laptops and Desktops) are still with the officers who have been deployed within the State Department Programs and are in use for assignments of their respective sections.

Committee Observations and Findings

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

SUPPORTING AGRICULTURAL INPUT AND OUTPUT MARKETING POLICY AND REGULATORY REFORMS TO IMPROVE THE ENABLING BUSINESS ENVIRONMENT FOR AGRICULTURE IN KENYA (AGRA GRANT NUMBER 2018 KE 005)

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1573. Lack of Internal Audit Review

As previously reported, it was noted that there was no internal audit review of the Project's activities contrary to Section 73(3)(b) of the Public Finance Management Act, 2012 which require that the Internal Auditor shall conduct internal auditing which includes risk-based, value-for-money and systems audits aimed at strengthening internal control mechanisms that could have an impact on achievement of the strategic objectives of the entity.

Submission by the Accounting Officer;

It is true that during the year under review, there was no internal audit review of the Project's activities contrary to Section 73(3)(b) of the Public Finance Management Act, 2012. The audit of the project was included in the Risk based annual work plan for the financial year 2021/2022 under Ad-hoc audits which were ranked as medium risk. However, due to limited resources the audits were focused in high risk audit areas.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer henceforth ensures compliance with Section 73(3)(b) of the Public Finance Management Act, 2012.

Query Nos. 1574-1575 have been examined under the State Department for Higher Education and Research, which was the implementing agency.

4.32 VOTE 1173: STATE DEPARTMENT FOR COOPERATIVES

Mr. Patrick Kilemi, the Principal Secretary and Accounting Officer for the State Department for Cooperatives, appeared before the Committee on 14th March 2024, accompanied by the following officers:

i.	Mr. Ian Ireri	-	SSE - MECH
ii.	Ms. Margaret Nyawera	_	Deputy Accountant General
iii.	Mr. Julius Semo Ndoli	_	SDSE (M)
iv.	Mr. George Marete	_	SDC
v.	Mr. Paul Ikuuc	_	PFO
vi.	Mr. Samwel Kiptoo	_	ACCD - SDC

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1579. Misstatement of Expenditure on Rentals of Produced Assets

The statement of receipts and payments reflects an expenditure of Ksh. 344,120,894 on the use of goods and services which as disclosed on note 4 to the financial statements includes an amount of Ksh.8,509,016 on rentals of produced assets. Review of payments records reveal that the expenditure on the rentals of produced assets includes payments totalling Ksh.346,657 which did not relate to rentals of produced assets.

In the circumstances, the expenditure on rentals of produced assets is overstated by Ksh. 346,657.

Submission by the Accounting Officer

The expenditure which was erroneously posted to rentals have since been reversed and posted to the right account through journal voucher no. 4065-1412.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to keep proper accounting records.

1580. Variances on Compensation of Employees Expenditure

The statement of receipts and payments reflects and expenditure of Kshs 244,683,479 on compensation of employees which, as disclosed in Note 3 to the financial statements, includes amounts of Kshs. 161,346,752 and Kshs. 83,336,727 in respect of basic salaries and other personal allowances, respectively. However, a review of payroll records revealed that the amounts of Kshs.138,410,003 and Kshs. 94,790,129 were paid in respect of basic salaries and other personal allowances resulting to unreconciled variances of Kshs. 22,936,749 and Kshs 11,453,402 respectively.

Although management explained that the variances arose due to payments that were not made through the payroll, no reconciliations of the differences were provided for audit verification Further, integrated Financial Management Information System (IFMIS) payments records

indicated that the Department paid an amount of Kshs 5,724,523 as special duty allowance to various officers. However, the integrated personnel and payroll Database (PPD) system did not reflect any amount having been paid as special duty allowances. In the circumstances, the accuracy and completeness of the basic salaries and other personal allowances of Kshs.22,936,749 and Kshs. 11,453,402 respectively could not be confirmed.

Submission by the Accounting Officer

The unreconciled variances were payments on salary items, that were not made through the payroll as explained in the reconciliations and copies of payments vouchers. The total expenditure in the financial statement indicates Kshs 161,346,752 and Kshs 83,336,727 were paid in respect of basic salary and other allowances totaling to Kshs 244,683,479.Payroll records indicates that Kshs 138,410,003 and Kshs 94,790,129 were paid in respect of basic salary and other allowance totaling to Kshs 233,200,129 as the payroll records attached.The difference in financial statement and payroll figures of Kshs 11,483,350 were paid by voucher outside payroll;

S/NO	ITEM	AMOUNT
1	Basic Salary Paid by payroll	138,410,003
2	Other Allowances paid by payroll	94,790,129
3	Payments made outside the payroll by voucher	11,483,350
	TOTAL EXPEDITURE	**244,683,479**

It is true that salary payments vouchers amounting to Ksh.5,724.523 were paid from special duty allowances, this was as a result of budget deficits and salaries had to be paid.

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1581. Irregular Award of Tender for Proposed Modernization of Luanda Farmers' Co-operative Union Ginnery

The State Department awarded a contract for the proposed modernisation of Luanda Farmers' Co-operative Union Ginnery to a firm at a contract sum of Kshs36,262,199 review of the procurement process revealed that bidder number six (6) whose bid was Kshs 28,887,225 was found non - responsive. The bidder's form of tender was not dully filled, signed and sworn affidavit on default notices/ warning for incomplete projects original bid submitted by the firm on 16th February, 2021 confirms that the bidder had fulfilled the said mandatory requirements as was the case with winning bidder.

Further, the tender documents provided for the supply of the cotton seed screw conveyor with all necessary equipment, spare parts and accompanying tools for operation at a total of Kshs. 2,273,224. However, physical verification of the project in the month of September, 2022 revealed

no new conveyor was delivered, Instead the existing pneumatic seed cotton transportation system was cleaned, serviced and repaired at a total cost of Kshs. 240,000 resulting in an unaccounted-for expenditure of Kshs. 2,033,224.

Review of payment records as at 30 June, 2022 revealed that an amount of Kshs.35,021,624 had been paid leaving a balance of Ksh.1,240,575 unpaid as at June 2022.

In the circumstances the management was in breach of the law and the stakeholders may have not obtained value for money in this procurement of the Contract.

Submission by the Accounting Officer

The State Department for Co-Operatives invited bids through tender notice dated 2nd February 2021 for the above project. During the tender opening, six bidders responded.

The Evaluation Committee subjected the bidders into an evaluation process which was based on the tender document set criterion. The first stage was preliminary evaluation and six bids were examined in order to determine their responsiveness to the statutory requirements as spelt out in the tender document.

Bidder No. 6 –M/s Tenestone Ltd failed in this preliminary stage because of the following reasons;

i. By not submitting a dully filled and signed form of tender with validity period of 120 days.
ii. Failed to submit a sworn affidavit on default notices and warning for incomplete projects, considering that a sworn affidavit is a statement of facts, voluntarily made by a respondent under an oath or affirmation administered by a person authorized to do so by law (Commissioner of notary/oath. In this case no such document was provided. Therefore, this bidder, by failing to submit these required documents in the right manner made her non-respondent).

Payments and physical verification from the issues raised on the above, the following clarifications are important: There are two (2) separate transportation/conveyor systems; a pneumatic transportation system for raw seed cotton and another conveyor for cotton seeds as described through a response letter, herein attached, from the Project Manager, State Department of Public Works.

The Pneumatic Transportation system for raw seed cotton; This one was to be cleaned, serviced and repaired for the complete system. That is, ducting from the store to ginning house, repair air leakages, install dust trapping valves, and repair corroded and rust areas. This costed KSH.240,000/=.

Cotton Seed Conveyor System; This was to be delivered, installed and commissioned as described on page M-9-Serial 0753 on the contract documen. During Tender evaluation, it was observed that the bidder (Philafe Engineering Ltd) had indicated that they intended to repurpose/repair the existing part of the conveyor for re-use. Furthermore, the conveyor was insufficiently described considering different lengths of the four (4 No.) conveyors and builders' works involved in fitting a new conveyor system. This particular work costed KSH.2,273,224. Also, it is important to note that this particular contractor, Philafe Engineering Ltd did Phase I of this ginnery and already had prior knowledge about the requirements of this ginnery, including earlier importation of equipment/machinery from manufacturers in India.

Committee Observations and Findings;

The Committee observed that;

i. **Bidder No. 6 –M/s Tenestone Ltd was indeed regularly disqualified;**

ii. **The conveyor belt was repurposed rather than replaced, curiously at the same cost quoted in the bill of quantities. The explanation that the state department had no expertise as at the stage of designing tender specifications was unsatisfactory. The repurposing should have seen a revision of the tender through a variation/ re-bid.**

Committee Recommendation;

The Committee reprimands the Accounting Officer for mismanagement of contract.

1582. Irregular Procurement for Consultancy Services to Modernize Coffee Factories

On September, 2021 the State Department invited bids for technical and financial proposals for Consultancy Services to Modernize Selected Co-operative Coffee Factories in the country through Request for Proposals. Review of the Procurement records revealed that four (4) bidders responded to the tender but the following anomalies were observed;

(i) The tender notice was published under section 116(1) (b) of the Public Procurement and Asset Disposal Act,2015 which state that an Accounting Officer may use request for proposals for a procurement if the services to be procured are advisory or otherwise of predominately intellectual nature. However, the items advertised for the tender notice and tender documents issued under terms of reference to the bidders were not intellectual in nature.

(ii) The professional opinion was approved by the Accounting Officer on 2nd November ,2021 while notification of award to successful and unsuccessful bidders was communicated on 1st November, 2021.

(iii) Although the Head of supply Chain Management services prepared an addendum on 20th September, 2021 notifying the bidders that requirement number 12 and number 15 on communication, authorization, certification and ICT authority certification were not mandatory requirements, there is no evidence that a tender notice for the addendum was issued to tenderers as required by law.

(iv) The Standard Technical Evaluation criteria were not provided for audit review.

Submission by the Accounting Officer

i. The nature of the works required various design proposals and construction works for the drying beds infrastructure as provided in the TOR by the user department.

ii. The professional opinion was approved by the Accounting Officer and had been prepared by the Head of Supply Chain Management on 1/11/2021 of which was the same date the Accounting Officer was supposed to approve the professional opinion but there was a clerical error on indicating the dates.

iii. It is not true that notice for addendum Pursuant to Section 75 (i) was not issued. This is because by the time of uploading the addendum to the website, there was no bidder who had picked the tender document from our office or shown any interest of downloading it from the website as required in the tender documents.

iv. The Standard Evaluation Criteria detailed for both mandatory and technical requirements were disclosed

Committee Observations and Findings;

The Committee observed that;

i. **Construction was not 'intellectual' in nature to require use of request for proposals;**

ii. **The explanation that date of approval of the professional opinion as a clerical error was unsatisfactory.**

Committee Recommendation;

The Committee reprimands the Accounting Officer for not adhering strictly to procurement laws.

4.33 VOTE 1174: STATE DEPARTMENT FOR TRADE AND ENTERPRISE DEVELOPMENT

Mr. Alfred K'Ombudo, the Principal Secretary and Accounting Officer for the State Department for Trade, appeared before the Committee on 7th March 2024, accompanied by the following officers:

i.	Mr. Tom Odundo	Deputy Accounting General
ii.	Mr. John Mwaura	Director Weights & Measures
iii.	Mr. Mmbetsa Beja	Senior Deputy Secretary
iv.	Mr. Kennedy Nyokwayo	Ag. Director International Trade
v.	Mr. Nicholas Kamau	SCFO
vi.	Mr. Joseph Rotich	Ag. Director External Trade
vii.	Mr. Clement Ochola	Under Secretary
viii.	Mr. Robert Okoth	Dep. Director Parliament Liaison
ix.	Mr. Aloyce Ratemo	Director Planning

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1585. Government Assets

1585.1. Loss of Motor Vehicles

The financial statements reflect non-current assets with a historical cost of Kshs.303,997,644, as disclosed in the summary of fixed assets register at Annex 3 of the financial statements. Included in these assets are transport equipment with a historical cost of Kshs.12,142,954, the figure includes two vehicles, registration numbers GK H604 Isuzu Pick-Up and GK A589T Toyota Pick-Up all of unknown value, that were reported stolen at the Thika Police Station on 27 August, 2007 and the Kabete Police Station on 09 February, 2013 respectively. Although, the Management indicated that the issues are still under investigations and awaiting conclusion and recommendations of the cases from the investigating agency, the matter has taken an unexceptionally too long to conclude.

Submission by the Accounting Officer

It is true the financial statements reflect non-current assets with a historical cost of Kshs.303,997,644, as disclosed in the summary of fixed assets register at Annex 3 of the financial statements. It is also true that included in these assets are transport equipment with a historical cost of Kshs.12,142,954, the figure includes two vehicles, registration numbers GK H604 Isuzu Pick-Up and GK A589T Toyota Pick-Up all of unknown value, that were reported stolen at the Thika Police Station on 27 August, 2007 and the Kabete Police Station 09 February, 2013 respectively.

The State department has subsequently followed up the matter by writing several letters to the office of the Inspector General of Police. Since this matter is still under investigation, the State Department can only await the conclusion and recommendation from the investigating agency.

Committee Observations and Findings;

i. **The Committee observed that the matter had earlier been referred to the DCI for investigations.**
ii. **The Committee notes that there was no sufficient follow-up on the matter by the Accounting Officer.**
iii. **The Committee also notes that the matter has remained pending for too long pointing to laxity among investigative agencies.**

Committee Recommendation;

The Committee directs that the Accounting Officer liaises with the DCI on the matter and submit a report within three (3) months of adoption of this report.

1585.2. Lack of Ownership documents for parcel of Land in south C Nairobi

The information available and as disclosed under Annex 3 to the financial statements indicates that the State Department owns the Weights and Measures Complex in South C Nairobi, which is built on a parcel of land measuring approximately seven (7) acres of unknown value. However, the title ownership documents were not provided for audit review.

In the circumstances, it was not possible to confirm the ownership status of the parcel of land in South C Nairobi as at 30 June, 2021.

Submission by the Accounting Officer

It is true that the State department owns the Weights and Measures Complex in South C Nairobi, which is built on a parcel of land measuring approximately seven (7) acres of unknown value. It is also true that the title ownership documents were not provided for audit review.

The State department has been in communication with the Chairmen National Land Commission vide a letter ref: No MOITED/SDT/1/27/134 dated 20th June 2022 requesting for letter of allotment. On the 4th of July 2022 the state Department made a follow up vide a letter Ref: MOITED/SDT&ED/FIN/3/11VOL.XIV/(104) dated 4th July 2022 to the Principal Secretary Ministry of Lands inquiring about the registration status of the same. The latest communication concerning this issue was from the acting Secretary/CEO National Lands Commission to the County Executive Committee Member-Lands, Nairobi County requesting the CEC to make a formal request to the Chairman National Land Commission on the matter and also requesting the State Department of Trade and Enterprise Development to avail themselves for a site inspection which was proposed to take place on the 18th January 2023.

Committee Observations and Findings;

i. **The Committee noted that the Weights and Measures Complex in South C sits on a piece of land to which the State Department does not own a title document.**
ii. **It is further noted that the State Department was pursuing a letter of allotment instead of a leasehold title.**

Committee Recommendation;

The Committee recommends that the Accounting Officer liaises with the Nairobi City County and the National Land Commission to secure a title document, and submits a report to the committee within three (3) months of adoption of this report.

1586. Unresolved Prior Year Matters

In the audit report of the previous year, several issues were raised under the Report on Lawfulness and Effectiveness in use of Public Resources. Management had indicated that the issues were responded to. However, the issues remained unresolved as Parliament has not met to deliberate on the same.

Submission by the Accounting Officer

The State Department was awaiting the Committee's recommendations.

Committee Observations and Findings;

The Committee notes that the report had since been adopted by the House.

Committee Recommendation;

The Accounting Officer is directed to ensure all Committee recommendations are implemented and issue a comprehensive report within three (3) months of adoption of this report.

4.34 VOTE 1175: STATE DEPARTMENT FOR INDUSTRIALIZATION

Dr. Juma Mukhwana, PhD, HSC, the Principal Secretary and Accounting Officer for the State Department for Industry appeared before the Committee on 15th February 2024, accompanied by the following officers:

i.	Mr. Joash Akuma	Senior Chief Finance Officer
ii.	Ms. Lydia Munialo	Deputy Director Supply Chain Officer
iii.	Mr. Philip Maitha	Principal Economist
iv.	Mr. John Macharia	Accountant
v.	Mr. Ernest Lukagu	Deputy Accountant General
vi.	Mr. Evans Nyamondo	Accountant

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1589. Motor Vehicles without Title Documents

As previously reported, Annex 4, the summary of fixed assets register reflects a total historical cumulative cost of assets of Kshs.635, 627,327. However, the balance excludes 78 vehicles (36 vehicles at the headquarters and 42 vehicles at the County Industrial Development Offices) with an estimated value of Kshs.185, 080,000 and Kshs.94, 200,600 respectively. Records provided indicated that out of the pool of 78 vehicles, 75 vehicles did not have logbooks or any registration documents and therefore it was not possible to determine their ownership status.

Management explained that, the original registration documents for the vehicles could not be traced due to the reorganization of the Ministry of Industrialization into various State Departments. Although, Management had requested for copies of the registration documents from the National Transport Safety Authority (NTSA), the logbooks had not been received at closure of audit in November, 2022.

In absence of the logbooks, it was not possible to confirm the ownership status of the vehicles.

Submission by the Accounting Officer

In the last few years, the ministry has been reorganized into various State Departments each with Accounting Officers. During the reorganization, motor vehicles were shared among the State Departments without the transfer of logbooks. Due to these changes the original copies of the indicated registration cannot be traced.

Out of the pool of 78 vehicles, 5 vehicles have registration certificates while 3 vehicles belonged to other State Departments and Agencies namely; State department for Mining (GKB 136V), Kenya leather Development Council (KCP 236A) and Export Processing Zones Authority (KCP 273A). The 3 vehicles have since been surrendered to their rightful owners and receipt acknowledged.

The State Department for Industry through a letter dated 16th December 2021 Ref; MITED/SDI/TRA/8/1 requested the National Transport and Safety Authority (NTSA) for verification of vehicles owned by the Ministry of Industry-State Department for Industrialization.

The Authority responded through letter Ref: NTSA/C/RT/005/2 VOL.1 dated 2nd June 2022 and provided a list of motor vehicles owned and registered under the Ministry of Industry- the State Department for Industrialization. Out of the list provided by the Authority (NTSA), the following were noted;

- 57 vehicles are owned and registered under the Ministry of Industry- the State Department for Industrialization and can be traced. We have since received 57 duplicate logbooks of the same.
- 13 vehicles are recorded under the State Department for Industrialization motor Vehicle Inventory but not registered under the State Department. Through a letter dated 24th October, 2022, Ref: MITED/SDI/TRA/8/1, the State Department wrote to the NTSA requesting for identification of ownership of the 13 vehicles and a further reminder Ref:MITI/SDI/GEN/8/1 dated 27th September,2023. NTSA has issued the registration details for 13 vehicles. Out of 13 vehicles 10 belong to the State Department we have since applied for logbooks on the E-citizen a waiting processing.
- The 2 vehicles belongs to the Ministry of Finance and planning, we wrote to The National Treasury on the same.

One Vehicle GKA467C is owned by the Office of the president (OOP).

Committee Observations and Findings;

i) **The Committee deemed the response from the Accounting Officer satisfactory.**

ii) **The Committee found that the matter was resolved.**

1590. Budgetary Control and Performance

The summary statement of appropriation: recurrent and development combined reflects actual exchequer releases of Kshs.4,257,569,405 against budgeted receipts of Kshs.5,132,333,120 resulting to an underfunding of Kshs.874,763,715 or 17% of total budget. Similarly, the statement reflects budgeted payments of Kshs.6,292,747,120 against actual payments of Kshs.5,090,081,684 resulting to under expenditure of Kshs.1,202,665,436 or 19% of total budget.

In the circumstances, the State Department has not implemented all the planned and approved programmes resulting to delayed provision of services to citizens.

Submission by the Accounting Officer

The under expenditure was due to non-receipt of exchequer from the National Treasury and unspent budget for Kenya Industry & Entrepreneurship (KIEP) project as a result of the slowdown of activities due to proposed restructuring process. The State Department confirms the full resumption of the project activities.

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1591. Pending Bills

Notes 18.1 and 18.3 to the financial statements reflects pending bills amounting to Kshs.90,272,732 which comprises of Kshs.16,914,534 for the State Department and Kshs.73,358,198 for Kenya Industrial Training Institute that were not settled in the year under review but were carried forward to the 2022/2023 financial year. The pending bills balance includes an amount of Kshs.30, 720,699 which relates to 2020/2021 and earlier financial years.

No explanation was provided for non-payment of the pending bills before the end of the financial year. This was contrary to Regulation, 42(1)(a) of the Public Finance Management (National Government) Regulations, 2015 which states that debt service payments shall be a first charge in 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.

Failure to settle bills in the year to which they relate will adversely affect the implementation of the subsequent year's budgeted programmes as the pending bills form a first charge for that year's budget provision.

Submission by the Accounting Officer

Out of the pending bill balance of Kshs 90,272,732 the State Department has paid Kshs 58,062,166 (64%). The State Department was not in a position to clear the entire amount of pending bills due to the austerity measures introduced at the onset of the financial year 2022/23.

The remaining unpaid pending bills as at 30th June 2022 and prior years have since been submitted to the pending bills verification Committee constituted by the CS-National Treasury via gazette notice No. 13355 of 29th September 2023. The committee direction is awaited.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendation;

The Committee recommends that eligible pending bills are settled as first charge in the prevailing financial year.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1592. Late Exchequer Releases

The statement of receipts and payments reflects exchequer releases of Kshs.4, 257,569,405 which as disclosed in Note 1 to the financial statements, includes an amount of Kshs.458, 369,160 received on 4 July, 2022. This was contrary to Section 17(2) (b) of the Public Finance Management Act, 2012 which states that, payment from the National Exchequer Account should be done without undue delay on all amounts that are payable for public services.

The delayed exchequer releases may have affected the State Department's ability to implement its planned programmes and possible underutilization of the budget, resulting to negative impact on delivery of services to the public.

In the circumstances, the late Exchequer releases affected the planned activities of the State Department and impacted negatively on service delivery to the public.

Submission by the Accounting Officer

It is true that the state department received the exchequer funding from The National Treasury on 4th July 2022, however, the exchequer requisitions were placed on time before 30th June 2023.

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1593. Failure to Provide Internal Audit Reports

As previously reported, the internal audit reports for the State Department were not provided for review and it was therefore not possible to ascertain whether the internal audit function had given an assurance on the state of the risk management, internal control and governance within the State Department as required by the Regulation 160(1) of the Public Finance Management (National Government) Regulations, 2015.

Further, Management did not provide the Audit Committee minutes for audit, contrary to Regulations 166(2) and 179(1) of the Public Finance Management (National Government) Regulations, 2015, which requires the Audit Committee to carry out annual review of independence, performance, and competency of the internal audit unit and comment on their effectiveness in the annual report and also ensure that the Audit Committee meets at least once in every three months respectively.

Submission by the Accounting Officer

The Internal Audit function carried out two (2) Audit review at Kenya Industrial Training Institute (KITTI) as per annual work plan for the year. Further, the Accounting officer requested the Internal Audit unit to carry out an Audit review on grants sent to RIVATEX.

At the time of the Audit, the report had not been finalized as they were awaiting for responses from the management. However during the year the reports were finalized and were provided to the external auditors for verification.

The Ministerial Audit committee has not been able to meet since the term of the previous committee expired and no appointment has been made of new members.

Committee Observations and Findings;

The Committee noted that the submission by the Accounting Officer was not satisfactory as the onus was on him to constitute and facilitate the internal audit function, pursuant to regulation 162(2) of the PFM Regulations.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the Accounting Officer constitutes the audit committee immediately.

DONOR FUNDED PROJECTS

KENYA INDUSTRY AND ENTREPRENUERSHIP PROJECT (CREDIT NO. IDA 6268-KE)

REPORT ON THE FINANCIAL STATEMENTS

1595. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects actual receipts of Kshs.99, 523,561 against budgeted receipts of Kshs.968, 500,000 resulting in a shortfall of Kshs.868, 976,439 or 90% of total budget. The shortfall arose under the IDA Loan where actual receipts amounted to Kshs.63, 687,757 against the budgeted receipts of Kshs.912, 000,000 resulting in a shortfall of Kshs.848, 312,243 or 93% of the total budgeted receipts. In addition, actual receipts under transfer from Government entities were Kshs.35, 835,804 against budgeted receipts of Kshs.56, 500,000, resulting to shortfall of Kshs.20, 664,196 or 37% of the total budgeted receipts.

Further, the statement of comparative budget and actual amounts reflects budgeted payments of Kshs.968,500,000 against actual payments of Kshs.139,713,236 resulting to under expenditure of Kshs.828,786,764 or 86% of total budget.

In view of the above, the Project Management have not implemented all the planned and approved programmes, resulting to delayed provision of services to the citizens.

Submission by the Accounting Officer

The shortfall of the total budget and under expenditure was as a results of unspent budget due to slowdown of the project activities as a result of the proposed restructuring process the State department intended to undertake thus the State Department did not request for the exchequer as per the approved budget. The full resumption of the project activities and all the pending payments to Consultant Management firms for various milestones achieved have since been paid.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report on the project within three (3) months of adoption of this report.

1596. Unresolved Prior Year Audit Matters

In the audit report of the previous year, several issues were raised under Other Matter and the Report on Lawfulness and Effectiveness in Use of Public Resources. Management has indicated that the issues have been responded to. However, the issues remained unresolved as Parliament has not met to deliberate on the same.

Submission by the Accounting Officer

The prior year Audit matters were addressed in paragraph 1462 to 1466.3 in the Audit responses for the financial year 2020/2021. The Accounting Officer appeared before National Assembly's Public Accounts Committee (PAC) on 13th April, 2023. The State Department is awaiting for the PAC recommendations for implementation.

Committee Observations and Findings;

i) **The Committee noted that the matters had been addressed.**

ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1597. Unpaid Salaries

As disclosed in Note 1 of other important disclosures, the Project did not pay 3 consultants salaries of 5 months from February to June, 2022 totaling Kshs.7, 750,000 due to restructuring process. This was contrary to the consultancy contracts rates agreed and specified in the cost estimate and schedule of rates at annexes C and D which states that "the client shall pay the consultant for services rendered at the rate(s) per man/month spent in accordance with the rates agreed.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

It is true that the individual consultants were not paid salaries as at 30th June 2022 due to proposed restructuring process, Chair, the salaries were paid on 6th December 2022.

Committee Observations and Findings;

i) **The Committee deemed the submission from the Accounting Officer satisfactory.**

ii) **The Committee found that the matter was resolved.**

4.35 VOTE 1184: MINISTRY OF LABOUR

Mr. Shadrack Mwadime, the Principal Secretary and Accounting Officer for State Department for Labour and Skills Development, appeared before the Committee on 29th April 2024, accompanied by the following officers:

i.	Ms. Eunice Ndinda Benard	Asst. Director SCMS
ii.	Ms. Meldah Angir	Asst. Director KMRA
iii.	Mr. Amos Omari	Deputy Accountant General
iv.	Mr. Joseph kinuthia	Project Coordinator KYEOP
v.	Dr. Wanjiru Kariuki	Secretary Skill Development
vi.	Mr. Festus Mutuse	Ag. Director Strategy
vii.	Ms. Everlyn Siriya	Project Accountant KYEOP

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1607. Unsupported Balances

The statement of assets and liabilities reflects balances of Kshs.65,607,134 and Kshs.57,426,499 in respect of accounts receivable and accounts payable which as disclosed in Notes 11 and 12 to the financial statements represent salary advances, receivables from foreign missions and deposits respectively. However, the schedules to support the balances were not provided for review.

In the circumstances, the completeness and accuracy of the balances as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer;

The Accounting Officer submitted that the management did not provide schedules of accounts receivables and accounts payables at the time of the audit. The management however provided the schedules to the Office of the Auditor General and the same were verified.

Committee Observations and Findings

The Committee observed that the supporting schedules had since been availed.

Committee Recommendation

The Committee reprimands the Accounting Officer for acting contrary to the provisions of Section 68(2)(k) of the PFM Act 2012.

1608. Budgetary Control and Performance

The summary statement of appropriation for both recurrent and development expenditure combined indicates a final receipts budget of Kshs.2,705,640,133 against actual receipts of Kshs.2,259,445,101 leading to under collection of Kshs.446,195,032 or 16% of the approved budget. Similarly, the Ministry spent a total of Kshs.2,257,924,241 against the actual receipts of Kshs.2,259,445,101 leading to an under expenditure of Kshs.1,520,860 of the actual receipts.

The underfunding and the resultant underperformance may have affected the planned activities and programmes which impacted negatively on effective service delivery to the public.

Submission by the Accounting Officer;

The Accounting Officer submitted that management there was a resultant underperformance due to non-funding of exchequer requisitions and under collection of AIA as detailed below.

	FINAL BUDGET	ACTUAL	BALANCE
Exchequer issues	Kshs 2,697,540,133.00	Kshs 2,252,934,501.00	Kshs 444,605,632.00
Dosh AIA	Kshs 6,300,000.00	Kshs 5,509,600.00	Kshs 790,400.00
HQS AIA	Kshs 1,800,000.00	Kshs 1,001,000.00	Kshs 799,000.00
	TOTAL		**Kshs 446,195,032.00**

The underfunding and the under collection of AIA was due to reduced activities and programmes due the effects of COVID-19.

Committee Observations and Findings

i) **The Committee observed that the explanation provided by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

1609. Unresolved Prior Year Matters

Various prior year audit issues remained unresolved as at 30 June, 2022. Management did not provide reasons for the delay in resolving prior year audit issues.

Submission by the Accounting Officer;

The Accounting Officer submitted that the state department for Labour appeared before the Parliamentary Accounts Committee on 4th May 2022 to adduce evidence on the Audit Issues.

Most of the unresolved prior year matter for the financial 2020/2021 were resolved by the Parliamentary Accounts Committee as detailed in its report, however the issues that are pending awaiting verification were reviewed by the auditors.

Committee Observations and Findings

The Committee notes that the 2020/2021 PAC report had since been adopted by the House.

Committee recommendation;

The recommends that the Accounting Officer status report on implementation of the Committee's recommendations within three months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1610. Stalled Construction of the National Employment Promotion Centre

The project was awarded to a local contractor on 15 May, 2015 at a contract sum of Kshs.442,723,947 and was for a duration of seventy-eight (78) weeks. However, the total amount certified and paid as at the time of the audit was Kshs.244,023,001 implying that the project may have stalled. Further, physical verification done in November, 2022 revealed that the contractor had abandoned the site.

In the circumstances, the value for money realized from the expenditure of Kshs.244,023,001 could not be confirmed.

Submission by the Accounting Officer;

The Accounting Officer responded as follows;

i. Project Manager (State Department for Public Works) issued a default notice to the contractor for failing to resume works. The Project Manager has also recommended termination of the contract due to non-performance and fundamental breech of the contract;

ii. The sub-contract for the supply, delivery, installation, testing and commissioning of wastewater treatment works was awarded at Kshs. 9,214,700.00.
The part payment amounting to Kshs. 5,660,880.00 paid to the sub-contractor was done after they delivered the plant and its accessories-(2No.sewage pumps, an air-blower, electrical power and control panel, electrical contractors and relays, fluid level indicators and air diffusers).
The project manager in the progress report indicated that the water treatment had been delivered;

iii. The latest progress report as at 30th June 2021. No works were implemented during FY 2021/22 and as a result, the Project Manager issued a default notice to the contractor for failing to resume works.
The contractor did not respond to the default notice which resulted in the Project Manager recommending termination of the contract due to non-performance and fundamental breech of the contract.
The works have since been adverstised and the tender documents are under evaluation;

iv. The State Department vide letter Ref. ML&SP/5/1 (449) dated 5th May 2022 wrote to the Project Manager – State Department for Public Works seeking to know the expected cost of terminating the above-mentioned contract. In return, the State Department responded vide letter dated 16th may 2022 informing us that no costs were expected to be incurred from terminating the contract.
The management further wrote to the Public Procurement and Regulatory Authority (PPRA) vide letter Ref. ML&SP/5/1 (483) dated 22nd June 2022 seeking advice on the Act to guide the termination proceedings since the subject contract was awarded during FY 2014/15 under the repealed Act – Public Procurement and Disposal Act 2005. In their

response vide letter Ref. PPRA/6/1/2 VOL.I (64) dated 7th July 2022, PPRA guided that the applicable Act in respect to termination of the contract was the repealed Act- Public Procurement and Disposal Act 2005, its attendant Regulations and Circulars.
The office of the attorney wrote to the state department of Labour and Skills Development vide letter date 19th January 2024 that the contract had lapsed and automatically terminated on 31st December 2020 by virtue of effluxion of time. Therefore, the option to terminate the contract has been overtaken by events and is no longer available to the parties;

v. The management vide letter Ref. ML&SP/5/1 (449) dated 5th May 2022 sought to establish the cost of terminating the subject contract from the Project Manager – The office of the attorney wrote to the state department of Labour and Skills Development vide letter date 19th January 2024 that the contract had lapsed and automatically terminated on 31st December 2020 and therefore no costs on termination. The state department has re-advertised for a new contract.

Committee Observations and Findings

The Committee observed that the re-advertised tender would cost the public additional funds of Kshs. 350 million.

Committee Recommendation

The Committee recommends that the Accounting Officer considers pursuing remedial measures on the contractor for non-performance and fundamental breach of the contract, and submit a status report within three (3) months of adoption of this report.

1611. Stalled Construction of the Research Institute Office Complex for the Directorate of Occupational Safety and Health Sciences

The project was awarded to a local contractor on 3 May, 2019 at a contract sum of Kshs.114,039,118 and was for a duration of thirty-two (32) weeks. However, the total amount certified as at the time of the audit was Kshs.95,291,477 implying that the project may have stalled. Further, there was an irregular variation of contract sum from Kshs.114,039,118 to Kshs.140,170,548 by an additional amount of Kshs.26,131,430 representing 23% variation contrary to the provisions of Section 139(4)(b) of the Public Procurement and Asset Disposal Act, 2015 which caps contract variation at 15%.

Physical verification done in September, 2022 revealed that the works were at 87% level of completion and had stalled as a result of non-payment of dues to contractors.

In the circumstances, the value for money realized from the expenditure of Kshs.95,291,477 could not be confirmed. Further, Management was in breach of the law.

Submission by the Accounting Officer;

The Accounting Officer responded as follows;

i. It is true that there was a contract variation of 23% as observed in the audit. The variation arose due to a shortfall in various works as proposed by public works and regional works office letter ref No: CQS/D114/GEN/VOL.1/71. Date 11th June 2019. The resultant variation arose from change of plastic tanks with a capacity of 20 meter cubic to steel tanks of 100 meter cubic which is an ideal industry standard for water reservoirs, air condition

and mechanical ventilation works were also variated to include a mechanical ventilation system for the basement and the kitchen, a cold room and an LPG gas tank. The variations were in accordance with Section 139 (4)(d) of the PPADA 2015 Act which allows for cumulative contract variations that do not exceed 25%;

ii. The implementation of these works had experienced challenges due to lack of budget allocations in the financial 2019/2020.
In the financial year 2023/2024 the project manager called the meeting for the final accounts and it was resolved that the contract be wound up.
The state department has since re-advertised for a new contract for completion of the office complex. The state department has re-advertised for a new contract.

Committee Observations and Findings

i. The Committee noted that cost variation was within the set limits as per section 139 (4)(d) of the PPADA 2015 Act;

ii. The Committee also noted that the State Department had since re-advertised for a new contract.

Committee Recommendation

The Committee recommends that the Accounting Officer submits a status report within three (3) months of adoption of this report by the House.

1612. Stalled Construction of Works at the National Employment Authority

The project was awarded to a local contractor on 3 June, 2019 at a contract sum of Kshs.14,587,615 and was for a duration of 24 weeks. However, the total amount certified and paid as at the time of audit was Kshs.11,170,000 implying that the project may have stalled. Further, project progress reports, minutes of final inspection, project handover minutes and certificates of practical completion were not provided for audit review.

In the circumstances, the value for money realized from the expenditure of Kshs.11,170,000 could not be confirmed.

Submission by the Accounting Officer;

The Accounting Officer responded as follows;

i. The project was handed over on 28th May 2020 hence no progress report could be availed as at 30th June 2022;
ii. Minutes of the final inspection and project handover minutes were not availed at the time of site visit by the auditors. However, the same were provided to the Committee for review;
iii. The certificate of practical completion and handover certificate was attached to the 3rd payment certificate which was forwarded for payment vide letter Ref. SCWO/D114/NEA/Vol. 1/3 dated 15th October 2020.

Committee Observations and Findings

i) The Committee noted that the project had since been completed and handed over.

ii) The Committee found that the matter was resolved.

1613. Lack of a Functional Audit Committee

The Ministry did not have an active Audit Committee contrary to the provisions of Section 73 (5) of the Public Finance Management Act, 2012 which requires every National Government public entity to establish an audit committee whose composition and functions shall be as prescribed by the Regulations.

In the circumstances, the Ministry did not benefit from the assurance and advisory services from the internal audit function as well as oversight from the Audit Committee.

Submission by the Accounting Officer;

The Accounting Officer submitted that the state department did not have a functional audit committee. The Audit committee was appointed on 29th April, 2023 towards the end of the financial year. However, the Audit committee members did not hold any meeting since the members had not been trained, in line with Regulation 182 (a) of the Public Financial Management Regulation which stipulates the capacity-building framework for the audit committee. The audit committee members have since been trained in the current financial year and is now fully operational.

Committee Observations and Findings

The Committee noted that the State Department did not have a functional audit committee during the year under review.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to establish a functional audit committee contrary to the provisions of Section 73 (5) of the Public Finance Management Act, 2012.

1614. Incomplete Fixed Assets Register

Annex 4 to the financial statements reflects a list of fixed assets with a total balance of Kshs.355,181,084 as at 30 June, 2022. However, review of the balance revealed that the Ministry's land, ICT equipment and nine (9) motor vehicles had not been valued and the resulting values included in the balance. Further, the fixed assets register provided was incomplete where some assets lacked corresponding values, dates of purchase and details of physical locations making it difficult to carry out verification. In addition, it was noted that most assets had not been labelled for identification, control, traceability and ease of verification and that the Ministry was in possession of various parcels of land and motor vehicles whose ownership documents were not provided for review.

In the circumstances, the ownership and existence of the fixed assets balance of Kshs.355,181,084 as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer;

The Accounting Officer submitted that the State Department for Labour and Skills Development did not have a standard template for assets register, the National Treasury has since standardized the assets register for all MDA's which the state department has since adopted and has done identification of all assets awaiting funding for valuation and tagging.

The updated assets register was presented for audit review.

Committee Observations and Findings

The Committee noted the submission from the Accounting Officer.

Committee Recommendation

The Committee recommends that a complete fixed assets register be availed for audit review in the subsequent financial year.

DONOR FUNDED PROJECT

KENYA YOUTH EMPLOYMENT OPPORTUNITIES PROJECT- CREDIT NO. 58120-KE

REPORT ON THE FINANCIAL STATEMENTS

1615. Unsupported Cash and Cash Equivalents

The statement of financial assets and as disclosed in Note 4 to the financial statements reflects cash and cash equivalents balance of Kshs.27,251,447. However, monthly bank reconciliation statements for the month of June, 2022 supporting the balance were not provided for audit review.

In the circumstances, the completeness and accuracy of the cash and cash equivalents balance of Kshs.27,251,447 could not be confirmed.

Submission by the Accounting Officer;

The Accounting Officer submitted that even though the Bank reconciliation might have not been provided at the time of audit, a final bank reconciliation was subsequently availed for audit review and confirmation of the cash and cash equivalents balance of Kshs. 27,251,447.

Committee Observations and Findings

The Committee noted that the Accounting Officer failed to ensure that reconciliations were done on time and the complete financial statements submitted to the Auditor General on time as provided for in Article 229 (4)(h), and section 81(4)(a) of the Public Finance Management 2012.

Committee Recommendation

The Committee reprimands the Accounting Officer.

1616. Inaccuracies in the Statement of Cash Flows

The statement of cash flows reflects purchase of goods and services amounting to Kshs.147,354,486, however, Note 2 to the financial statements and the statement of receipts and

payments reflects purchase of goods and services amounts of Kshs.147,554,486, resulting to an unexplained variance of Kshs.200,000.

Further, the statement reflects a net cash flow from operating activities of Kshs.146,539,842 whereas the recalculated amount is Kshs.147,354,486, resulting to an unexplained variance of Kshs.814,644.

In the circumstances, the accuracy and completeness of the above balances in the statement of cash flows could not be confirmed.

Submission by the Accounting Officer;

The Accounting Officer submitted that the cash flow statement reflects different figures on the purchase of goods and services of Ksh 147,554,456 and as appearing in the statement of receipts and payment of Ksh 147,354,486. This was due to typing error of Kshs.147,554,456 as Kshs.147,354,486 resulting to net variance of Ksh 200,000. The Kshs.814,614 arose from the typing error in the cash flow statement where Kshs.147,354,486 was typed as Kshs.146,539,842 The errors has been corrected in the subsequent Financial Year 2022/2023 final statements.

Committee Observations and Findings

The Committee noted that the Accounting Officer failed to ensure that reconciliations are done on time and the complete financial statements submitted to the Auditor General on time as provided for in Article 229 (4)(h), and section 81(4)(a) of the Public Finance Management 2012.

Committee Recommendation

The Committee reprimands the Accounting Officer.

1617. Inaccuracies in the Statement of Comparison of the Budget and Actual Amounts

The statement of comparison of the budget and actual amounts reflects total receipts final budget of Kshs.358,177,305 which differs with the recalculated amount of Kshs.496,624,305 resulting to an unexplained variance of Kshs.138,447,000. In addition, the statement reflects total performance difference of Kshs.319,179,218 which differs with the recalculated amount of Kshs.399,681,218 resulting to an unexplained variance of Kshs.80,502,000

In the circumstances, the accuracy and completeness of the above amounts could not be confirmed.

Submission by the Accounting Officer;

The Accounting Officer submitted that there was an error in the calculation of final receipts budget where the final budget figure was erroneously typed as kshs 358,177,308 instead of the correct figure of Kshs. 496,624,305. This typing error also affected the calculation of the statement of comparative budget and actual amounts for the F/Y 2021/2022.The error has been corrected in the subsequent Financial Year 2022/2023 final statements.

Committee Observations and Findings

The Committee noted that the error on the financial statements had since been corrected.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to keep proper accounting records.

1618. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.358,177,305 and Kshs.96,943,087 respectively, resulting to an underfunding of Kshs.261,234,218 or 73% of the budget. Similarly, the Project expended Kshs.184,014,126 against an approved budget of Kshs.358,177,305, resulting to an underexpenditure of Kshs.174,163,179 or 49% of the budget.

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

Submission by the Accounting Officer;

The Accounting Officer admitted that the statement of comparison of budget and actual amounts reflected under funding of the receipts and underperformance of the budget in the financial year 2021/2022. The underfunding and the resultant underperformance was attributed to the effects of the COVID-19 which significantly affected the Kenyan economy as it did globally. The disruptions of COVID-19 negatively affected the implementation of planned activities of the Project where various programmes were scaled down and others suspended. Further, the underfunding was also due to the roll over nature on World Bank funded projects. Cash balances from the previous financial year 2020/2021 of Ksh 114,322,476 were brought forward.

Committee Observations and Findings

i) **The Committee noted that the explanation provided by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

OTHER DONOR FUNDED PROJECT IMPLEMENTED BY AGENCY UNDER STATE DEPARTMENT FOR LABOUR

KENYA YOUTH EMPLOYMENT AND OPPORTUNITIES PROJECT- IDA CREDIT NO. 5812-KE – NATIONAL INDUSTRIAL TRAINING AUTHORITY

REPORT ON THE FINANCIAL STATEMENTS

1622. Incomplete Fixed Assets Register

The summary of fixed assets register at Annex 4 and Note 5 to the financial statements reflects the cumulative total acquisition of non-financial assets balance of Kshs.148,159,167. However, the audit review of the assets register revealed it was incomplete since important information such as serial numbers and conditions of the assets were not indicated and assets worth Kshs.9,254,343 were not tagged.

In the circumstances, the accuracy, completeness and ownership of cumulative non-financial assets of Kshs.148,159,167 could not be confirmed.

Submission by the Accounting Officer;

The Accounting Officer submitted that at the time of the audit some of the assets were not serialized and tagged however, the updated register had been updated and availed for review.

Committee Observations and Findings

i) **The Committee noted that the fixed assets register had since been availed.**

ii) **The Committee found that the matter was resolved.**

1623. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects final revenue budget and actual revenue on comparable basis of Kshs.575,808,289 and Kshs.382,328,585 respectively, resulting to an underfunding of Kshs.193,479,704 (or 34%) of the approved budget. Similarly, the Project expended Kshs.290,912,383 against an approved budget of Kshs.575,808,289 resulting to an underexpenditure of Kshs.284,895,906 (or 49%) of the budget.

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

Submission by the Accounting Officer;

The Accounting Officer admitted that the statement of comparison of budget and actual amounts reflected under funding of the receipts and underperformance of the budget in the financial year 2021/2022. The underfunding and the resultant underperformance was attributed to the effects of the COVID-19 which significantly affected the Kenyan economy as it did globally. The disruptions of COVID-19 negatively affected the implementation of planned activities of the Project where various programmes were scaled down and others suspended. Further, the underfunding was also due to the roll over nature on World Bank funded projects. Cash balances from the previous financial year 2020/2021 of Ksh 177,214,091 were brought forward.

Committee Observations and Findings

i) **The Committee noted that the explanation provided by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1625. Lack of Effective Internal Audit Function

The Project has not established an effective internal audit function. This is contrary to Section 155 of the Public Finance Management Act, 2012 which provided for the establishment of an effective internal audit function. As such, the Project did not benefit from the assurance and advisory services from the internal audit function.

In the circumstances, effectiveness of internal controls and governance could not be confirmed

Submission by the Accounting Officer;

The Accounting Officer submitted that the project had no independent internal audit function but relied on the internal audit function of National Industrial Training Authority.

Committee Observations and Findings

i) **The Committee noted that the explanation provided by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

4.36 VOTE 1185: STATE DEPARTMENT FOR SOCIAL SECURITY AND PROTECTION

Mr. Joseph M. Motari, MBS, the Principal Secretary and Accounting Officer for the State Department for Social Protection and Senior Citizen Affairs appeared before the Committee on 16th October 2023 and 28th November 2023, accompanied by the following officers:

i.	Mr. Nicholas Kitua	Director Planning
ii.	Ms. Jane Kitili	Director of Social Protection Secretariat
iii.	Mr. Moses Kamau	Director of Social Assistance
iv.	Mr. Benard Orina	Director of Human Resource
v.	Mr. Lissel Mogaka	Ag. Secretary Director Social development
vi.	Mr. Benson Mugo	Secretary of Administration
vii.	Mr. Batista Nyanjara	Head of Finance
viii.	Mr. Benard Salawami	Head of Accounting unit
ix.	Mr. Shem Nyakutu	Secretary of Children Services
x.	Ms. Gladys Ngaruiya	Assistant Secretary
xi.	Mr. Maymuna Chariff	Assistant Secretary
xii.	Ms. Jane Muthuri	Finance Officer
xiii.	Mr. Benard Moenga	Social Development Officer

and submitted as follows;
REPORT ON THE FINANCIAL STATEMENTS

1627: Unsupported Bank Balances

The statement of assets and liabilities reflects an amount of Kshs.816,841,947 in respect of bank balances. As disclosed in Note 9 to the financial statements, the balance includes an amount of Kshs.174,472,168 held at Central Bank of Kenya whose bank statements and bank reconciliations statements were not provided for review.
In the circumstances, the existence of the Kenya Social Economic Inclusion Programme (KSEIP) bank balance of Kshs.174, 472,168 as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The statement of assets and liabilities reflects an amount of Ksh 816,841,947 which include the balance of amount of Ksh. 174,472,168 held at Central Bank of Kenya relating to Kenya Social Economic Inclusion Programme (KSEIP). The Bank Statement and Bank Reconciliation Statements have now been availed.

Committee Observations and Findings;

The Committee observed that the statement was not availed at the time of the audit contrary to section 62 of the Public Audit Act, 2015, and section 68 (2)(b) of the PFM Act. The same had now been availed.

Committee Recommendation
The Committee reprimands the Accounting officer for failing to provide information on time as required under section 62 of the Public Audit Act, 2012.

1628: Discrepancy between Payroll and Financial Statements

The Statement of Receipts and Payments reflects an expenditure of Kshs. 1,690,819,559 in respect of compensation of employees which however, differed with the total payroll amount of Kshs. 1,689,554,702 by an unexplained variance of Kshs. 1,264,858.
In the circumstances, the accuracy and expenditure on compensation of employees of Kshs. 1,690,819,559 could not be confirmed.

Submission by the Accounting Officer

It is true that the statement of receipts and payments reflects an expenditure of Kshs. 1,690,819,559 in respect of the compensation of employees, which, however, differed from the total payroll amount of Kshs. 1,689,554,702 by an unexplained variance of Kshs. 1,264,858. The unexplained variance was occasioned by payments made outside the payroll system. Such payments are provided under Human Resource and Procedure Manual (2016) which includes payment of baggage allowance, payment to deceased officers who have been deleted in the system before salary is processed, and payment of service gratuity for officers on local contracts and refund of overpaid market rent. Therefore, the variance of Kshs. 1,264,858 falls within the above categories and is supported by payment vouchers.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendation
The Committee recommends that the State Department for Public Service configures the IPPD system to capture all payable employee costs/ allowances, including miscalleanous expenses.

1629: Unsupported Purchase of Specialized Materials and Supplies

The statement of receipts and payments reflects an amount of Kshs.1,585,933,542 in respect of use of goods and services which, as disclosed in Note 5 to the Financial Statements, includes an expenditure of Kshs.244,901,512 in respect of purchase of specialized materials and supplies. However, the expenditure was not supported by a schedule.
In the circumstances, the accuracy and occurrence of the expenditure on purchase of specialized materials and supplies of Kshs.244,901,512 could not be confirmed.

Submission by the Accounting Officer

It is true that the expenditure of an amount of Kshs.244,901,512 in respect of purchase of specialized materials and supplies were not supported by the schedule at the time of the audit review. The above amount which include food and rations , medical , purchase of uniforms and

clothing's was disbursed to the Children Rehabilitation schools , Children Rescue Centre's , Children remand homes and vocational rehabilitation center's through Authority to Incur Expenditure (AIEs). During the audit review institutions and remand homes had not submitted their returns on time.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

1630: Unresolved Prior Year Matters

Various prior years audit issues remained unresolved as at 30th June, 2022, Management has not provided reasons for the delay in resolving prior years audit issues.

Submission by the Accounting Officer

The unresolved prior year issues recurred in this financial year's audit and have been responded to in the respective patagraphs.

Committee Observations and Findings;

The Committee noted that its report for the financial year 2020/21 had since been adopted by the House.

Committee Recommendation

The Committee recommends that the Accounting Officer implements recommendations contained in its report, within the set timelines, and avails a status report within three (3) months of adoption of this report.

1631: Delayed Cash Transfers

Statement of receipts and payments reflects transfers to other Government units of Kshs.31,864,726,518 which, as disclosed in Note 6 to the financial statements, includes cash transfers amounting to Kshs.31,254,074,195.

However, review of data from the Consolidated Cash Transfer Management Information System (CCTPMIS) and Payment Service Providers (PSPs) operations revealed that transfers to Inua Jamii Programme beneficiaries had delays of between 12 and 90 days. This is contrary to Section 3.3.3 of the Operations Manual for Consolidated Cash Transfer Programme which states that payments are made at the tail end of the second month of a payment cycle.

In the circumstances, Management was in breach of the operational manuals.

Submission by the Accounting Officer

The delay was as a result of shifting from old Payment Service Providers' (PSP) contract to the new PSPs contract which included more service providers. The shift necessitated Consolidated Cash Transfer Programme Management Information System (CCTPMIS) and the Banks systems be enhanced to comply with new contract requirements. The enhancement took some time. After the systems enhancements the on-boarding of the beneficiaries to the new payment model also took some time, which caused the said delays in payments.

On the other hand, delay in release of Exchequer in the later months of the financial year also contributed to non-compliance to the timeliness and regularity of payment as outlined in the programme Operations Manual.

However, the State Department has made significant progress towards addressing this issue. In February, 2023 the Cabinet approved a memo directing the National Treasury to prioritize National Safety Net Programme (*Inua Jamii*) Budget expenditure like that of Civil Servants, so that funds for beneficiaries are availed in timely manner. Further, His Excellency the President, directed that *Inua Jamii* beneficiaries be paid on a monthly basis, and ahead of the payment of civil servants' salaries. This directive has since commenced in the July 2023 payment. And thus payment to beneficiaries are up to date.

Committee Observations and Findings;

i) **The Committee observed that the delays were occasioned by late exchequer releases and a system shift that affected the transition period. The delays were cyclic and uniform across the country. The Operations Manual had been amended to allow for prompt (monthly) payment of beneficiaries as resolved by Cabinet.**
ii) **The Committee found that the matter was resolved.**

1632: Over-commitment of Salary

The statement of receipts and payments as disclosed in Note 4 to the financial statements, reflects expenditure of Kshs. 1,690,819,559 on compensation of employees. However, review of the payroll data revealed that, during the year under review, sixteen (16) employees earned a net of less than one third (1/3) of their basic contrary to the provisions of Section C. 1(3) of the Human Resource Policies and Procedures Manual for the Public Service, 2016 which states that Public Officers shall not over-commit their salaries beyond two thirds (2/3) of their basic salaries and Heads of Human Resource Units should ensure compliance.

Submission by the Accounting Officer

It is true that from the payroll data review, sixteen (16) employees earned a net of less than one third (1/3) of their basic contrary to the provisions of Section C. 1(3) of the Human Resource Policies and Procedures Manual for the Public Service, 2016.

However, according to our records twelve (12) employees were earning below a third. Nine (9) of these officers as shown below were granted loans before implementation of Public Service Superannuation Scheme contribution that was introduced in January 2021 at 2.5%, January 2022

at 5% and January 2023 at 7.5%. This has continuously affected employee's net salary. The Human Resource Management and Development unit has no control on statutory deductions effected in the payroll.

A statutory deduction will always take the first charge leading to an employee to earn below a third.

On the other hand three (3) officers as shown below were granted loans when the government had waived on Pay as You Earn (PAYE) due to Covid19 pandemic in 2020. Upon the lifting of the waiver on Pay As You Earn (PAYE) on 1st January 2021, the PAYE deduction increased resulting to violation of one third rule.

It should also be noted that in the circumstances where an employee is transferred from one station to another, the IPPD System is configured to adjust the house allowance automatically. This therefore means that if an employee had committed his/her salary based on the house allowance received while in that station, upon transfer the employee will end up violating one third rule.
The Human Resource Management and Development unit is able to ensure compliance of one-third rule when an employee is planning to take a loan from a credit facility. This is done through confirmation of employee's credit-worthiness whereby loan forms are signed after confirmation that the employee has the ability to pay the loan and is within the one-third rule.

Committee Observation

i) **The Committee observed that the explanation was satisfactory.**
ii) **The Committee found that the matter was resolved.**

1633: Undeserving Programme Beneficiaries

The statement of receipts and payments reflects transfers to other Government units of Kshs.31,864,726,518 which, as disclosed in Note 6 to the financial statement, includes cash transfers amounting to Kshs.31,254,074,195. However, verification of the transfers revealed that some of the households in the program were not eligible since members had other adequate regular incomes. This ineligibility is contrary to the provisions of Section 1.2 of the Operations Manual for Consolidated Cash Transfer Programme which states that an individual benefit is where the cash transfer is issued to each individual in a household who meets the certain criteria set while a household benefit is issued once to a household with at least one member who meets the certain criteria.

In the circumstances, Management was in breach of the regulations.

Submission by the Accounting Officer

It's true that during verification of the cash transfers, it was revealed that some of the households in the program were not eligible since the members had other adequate regular incomes. This is because;
The Programme may appear to be paying some beneficiaries who are not deserving as found during the field visit of the audit team. This can be attributed to the following:

i) Before the year 2017, the Older Person Cash Transfer (OP-CT) Programme targeted poor households with older persons aged 65 years and above. So by that time it was a breach of the programme regulations to have well-off households enrolled to the Programme. However, from July 2017, through a Presidential Directive the OP-CT Programme was enhanced and changed from being a Targeted household-based programme for persons aged 65 years and above to a Universal programme for individuals aged 70 years and above, irrespective of their socio-economic status.
This is provided for under section 1.2.2 of the programme Operations Manual.

ii) In the case of Cash Transfer for Orphans and Vulnerable Children (CT-OVC) and Persons with Severe Disabilities programmes, the above scenario may have arisen especially for households that have been in the programme for a long period, and by their effective utilization of funds received have managed to improve their livelihood. Therefore, in the process they would have acquired domestic assets.
In other instances, some households have used part of the money to educate their children, some of whom may have succeeded in getting gainful employment, and are therefore able to currently support the households. A number of households in the CT-OVC Programme where targeted as far back as 2006; therefore, some significant positive socio-economic dynamics may have occurred to some of these households

These cases were required /expected to have been identified and exited through recertification process, which is supposed to be undertaken regularly. However, due to inadequate operations funds for the programme this has not been possible.

However, in this current financial year, the State Department shall undertake Payroll Cleaning to exit the deceased cases, and exit undeserving households to pave way for on-boarding of new deserving households.

Committee Observations and Findings;

The Committee observed that;

(i) The current system allowed for loopholes susceptive to loss of funds;

(ii) Not all individuals above 70 years were needy;

(iii) The State Department's periodic (six-month) 'proof of life' checks to ascertain that beneficiaries were still alive was an inadequate safeguard, same as their reliance on provincial administrators;

(iv) The State Department was at the inception stages on engaging a donor, the World Food Programme, to help develop a system that would monitor enrolment and exit of beneficiaries, among other safeguards.

Committee Recommendation

The Committee recommends that the Auditor General conducts a special audit on beneficiaries of the sums advanced through the programme from inception to ascertain whether there was loss of funds, and reports to the National Assembly within six (6) months of adoption of this report.

1634: Overpayment of Transfers

The statement of receipts and payments reflects transfers to other Government units of Kshs.31,864,726,518. As disclosed in Note 6 to the financial statements, the balance includes cash transfers amounting to Kshs.31,254,074,195. However, review of the payments from the consolidated cash transfer programme data revealed that the programme had paid amounts totalling to Kshs.85,453,000 as cash transfers to two thousand nine hundred and eighty-nine (2,989) beneficiary households which exceeded the expected transfers of Kshs.71,736,000 by an unexplained amount of Kshs.13,717,000. This was a contravention of Section 3.3.1 of the Operations Manual for Consolidated Cash Transfer Programme which states, inter alia, that the current transfer value is Kshs.2,000 per month (Kshs.4,000 per payment cycle).

In the circumstances, Management was in breach of the regulations.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;
It is true that during the financial year, review of the payments from the consolidated cash transfer programme data revealed that the programme had paid amounts totaling to Kshs. 85,453,000 as cash transfers to two thousand nine hundred and eighty-nine (2,989) beneficiary households which exceeded the expected transfers of Kshs. 71,736,000 by an unexplained amount of Kshs. 13,717,000. The difference of Ksh 13,717,000 was as a result of NICHE top ups to eligible beneficiaries under Inua Jamii. Nutrition Improvement through Cash for Health and Education (NICHE) Complimentary Programme is being simplemented in Kilifi, Kitui, Turkana, West Pokot, and Marsabit. The NICHE Programme provides a monthly top-up of Kshs. 500 to selected regular Inua Jamii Programme beneficiary households with an expectant mother or a household with a child under two(2 years. That means a household with one child under 2 years receives KShs. 500 per month, while an expectant mother also receives the same amount. Where a household has both a child below 2 years and an expectant mother, that household receives KShs. 1,000 per month. The top-up is meant to supplement a household's diet for proper growth and development of the child within the first 1,000 days of life.

The table below shows tabulation for three payment cycles amounting to Ksh. 23,656,000 for the NICHE top ups. These top ups was on top of the regular cash transfer.

	September - October, 2021 payment cycle		
s/n	**COUNTY**	**BENEFICIARIES**	**AMOUNT**
1	KILIFI	1,316	730,000
2	KITUI	1,553	871,500
3	MARSABIT	485	251,000
4	TURKANA	1,682	870,500
5	WEST POKOT	1,166	627,500
	Total	**6,202**	**3,350,500**

	January - February, 2022 payment cycle		
s/n	**COUNTY**	**BENEFICIARIES**	**AMOUNT**
1	KILIFI	1,462	1,608,500
2	KITUI	1,787	1,976,500
3	MARSABIT	459	458,000
4	TURKANA	1,814	1,819,500
5	WEST POKOT	1,205	1,250,000
	Total	**6,727**	**7,112,500**
s/n	**May - June, 2022 payment cycle**		
	COUNTY	**BENEFICIARIES**	**AMOUNT**
1	KILIFI	1,716	1,970,000
2	KITUI	1,965	2,293,000
3	MARSABIT	2,447	2,594,000
4	TURKANA	4,470	4,686,000
5	WEST POKOT	1,456	1,650,000
	Total	**12,054**	**13,193,000**
Grand total		**24,983**	**23,656,000**

Committee observations and findings;

The Committee noted that the explanation and documents provided by the Accounting Officer was satisfactory.

Committee Recommendations;

The Accounting Officer is directed to amend the Operations Manual for Consolidated Cash Transfer Programme to include any other source of funding outside GOK, within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1635: Lack of an Effective Internal Audit Function

During the year under review, the State Department did not have an effective internal audit function and consequently, the Department lacked an active Audit Committee contrary to the provisions of Sections 73(1) and (5) of the Public Finance Management Act, 2012 which requires every public entity to have arrangements in place for internal audit function for the purpose of carrying out in depth reviews of Management operations and internal controls.

In the circumstances, the Department did not benefit from the assurance and advisory services from the internal audit function as well as oversight from the Audit Committee.

Submission by the Accounting Officer

The Accounting Officer submitted that during the Audit Review, the State Department did possess an Internal Audit function, but it was notably understaffed with only two (2) officers. According to the Accounting Officer, this shortage of staff created a substantial workload and limited their ability to adequately cover all the audit activities outlined in the Annual Work Plan.

The Accounting Officer also submitted that despite these challenges, the team successfully completed specific audit activities as referenced in ML&SP/SDL/IA/AL/Vol./18 dated 25th October, 2021, MPSGSCA&SP/IA/AR/Vol.2/8 dated 18th March, 2022 and ML&SP/SP/IA/AR/VOL.2/7 dated 25th March, 2022 as per the provided documents.

To address the understaffing issue, two additional officers were posted to the internal audit unit vide letters Ref No NT/CONF/IAG/GEN/02 dated 20th April, 2021.

The Accounting Officer further submitted that it is true that the audit committee was inactive during the year under review. This was occasioned by a shortage of financial resources, which impeded committee's induction process aimed at ensuring a comprehensive understanding of their roles and responsibilities. As a result, the activities of the audit committee posed considerable challenges. The issue of inadequate funding was formally raised vide letters Ref ML&SP/SDL/IA/C-PS/Vol.II/32 dated 15thJune, 2021 and Ref ML&SP/IA/MAC/VOL.II/38 dated 3rd November, 2021.

A functional Audit Committee has been formally established through the issuance of appointment letters with reference numbers ML&SP/IA/MAC/37-40 dated 29th June, 2023 as provided. This establishment occurred subsequent to the conclusion of the term of the previous Ministerial Audit Committee members. Additionally, a successful induction process for the newly appointed Ministerial Audit Committee members has since been successfully conducted.

Committee Observations and Findings;

The Committee noted that the internal audit function was now in place.

Committee Recommendations;

The Committee reprimands the Accounting Officer for failure to ensure the internal audit function was in place in breach of sections 73(1) and (5) of the Public Finance Management Act, 2012 and recommends that the matter is resolved.

1636: Lack of an Approved Training Plan

The statement of receipts and payments reflects expenditure on use of goods and services amounting to Kshs.1,585,933,542 which, as disclosed in Note 5 to the financialstatements, includes an amount of Kshs.29,771,483 incurred on training expenses. However, no approved training plan was provided for audit verification making it difficult to determine whether the trainings were carried out effectively and that the public received value for money in the expenditure.

In the circumstances, the effectiveness of the expenditure on training could not beconfirmed.

Submission by the Accounting Officer;

The Accounting Officer submitted that a training plan is a comprehensive document that outlines the objectives, strategies, and activities required to develop knowledge, skills, and competencies in individuals or teams. A well-designed training plan considers the target audience's needs, identifies desired learning outcomes, and determines appropriate instructional methods and resources. The State Department prepared a training plan that was approved for the financial year 2021-2022; the same was provided for verification.

Committee Observations and Findings;

The Committee observed that the training manual had now been availed.

Committee Recommendation;

The Accounting Officer is reprimanded for failure to provide information within reasonable time to the Auditor General pursuant to Section 62 (1) of the Public Audit Act, 2015.

1637: Anomalies in the Summary of the Fixed Asset Register

Annex 4 to the financial statements reflects total assets historical cost balance of Kshs.1,235,597,562 as at 30 June, 2022. However, the balance excludes the cost of landowned by the Department. Further, some items in the assets register had no corresponding values and no date of purchase. In addition, review of records revealed that the State Department had thirty-six (36) parcels of land spread across the country but whose ownership documents were not provided for audit verification.

In the circumstances, it may not be possible for Management to safeguard the Department's assets.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

It was confirmed that the Financial Statements reflects total assets historical cost excluding the cost of land owned by the State Department. The parcels of land in the asset register were allocated by the Government to the State Department for various uses. Assets Register was provided for the Committee's review.

We wish to state that, the management has made significant efforts to secure all its parcels of land, which are at different levels of documentation process.

Committee Observations and Findings;

i. **The Committee noted that all the parcels of land have been identified and the titling process is on-going.**
ii. **The Committee also noted that the state department is in the process of preparing a comprehensive fixed assets register.**

Committee Recommendation;

The Accounting Officer to provide a status report within three (3) months of adoption of this report.

DONOR FUNDED PROJECT

KENYA SOCIAL AND ECONOMIC INCLUSION PROJECT CREDIT NO.6348-KE

REPORT ON THE FINANCIAL STATEMENTS

1638: Unsupported Payments

The statement of receipts and payments reflects purchase of goods and servicesexpenditure of Kshs.849,856,604 as disclosed in Note 5 to the financial statements which further includes domestic travel, subsistence and other transportation costs of Kshs.461,297,970. However, the following anomalies were noted during the audit:

i. Included in the expenditure is an amount of Kshs.14,573,400 incurred on formation and training of consolidated beneficiary's welfare committees in twenty (20) Counties which was not adequately supported with relevant documents such as training programmes, attendance registers, work tickets and back to office report.
ii. In addition, the expenditure includes an amount of Kshs.3,600,000 paid to field officers which was not supported with signed payment details.
iii. Included in that balance is an amount totalling to Kshs.65,402,480 for claims to various Government employees in five counties of West Pokot, Kitui, Kilifi, Marsabitand Turkana to undertake training on baby friendly initiative strategy for Nutrition tosupport Nutrition Improvement through cash and Health Education (NICHE) deliverable. The officers were drawn from the State Department of Social Protection and the Ministry of Health. However, invitation letters and training programmes werenot provided for audit.
iv. Further transport claims amounting to Kshs.10,490,180 were paid to facilitate movement of the persons to be trained which were not supported with bus tickets attached to the payment vouchers or signed schedules by the beneficiaries.
v. In addition, the No Objection by the Donor indicated that the fuel and airtime costs would be covered by the Government of Kenya counterpart funding. However, Kshs.850,000 was paid for fuel and Kshs.250,000 was paid for airtime resulting to an ineligible expenditure of Kshs.1,100,000.

In the circumstances, the completeness, accuracy and propriety of the expenditure of Kshs.95,166,060 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

i. The Beneficiary Welfare Committee (BWC) is a group of representatives of beneficiaries of Cash Transfer programs at the locational level. This exercise hence involved the formation of beneficiary welfare committees in every location in the 20 counties. It

commenced towards the closure of the financial year due to late release of the exchequer and hence overlapped to the following financial year. By the time the audit was being conducted, the activity was still ongoing.

The following documents were provided for review;

- Training programmes
- Attendance registers
- Work tickets
- Final report

ii. Payments were claims that were based on signing of the attendance list. All the field officers who were paid attended as per the list provided.

iii. The NICHE programme is implemented by both National and County governments through a signed MOU. These five counties have high malnutrition rates in the country. Attached find the invitation letters and BFCI training programme (standard across counties) for Kitui, Marsabit and Kilifi. For Turkana and West Pokot invitations were done via email to BFCI participants who were invited by respective County governments-Directorate of Health and Sanitation.

iv. Most of the participants did not provide bus tickets for transport reimbursement due to the means of transport used in those areas. However Health Care Workers from far flung health facilities in Lokichar, Lokichogio and Loima in Turkana County and Marsabit County did not avail bus tickets due to challenges of transport in the areas and lack of bus tickets by the transport service providers. A rationalized rate was paid in consideration of the distance. For example in Turkana an officer from Kibish which is 500km from Lodwar was paid 5000/= return transport while an officer from Katilu which is 250 KM away from Lodwar was paid 3000/= return transport.

v. Fuel amounting to Ksh. 511,541 was procured under GOK counterpart funding by Supply Chain Management and loaded to the 5 KSEIP fuel cards supporting NICHE implementation at National and County level. It is a requirement to include fuel and airtime in the NICHE activities but their funding is from the GoK counterpart. There is no budget for airtime of 250,000 in the approved memo and budget.

The State Department charged the two vote items i.e. 2210302 and 2210301 that facilitate Accommodation allowances and Transport and this is within the eligible expenditure items.

All the payments to participants were through claims based on the signed attendance lists which had all officers' details including PF. Number, IFMIS and bank accounts.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

1639: Cash and Cash Equivalents

The statement of financial assets reflects bank balances of Kshs.230,178,868 as disclosed in Note 9 to the financial statements. However, the balance was not supported with bank reconciliation statements, bank statements, bank confirmation certificates for the month of June, 2022 for two bank accounts out of three bank accounts being operatedby the Project.

In addition, one bank account with a balance of Kshs.8,505,200 was not disclosed in the financial statements. Further authority for opening and operating the bank account was not provided for audit.

In the circumstances, the accuracy and completeness of the bank balances of Kshs.230,178,868 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that it is true that the bank balance of Ksh.230,178,868 was not supported with bank reconciliation statements, bank statements, bank confirmation certificates for the month of June, 2022 for two bank accounts out of three bank accounts being operated by the Project. However the bank reconciliation statements, bank statements, bank confirmation certificates for the month of June, 2022 for the two bank accounts have now been submitted for review and verification.

The Accounting Officer further submitted that it is true that the bank account with a balance of Kshs.8,505,200 was not disclosed in the Financial Statement. This was erroneous and has since been rectified. More over the authority to open this bank account was provided for review.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

1640: Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budgetof Kshs.17,208,944,501 against actual receipts of Kshs.14,934,713,928 resulting to underfunding of Kshs.2,274,230,573 or 13% of the budget.

Similarly, the project had budgeted to spend a total of Kshs.17,176,549,501 against actual expenditure of Kshs.14,940,372,344 leading to an under-expenditure of Kshs.2,236,177,157 or 13% of the budget.

The underfunding and under expenditure might have affected the planned activities and programmes which may have impacted negatively on effective service delivery to the citizens.

Submission by the Accounting Officer

The Accounting agreed with the auditor that the underfunding and under expenditure affected the planned activities and programmes which impacted negatively on effective service delivery to the citizens. This was occasioned by the delay in release of exchequer by the National Treasury and Economic Planning.

Committee Observations and Findings;

i) **The Committee noted that the explanation given by the Accounting Officer was satisfactory.**
ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1641: Irregular Recruitment of Project Co-ordination Assistant

The statement of receipts and payments reflects purchase of goods and servicesexpenditure amounting to Kshs.849,856,604 as disclosed in Note 5 to the financial statements. Included in the expenditure is an amount of Kshs.94,797,444 relating to otheroperating expenses which further includes an amount of Kshs.1,620,000 paid to an individual consultant whose contract sum was Kshs.7,920,000 on a one-year time-based contract. However, review of the procurement documents revealed the following anomalies:

i) The recruited consultant was awarded the contract based on the strength of having worked on social protection activities in Kenya. However, there was also another bidder who had extensive work experience on social protection activities both in Kenya and outside the county and was rejected.
ii) Further, the recruited consultant had indicated one of the members of the evaluation committee as a referee in the curriculum vitae resulting in a conflict of interest situation.
iii) In addition, it was indicated that the recruited consultant had worked at the National Social Protection Secretariat as a Program Support Assistant for a period of ten (10) months. No documents were provided for audit verification.
iv) Contract agreement documents were also not provided for audit verification.

In the circumstances, the regularity of the recruitment of the individual consultant could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the consultant was recruited in a regular manner and as per the World Bank Regulations. This was an Individual Consultant, hired via Open Tendering method. Five Individual consultants submitted their Curriculum Vitaes (CVs) which were evaluated against the Terms of Reference (ToRs) and the evaluation criteria as set out in the Tender Documents.

The selected individual consultant demonstrated to have done more assignments as compared to the other candidate consultant in the field of Familiarity with Office Organization and Optimization Techniques, which was one of the factors outlined in the ToRs and evaluation n criteria.

The selected consultant, on high degree of Multi – tasking, ability to prioritize work and maintain schedules, which was one of the evaluation criteria, indicated through literature the number of

assignments she was undertaking and their completion timeframes hence was to be available the time she was required. (Criteria No.4 in the Evaluation Report).
In the ToRs, the Experience in Coordinating Activities or Projects across multi-sectoral teams and with International Organizations and Development Partners, the selected consultant indicated more engagements as compared to the other candidate consultant, hence became more advantageous. (Criteria No.6 in the Evaluation Report).
Pursuant to Paragraph 7.35 of the World Bank Procurement Regulations for IPF borrowers, 2016, revised in 2017, individual consultants selected to be employed by the borrower shall be the most experienced and best qualified among the candidates. The evaluation was therefore based on the relevant qualifications and experience of the individual consultant.

The Evaluation Committee members on perusal of the documents, noted that one of the committee members was referenced in one of the candidate consultant CV. Pursuant to paragraphs 3.14 to 3.17 of the World Bank Procurement Regulations for IPF borrowers, 2016, revised in 2017, the committee member withdrew from the evaluation exercise and didn't even sign the evaluation report. This observation was also noted in the evaluation report.

The information on the selected consultant having worked at the National Social Protection Secretariat as a program support assistant for ten (10) months was provided in her CV. The selected consultant was not involved in the preparation of ToRs and Tender Documents to give her unfair competitive advantage.

The copy of Contract Agreement (Time Based) for the consultancy in question was provided for ease of reference and Audit verification.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1642: Non-Payment to Beneficiaries in the Economic Inclusion Programme

The statement of receipts and payments reflects other grants and transfers payments of Kshs.13,902,759,000 as disclosed in Note 8 to the financial statements. The expenditure includes an amount of Kshs.63,668,000 which was paid out to beneficiaries through the Economic Inclusion Programme Cash Transfer. However, the audit revealed that the payment was made out to four thousand seven hundred fifteen (4,715) beneficiaries onlyas opposed to the seven thousand five hundred (7,500) as outlined in section 1.1.3 of theOperations Manual. No reconciliation was provided to explain the failure to pay two thousand seven hundred eighty-five (2,785) beneficiaries.

In the circumstances, the value for money and regularity of the expenditure of Kshs.63,668,000 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

The EIP is a pilot complementary programme that focuses on enabling the extremely poor households to participate in social and economic activities by increasing their access to skills, productive inputs, assets, finance and economic opportunities.

It targets households benefiting from the Inua Jamii cash transfer programmes as well as non-recipient of cash transfer households that meet the selection criteria.

It was confirmed that during the year under review the audit revealed that only four thousand seven hundred fifteen (4,715) beneficiaries were paid through Economic Inclusion Programme Cash Transfer as opposed to the seven thousand five hundred (7,500) this is because:

1. During Programme implementation, some beneficiaries had exited the program voluntary and others through natural attrition. The nature of exits ranged from; participants migrating from the programme areas, participants duplicated in other similar programmes, deceased participants and voluntary exits where participants are unable to keep up with programme activities.

2. During the first Payroll generation, some beneficiaries' accounts had not been submitted to the Consolidated Cash Transfer Programme Management Information System (CCTPMIS) by the contracted Payment Service Providers. The submission of the accounts to the Consolidated Cash Transfer Programme Management Information System (CCTPMIS) is to ensure inclusion of the beneficiaries to the Payroll for payment. The process of payment is automated. The process of account opening entails participants visiting the PSPs for enrolment and the PSPs subsequent submission of accounts through the Application Programming Interface (API) to the CCTPMIS.

To address this, the participants whose accounts were later submitted to the Consolidated Cash Transfer Programme Management Information System (CTTPMIS) were later in the subsequent payrolls in arrears on Consumption Support and Asset Transfers as per the EIP OM, and reconciliation was done.

Committee Observations and Findings;

i) **The Committee noted that the explanation given by the Accounting Officer was satisfactory.**
ii) **The Committee found that the matter was resolved.**

1643: Irregular Payments

The statement of receipts and payments reflects purchase of goods and services expenditure of Kshs.849,856,604 as disclosed in Note 5 to the financial statements which includes domestic travel, subsistence and other transportation costs of Kshs.461,297,970. However, included in the expenditure is an overpayment of Kshs.2,076,200 resulting from the use of County rates instead of Sub-County rates where actual trainings were undertaken.

In the circumstances, the regularity of the expenditure of Kshs.2,076,200 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that it is true the officers were paid the county rates. These were Baby Friendly Community Initiatives (BFCI) trainings that took place at the sub-county level but

participants resided at the county headquarters due to lack of accommodation at the sub-county level.

Committee Observations and Findings

i) **The Committee noted that the explanation given by the Accounting Officer was satisfactory.**
ii) **The Committee found that the matter was resolved.**

1644: Lack of an Internal Audit Function and an Audit Committee

During the year under review, the State Department did not have an effective internal audit function and consequently, the Department lacked an active Audit Committee contrary to the provisions of Sections 73(1) and (5) of the Public Finance Management Act, 2012 which requires every public entity to have arrangements in place for internal audit function for the purpose of carrying out in depth reviews of Management operations and internal controls.

In the circumstances, the Department did not benefit from the assurance and advisory services from the internal audit function as well as oversight from the Audit Committee.

Submission by the Accounting Officer

The Accounting Officer reiterated his submission under paragraph 1635 above.

Committee Observations and Findings;

The Committee noted that the internal audit function was not in place as at time of audit.

Committee Recommendations;

The Committee reprimands the Accounting Officer for failure to ensure the internal audit function was in place in breach of sections 73(1) and (5) of the Public Finance Management Act, 2012 and recommends that the matter is resolved.

Query Nos. 1646-1652 under donor project Kenya Social and Economic Inclusion Project implemented by the National Drought Management Authority are addressed under the State Department for the ASALs and Regional Development.

4.37 VOTE 1194: MINISTRY OF PETROLEUM AND MINING

Mr. Elijah Mwangi, the Principal Secretary and Accounting Officer for State Department for Mining and **Mr. Mohamed Liban**, the Principal Secretary and Accounting Officer for State Department for Petroleum, appeared before the Committee on 23rd May 2024, accompanied by the following officers:

i) Mr. David Onyancha	–	Director of Administration, Mining
ii) Mr. Samuel Waithaka	–	Chief Finance Officer, Mining
iii) Mr. Philip Kirui	–	Chief Inspector of Mines
iv) Mr. Henry Siele	–	Senior Deputy Accountant General, Mining
v) Ms. Veronica Kamau	_	Snr. Dep. Accountant General, Petroleum
vi) CPA Dismas Ogot	_	Chief Finance Officer, Petroleum
vii) Mr. Bernard Munia Kagwe	–	Senior Admin. Officer, Mining
viii) Mr. Joseph Otieno	_	SPSG Petroleum
ix) Mr. Victor Mudachi	_	Ag. CP
x) Ms Lucy Gaithi	_	CE - SDP
xi) Ms Joyce Ala	_	DSCMS
xii) Mr. Zakaria Jomo	_	Legal Advisor to PS
xiii) Mr. Eliud Mwaura	_	Director HR
xiv) Mr. M.B Mohamed	_	Secretary, Administration

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1655. Misclassification of Expenditure

The statement of receipts and payments reflects an expenditure of Kshs.636,677,019 in respect of use of goods and services, as disclosed in Note 7 to the financial statements. Included in this amount is an expenditure of Kshs.2,024,677 incurred on foreign travel and subsistence. However, review of the expenditure records revealed that Kshs.1,097,843 was in respect of domestic travel and subsistence allowance though charged under foreign travel and subsistence allowance.

Similarly, the statement reflects acquisition of assets amount of Kshs.1,118,730,114, as disclosed under Note 10 to the financial statements. Included in this amount is Kshs.1,005,288,436 which was incurred on research studies, project preparation, design and supervision out of which an amount of Kshs.4,533,266 was recurrent in nature and ought to have been charged under office and general supplies component.

In the circumstances, the accuracy of the amounts reported against the expenditure items in the statement of receipts and payments could not be confirmed.

Submission by the Accounting Officer;

During the Financial Year under review, the Government Policy on budget rationalization adversely affected domestic travel, subsistence and accommodation budget. There were commitments on imprests which had been correctly charged to domestic travel but due to budget

rationalization, the balances were negative hence the surrenders were charged to foreign travel item. to forestall incurring pending bills on imprests that had already been spent by the staff.

It is also true that Kshs.4,533,266 is recurrent in nature. The mandate of the State Department on oil and gas exploration, guaranteeing adequate supply of quality petroleum products and price stability of petroleum products, among others are undertaken through projects, namely: Lokichar-Lamu Crude Oil Pipeline Project, Fuel Marking, Monetization of first Oil Project, Oil and Gas Exploration, the Liquefied Petroleum Gas Project.

The projects are undertaken through one budget programme – Oil and Gas Exploration and Distribution. The budgets of the programme comprise purchase of geoscientific equipment; consultancy services; monitoring and evaluation; data marketing and attendant support expenditure for the activities such as equipment, printing of cartographic communication supplies, travel, transport, maintenance of vehicle, among others. The support expenditure although recurrent in nature are in-built in the oil and gas related projects aforementioned. The budgetary provision and supplies are therefore activity-based in nature. The budgetary formulation and implementation are programmed-based budgetary framework which holistically looks at the whole ingredients of the programmed and activity processes.

Committee Observations and Findings

The Committee observed that;

i) **The Accounting Officer failed to re-allocate amounts in local and foreign travel vote heads hence charging the wrong line items;**

ii) **Amount charged for research studies, project preparation, design and supervision were satisfactorily explained.**

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to lawfully re-allocate vote heads, as provided for under section 43 (2) of the Public Finance Management 2012.

1656. Unsupported Transfer of Funds to other Entities

The statement of receipts and payments reflects Kshs.479,000,000 in respect of grants and transfers to other Government entities, as disclosed in Note 8 to the financial statements. Included in this amount are transfers to the National Oil Corporation (NOCK), amounting to Kshs.250,000,000 which was transferred for the purpose of Petroleum Exploration in Block 14T, Kshs.200,000,000 to Energy and Petroleum Regulatory Authority (EPRA) for the purpose of fuel marking and Kshs.29,000,000 to the National Mining Corporation. However, the basis for the disbursement was not clear given that the funds were transferred without detailed work plans from the three entities to justify the disbursement. In addition, none of ten recipient entities provided expenditure returns to the Ministry as evidence that the funds were utilized for intended purposes.

In the circumstances, the completeness of the transferred amount of Kshs.479,000,000 could not be confirmed.

Submission by the Accounting Officer;

The National Oil Corporation of Kenya is a Semi- Autonomous Government Agency (SAGA) under the State Department for Petroleum. The appropriations Act provides budgetary support transfers to Government Agencies through votes hence the SAGA receives budgetary support through the State Department.

The management confirms the transfer of Kshs. 479,000,000 comprising Kshs. 250,000,000 to the National Oil Corporation of Kenya and Kshs. 200,000,000 to Energy and Petroleum Regulatory Authority (EPRA) and Kshs.29,000,000 to the National Mining Corporation as appropriated in the budget for the period under review. It is noteworthy that the appropriation transfer to National Oil Corporation of Kenya (NOCK) is an ongoing oil and gas exploration activity in Block 14T, that is funded under a production sharing contract between GOK and National Oil Corporation of Kenya (NOCK).

The funds transferred to Energy and Petroleum Regulatory Authority (EPRA) was budgetary support for the entity, in fulfilment of its mandate related to oil and gas regulatory roles. The funding is legally provided under the Petroleum Development Levy (PDL) Act, 1991 and the PFM Act 2012.

The budgetary support to EPRA was necessary to supplement the levies which they collect as Appropriation in Aid but has not been sufficient to meet the cost of their programs. This will cease once the current proposal before Parliament to review the regulations enabling EPRA to collect adequate levies necessary to undertake the upstream regulatory mandate.

The two entities being semi-autonomous government agencies prepare and account for monies appropriated to them separately.

Committee Observations and Findings

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1657. Pending Bills

The financial statements reflect pending bills balance of Kshs.132,775,321 as disclosed in Note (a) to other important disclosures in the financial statements. However, the bills were not settled and did not form a first charge in the year under review contrary with the Government policy. Failure to settle bills during the year to which they relate distorts the budget implementation of the subsequent year as the outstanding bills form a first charge on resources available.

Submission by the Accounting Officer;

It is true that the financial statements reflect pending bills balance Kshs.132, 775,321 as disclosed in Note (a) to other important disclosures in the financial statements.

During the financial year under review, the Government policy on budget rationalization adversely affected the operations at the State Department since budget items that had outstanding commitments were reduced leading to negative figures.

The State Department has since processed and cleared all the pending bills amounting to Kshs.132,775,321.

Committee Observations and Findings

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1658. Non-Compliance with the Public Sector Board in the Presentation of the Financial Statements

The financial statements presented for audit review did not include prior year balances as per the format prescribed by the Public Sector Accounting Standards Board (PSASB).

In the circumstances, the presentation of the financial statement does not conform to the requirements of the Public Sector Accounting Standards Board.

Submission by the Accounting Officer;

During the financial year 2020/2021, the State Department for Mining and the State Department for Petroleum were two separate State Departments with different votes and hence prepared separate financial statements with different prior year balances; whereas in the financial year under review (2021/2022), the two State Departments were merged to form one Ministry namely Ministry of Petroleum and Mining. In the circumstance it was not possible to establish which of the two State Departments' comparative figures were to be used.

Committee Observations and Findings

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1659. Delayed implementation of the Mwananchi Liquefied Petroleum Gas Enhancement Project

Mwananchi Liquefied Petroleum Gas (LPG) Project was initiated by the defunct Ministry of Energy and Petroleum in 2016 and was intended to promote use of modern cooking fuels among the low-income households. The project entails supply and distribution of LPG cylinders, grills, and burners to households at subsidized prices, and erection of facilities to store the cylinders at local distribution points. The National Oil Corporation of Kenya was engaged to implement the project with the role of ensuring that the LPG components were distributed to the targeted households.

The project was to be implemented in two modules: Module I entailed distribution of subsidized filled 6 Kg cylinders fitted with a grill and a burner in eleven (11) piloted sub- Counties in Nairobi while Module II involved distribution of filled 6 Kg cylinders with a smart metering device, a horse pipe and 2 low burner tabletop cookers.

As reported in previous years, at least 79,057 of the 357,355 6 kg gas cylinders were found to be defective by an independent inspector who was contracted by the Ministry following safety concerns raised by consumers, which led to suspension of the project in 2019.

An audit verification carried out on 15 December, 2022, revealed that the 6 kg cylinders purchased in Module I and 72,000 two-burner low pressure tabletop cookers purchased in Module II of the project were yet to be distributed and were lying at the warehouses rented by the Ministry and NOCK.

As at 30 June, 2022, an amount of Kshs.1,104,781,654 had been incurred for the purchase of LPG cylinders and accessories, inspection of the cylinders and accessories and purchase of two-burner low pressure tabletop cookers.

In addition, there were uncertainties in the implementation of the project due to lack of critical policies and plans such as project implementation plan, strategy detailing how the project was started and overall sustainability plan, a beneficially identification mechanism for the LPG cylinders and 20,000 low burner tabletop cookers. Further, there was no smart metering service and technical support for dispensing LPG from the source point to consumers who constituted the point of use.

In the circumstances, it could not be confirmed that the public obtained value for money on the Kshs.1,104,781,654 incurred in the implementation of the project.

Submission by the Accounting Officer;

A comprehensive report on the Mwananchi Liquefied Petroleum Gas Enhancement Project is as below;

The goal of the 'Mwananchi Gas project' is to facilitate the transition of households (HH) from cooking with traditional fuels (wood and other forms of biomass) to clean cooking with Liquefied Petroleum Gas.

The overarching objective is to reduce the use of biomass and kerosene as primary household cooking fuels, which have negative impact on the environment, respiratory health and sustainable economic development by scaling-up the uptake and use of LPG from 10% to 70% of households

The mandate of the Ministry in this project is to procure the hardware (Cylinders, Grills, table to cook stoves and Burners), distribution containers as well sensitization of the public on the project while that of National Oil Corporation is to implement the project through a robust distribution model.

The project was conceptualized in the FY2016/2017. During this financial year, procurement of the Cylinders, grills and burners was done

The project was done in two modules;

i) Model 1 - conventional Cylinder, grill & burner model targeting conversion of households HH

ii) Model 2 - the Cylinder Smart Meter (CSM) Model targeting initial 60,000 HH. LPG use leveraging on the Internet of Things (IOT) meant to mimic the behavior of the users to purchase and cook with LPG in small quantities as per their disposable income at hand

In 2017/2018, Project pilot was done in Kajiado and Machakos counties. During the pilot for a set of 6Kg cylinders filled with Gas fitted with grill and burner was issued to beneficiaries

In October 2018, the project was stopped by a court order following a legal suit by COFEK owing to the doubts on the quality of the cylinders supplied in 2017/2018.

Following this court order, the state department (SDP), contracted Bureau Veritas Kenya Ltd (BVKL) to undertake 3rd Party 6Kg LPG cylinder inspection services vide Framework contract, Contract No. MOPM/SDP/OT/05/2019-2020.

In 2021, the court case was finalized and the Ministry was given a go ahead to progress with the project.

Until December 2021, the Ministry was undertaking remedial measures to remedy the defective cylinders. 52,869 cylinders have been remedied, delivered to the Ministry and inspected and accepted by the relevant committee.

NOCK has developed beneficiary identification and cylinder tracking mechanism in readiness for roll out of the cylinders in Nairobi before the end of this year.

The Mwananchi gas project will now be part of the larger LPG growth strategy by the government.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer submits a status report on the roll-out of the new project within three (3) months of adoption of this report.

1660. Irregular Payment of Special Duty Allowance

The statement of receipts and payments reflects expenditure on compensation of employees amounting to Kshs.521,816,962, as disclosed in Note 5 to the financial statements. Included in this amount is Kshs.1,059,482 paid as special duty allowance to employees who performed duties which were of higher grades. However, the amount was paid despite the Public Service Commission directive issued in December, 2021 requiring review of organization structures and staff establishment, and a succession management be put in place across the Public Service. The Commission further directed that payment of special duty allowance should henceforth cease and vacant positions be declared for competitive filling.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer;

It is true that the Ministry paid special duty allowance to staff during the period under review amounting to Ksh.1, 059,482.00. This allowance was made to employees who were performing duties which were of higher grades.

At the time of the issuance of the Public Service Commission Circular directing MDAs to stop payment of Special Duty Allowances (SDA), the Ministry had officers drawing SDA which had been approved prior to the Commission's directive. It was therefore, agreed that further payment of SDA be stopped with immediate effect and only officers who were drawing SDA prior to the circular to continue drawing the allowance until the expiry of the period. This was to avoid pecuniary embarrassment to the officers who had already committed their salaries based on earning of the additional allowance.

As guided by the Public Service Commission, the Ministry has since taken corrective measures to fill the vacant positions by implementing the Public Service Commission Succession Management Programme to promote staff and also to declare the vacancies of technical posts for advertising and filling. This has partially addressed the issue of Acting Appointments and drawing of Special DutyAllowance.

The Public Service Commission has since appointed some technical staff.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer regularizes its structure with the PSC within three (3) months of adoption of this report.

1661. Delayed Completion of Office Partitioning Works

The Ministry on 24 November, 2021 entered into a lease agreement with Kenya Accountants and Secretaries National Examinations Board (KASNEB) for office space measuring 36,339 square feet at Upper hill area in Nairobi. The lease agreement was signed on 19 May, 2022 for a period of six (6) years and backdated to 1 December, 2021. Effectively, rent was payable from 1 December, 2021. The Ministry thus, paid rent amounting to Kshs.28,453,719 for the period from 01 December, 2021 to 30 June, 2022.

However, as at the time of audit in December 2022, the Ministry had not occupied the leased offices due to incomplete works and continued to pay rent for the offices. Management indicated that the office partitioning works were due to be completed on 31 December, 2022, after the Contractor requested for two extensions.

In the circumstances, it was not possible to confirm that the Ministry realized value for money on rent incurred for the leased building.

Submission by the Accounting Officer

It is true that the Ministry accepted an offer to lease office space measuring 36,339 square feet at Kenya Accountants and Secretaries National Examinations Board (KASNEB) located in Upper Hill on 24th November 2021 and a lease agreement was signed on 19th May 2022. The Ministry took possession of site on December 2021 in order to facilitate the commencement of the procurement process and this necessitated the payment of rent for the premises.

It is noteworthy that the tender for the proposed partitioning works was advertised on 21st December 2021 and the tender closing date was on 5th January 2022.

During the partitioning contract implementation period, the State Department through Executive Order NO.1 of 2023 was moved from the Ministry of Petroleum and Mining to the Ministry of Energy and Petroleum. This change necessitated some structural adjustments in the partitioning works to accommodate the new management.

The structural adjustments and lack of adequate funding lead to the contractor requesting for extension of time to complete the project.

However, the partitioning works were completed and the State Department occupied the office space on 1st September 2023 after a site hand over to the Ministry for occupation.

Committee Observations and Findings

The Committee observed that the state department took possession of the premise and delayed completion of partitioning due to budgetary constraints, hence occasioning wastage of funds.

Committee Recommendation

The Committee recommends that the state department leverages on its long-term tenancy to re-negotiate terms of the lease to recover lost time, within three (3) months of adoption of this report.

1662. Non-Compliance with the Data Protection Act, 2019

During the year under review, the Ministry did not appoint a Data Protection Officer contrary to Section 24 of the Data Protection Act, 2019, to carry out the data protection functions. Further, Management did not register the Ministry as either a Data Controller or Data Processor or both with the Data Protection Commissioner's Office contrary to Section 18 of the Act, which requires such registration.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer;

It is true that during the period under review, the state Department had not appointed a data protection officer, however, the state Department has since been registered as a data controller NO. 886-565d-BD53 and a data protection officer was appointed vide letter ref MOPM/P/1/69(2) in compliance with section 24 of the data protection Act 2019.

Committee Observations and Findings

The Committee noted the admission by the Accounting Officer.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to comply with the Data Protection Act 2019.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1663. Failure to Establish a Public Finance Management Committee

During the year under review, the Ministry had two operational committees in place comprising of the Training Committee and the Ministerial Human Resource Management Advisory Committee (MHRMAC). However, the Public Finance Management Standing Committee envisaged under Regulation 18(1) of the Public Finance Management (National Government) Regulations, 2015 was yet to be constituted and operationalized at the Ministry.

In the circumstances, the effectiveness of the finance department could not be confirmed.

Submission by the Accounting Officer;

It is true that the Public Finance Management Standing Committee (PFMSC) envisaged under Regulation 18(1) of the Public Finance Management (National Government) Regulations 2015 was yet to be constituted and operationalized at the Ministry at the time of audit. The Accounting Officer vide his letter Ref. No. MOPM/CONF/3/34 VOL.IV(33) of 7th July, 2022 established and appointed members/Secretary of the Ministerial Budget Implementation Committee in compliance to the National Treasury Circular No. 04/2022, Ref. No ES/03 'S' (28) dated 30th June, 2022 on the Guidelines for Implementation of the Financial Year 2022/23 and the Medium-Term Budget. The failure to comply with the Regulation 18(1) is regretted.

The State Department has since established the PFMSC (Standing Committee) in compliance to the PFM National Government Regulations, 2015. Whereas the roles of financial management of the Ministry, as provided on the Regulations, 2015 may vary with BIC Terms of Reference, same are implementable through the budget Implementation Committee vide the Treasury Circular. To that extent, effectiveness of the financial Management was assured.

Committee Observations and Findings

The Committee noted the admission by the Accounting Officer.

Committee Recommendation

The Committee reprimands the Accounting Officer for failure to establish a PFM Committee.

1664. Lack of a National Upstream Petroleum Advisory Committee

During the year under review and earlier years, the Ministry did not have a National Upstream Petroleum Advisory Committee as required in Section 12 of the Petroleum Act, 2019. The Act

outlines the functions of the Committee to include advising the Cabinet Secretary on Upstream Petroleum operations.

In the absence of the Committee, it was not possible to confirm how the outlined functions were being performed.

Submission by the Accounting Officer;

The National Upstream Petroleum Advisory Committee established under the Petroleum Act, 2019 was operationalized in 2019 and has been performing its functions which include advising the cabinet secretary on upstream petroleum operations.

Committee Observations and Findings

i) **The Committee noted that the Accounting Officer availed minutes demonstrating presence of the committee.**

ii) **The Committee found that the matter was resolved.**

1665. Lack of a National Petroleum Policy and Plan

During year under review, the Ministry did not have a National Policy on Petroleum Operations contrary to Section 5(1) and Section 6(1) of the Petroleum Act, 2019. In addition, a National Petroleum Strategic Plan had not been developed and published. The Act, stipulates that the Strategic Plan and the National Petroleum Policy serve as a guide for the implementation of the national policy on petroleum operations.

In the absence of the policy and strategic plan on petroleum operations, it was not possible to confirm how the petroleum operations were guided.

Submission by the Accounting Officer;

The policy direction of the petroleum sector was initially governed by the Sessional Paper No. 4 of 2004. The unveiling of the national development blueprint, Kenya Vision 2030, in 2008 and promulgation of the Constitution of Kenya on 27th August, 2010 made it necessary to review the sector policy.

The State Department for Petroleum developed the draft National Petroleum Policy, a draft National Petroleum Master Plan as well as the 2018-2022 Strategic Plan which was aligned to MTP III. The draft Petroleum Policy establishes a set of guiding principles for all major decisions and activities that take place within the oil and natural gas sector, from upstream through to midstream and on to downstream.

The merger of the State Department for Petroleum and State Department for Mining in January 2021 necessitated the review of the Strategic Plan to align it to the Executive Order. Currently the Ministry (MOEP) has developed the Strategic Plan 2023-2027 that has gone through public participation

The revised strategic plan 2021 and Petroleum Policy 2018 were used to guide Petroleum operations during the review period (FY 2021/22). The State Department has commenced a review of the National Petroleum Policy.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer ensures completion of the strategic plan and policy and submits the same to the Committee within three (3) months of adoption of this report.

REPORT ON THE REVENUE STATEMENTS

1666. Long Outstanding Arrears

The statement of arrears of revenue reflects arrears totaling to Kshs. 2,675,311,892 owed by various companies as at 30 June 2022. However out of the six (6) companies with long outstanding arrears, only Magadi Soda and Carbacid (CO2) Limited made partial payments of Kshs. 216,114,540 and Kshs. 3,763, 833 respectively during the year. Further, and although the receiver of revenue sent out demand letters to the companies during the year, no significant progress was made to collect the long outstanding arrears as detailed below;

1666.1. East Africa Portland Cement Company

Included in arrears of revenue of Kshs. 2,578,621,214 is an amount Kshs. 404,759,572 owed by East Africa Portland Cement Company (EAPC) which accrued in the financial years 2014/2015 to 2020/2021. Further, the Company has since 2018/2019 filed incomplete self-declaration assessments and was therefore, not assessed for cement levy from 2018/2019 to 2021/2022 financial years. Management did not provide any explanation on why levies that were due and chargeable to the Company and were not assessed in the relevant periods. Further, the company had carried out operations without a mining License contrary to Section 159 of the Mining Act, 2016.

Under the circumstances, the recoverability and accuracy of the Kshs. 404,759,572 as at 30 June, 2022 could not be ascertained.

Submission by the Accounting Officer;

It is worth noting that this query was discussed earlier under paragraph 1533 of FY 2020/21 report. However, The State Department has had several engagements with EAPC including sending payments demands and holding discussions concerning the arrangement to clear the arrears; East African Portland Cement Company Limited (EAPC) indicating that they are undergoing financial difficulties the company has been reducing the arrears but at a slow pace.

Following enforcement measures, (closure of their operations) they paid an amount of Kshs. 700,000 this financial year. The company has shown willingness to pay the arrears and has since undertaken to pay Kshs. 1,000,000 on monthly basis. Further, the company has since applied for a mining license i.e.ML/2024/0110 which is currently under review. The Ministry has continued to put in place several measures to ensure recoverability including limiting access to Explosives.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer ensures all sums due are recovered in total within an acceptable payment plan, and avails a status report within three (3) months of adoption of this report.

1666.2. Savanna Cement Company

Included in the balance of Kshs. 2,675,311,892 is Kshs. 370,862,635 due from Savanna Cement Company in respect of cement minerals levy which accrued in 2020/2021 and earlier years. Although a payment plan agreement was signed in August, 2017 between the Ministry and the company requiring settlement of the arrears in twenty-four (24) monthly instalments starting from September, 2017, the Company had reneged on the plan stating that it did not hold a mineral license from the Ministry and therefore was not liable to pay the levy. The Company had also moved to the High Court challenging Legal Notice No.222 of 2013 which required payment of cement minerals levy by all cement producing companies in Kenya. The Cabinet Secretary for Petroleum and Mining subsequently entered into consent with the company where the Ministry committed to forego the demand against the company.

Further, the company had not filed any self-declaration assessment since 2018/2019 financial year to the year ended 30th June 2022 and had, therefore, not been assessed for cement levy. In addition, the company remitted Kshs. 5,000,000 during the 2021/2022 financial year, but the remittance was not supported by production and sales reports.

Under the circumstances, the recoverability of the arrears of Kshs. 370,862,635 could not be confirmed.

Submission by the Accounting Officer;

Following the recommendation of this committee, notwithstanding court consent order arising from legal notice No222 of 2020; we have since written to the receiver manager demanding the full payment of the arrears.

Committee Observations and Findings

The Committee noted that the matter had been outstanding for several years.

Committee Recommendation

The Committee recommends that the Accounting Officer and the Receiver of Revenue immediately takes legal measures to ensure full recovery.

1666.3. Tata Chemicals Magadi Limited

The arrears of revenue of Kshs. 2,675,311,892 further includes royalty arrears of Kshs. 1,050,467,818 owed by Tata Chemicals Magadi Limited which has accrued since the financial year 2015/2016. The Company settled the arrears amounting to Kshs. 216,114,540 during the year under review.

However, review of correspondences between the Company and the Ministry revealed that the Company had cited serious operational and financial challenges and could therefore not afford to pay the royalties at the gazette rates. The Company Management proposed to pay a negotiated rate

of 3% and to be applied retrospectively from 1st July, 2017. However, the Ministry of Petroleum and Mining asserts on application of the gazette rates of 4% of gross sales value from 1st July, 2017 and 5% of gross sales value from 1st July, 2019.

Under the circumstances, the recoverability of the arrears of revenue of Kshs. 1,050,467,818 could not be confirmed.

Submission by the Accounting Officer;

The State Department entered into negotiations with Tata Chemicals Magadi Ltd and to date, the company has paid the arrears to the tune of Kshs. 715,333,515.95 this financial year (2023/2024). The Ministry continues to engage with the company to clear the arrears and enforcement as per payment demand notice given continuous.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer ensures all sums due are recovered in total within an acceptable payment plan, and avails a status report within three (3) months of adoption of this report.

1666.4. African Diatomite Factories Limited

The balance of Kshs. 2,675,311,892 also includes of arrears of Kshs. 21,030,156 due from African Diatomite Factories Limited out of which arrears amounting to Kshs. 17,520,857 relating to financial year 2020/2021 and earlier years and Kshs. 3,509,299 to the year under review. Although, the Ministry issued default Notice and reminders, the arears remain outstanding and continue to increase.

In the circumstances the, recoverability of the arrears of revenue of Kshs. 21,030,156 could not be confirmed.

Submission by the Accounting Officer;

The company had raised issues on the high royalty rates charged on their products, and had petitioned the Ministry for the reduction of the same. The Ministry on 12th September 2023 suspended their operations due to non-payment of royalty. Following this stoppage, African Diatomite Factories Limited has so far paid the arrears of Kshs. 10,000,000 on 20th November 2023. The Ministry continues to engage all the companies who are in arrears to make good the debts.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer ensures all sums due are recovered in total with an acceptable payment plan.

1666.5. Carbacid (CO2) Limited

The arrears of revenue balance of Kshs. 2,675,311,892 includes of arrears an amount of Kshs. 99,122,674 due from Carbacid (CO2) Limited accrued from 2017/2018 financial years to 2021/2022. However, a review of correspondences revealed that the Company Management had expressed reservations regarding payment of the royalties before a consensus on payment rates was reached. In addition, the Company did not file a self-declaration assessment and was, therefore, not assessed for royalties due in the year under review.

In the circumstances the, recoverability of the arrears of revenue of Kshs. 99,122,674 could not be confirmed.

Submission by the Accounting Officer;

The State Department for Mining has continued to engage the company by meeting the directors and other enforcement measures. Kshs 16,814,900.00 has already been recovered.

The Company has attributed their inability to pay royalties to poor business environment and stiff competition in the industry. The management undertakes to ensure payment of the arears and as such, stringent measures have been put in place, which includes: follow-ups on Royalties' payments to minimize accumulation of arrears and also measures to recover the pending arrears. The State Department on 14th May 21, 2024 sent demand letters to the company.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer ensures all sums due are recovered in total within an acceptable payment plan, and avails a status report within three (3) months of adoption of this report.

1666.6. ARM Cement Ltd.

The balance of Kshs. 2,675,311,892 in additions includes arrears of Kshs. 290,232,493 due relating to 2020/2021 and earlier years due from ARM Cement Limited. The Ministry stated that the arrears are unrecoverable as the Company is under insolvency.

Under the circumstances, the recoverability of the arrears of revenue of Kshs. 290,232,493 is doubtful.

Submission by the Accounting Officer;

ARM Cement Limited was acquired by National Cement Company Limited after being placed under administration. Upon demand for payment; The administrator indicated that the amounts due will be dealt with in accordance with the provisions of the insolvency Act 2015 (specifically in accordance with the provision relating to priority of payments to preferential creditors under the second schedule of the Act).

The State Department is following up on the payment and has conditioned the transfer of ARM licenses to National cement company ltd to full payment of this arrears.

Committee Observations and Findings

i) **The Committee observed that the explanation by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

1667. Unsupported Non-Tax Receipts

The statement of receipts and disbursements reflects non tax receipts of Kshs. 4,838,661,230 which were disclosed in Note 1 to the revenue statement consist of the balance brought forward of Kshs. 2,101,834,223 and receipts for the year under review of 2,736, 827,007. The receipts comprise of revenue collected from cement levy, mining royalties and licence and permits fees from various licensees. However, established cadaster system or register of mineral rights or records of licences issued for each category were not provided for audit. Section 191 of the Mining Act, 2016 provides for establishment and maintenance of an up-to-date computerized mining cadaster and registry system, including a register of mineral rights.

Due to the unavailability of these records, the accuracy of revenue from mining and exploration licences, export permits and mining royalties from various licensees could not be confirmed.

Under the circumstances, the accuracy, validity, and completeness of the non-tax receipts amounting to Kshs. 4,838,661,230 could not be confirmed.

Submission by the Accounting Officer;

Previously, records of royalty payments were managed through physical files of mineral rights holders where tracking of payments is done, however The State Department has awarded a contract for development of Royalty Management System that serves the purpose for a Royalties' cadastral register. This system is designed and expected to increase the accuracy, traceability, accessibility and reliability of all royalty records. Further, a quickbook system has been installed to augment the accuracy and completeness of records.

A National Multi Agency team was tasked to develop Mining Cadaster, which is still work in progress, however the current cadaster is undergoing an upgrade which will facilitate more reliable records. In addition, Royalty Management System (RMS) has been procured and is expected to fill in the gaps experienced in the mining cadaster.

Committee Observations and Findings

i) **The Committee observed that the explanation by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

1668. Cement levy received for National Cement Limited

The statement of Receipts and Disbursements reflects cement levy and Royalties receipts of Kshs. 4,838,661,230 which as disclosed in Note 1 to the financial statements includes cement levy of Kshs. 345,842,612 received form National Cement Limited. However, the following unsatisfactory matters were noted;

1668.1. Irregular Variation of Cement Levy Rates

Analysis of production and sales reports from the company revealed a variance of Kshs 167,838,286 between cement levy remitted to Ministry of Kshs. 413,565,362 and the levy due on sales of Kshs. 581,365,260 as shown below;

Period	Production in Tonnes	Rate Used (Kshs)	Royalty as Per Reports (Kshs)	Royalty Payable at 140/Ton (Kshs)	Variance (Kshs)
July, 2021 - Sep, 2021	1,010,632	100	101,063,228	141,488,522	40,425,294
Oct -Dec 2021	1,023,573	100	102,357,299	143,300,220	40,942,921
Jan-March 2022	1,055,127	99.3	104,760,705	147,717,752	42,957,047
April, 2021 - June, 2021	1,063,277	99.1	105,345,777	148,858,801	43,513,024
Total			**413,565,362**	**581,365,260**	**167,838,286**

According to Section 183(2) and 188(2) of the Mining Act, 2016, the Cabinet Secretary is required to make regulations to provide for the conditions and criteria for determining application for reduction or suspension of payment of royalties. Although a letter from the Cabinet Secretary dated 14 March, 2021 provided for audit authorized the Company to pay a reduced cement levy rate different from the gazette rate of Kshs. 140 per ton, the letter was not based on any existing regulations as required.

As a result of the variation, the Government lost revenue amounting to Kshs. 167,838,286

Submission by the Accounting Officer;

National Cement Company Limited has been paying the cement levy at the rate of KShs.100 per tonne of cement sold against the rate of KShs.140 per tonne, prescribed in Legal Notice No. 222 of 2013. The Ministry has since revoked this arrangement as per the attached letter and demanded the arrears resulting from the difference. Further the State Department for Mining has developed regulations (Royalty Collection and Management Regulations (2023), which is undergoing clearance by the Attorney General as envisaged by Section 188(2).

Committee Observations and Findings

i) **The Committee observed that the explanation by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

1668.2. Unconfirmed Cement Levy – Missing demand letter

The reported amount Kshs. 348,842,612 received form the company differs with Kshs. 413, 565, 362 analyzed from the production and sales reports, resulting to an unreconciled variance of Kshs. 67, 722,750.

In the circumstances the accuracy and completeness of the reported cement levy received form National Cement Limited of Kshs. 345, 842,612 could not be confirmed.

Submission by the Accounting Officer;

The Ministry has reconciled the statement for National Cement to account for the right cement levy received. The preceding financial statements for 2022/23 reported the reconciled balance to the National Cement.

Committee Observations and Findings

i) **The Committee observed that the explanation by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1669. Un-authorized Use of Prospecting Fees

During the year under review, revenue in respect of prospecting fees amounting to Kshs. 28,137,769 was collected and paid into the Department's recurrent bank account and utilized as Appropriations - In- Aid (AIA) without approval from the Cabinet Secretary for The National Treasury. This was contrary to Regulation 64 (4) of the Public Finance management (National Government) regulations, 2015 which states that all public moneys collected by a receiver of revenue or collector of revenue or collected and retained by a National Government entity, shall be paid into the designated bank account of the National Government and shall not be used by any Public officer in any manner between the time of their receipt and payment into the bank expect as provided by law.

In the circumstances, the Management was in breach of the law.

Submission by the Accounting Officer;

The state department is authorized to collect fees as per legal Notice No:38 dated 28th February, 2014. The fees items in the Notice gazette above are categorized as Appropriation-in-Aid; These are; Ground Rent, Laboratory Fees, Explosive License Fee, Library Fee, mining permit and Mining License Application and Renewal Fee and Dealers License Application & Renewal Fee.

There have been earlier instances of contestation and misrepresentation of prospecting fees as an A-I-A item and Ground Rent as prospecting fees. During the year, Ground rent of KShs. 28,137,769.00 was erroneously receipted/recorded as prospecting fees but going forward, ground rent is being receipted as miscellaneous receipt and accounted accordingly. It has been noted that the two items are distinct fees items and they should be recognized independently in the financial books. The prospecting fees will be accounted as Revenue item as directed by the National Treasury while ground rent will be treated as an A-I-A item. To minimize mis-classification, a/ senior officer has been posted to be in charge of the revenue and A.I.A section.

Committee Observations and Findings

i) **The Committee observed that the explanation by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

1670. Underutilized Gemstone Centre in Voi

The Ministry operates a Gemstone Centre situated in Voi Town as a value addition Centre which was constructed between 2015 and 2017. However, the Centre was underutilized and not generating revenues for the government due to the following reasons:

i. The services to the public and customers could not be priced due to absence of gazette rates on gem identification and value addition at the gem laboratory and lapidary.
ii. The laboratory and lapidary were inadequately equipped and staffed.
iii. Being a business Centre, occupation of dealers' booths and restaurant through competitive bidding had not been done.
iv. The Centre was yet to be officially commissioned.

Under the Circumstances, the Government is not obtaining value for money spent in the construction and equipping the Centre.

Submission by the Accounting Officer;

The Centre was officially commissioned on 25th September, 2023 by H.E the President. The management has proceeded to procure laboratory and lapidary equipment in the current financial year. More still, staffing is underway with the newly employed geologists and miners. The Ministry has allocated booths to interested parties.

Further, the regulation anchoring the fees chargeable for value addition and storage of gem stones at the Gem Center was gazetted and tabled before the National Assembly for public scrutiny pursuant to the Statutory Instrument Act.

Committee Observations and Findings

i) **The Committee observed that the explanation by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

1671. Non-Issuance of Mining Permits to Artisanal miners

The Mining Act, 2016 outlines the functions of the representatives of the Director of Mines in the county offices. The functions include compiling a register of artisanal miners, renewing, revoking and granting artisanal mining permits guided by the recommendations of Artisanal Mining Committees. Review of operations in County offices revealed the following;

i. Artisanal Mining Committees had been established in Kakamega, Vihiga, Siaya, Migori, Taita Taveta and Narok County back to year 2020. However, no evidence was provided to show that these committees held meetings and deliberations concerning recommendations for issuance of artisanal mining permits. There is a likelihood that the terms for the gazetted committees may lapse without the members engaging in any meaningful activities.
ii. Although a register of artisanal miners was maintained for the regions indicated above, but there was no record of artisanal mining permits issued to the registered miners.

In the circumstances, the Ministry was not able to monitor operations of the miners and lost opportunity to collect revenue from artisanal mining permits.

Submission by the Accounting Officer;

The role of Artisanal Mining Committees (AMCs) is to advise the Director of Mines on the granting, revocation, and renewal of the Artisanal Mining Permits. It is true that Artisanal Mining Committees had not recommended any artisanal miners to be issued with mining permits as stipulated in the Mining Act, 2016. The issuance was initially affected by the moratorium on issuance of mining and prospecting licenses of 2019, as well as lack of funding. There was no issuance of Mineral Rights Permits when the Moratorium was in place and as such the AMCs did not hold meetings. Since the lifting of the Moratorium, the State Department has gazetted 24 Artisanal Mining Committees, allocated and issued with adequate funds to start operating. The Ministry has since launched the meetings and they are now going on.

Committee Observations and Findings

i) **The Committee observed that the explanation by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

1672. Failure to Enforce Surrender Mineral Rights

Review of the mineral rights register maintained in the online Mining Cadaster revealed that companies holding prospecting mineral rights whose term had expired had not applied for renewal of the rights or made applications to surrender them. Further, majority of the companies had not paid ground rent for the year under review or complied with the requirement of submitting quarterly reports. In addition, there was no record of activities reported for some companies that held these prospecting licences.

In the circumstance, there is a likelihood that the mineral rights holders may have advanced their operations from prospecting to mining without following due process or abandoned the site without rehabilitating them or were just merely hoarding the mineral rights.

Submission by the Accounting Officer;

The Cabinet Secretary revoked such non- performing mineral rights through the Gazette Notice No. 5720 of 2021. The revocation created an outcry because it affected holders who then appealed for reconsideration of the action. The Cabinet Secretary, in Response formed a committee to establish non- performing mineral rights existence and status. Currently, the recommendations are being reviewed by the Mineral Rights Board and are being acted on by the Cabinet Secretary.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Cabinet Secretary implements recommendations of the Mineral Rights Board within three (3) months of adoption of this report.

1673. Dealing in Minerals Without Valid Licenses

The mining cadastral records maintained by the Ministry of Petroleum and Mining indicated that Tata Chemical Magadi Ltd. had a pending Mining License application as at the time of in- year audit carried out on 5 September, 2022, yet the company continued to undertake mining activities and dealing in minerals contrary to Mining Act, 2016. Management indicated that the company was operating on a licence that was issued before the enactment of the Mining Act, 2016.

Similarly, a review of the mining cadastral records revealed that an International Mining Company had not been issued with mineral dealer's licence or permit and did not possess a valid mining permit yet continued to deal in minerals contrary to Section 159 of the Mining Act, 2016. According to the cadastral records, the Company's prospecting licence expired in 2015 while its Mining Permit expired in 2018. However, during the year under review, the Company exported 5800 tonnes of Manganese ore without a valid mineral dealer's licence.

Under the circumstances, the company was in breach of the law.

Submission by the Accounting Officer;

It is true that Tata Chemicals Magadi Limited has operated without a mining licence since they started operations in 1911. This is because they had a land lease document that authorizes them to extract trona and salt from Lake Magadi.

The Ministry has put effort to have the company regularize their operations under the Mining Act, 2016, the company has since made applications of three licenses which are currently being processed.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer expedites the licensing and provides confirmation of the same within three (3) months of adoption of this report.

1674. Lack of Revenue Sharing Framework

Since enactment of the Mining Act, 2016, a total of Kshs. 10,224,771,968 in royalties was collected from various mineral right holders. However, no support evidence of minerals revenue sharing between the National Government, County governments and Local Communities was provided for audit. Section 183(5) of the Mining Act, 2016, requires royalties paid by a holder of mineral right to be distributed as follows: seventy percent (70%) to the National Government, twenty percent (20%) to the County Governments and ten percent (10%) to the Community where the mining operations occur.

Had the amount been shared as per the law, a total of Kshs. 1,022,477,203 should have paid to the communities and Kshs. 2,044,954,393 to the devolved units as detailed in the table below;

Year	Amount Kshs.	70% Kshs.	20% Kshs.	10% Kshs.
2016/2017	1,065,421,154	745,794,808	213,084,231	106,542,115
2017/2018	1,364,759,144	955,331,401	272,951,829	136,475,914
2018/2019	1,571,862,220	1,100,303,554	314,372,444	157,186,222
2019/2020	1,666,666,523	1,166,666,566	333,333,305	166,666,652
2020/2021	1,835,176,919	1,284,623,844	367,035,384	183,517,692
2021/2022	2,720,886,007	1,904,620,205	544,177,201	272,088,601
Total	**10,224,771,968**	**7,157,340,377**	**2,044,954,393**	**1,022,477,203**

The Management attributed the situation to lack of a framework for remission of royalties share to the communities and County Governments. Further, if the shares for the County Governments and communities are not set aside, the citizens in areas where mining activities are carried out might not benefit from royalties as the minerals being extracted are finite and might get depleted by the time structures for revenue sharing are established. In addition, the county governments and communities that hosted mining activities during the six (6) years may lose a total of Kshs. 3,067,596.

Submission by the Accounting Officer;

It is true that Section 183(5) of the Mining Act, 2016, requires royalties paid by a holder of mineral right to be distributed as follows: seventy percent (70%) to the National Government, twenty percent (20%) to the County Governments and ten percent (10%) to the Community where the mining operations occur.

The 20% due to the County Government is due for disbursement by the National Treasury through County Government Additional Allocation Fund.

Further, a regulatory framework Mineral Royalty Sharing Regulations (2023) on sharing the 10% to the communities to support the sharing of funds meant for the consolidated fund is being developed and is currently undergoing review by the Attorney General.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Cabinet Secretary submits the Regulations to the National Assembly within three (3) months of adoption of this report.

1675. Unlicensed Mining Operations

Field visits done in September, 2022 on artisanal miners in Siaya and Migori counties revealed that operators of gold leaching plants did not possess requisite mineral processing licences and permits as provided by the Mining Act, 2016. Further, the plants and small scale gold operators in those counties were using cyanidation to extract gold from tailings. Cyanidation is widely used to process tailings due to its efficiency in reacting with gold thus lowering the cost of mining. However, the contaminated waste material from the leaching process were abandoned at the sites since most leaching sites lacked proper disposal mechanism. The leaching plants are also situated in proximity to human habitats.

In the circumstances, activities of the operations of gold leaching plants in Siaya and Migori counties were unlawful. Further, the highly toxic cyanide chemical may result in negative environmental impacts and public health risks if released into the environment.

Submission by the Accounting Officer;

It is true that some gold leaching plants were not licensed. The problem has been compounded by easy access of cyanidation know-how and smuggled cyanide from across the borders. Further, the disconnect between government agencies; State Department for Mining, NEMA and County Government has created a loophole that the owners of processing plants are exploiting. Some plants have EIA Licenses, County Business Permits but without Dealers Processing License. All unlicensed miners in Migori were in August 2023 instructed to cease operations until they were licensed. The order was copied to the County Commissioner and County Police Commandant to assist in the enforcement of the closure directive. Note that, all illegal mining operations have been suspended until the entities acquire the requisite license. This is being enforced by the Ministry through Migori Regional Mining Office in conjunction with the newly formed Mining Police Unit.

Several illegal operators have already been arrested and prosecuted. The Government has now funded and equipped Regional Mining Offices in order to regulate this activity appropriately.

Committee Observations and Findings

i) **The Committee observed that the explanation by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

1676. Non-adherence to Prospecting Licence Conditions

Site inspection of prospecting map area in Bondo, Siaya County for Lake Mining Company conducted on 27 September, 2022 revealed that the Company had commenced processing of gold tailings. However, a review of operations of the company revealed the following anomalies:

i. Cadastral records show that the Company was granted prospecting licence No. PL/2017/0054 in 2019. However, the Mineral right expired in July 2022 but there was no record of renewal application lodged in the Cadastre system.
ii. The Company personnel at the site explained that the Company had already commenced processing of tailings in July, 2022. The gold ore processing equipment found at the site included a rock crusher/grinding mill, leaching tanks, concentration table among others. Such operations would require a mining licence or mineral dealings licence as provided for in Section 159 of the Mining Act, 2016 but none was provided for audit.
iii. The nature of activities seen on the ground were not indicative of prospecting.

In the circumstances, the management was in breach of the law.

Submission by the Accounting Officer;

It is true that Lake Side Mining Company do not have the necessary mineral right for the kind of activities observed on site. An application for a mining licence had been approved, offer letter issued and the Company accepted the offer but the license was never granted as the Moratorium against issuance of mineral rights took effect. However, after the lifting of the moratorium all the mineral right applicants were advised to re submit applications supporting documents such mining work program. This particular company did not comply with this requirement and its application is awaiting review by the Mineral Right Board. In enforcement of current reforms in the mining sector on the fight against illegal mining the company was served with a stoppage order to suspend the operations until the company acquired requisite documents.

Committee Observations and Findings

i) The Committee observed that the explanation by the Accounting Officer was satisfactory.

ii) The Committee found that the matter was resolved.

1677. Irregular Issuance of Mineral Exploration Rights

Site inspection of Copper Hill Exploration and Mining Resources Company Limited situated in Migori-Nyatike area revealed that the following:

i. Whereas the company holds Mining Permit No. MP/2021/0418 issued on 19th March 2021 with an expiry date of March 2026, cadastral records indicate that the mineral right was at application stage.
ii. The Moratorium issued on 18 December, 2019 froze issuance of permits and licences regarding any new potential mineral areas, thus it remains unclear, how the company was awarded the Mining Permit, yet it had no continuing obligations such as prospecting or mineral dealings.
iii. Second Schedule of the Mining Act 2016 provides that a mining or prospecting operation may be classified as small-scale operation if the operations do not employ specialized prospecting, mechanized mining technologies, chemicals including mercury and cyanide or explosives. However, the scale of operations at the site and the heaps of waste removed from the site was indicative of capital-intensive activities that required heavy machinery such as large trucks, excavators, and dozers.

In the circumstances, the legality of the mining activities of the Copper Hill Exploration and Mining Resources Company could not be confirmed.

Submission by the Accounting Officer;

The Ministry revoked the Permit due to irregular issuance. The investor sued and the case is subject of a law suit at Migori court ELC Suit No. 95 of 2021 and ELC Appeal No. 7 of 2022. The Ministry is awaiting the outcome of the court process and there's no mining ongoing.

Committee Observations and Findings

The Committee observed that the then Cabinet Secretary, Mr. John Munyes, awarded a license irregularly, during a moratorium, and without the recommendation of the Mineral Rights Board.

Committee Recommendation

The Committee recommends that the Ethics and Anti-corruption Commission investigates the then Cabinet Secretary for irregular issuance of license.

1678. Expired Prospecting Licence

Site inspection of Aurum Utalum Mining Company prospecting location situated in Rongo, Migori County revealed the following anomalies:

i. Although the company claimed to hold a valid Prospecting Licence, Cadastral records indicate that the company's prospecting licence No. PL/2018/0107 expired on 11 November, 2021. There was no record of application of renewal lodged in the cadastre system
ii. The nature of activities observed at the time of the site visit entailed removal of tailings from a colonial mine and testing for mineral recoverability per sample of the tailings extracted. However, the company declined to provide the lab test results and the use of the heaps of tailings that had been piled over the years by the company could not be ascertained.

In the circumstances, licence holders were using prospecting licences to undertake mining operations thus denying Government the mineral extraction revenue.

Submission by the Accounting Officer;

Through an operation that was led by Principal Secretary and NGAO officers backed by Mining Police Unit, an operation was conducted in Migori and closed over 9 sites besides arresting and prosecuting illegal operators. Aurum Utalum Mining Company was closed and Directors arrested pending deportation.

The Ministry through the Migori Regional office had issued a stop order against Aurum Utalum Mining Company for breach of the Prospecting License for engaging in activities beyond what their mineral right authorizes.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that;

i. **The Accounting Officer in liaison with the mining police unit intensifies patrols and enforcement across the country;**

ii. **Persons already deported from the country for illegal criminal acts be red-listed and not allowed back into the country;**

iii. **Foreigners found to be engaging in illegal mining activities be prosecuted subject to section 202 of the Mining Act 2016, before deportation.**

1679. Delayed issuance of Prospecting Licenses

Field inspection carried out in the Ministry's regional office in Kwale County between 26 September, 2022 to 27 September, 2022, revealed that Base Titanium had applied for prospecting Licenses in the year 2019. However, as at the time of the audit the application was still pending and no satisfactory explanation was provided for the delay.

In the circumstances, any royalties the Government may have earned on mining activities following successful prospecting were lost.

Submission by the Accounting Officer;

It is true that the application for prospecting licensee by Base Titanium Limited has been pending since 2019. A Moratorium on issuance of permits and Licenses had been issued against the issuance of new mineral rights on 2nd December, 2019. The Moratorium was lifted in October 2023 and 3 (three) of the company application has been evaluated and undergoing public participation in preparation for issuance.

Committee Observations and Findings

i) **The Committee observed that the explanation by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1680. Lack of an Updated Cadastre Records

Review of mining cadastral records maintained by the Ministry of Petroleum and Mining revealed that the ministry did not maintain an up-to-date cadastre records. Some of the records indicated that the actions were open, yet they were supposed to be closed. Further, the system was not fully supported by the contracted service provider. Management attributed this to lack of requisite clauses in the contract to enable payments for maintenance.

In the circumstances the integrity of the information stored in the cadaster could not be confirmed.

Submission by the Accounting Officer;

A National Multi Agency team was tasked to in develop Mining Cadaster, which is still work in progress, however the current cadaster is undergoing an upgrade which will facilitate more reliable records. In addition, Royalty Management System (RMS) has been procured and is expected to fill in the gaps experienced in the mining cadaster.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer avails the cadaster register within three (3) months of adoption of this report.

DONOR FUNDED PROJECT

KENYA PETROLEUM TECHNICAL ASSISTANCE PROJECT (IDA CREDIT NO.5526-KE AND GRANT NO. TFOA 3418)

REPORT ON THE FINANCIAL STATEMENTS

1681. Ineligible Expenditure – Unremitted Tax and Penalties

The statement of receipts and payments reflects purchase of goods and services expenditure of Kshs.344, 248,676 which comprises of Kshs.175, 990,515 and Kshs.168, 258,161 paid by the Ministry and the Donor respectively. The payments made by the Ministry include Kshs.81, 824,559 made to Kenya Revenue Authority (KRA) in respect of unremitted Withholding Tax (WHT), Withholding Value Added Tax (WHVAT) and reverse value added tax. Review of payment details and correspondences between the Ministry and KRA revealed that the Project Management Unit made payments to non-resident professionals offering training services without deducting withholding taxes and value added tax applicable for imported services.

In the circumstances, the tax payments amounted to double payment and thus ineligible charge to the project and to public funds.

Submission by the Accounting Officer;

The payments totaling to Kshs 81,824,599 made to Kenya Revenue Authority were as a result of an assessment to the full life of the project that the Authority carried out during the period 14th April to June 2021. The findings included a figure of Kshs.38, 189,532 in respect of income tax for non-resident professionals which had not been remmited. This claim was settled in 2020/2021 financial year. Further, the figure of Kshs43, 635,027.60 paid during the year under review was in respect to Withholding tax that had not been remitted.

The two payments were authorized by the Principal Secretary and later approved by the World Bank vide the Withdrawal Application no. WA/153 which was approved by the National Treasury and World Bank through the Client Connection.

Noteworthy, the payments received all the required approvals hence not ineligible.

Committee Observations and Findings

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1682. Long Outstanding Bank Reconciliation Items

The statement of financial assets reflects a bank balance of Kshs.482, 815. Review of the bank reconciliation statement in respect of the account revealed long outstanding unpresented cheque totaling to Kshs.159, 000 and payments in bank statements not in the cash book amounting to Kshs.641,815. The reconciling items have been outstanding since 2020/2021 financial year. The Management indicated that non- clearance of the items was due to insufficient documentation to support the reconciling items hence could not clear the entries from the final project books. Therefore, this implies that the un-cleared reconciling items will remain outstanding as the project closed on 31 August, 2021, and a disbursement deadline of four (4) months after the closing date lapsed on 30 June, 2022.

In addition, the project bank account had not been closed despite the balance in the account having been transferred to The National Treasury after the project closed on 31 August, 2021.

In the circumstances, the accuracy and completeness of bank and cash balances of Kshs.482, 815 could not be confirmed.

Submission by the Accounting Officer;

The State Department concurs with the audit observation in regard to the erroneous cashbook balance which did not include payments in the bank statement for which cheques were issued by the project some in the previous year, thereby reflecting a false position of the cash book. As is common with World Bank financed projects, the Public finance management staff of the project were understandably hired from outside the civil service and therefore left at the expiry date of the project.

The State Department has subsequently made several telephone calls to obtain information necessary to clear the outstanding items without success.

Evidence in the books however indicate that ksh.68,027,403.85 was returned as unspent balance at the close of the project.

Committee Observations and Findings

The Committee noted the submission by the Accounting Officer.

Committee Recommendation

The Committee recommends that the Accounting Officer liaises with National Treasury for reconciliation and eventual closure of the account within three (3) months of adoption of this report.

1683. Lack of an Approved Annual Work plan

The statement of receipts and payments reflects payments amounting to Kshs.344, 248,676 in respect of purchase of goods and services. However, no approved work plan in respect of implemented activities was availed for audit review. In the circumstances, the regularity and accuracy of the expenditure amounting to Kshs.344, 248,676 could not be confirmed.

Submission by the Accounting Officer;

The Kenya Petroleum Technical Assistance Project (Loan ended on 31st August 2021 and Grant 30th June 2021). The payments made in the financial year under review represented final milestones that had already matured and therefore not new activities. The Bank does not allow implementation of new activities in the final year of projects implementation. The National Treasury gave a budget ceiling of Kshs.500, 000,000 which was later reduced to Kshs.437, 584,215. The activities therein comprised of payments of the last milestones that had been approved in previous financial years.

Committee Observations and Findings

i) **The Committee observed that the explanation by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

1684. Budgetary Control and Performance

The statement of comparative budget and actual amounts for the year under review reflects final budget and actual payments on comparable basis of Kshs.437,584,215 and Kshs.344,248,676 respectively, resulting in an under-expenditure of Kshs.93,335,539 or 21%. As a result, some of the planned activities were not undertaken during the year and therefore the Project may not have achieved its desired objectives.

Submission by the Accounting Officer;

As indicated in the statement of comparative budget and actual amounts for the year under review reflects final budget of Kshs 437,584,215. Notably the budget was based on estimated costs. The money was utilized to settle outstanding bills and payment of all remaining milestones totaling to Kshs 344,248,676. All planned project activities were implemented and as evidenced by the final Aide Memoire (Final World Bank Supervision Mission, Pages 12-14), a substantial number of the objectives were realized.

Committee Observations and Findings

i) **The Committee observed that the explanation by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

1685. Project Implementation and Performance

The project information and funding summary statement indicates that the donor had made a funding commitment of USD.51,000,000 (Approximately Kshs.5,100,000,000) comprising

Kshs.600,000,000 and Kshs.4,500,000,000 in IDA Grant and IDA Loan respectively. However, as at 30 June, 2022, the Project had utilized a total of Kshs.4, 533,412,421 or 89% with the Project closure on 31 August, 2021 after a six (6) month extension from the initial closure date of February, 2021.

In the circumstances, the Project failed to realize and utilize the remaining funding commitment of Kshs.579, 048,893 which may have negatively impacted on service delivery to citizens.

Submission by the Accounting Officer;

The project was restructured and during that exercise any activity that was not in line with the project's desired objectives were not approved. As evidenced by the final Aide Memoire (Final World Bank Supervision Mission, Pages 12-14), a substantial number of the objectives were realized.

Committee Observations and Findings

The Committee observed that the explanation by the Accounting Officer was satisfactory.

Committee Recommendation

The Committee found that the matter was resolved.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1687. Lack of Asset Handing Over Report

Annex 4 to the financial statements containing a summary of fixed asset register, and a corresponding detailed fixed asset register as at 30 June, 2022 reflects net book value of assets at historical cost amounting to Kshs.215,351,264. However, no asset handing over report to the Accounting Officer was provided following closure of the Project on 31 August, 2021 as required under Regulation 74(6) of the Public Finance Management Regulation (National Government) Regulations, 2015.

In the circumstances, the accuracy and existence of fixed assets balance of KShs. 215,351,264 could not be confirmed and the project Management was in breach of the law.

Submission by the Accounting Officer;

The project funded a number of assets to beneficiary organizations such as NEMA, Directorate of Occupational Safety and Health Services (DOSHS) State Department for Petroleum, EPRA among others. The assets handing over report would therefore include all these assets.

Committee Observations and Findings

The Committee observed that the explanation by the Accounting Officer was unsatisfactory.

Committee Recommendation

The Committee recommends that the Accounting Officer avails a complete inventory of all the assets and their locations, within three (3) months of adoption of this report.

4.38 VOTE 1202: STATE DEPARTMENT FOR TOURISM

Mr. John Ololtuaa, the Principal Secretary and Accounting Officer for the State Department for Tourism appeared before the Committee on 28th September 2023 accompanied by the following officers:

i.	Ms. Agnes W. Waweru	Head, Accounting Unit
ii.	Ms. Moraa Nyamweru	Head, Supply Chain Management
iii.	Mr. Mathew K. Musyoka	Head of Finance
iv.	Mr. Munyithya Kimwele	Paliamentary Liason Officer
v.	Ms. Julius Musau	PA to PS

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1689: Inaccuracies in the Financial Statements

Comparison of balances reflected in the financial statements for the year ended 30 June, 2022 and reports generated by Integrated Financial Management Information System (IFMIS) annexed to the financial statements revealed unreconciled differences as detailed below;

1689.1 Statements of Receipts and Payment

The statement of receipts and payments reflects an amount of Kshs.237,870,098 in respect to use of goods and services while IFMIS report reflects an amount of Kshs.237,732,103 resulting to unreconciled and unexplained variance of Kshs.137,995.

Submission by the Accounting Officer

It's true the financial statements reflects an amount of Ksh.237, 870,098 on use of goods while the IFMIS figure reflects Ksh.237,732,103. The difference of Ksh.137, 995 was as a result of an Imprest which had not been cleared in the IFMIS system when the accounts were being submitted. This amount which overstated the item for use of goods in the system was later cleared and captured in IFMIS which brought the figure to ksh 237,870,098 as reflected in the audited Financial Statements.

Committee Observation

i) **The Committee observed that the Accounting Officer had made satisfactory explanation.**
ii) **The Committee found that the matter was resolved.**

1689.2 Statements of Assets and Liabilities

The statement of assets and liabilities was at variance with the IFMIS report as detailed below:

Item	Amount as per Audited Financial Statements (Kshs.)	Amount as per IFMIS Report (Kshs.)	Variance (Kshs.)
Cash and Cash Equivalents	156,999,780	619,741,521	(462,741,741)
Account Receivables	-	8,228,563	(8,228,563)
Account Payables	139,997,793	610,777,009	(470,779,216)

Submission by the Accounting Officer

The variance between the audited financial statements and IFMIS report in the statement of assets and liabilities as analyzed by the auditor in the table above was as a result of an incomplete auto bank reconciliation and some unaccounted for transactions in the IFMIS.

The auto reconciliation was later completed and all the unaccounted for transactions cleared the figure for cash and cash equivalent, account receivables and accounts payable are now as shown below.

Item	Amount as perAudited Financial Statements (Kshs.)	Adjustment (Kshs)	Amount as per revised IFMIS Report (Kshs.)
Cash and Cash Equivalents	156,999,780	-	156,999,780
Account Receivables	-	-	-
Account Payables	139,997,793	1,042,797	138,954,996

The reinstated amount of Ksh. 138,954,996 was arrived at after several items that amounted to ksh 1,042,797 were cleared from the unaccounted for transactions report. The revised figures will reflect in the financial statements for year 2022-2023 under the comparative column.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

1689.3 Statements of Cash Flows

The statement of cash flows was at variance with the IFMIS report as tabulated below:

Item	Amount as per Audited Financial Statements (Kshs.)	Amount as per IFMIS Report (Kshs.)	Variances (Kshs.)
Cash Flow from OperatingActivities	87,088,365	547,777,107	(460,688,742)
Net Increase in Cash and Cash Equivalents	18,417,850	481,106,592	(462,688,742)
Cash and Cash Equivalent atthe end of the Year	156,999,780	619,741,521	(462,741,741)

Submission by the Accounting Officer

The variance between figures in the financial statements and the IFMIS report for Cash flow from operating Activities, Net Increase in Cash and Cash Equivalents and Cash and Cash Equivalent at the end of the Year reflected in the statement of cash flows observed by the auditor is also as a result of an incomplete auto bank reconciliation. The reconciliation was later completed and the figures in the audited statements now tally with IFMIS reports.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

1689.4 Difference between Financial Statement and Trial Balance

The financial statement amounts differed with trial balance amounts as detailed below:

Account No and Description	Financial Statement (Kshs.)	Trial Balance (Kshs.)	Variance (Kshs.)
2210400 Foreign Travel and Subsistence, and Other Transportation Costs	48,290,544	48,152,550	137,994
6530000 Recurrent Bank Account	14,551,584	616,842,216	(602,290,632)

6540000 Development Bank Account	3,493,200	(60,665,265)	64,158,465
6550000 Deposit Bank Account	138,954,996	116,405,157	22,549,839
6580104 Cash in Transit	-	(203,443,028)	203,443,028
6580000 Cash in Hand	-	150,602,441	(150,602,441)
6710103 Salary Advance	-	(132,735)	132,735
6740101 Prepayment	-	440,900	(440,900)
6740102 R/D Cheques	-	(70,891)	70,891
6760000 Government Imprests	-	7,991,289	(7,991,289)
7310000 Deposits	-	185,000	(185,000)
7320000 Other Liabilities	(1,042,797)	(1,076,479)	33,682
7320201 Contractors RetentionMoney	(138,954,996)	(116,405,157	(22,549,839)
7380000 Withholding Taxes	-	(143,655)	143,655
7390000 System Required Liabilities A/cs	-	(492,966,718)	492,966,718
9910000 Provisions	-	(11,717,043,408)	11,717,043,408
9990000 Opening BalanceReserves	-	9,907,878,700	(9,907,878,700)

In the circumstances, the accuracy and completeness of the financial statements for theyear ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The variance Between Financial Statements and Trial Balance were as a result of the variances in paragraph 1689(1, 2&3) above. After obtaining the correct figures in the IFMIS, the adjusted trial balance now reflects the correct position of the financial statements. The affected line items have been reinstated and will reflect in the financial statements for year 2022-2023 under the comparative column.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

1690: Inaccuracies in Presentation of Financial Statements

Review of the financial statements revealed the following anomalies:

i. Significant accounting policies Note 4(j) on prior period adjustments refers to Note26 instead of Note 12 to the financial statements where errors corrected during theyear are disclosed.

ii. Annex 4 to the financial statements on summary of fixed asset register reflects nil balance brought forward instead of the correct balance of Kshs.822,637,554 as per the previous year audited financial statements.

iii. Annex 6 to the financial statements provides a list of Semi-Autonomous Government Agencies (SAGAs) under the State Department that reflects their accounting officers as the Principal Secretary State Department for Tourism instead of the specific accounting officer of the respective SAGAs.

iv. Inter-entity confirmation letters for Tourism Research Institute and Tourism Regulatory Authority confirming the grant amounts received have not been provided and attached to the financial statements hence casting doubts on whetherthe funds were actually disbursed.

In the circumstances, the accuracy and completeness of the financial statements for theyear ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

Management submitted that;

i) It is true that under significant accounting policy the prior period adjustments are stated to be disclosed under note 26 of the financial statements whereas they are disclosed under note No.12. Honorable Chair, this error has been noted and will avoided in subsequent reports.

ii) It is true Annex 4 to the financial statements on summary of fixed asset register reflects nil balance brought forward instead of the correct balance of Kshs. 822,637,554. I would like to state that the amount of ksh 822,637,554 is a cumulative cost of the assets acquired by the entity since its establishment as a vote. The amount does not have a financial effect on any report in the Financial statements but is a significant disclosure for valuation of Assets. The management took note and has made correction by including the amount in the figure of Ksh 891,308,069 reported as historical cost for the year 2022/23. Annex 4 of financial statements

iii) It is true the financial statements reflect the accounting officer of the state department for Tourism as the accounting officer for all SAGAs instead of the Chief executive officers for the respective SAGAs. Honorable chair, this has been noted. The current reporting template though does not have a provision for indicating the accounting officers for SAGAs.

iv) On the matter of inter-entity confirmation letters for Tourism Research Institute and Tourism Regulatory Authority, I would like to state that the amounts were confirmed as disbursed by the State Department as reflected in the statement for the Recurrent bank account. The equivalent was received by the entities as indicated in the confirmation letters from the respective Agencies together with extracts of bank

statements for the dates the amount reflected in their bank accounts. The management commits to attaching all confirmation letters as required.

Committee Observations and Findings;

The Committee observed that the errors had since been corrected.

Committee Recommendation

The Committee reprimands the Accounting Officer for failing to proper accounting records, as required by sections 81 & 83 of the PFM Act 2012.

1692: Unsupported Payment of Deposits

The statement of assets and liabilities reflects accounts payables balance of Kshs.139, 997,793 out of which an amount of Kshs.138, 954,996 relates to deposits. However, the supporting documents for payment of Kshs.20, 591,158 paid from deposit account to a local Company on 3rd September, 2021 were not provided for audit review.

In the circumstances, the accuracy of the accounts payable balance of Kshs.20, 591,158as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

The amount of ksh.20,591,158 was paid to a local company on 3rd September, 2021 as final retention money after completion of the project of Regeneration of Mama Ngina Water Front and Cultural District in Mombasa County.

The payment voucher together with documents that supported the payment were availed to the auditor for verification.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

1693: Use of Goods and Services - Design and Procurement of GovernmentCalendars.

Note 3 to the financial statements reflects Kshs.237,870,098 relating to use of goods andservices which includes an amount of Kshs.28, 434,062. In respect to specialized materialsand services which in turn includes an amount of Kshs.10,000,000 for design and printing of calendars. Review of the payment details revealed the following anomalies:

I. The State Department had planned to procure 50,000 units of wall calendars and 25,000

units of desk calendars at an estimated unit cost of Kshs.200 all totaling to Kshs.10,000,000 and Kshs.5,000,000 respectively.

II. The Management transferred Kshs.10,000,000 of its budgeted funds to Kenya Tourism Board (KTB) vide AIE No. 129013 to procure calendars on their behalf without justification as required by Section 51(2)(a) and (b) of the Public Procurement and Asset Disposal Act, 2015.

III. KTB engaged a local procurement agent at a cost of Kshs.1,666,583 to design and print 45,800 units of wall calendars at a total cost of Kshs.5,897,208 and 22,700 unitsof desk calendars at a cost of Kshs.2,435,710. The quantities of calendars deliveredwere inadequate of the planned quantities by 4,200 and 2,300 units respectively. The company engaged by KTB also engaged another agent to print the calendars at a cost of Kshs.8,332,918. Consequently, the payment of Agency fee of Kshs.1,666,583 could not be justified.

In the circumstances, the propriety and validity of the specialized materials and services expenditure of Kshs.28,434,062 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer was in agreement with the auditor's findings.

The Accounting Officer further stated as follows;

I. That the budget for specialized materials and supplies was Kshs. 28 million, out of that budget, production of calendars was allocated Kshs. 15 Million. During the supplementary budget for Financial Year 2021-2022 the budget was reduced by Kshs. 4,755,000. This reduction necessitated the rationalization of the budget for calendars from Kshs.15 million to Kshs. 10 million.

   Due to the reduction of the budget for calendars, the quantity of the calendars procured was reduced to correspond to the available budget and in compliance with regulation 53 (8) of the Public Procurement and Asset Disposal Act,2015 which requires the Accounting Officer to confirm availability of sufficient funds to meet contractual obligations prior to commencement of any procurement.

II. It is true that section 51(2) (a) (b) & (c) of the Public Procurement and Asset Disposal Act,2015 provides for circumstances where a procuring entity may use the services of a procurement agency. However, the State Department engaged the services of Kenya Tourism Board (KTB) which is a public entity and not a procuring agent.

III. The Kenya Tourism Board is a semi-autonomous government agency (SAGA) within the state department with the key mandate to develop, implement and co-ordinate a national tourism marketing strategy.

KTB had an existing contract for the provision of ***Intergrated Advertising and Media Buying Agency Services*** whose scope included design and production of calendars. The state department leveraged on the existing contract to save on time and cost of the tendering process.

The Agency used by Kenya Tourism Board, M/S Scanad Kenya Limited is indeed a firm that was procured through open tender and the contract was entered into on 27th May 2019 for a three (3)

year period. The scope of the contract included in clause 5.3.(1)(d) that the agency will provide KTB with a total production cost which will be inclusive of twenty percent (20%) Agency Commission. This justifies the agency commission of Kshs.1, 666,583.60 paid by KTB to the agency for the designing and production of artwork for the government calendars.

The estimated unit cost of procuring both the wall and desk calendar was Kshs.200. The state department obtained value for money since the average unit cost of design and printing of the calendars translated to Kshs. 145.97 as tabulated below:-

Smart Printers Limited					
	Quantity	**Unit Cost Exc. VAT**	**Unit Cost Incl. VAT**	**Total cost Exc. VAT**	**Total Cost Incl. VAT**
Wall Calendars	45,800	111	128.8	5,083,800.00	5,897,208.00
Desk Calendars	22,700	92.5	107.3	2,099,750.00	2,435,710.00
Total	**68,500**			**7,183,550.00**	**8,332,918.00**
Agency Fee is = 20% of Total Cost of Calendars inclusive of VAT (20% *8,332,918)					1,666,583.60
Total Cost of Calendars inclusive of 16% VAT and 20% Agency Fee					9,999,501.60
Average cost of calendars is:- Kshs.9,999,501.60/68,500= **Kshs.145.97**					

Corrective Action Taken

The State Department afterward took corrective action in the subsequent year i.e., 2022-2023 and procured the government calendars through its procurement department.

Committee Observations and Findings;

i. **The Committee observed that the Kshs. 1, 666,583.60 paid as agency fee to the procuring firm could have been avoided hence value for money was not achieved.**

ii. **The Committee also observed that the State Department engaged the Kenya Tourism Board to procure calendars on its behalf and yet KTB is not a procuring entity.**

iii. **The Committee further observed that the State Department has since taken corrective action by using its own procurement department.**

Committee Recommendations;

i. **Reprimand the Accounting Officer for acting contrary to Section 51(2)(a) and (b) of the Public Procurement and Asset Disposal Act, 2015.**

ii. **The Committee recommends that the then Accounting Officer be surcharged a total of Kshs. 1,666,583.60 that was paid as agency fee.**

1694: Undisclosed Revenue in the Financial Statements.

The State Department collected revenue amounting to Kshs.1,494,050 at the Mama Ngina Waterfront in Mombasa that was banked at KCB bank account No.1285363612. However, the State Department had not budgeted to collect any revenue during the year under review and the revenue collected was not disclosed in the financial statements.

In the circumstances, the accuracy and completeness of the revenue disclosed in the Financial statements could not be confirmed.

Submission by the Accounting Oficer

The Accounting Officer submitted that an amount of ksh.1,494,050 was collected under MNWF and banked in the KCB account No. 1285363612 as reported by the auditor. The Accounting Officer also submitted that the project bank account was opened in April 2020 and an amount of Ksh 200 deposited to activate the account. The Calamity of Corona Virus affected activities in the park and no revenue was collected until 30th April 2021 when the initial revenue was collected and banked. Further, the budget process for 2021/22 in the state department had been concluded when the revenue started streaming in and hence the revenues could not be budgeted for during the year.

The Accounting Officer further reported that the revenue was included in the budget for the following year 2022/2023 and all the amount collected since inauguration was transmitted from the KCB account to the state department's Recurrent bank account. The amount was also recognized as Appropriation In Aid (A.I.A) in the Financial reports for the same year.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

1695: Non-Disclosure of Pending Bills

In the year under review, the State Department had several active court cases on which judgments had been delivered while others were still ongoing. However, the Management did not recognize the ongoing cases as contingent liabilities. Further, a balance of Kshs.5,391,020 was omitted from the list of pending bills annexure 3 to the financial statements.

In the circumstances, Management was in breach of the Public Sector Accounting Standards Board Reporting Template.

Submission by the Accounting Officer

The Accounting Officer submitted that the state Department had active court cases on which judgment had been delivered while others were still ongoing. The Accounting Officer also submitted that the Ministry did not recognize them as contingent liabilities and neither was the amount of ksh.5,391,020 related to the cases included in the pending bills. The Accounting Officer further submitted that these cases have now been disclosed as contingent liabilities in the financial statements for FY 2022/23. The state department has also requested for the amount to be included in the supplementary budget for Financial Year 2023/24.

Committee Observations and Findings

i) **The Committee observed that the explanation given by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

4.39 VOTE 1203: STATE DEPARTMENT FOR WILDLIFE

Ms. Silvia Museiya, the Principal Secretary and Accounting Officer for the State Department for Wildlife, appeared before the Committee on 21st March 2024, accompanied by the following officers:

i.	Ms. Netty Jemutai	_	Project Coordinator
ii.	Mr. John Mwangangi Makai	_	Deputy Accountant General
iii.	Mr. John O. Olima	_	Chief Finance Officer
iv.	Ms. Alice Ouchek	_	Principal Accountant

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1698. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.9,764,799,340 and Kshs.8,763,337,148 respectively, resulting to an underfunding of Kshs.1,001,462,192 or 10% of the budget. Similarly, the State Department spent Kshs.8,660,103,614 against an approved budget of Kshs.9,764,799,340 resulting to an under expenditure of Kshs.1,104,695,726 or 11% of the budget. The underfunding and under-performance affected the planned activities and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The Underfunding and under-performance were due to non-transfer of recurrent grants to KWS of Kshs.1,000,000,000.00 (One Billion). The funds were factored in the supplementary 1 budget to support the operations of KWS after they suffered a low revenue collection due to corona restriction on travelling affecting the tourism industry. However, the transfer was not done due to lack of exchequer funding.

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1699. Human Wildlife Conflict Compensation

Annex 1 to the financial statements reflects outstanding balance for pending accounts payable of Kshs.2,715,987,161. This balance includes an amount of Kshs.2,708,390,651 in respect of unpaid human wildlife compensation claims. Although the Department paid claims amounting to Kshs.530,000,000 during the year under review, the cumulative outstanding balance is still growing due to increased human wildlife conflicts. Failure to settle human wildlife conflict claims during the year in which they relate distorts the budget and adversely affects the budgetary provisions for the subsequent year as they form a first charge.

Submission by the Accounting Officer

The state department has been requesting enough allocation to compensate the victims of Human Wildlife Conflict on a timely basis but the provision has not been enough and even where the funds have been allocated in the budget the department has not been getting full issue of exchequer. Like in the case above, the department had been given an allocation of 1 billion but only received an exchequer of KES 530 million which was used to pay part of the claims. The department will however continue to engage the National Treasury and Parliament to provide enough funds for the purpose of clearing the outstanding claims. Going forward, the Government has come up with a Scheme called Human Wildlife Compensation Scheme with current allocation of 800 million.

Committee Observations and Findings;

The Committee observed that the rate of compensation was very slow and would invariably continue compounding.

Committee Recommendation;

The Committee recommends that the National Treasury prioritizes provision of compensation of claims, as first charge.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1701. Lack of ICT Policy and Risk Management Policy

The State Department had not prepared and implemented an ICT policy as a commitment to the process of implementing digital technology. An ICT policy would give guidance on 556 how to ensure confidentiality, integrity and availability of the entity's data. Further, the State Department did not have a risk management policy, contrary to Regulation 165(1) of the Public Finance Management (National Government) Regulations, 2015. As a result, it has not been possible to define the entity's risk appetite and set the risk tolerance levels by identifying boundaries against unacceptable risk exposures as well as determining the data integrity. In the circumstances, the State Department did not have a framework to identify, assess and control risks.

Submission by the Accounting Officer

At the time of audit, the department did not have an ICT Policy. However, development of one is currently ongoing and we can report that a draft ICT Policy is now undergoing validation. For Risk Management policy a risk management register has been developed and Risk Management committee trained.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a status report on operationalization of both policies, within three (3) months of adoption of this report.

DONOR FUNDED PROJECT

COMBATING POACHING AND ILLEGAL WILDLIFE TRAFFICKING IN KENYA THROUGH INTEGRATED APPROACH (IWT- KENYA) PROJECT

REPORT ON THE FINANCIAL STATEMENTS

1703. Budgetary Control and Performance

The summary statement of comparison budget and actual amount reflects total receipts final budget and actual on comparable basis of Kshs.98,810,000 and Kshs.58,146,293 respectively resulting to an underfunding of Kshs.40,663,707 or 41% of the budget. Similarly, the Project spent Kshs.56,380,814 against an approved budget of Kshs.98,810,000 resulting to an under expenditure of Kshs.42,429,186 or 43% of the budget. The underfunding and under-performance affected the planned activities and may have impacted negatively on service delivery to the stakeholders.

Submission by the Accounting Officer

The under-absorption was due to lack of proper system for transfer of funds. The Project was in its initial phase and the officials (Project Management Unit) were newly recruited. The team was setting up the processes which entailed opening Special Bank Accounts and preparing the work plan required by UNDP to facilitate the transfer funds. This was completed and the first transfer done in the third quarter of the year. Further, the budget was also a one-line item captured as capital transfer to Semi-Autonomous Agency (SAGA) making it difficult for the management to utilize the funds on itemized basis as per the work plan. Although this was corrected in supplementary 1, the year was already advanced thus it was difficult to absorb the funds.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a status report on achievement of the project's key performance indicators, within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1704. Ambiguity in Financing Agreement

Section IX of the Financing Agreement states that both Government of Kenya (GoK) and United Nations (UN) financial and procurement procedures will be utilized and adhered to as appropriate. However, this clause may bring conflict where GoK financial and procurement procedures are not in tandem with those of UN. 557 In the circumstances, continued application of the Financing Agreement with the above clause may result to non-adherence to GoK financial and procurement procedures.

Submission by the Accounting Officer

The Project uses two models of funds disbursements. Revenue and AIA (Direct Payment). For Direct Payments (AIA) the donor uses the UNDP Procurement System applied worldwide. In this

case, the role of the Project is to requisition the needed item and UNDP uses its procurement procedures to acquire these assets, goods and services through direct payments (AIA). In disbursement under Revenue; the donor (UNDP) disburses the actual liquidity and the departments/project uses the Country's procurement procedures hence the need for Section IX of the Financing Agreement stating that both Government of Kenya (GoK) and United Nations (UN) financial and procurement procedures will be utilized and adhered to as appropriate. The conclusion is therefore, there no ambiguity in the financial agreement.

Committee Observations and Findings;

i) **The Committee observed that the matter was resolved in its report for the preceding financial year.**

ii) **The Committee found that the matter was resolved.**

1705. Gender Imbalance

In Recruitment During the year under review, the Project Management recruited for five (5) vacancies. However, all the five (5) posts were filled by male candidates despite existence of female applicant's contrary to Section 33(2) of the National Cohesion and Integration Act, 2008. No explanation was provided for this anomaly. In the circumstances, the Project Management was in breach of the Act.

Submission by the Accounting Officer

The department acknowledges the auditor's concern regarding the lack of a female candidate filling any of the five vacant positions. During the recruitment process; the female candidates who were shortlisted and appeared for interview for the five positions did not attain the minimum qualification requirement of 60%. Within the year, one of the positions above of Project Manager/Coordinator fell vacant after resignation of the position holder. This position was then filled by a female candidate competitively selected after meeting the minimum requirements for the position.

Committee Observations and Findings;

The Committee observed that despite incremental address of the situation, the state department ought to have re-advertised the positions ab initio.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits status of recruitment of the next vacant position as soon as it is done.

4.40 VOTE 1212: STATE DEPARTMENT FOR GENDER

Ms. Anne N. Wang'ombe, the Principal Secretary and Accounting Officer for the State Department for Gender, appeared before the Committee o 5th March 2024, accompanied by the following officers:

i.	Mr. Dudney Matagi	Head of Accounting Unit
ii.	Mr. Joseph Gikonyo	Senior Principal Finance Officer
iii.	Mr. Sephone Ombachi	Chief Finance Officer

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1707. Unsupported Amounts in the Financial Statements

The statement of receipts and payments reflects proceeds from domestic and foreign grants amount of Kshs.48,125,120, being a grant from Finland Government. The Management did not however, provide the supporting documents for audit review.

Further, the statement reflects use of goods and services amount of Kshs.231,968,254 which includes hospitality supplies and services expenditure of Kshs.49,967,708 as disclosed in Note 5 to the financial statements. Out of the amount, expenditure relating to grants totalling to Kshs.22,142,473 were not supported with the payment vouchers and other supporting documents. In addition, the use of goods and services amount includes expenditure on training of Kshs.13,896,888 out of which expenditure on Finland program through AIA of Kshs.2,000,000 was not supported with any document.

In the circumstances, the accuracy and completeness of proceeds from foreign grants, hospitality supplies and services and training expenses of Kshs.48,125,120, Kshs.22,142,473 and Kshs.2,000,000 respectively could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer informed the Committee that the documents have since been availed for audit verification.

The Accounting Officer submitted that the documents were not provided during the audit review since they were at the Programme Home office in Finland and by then the programme did not have an office at the State Department for Gender and Affirmative Action.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

1708. Pending Bills

According to Note 17.1 to the financial statements, the Department had pending accountspayable totalling Kshs.3,608,065 as at 30 June, 2022. Management did not explain why the bills were not settled during the year when they occurred. As a result, the Departmentis at risk of incurring significant interest costs and penalties with their continued delay in payment.

Further, failure to settle bills during the year in which they relate to distorts the financial statements and adversely affects the budgetary provisions for the subsequent year as they form a first charge.

Submission by the Accounting Officer

The Accounting Officer submitted that the pending bills had since been paid.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1709. Unresolved Prior Year Matters

In the audit report of the previous year, several paragraphs were raised under the Reporton Financial Statements and Report on Lawfulness and Effectiveness in Use of Public Resources. Although Management indicated that some of the issues were responded to,the matters remained unresolved.

Submission by the Accounting Officer

The Accounting Officer submitted that the issue was discussed by PAC (FY.2020/2021) and therefore waiting for report and recommendation.

Committee Observations and Findings;

The Committee observed that the Public Accounts Committee (PAC) report for 2020/2021 had since been adopted by the house and recommendations are contained therein.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report on implementation of its recommendations within three (3) months of adoption of this report.

1710. Failure to Implement PAC Recommendations

The Public Accounts Committee (PAC) deliberated on the Department's report of the Auditor-General on the financial statements for the financial year 2018/2019 on 17 May, 2022. The Committee recommended that within three (3) months of tabling and adoption of the report, the Accounting Officer should recover amounts overpaid or irregularly paid to officers. A review of the position as at 8 December, 2022 however, revealed that out of the total irregular payments of Kshs.6,296,000, the Department has only recovered Kshs.3,688,385 or 58.6% of the total amount, leaving a balance of Kshs.2,607,614.

Thus, the recommendations of the PAC have not been fully implemented as required.

Submission by the Accounting Officer

The Accounting Officer submitted that as at 30 June, 2023 out of the total payments of Kshs 6,296,000 the Department has recovered Kshs.4,144,500 leaving a balance of Ksh 2,151,500. The state department has communicated to those who have not fully paid. Current total recovery was Ksh.4,259,000 which was 67.7%.

Committee Observations and Findings;

The Committee noted that the Accounting Officer had not fully complied with its recommendations.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the outstanding dues be recovered within three (3) months of adoption of this report, failure to which the Accounting Officer be fully surcharged.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1711. Failure to Update Fixed Assets Register

The statement of receipts and payments reflects acquisition of assets amount of Kshs.88,388,080 which includes purchase of office furniture and general equipment amount of Kshs.7,579,080 as disclosed in Note 8 to the financial statements. The amount includes expenditure on purchase of fixed assets of Kshs.955,840 incurred at the county offices. The details of the assets, including date of purchase, cost, supplier's name and location of the assets have however, not been updated in the asset register contrary to Regulation 143 of the Public Finance Management (National Government) Regulations, 2015 which requires the Assets Register to be updated with all assets acquisitions.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that an updated Fixed Asset Register has been submitted for audit verification.

Committee Observations and Findings;

The Committee noted the observation given by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General confirms status in subsequent audit.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1712. Lack of ICT Policy

Review of the Department's information technology systems revealed that it has in place systems to manage its operations. The Department did not however, have an approved IT policy for governance and management of its ICT resources. In addition, there was no ICT Steering Committee in place to assist in the development of ICT policy framework to enable the Department

to realize long-term ICT strategic goals. Lack of an approved IT policy may result in an unclear direction regarding maintenance of information security across the organization and safeguarding the Department's ICT assets. Further, without a sound and approved framework, users do not have any rules and procedures to follow in order to minimize risk of errors, fraud and the loss of data confidentiality, integrity and availability.

Submission by the Accounting Officer

The Accounting Officer informed the Committee that the ICT steering committee is in place to assist in achieving ICT strategic goals in the State Department The steering committee has developed a draft ICT policy awaiting validation.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures that the Office has an IT Security Policy and avails a status report within three (3) months of adoption of this report.

4.41 VOTE 1213: STATE DEPARTMENT FOR PUBLIC SERVICE

Mr. Amos N. Gathecha, EBS, ndc (k), the Principal Secretary and Accounting Officer for the State Department for Public Service, appeared before the Committee on 19th March 2024, accompanied by the following officers:

i.	Mr. Mugambi Njeru	-	Ag. Secretary/CEO Huduma Kenya
ii.	Mr. Francis Muteti	_	Snr Chief Finance Officer
iii.	Ms. Maureen Oganya	_	Deputy Accountant General
iv.	Mr. Isaac Ngugi	_	Parliamentary Liaison Officer
v.	Mr. David Chege	_	P.A to PS
vi.	Mr. Kirkland Muhika	_	Accountant 1
vii.	Ms. Beryl Odiembo	-	Programme Assistant Finance

And submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1714. Unsupported Accounts Payables- Deposits

The statement of assets and liabilities and corresponding Note 12 to the financial statements, reflects accounts payables - deposits balance of Kshs.20,819,640. Included in the balance is an amount of Kshs.19,220,963 in respect of retention monies owed to contractors engaged by the State Department to undertake various projects. However, schedules and analysis provided to support the balance did not have relevant details.

In the circumstances, the accuracy of the accounts payables - deposits balance of Kshs.20,819,640 could not be confirmed.

Submission by the Accounting Officer

Out of the indicated figure of Ksh. 19,220,963 a total amount of Kshs. 14,488,673.50 relate to works done when the ministry was known as Ministry of Devolution and Planning.

The State department has written to the Ministry of Planning to assist in retrieval of the documentation related to the contractors. However, retention monies amounting to Kshs. 4,732,290.60 related to the year under review and payments of the same cleared.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer liaises with that of the State Department for Planning and settles the matter within three (3) months of adoption of this report.

1715. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects final receipts budget and actual on comparable basis of Kshs.20,158,815,921 and Kshs.19,268,681,238, respectively, resulting in an underfunding of Kshs.890,134,684 or 4% of the budget. Similarly, the State Department spent an amount of Kshs.19,268,027,814 against an approved budget of Kshs.20,158,815,921 resulting to an under-expenditure of Kshs.890,788,107 or 4% of the budget.

The underfunding and underperformance affected the implementation of the State Department's activities and overall annual work plan and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The under absorption of Kshs.890,788,107 of the budget was mainly due to lack of exchequer release by the National Treasury and lengthy procurement processes.

Committee Observations and Findings;

The Committee noted that the submission by the Accounting Officer was unsatisfactory.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the Accounting Officer commences execution of procurement plans promptly after approval.

1716. Long Outstanding Pending Accounts Payables

As disclosed under other important disclosures, Note 17.2 (Annex 1) to the financial statements reflects pending accounts payables (pending bills) balance of Kshs.1,478,128,900 as at 30 June, 2022 owed to various suppliers of goods and services. Included in the balance is long outstanding pending accounts payables balance of Kshs.120,777,055. However, Management did not provide reasons for non-payment of the bills.

Further, failure to settle bills in the year to which they relate adversely affects the implementation of the subsequent year's budgeted programmes as the pending bills form a first charge to that year's budget provision.

Submission by the Accounting Officer

The Pending bills amount of Kshs.120,777,055 are historical and relate to the period between 2018/2019 – 2020/2021.

The State Department was unable to settle the indicated historical bills of Ksh.120,777,055.05 due to the budget cuts and lack of budgetary provision. However, as of the closure of the financial year 2022/23 the department settled previous years bills amounting to 1.32 billion.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer prioritizes settlement of eligible pending bills as first charge as provided for under Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

1717. Unresolved Prior Year Matters

In the previous year's audit report, several issues were raised under the Report on Financial Statements and Report on Lawfulness and Effectiveness in Use of Public Resources. However, the Management had not resolved the issues or given explanation for the failure to implement the recommendations.

Submission by the Accounting Officer

The State Department for Public Service appeared before the Public Accounts Committee (PAC) on 31st May, 2022 and the issues raised in the audit report of the prior year were adequately responded to. The Stae Department is awaiting the recommnedations.

Committee Observations and Findings;

The Committee noted that its report had since been adopted by the House.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits a status report of implementation of its recommendations within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1718. Construction Works at Proposed Ultra-Modern Huduma Centre, Garden City Mall

The statement of receipts and payments reflects use of goods and services expenditure of Kshs.1,162,080,137 as disclosed in Note 5 to the financial statements. Included in the expenditure is an amount of Kshs.48,700,339 in respect of routine maintenance-other assets. Review of the expenditure records indicated that a contractor was paid a total of Kshs.40,106,173 out of which Kshs.24,087,536 was paid during the year under review for the interior works at the Ultra-Modern Huduma Centre located at Garden City Mall, being the first interim payment to the contractor.

Review of records attached to the above payment vouchers revealed the following irregularities;

1718.1. Irregular Payments Without a Valid Contract

The payments to the contractor amounting to Kshs.40,106,173 was based on a contract signed between the State Department for Public Service, Youth and Gender Affairs and the Contractor on 2 February, 2018 for provision of consultancy services for designing, building works, supervision and project Management at Bomet, Narok and Kajiado West Huduma Centres at a contract sum of Kshs.169,958,444. There was no valid contract for the payment of interior works at the proposed Ultra-Modern Huduma Centre, Garden City Mall and the contract agreement used to support the payment excluded the specific contract sum for the works carried out at Garden City Mall.

Submission by the Accounting Officer

The Ministry of Public Service, Youth and Gender Affairs entered into a two-year Contract No. MPYG/HKS/02/2016-2017 with the Contractor for the provision of consultancy for the design, building works, supervision, project management for Huduma Centres Bomet, Narok and Kajiado West and Maintenance of Huduma Centres. The Contract commenced on 2nd February 2017 and expired on 2nd February 2019.

From the signed form of contract, the scope of work to be undertaken under paragraph 2 included the maintenance of particular Huduma Centres and other related works in the Secretariat.

On 9th March, 2018, the Principal Secretary, State Department for Public Service and Youth approved the proposed interior fit-out of ultra-modern Huduma Centre at Garden City Mall at a cost of Kshs. 169,958,444. The State Department, vide letter Ref: MPYG/HUD.2/1122 dated 14th May 2018, communicated the proposed fit-out works of Garden City Huduma Centre to Constraq Consult Limited.

From the total contract sum of KSh. 169,958,444, the Contractor was paid KSh. 40,106,172.92 following the process below:

i. The Accounting Officer vide letter Ref: MPYG.CS/3/3 dated 21st January 2020 wrote to the Attorney General requesting for a Legal Opinion regarding the Fit-out works for the interior fit-out of ultra-modern Huduma Centre at Garden City Mall and the validity of payments to M/s Costraq Consult Limited;
ii. The Attorney General vide letter Ref: AG/CONF/21/80VOL.1(56) dated 15th May 2020 responded to the letter of the Accounting Officer and guided the Accounting Officer to approve payments on the principle of Quantum Meruit after verification of the actual works done.
"Quantum meruit is a latin phrase meaning 'what one has earned' and may be applied to recover reasonable remuneration for services rendered or for goods supplied on an implied contract or when there is doubt as to the amount due for the work performed but done under circumstances where payment could be expected."
iii. The Accounting Officer wrote to the State Department for Public Works vide letter Ref: MPSG/3/3 (73) dated 4th June 2020 requesting for guidance in determining and concluding payments to the Contractor on the principle of Quantum Meruit as guided by the Attorney General.
iv. The Principal Secretary, the State Department for Public Works responded vide a letter Ref: QD103/MPYG/HKS/COS/2016-17/43 dated 14th October 2020 recommending the payment of KSh. 24,087,536.88 following assessment and valuation of the actual works done. The State Department for Public Works therefore issued a final certificate on account of the project.
v. In that regard, KSh. 24,087,536 was paid to the Contractor as a second and final payment split into KSh. 20,000,000, and KSh. 4,087,536 respectively.
vi. KSh. 16,018,636.92 paid to the Contractor was for Project design consultation as per the Contract and Payment Certificate No. 1 from the State Department for Public Works. This was paid as the 1st instalment.

Committee Observations and Findings;

The Committee observed that;

i. **The Accounting Officer embarked on works and payments without a valid contract, occasioning loss of Kshs. 40,106,172.92;**

ii. **The Accounting Officer then attempted to sanitize the irregularity vide the Attorney General's opinion as an afterthought;**

iii. **The Garden City Mall Huduma Centre has not been operationalized to date despite the huge sums spent.**

Committee Recommendation;

The Committee reprimands the then Accounting Officer and recommends that the Head of Public Service takes disciplinary action on the then Accounting Officer.

1718.2. Non-performance by the Contractor

Further, examination of the project file contract revealed that the Project was to run for thirty-six (36) weeks with commencement date of 17 May, 2018 and expected completion date of 17 February, 2019. Records provided for the audit indicated that a site visit meeting held on 13 September, 2018 noted very minimal execution of works had been completed, including mechanical ventilation and electrical works. The project remained inactive for over five (5) years. It is therefore, not clear why Management did not take the action to terminate the contract based on the site visit meeting minutes and subsequent evidence of non-performance.

In addition, Management contracted consultancy services to a private firm for services that would ordinarily have been provided by the State Department for Public Works in the designing of buildings, preparation of bills of quantities, preparation and evaluation of tender documents, tendering process, supervision and approval of work programs, final accounts among others.

Submission by the Accounting Officer

Upon commencement of the works, several site visits meetings spearheaded by Public works were held from 2nd July, 2018. Subsequently, the Contractor submitted Payment Certificate 1 of KSh. 16 million and Payment Certificate 2 of KSh. 36 million for processing on 28th June and 6th July 2018 respectively.

In 2019, the Accounting Officer constituted an interdepartmental team comprising of officers from the State Department for Public Service and Huduma Kenya Secretariat to provide an advisory on whether the project should have been continued or terminated.

The Committee recommended that Legal Counsel be sought on the validity of the Contract supporting the payment for works already certificated. It also noted that it would not be possible to complete the works since the contract had lapsed.

On 21st January, 2020, the Principal Secretary, State Department for Public Service sought the advisory of the Office of the Attorney General on the validity of the contract and payments involved. In response, the Solicitor General in a letter dated 15th May, 2020 indicated that the contract expired on 2nd February, 2019 by effluxion of time and no longer existed and could not be revived.

Subsequently and as part of the project review, the Departmental Management Committee in an advisory to the Principal Secretary, State Department for Public Service dated 17th November 2020, recommended discontinuation of the Huduma Centre Garden City project. On 11th August, 2023, the Principal Secretary, State Department for Public Service approved the Garden City exit.

The Accounting Officer, during the 3rd session of the 12th Parliament of the Public Accounts Committee deliberations on the Auditor General's report for the Financial Year 2016/2017, submitted responses on procurement of private consultants at a fee for projects, and it was noted that:

a. The Engineers and quantity Surveyors involved were under the newly constituted County Governments. The Ministry of Lands, Housing and Urban Development indicated their inability to take up the projects;
b. The National Construction Authority (NCA) lacked capacity in personnel, greatly affecting project delivery;
c. The University of Nairobi Enterprises and Services (UNES) who conceptualized and designed the pilot Huduma Centre, lacked the required personnel and faced delays in facilitating the movement of the lecturers to the various sites for supervision of works in good time;
d. UNES and NCA provided the services at a fee;
e. The Contracts were to be fulfilled within specified period of times, and it was therefore considered more cost effective to procure the service from the open market; and
f. The State Department for Public Works assisted in the procurement of the private consultant's right from the development of the Terms of Reference (TORs), preparation of tender documents, and evaluation of bids to drafting of contracts.

The 3rd session of the 12th Parliament of the Public Accounts Committee deliberations on the Auditor General's report for the Financial Year 2016/2017, on procurement of private consultants at a fee was concluded and resolved. Based on the above precedence, management used that for procurement of consultancy services of a private firm.

Committee Observations and Findings;

i) **The Committee noted that the matter was resolved in its report for FY 2016/17 as under paragraph 504.**

ii) **The Committee found that the matter was resolved.**

4.42 VOTE 1214: STATE DEPARTMENT FOR YOUTH AFFAIRS

Mr. Ismail Maalim Madey, the Principal Secretary and Accounting Officer for the State Department for Youth Affairs and Creative Economy, appeared before the Committee on 27th February and 12th March 2024, accompanied by the following officers:

i.	Mr. Charles Mwaniki	Deputy Director Youth Development
ii.	Mr. George Osaso	Deputy Director Youth Development
iii.	Ms. Grace Kariuki	Assistant Director Supply Chain Management
iv.	Mr. Augustine Mayabi	National Project Coordinator
v.	Mr. Alan Machari	Secretary Administration
vi.	Mr. Robert Asumani Samuel	Head of Accounting Unit
vii.	Ms. Joan Ochieng	Deputy Head of Accounting Unit
viii.	Ms. Kerandi Sarah	Senior Chief Finance Officer
ix.	Ms. Naomi Onyango	Principal Youth Development Officer

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1721. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects budgeted receipts and actual on comparable basis amounting to Kshs. 5,395,360,032 and Kshs.5,220,923,013 respectively resulting in a revenue shortfall of Kshs. 174,437,019 or 3% of the budget. Similarly, the same statement reflects budgeted payments and actual on comparable basis amounting to Kshs. 5,395,360,032 and Kshs.4,447,103,358 respectively resulting an under-expenditure of Kshs. 948,256,674 or 18% of the budget.

In the circumstances, the under-funding and under expenditure affected the planned activities and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The under-funding affected different project implementation due to their operational set ups and unique activities implementation as pointed out in paragraphs 1734 and 1746 respectively. It should also be noted that late exchequer releases as noted in paragraph 1722 affected absorption of the budget.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendation;

The Committee recommends that National Treasury releases appropriated amounts in full to ensure attainment of programme objectives.

1722. Late Exchequer Releases

The statement for receipts and payments reflects transfers from the National Treasury totalling Kshs.5,102,220,321. However, exchequer issues totalling Kshs.894,659,831 comprising Kshs.104,741,121 and Kshs.789,918,831 in respect to recurrent and development expenditure respectively were received by the State Department during the months of June and July 2022 as follows: -

Date	Vote	Amount (kshs)
15 June 2022	Recurrent	34,220,386
24 June 2022	Recurrent	52,694,005
30 June 2022	Recurrent	16,403,915
6 July 2022	Recurrent	1,422,814
16 June 2022	Development	65,662,075
23 June 2022	Development	4,438,780
30 June 2022	Development	22,971,087
01 July 2022	Development	600,266,120
06 July 2022	Development	96,480,770
	Total	**894,659,952**

In the circumstances, the late exchequer releases may have hindered timely implementation of the planned programmes and activities of the State Department.

Submission by the Accounting Officer

The exchequer requests were made on time as per attached evidence and received on the dates quoted by the Auditor General in the above table. Exchequer of Kshs. 600,266,120 received on 1st July 2022 relates to the activities of Kenya Youth Employment and Opportunities project (KYEOP);a Donor funded project. The activities of the project, for instance, payment of master craftsmen and stipend to youth were adversely affected because of the delay in release of the exchequer.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer makes timely exchequer requests as guided by well-forecasted work-plans.

1723. Pending Bills

Note 16.2 to the financial statement reflect pending accounts payables amounting to Kshs.66,186,271 as at June,2022 which were not settled in the year under review, but were carried forward to 2022/2023 financial year.

Failure to settle bills in the year for which they relate adversely affect implementation of the subsequent year's budgeted programmes as the pending bills form a first charge to that year's budget provision.

Submission by the Accounting Officer

The State Department had pending bills of Kshs. 66,186,271 in the financial year 2021/2022. This occurred due to delay in release of exchequer as noted in paragraph 1722 above. These bills were settled in the financial year 2022/2023 as per the attached status of pending bills report and bank statements, except for the historical pending bills amounting to Kshs. 19,624,060 which were not properly supported and have since been presented before the National Treasury pending bills verification committee for further guidance with regards to payment.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer keeps proper documentation of all transactions to avoid future cases of unsupported pending bills.

1724. Unresolved Prior Year Matters

In the audit report of the previous year, several paragraphs were raised under the Report of Financial Statements, Report on Lawfulness and Effectiveness in Use of Public Resources, and Report on Effectiveness of Internal controls, Risk Management and Governance. However, the management has not resolved the issues nor given any explanation for failure to adhere to the provisions of the Public Sector Accounting Standards Board templates and the National Treasury's circular.

Submission by the Accounting Officer

The State Department appeared before the Public Accounts Committee on 23/05/2023 and responded to the report of the Auditor General on its Financial Statements for the financial year ended 30th June 2021.

Committee Observations and Findings;

The Committee notes that its report for FY 2020/21 has since been adopted by the House.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails status of implementation of its recommendations within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1725. Irregular Procurement of Motor Vehicle Service and Repairs

The statement of receipts and payments reflects use of goods and services expenditure of Kshs.2,805,884,137. The expenditure includes an amount of Kshs. 29,515,863 in respect of routine maintenance-vehicles and other transport equipment which further includes an amount of Kshs.1,524,616 paid to a garage for repair of two (2) motor vehicles. Examination of records

provided for audit indicates that the two vehicles were repaired on 25 July 2019 and 30 August, 2019. However, request for quotations were made on 21 October, 2021 with a deadline of 26 October 2021 and Local Purchase orders issued on 13 April, 2021 approximately two years after the two vehicles were repaired. In addition, an amount of kshs.4,011,308 was spent on repair and service of other eleven (11) motor vehicles. However, original work tickets showing movement of the vehicles to and from the garages were not provided for audit review.

In the circumstances, it was not possible to confirm whether the State Department obtained value for money for the expenditure totallingKshs.5,535,924 in respect of the repair of motor vehicles.

Submission by the Accounting Officer

The two vehicles, GK A679P and GK A675P were not repaired on 25/7/2019 and 30/08/2019 respectively as indicated in the Audit Report, but were repaired between 22nd December 2021 when the Local Purchase Orders were issued and 4th January, 2022 and 10th January, 2022 respectively when the invoices were raised by the service provider.

The mentioned dates in the Audit report were picked from the Defect Report and Estimate of Works form (job card) that was prepared by the garage on the dates in which the vehicles were booked after they were received from the field Youth Offices.

The garage was contracted by the State Department to tow Vehicle no. GK A679P from Kisumu and GK A675P from Baringo to Nairobi for major repairs as per the attached copies of letter of authority to tow vehicles from the field offices.

The vehicles remained in the said garage until the time when the purchase order numbers 2623 and 2624 were raised and issued to the service provider on 22nd December, 2021.

The initial Purchase Orders could not be received in Ifmis system because of system challenges and this led to their cancellation. However, new Purchase Order nos. 2865 and 2867 were issued on 20th April 2022 to facilitate process of the payment.

In regard to the dates in which the purchase Order were raised, the Purchase orders mentioned were raised on 13th April, 2022 and not 13th April, 2021 as indicated in the Audit Report.

Committee Observations and Findings;

i) **The Committee deemed the submission from the Accounting Officer satisfactory.**

ii) **The Committee found that the matter was resolved.**

1726. Failure to provide Motor Vehicle Work Tickets

As disclosed in Note 4 to the financial statements, the State Department incurred an expenditure of Kshs.14,084,611 on fuel, oil and lubricants. However, work tickets for seventeen (17) motor vehicles were not provided for audit verification. This is contrary to regulation 166(4) (b) of the Public Procurement and Asset Disposal Regulations, 2020 which stipulates that an Accounting Officer should ensure that the movement and condition of assets can be tracked.

Further, review of fuel statements provided for audit revealed payments amounting to kshs.1,430,694 through three (3) general fuel cards as follows:

Card No.	Amount (kshs)
1122008267	1,272,678
1122021169	28,564
1122023475	129,452
Total	**1,430,694**

However, the registration numbers of vehicles that drew the fuel was not indicated in the statement and therefore the value for money and authenticity of the expenditure could not be confirmed.

Submission by the Accounting Officer

The State Department incurred an expenditure of Kshs.14,084,611 on fuel, oil and lubricants. The missing work tickets have since been provided for audit verification and the registration numbers of vehicles that drew fuel on the three general cards indicated. The work Tickets were not provided during audit since some vehicles were still attached to the field stations. Also, reorganization and arrangement process in the registry brought up mixing of documents which delayed traceability during the Audit process. The State Department has since ensured proper record keeping through re-organisation and training of staff in Transport unit in fleet management.

The work tickets for the (17) motor vehicles have since been submitted for audit review and verified by the Audit team.

Committee Observations and Findings;

The Committee noted that the Accounting Officer ought to have kept proper records and availed them to auditors on time.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

1727. Irregular Procurement of Goods and Services

Note 4 to the financial statements reflects an expenditure of Kshs.2,905,884,137 on use of goods and services. The expenditure includes payments totalling Kshs.13, 771,865 incurred on procurement of various goods and services from suppliers. However, the suppliers for year under review were not registered with the State Department as prequalified suppliers for the year under review. Further, the updated list of suppliers provided was not classified into categories of goods, works or services according to procurement needs contrary to Section 106(2)(a) of the Public Procurement and Asset Disposal Act, 2015.

In the circumstances, the propriety and value of money of expenditure of Kshs.13,771,865 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

During the year under review, there were two lists of registered suppliers; i.e list of registered suppliers as at 1st July, 2021, and an updated list of prequalified suppliers as at 17th January, 2022.

However, during submission of documents for Audit, the old list of registered suppliers was erroneously submitted. Failure to submit the current list where the names of suppliers used to procure the said goods amounting to Kshs. 13,771,865 is regretted. The updated list has been submitted to the Auditors for verification.

The updating of registered list of suppliers was in line with section 44. (1) of the Public Procurement and Asset Disposal Regulations, 2020 which states that: "The suppliers register shall be updated at least every six months as a requirement under section 57(2) of the Act and in accordance with section 71 of the Act".

Section 57. (2) of the Public Procurement and Asset Disposal Act, 2015 states that: "Submission of names shall be continuous and the registration list shall be updated periodically as prescribed in Regulations and in accordance with this Act".

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1728. Management of Imprest

The Statement of assets and liabilities reflects accounts receivable–Outstanding imprest and accounts clearance balance of Kshs.1,709,116 and as disclosed in Note 9 to the financial statements. However, several officers were issued with multiple imprest before surrendering previous imprest contrary to Regulation 93(4) of the Public Finance Management (National Government) Regulations, 2015 which prohibits issue of new imprests to officers with outstanding imprest. No explanation was provided by management for the anomaly.

In the circumstance, Management were in breach of the law.

Submission by the Accounting Officer

This situation arose as a result of surrender imprests not having been captured in the IFMIS system despite the fact that the physical surrender documents had already been availed by the imprest holders. The delay in capturing the surrenders in IFMIS was caused by system challenges.

The State Department had no outstanding imprests in the Financial Year ended 30th June 2022 as per the attached extract of the Audited Financial Statements for the year ended 30th June 2023.

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1729. Refurbishment of Youth Empowerment Centres

The statement of receipts and payments reflects a balance of Kshs.290,257,712 for acquisition assets and as disclosed under Note 7 to the Financial Statements. Included in the balance is an amount of Kshs.25,687,067 incurred on refurbishment of youth empowerment centres. Physical verification carried out in the month of September 2022 revealed the following anomalies: -

1729.1. Poor Workmanship

There were visible deep cracks on the wall and floors, loose electrical installations, leaking ceiling and broken window latches at Mulot Youth Empowerment Centre, While Rachuonyo YEC had evidence of leakages from the roof an indication of poor workmanship of Centres.

Submission by the Accounting Officer

Mulot Youth Empowerment Centre (YEC):

The said defects were earlier cited and noted by the County Works Officer by virtue of being the supervisor of the project during the construction. He addressed the issues with the contractor who did the repairs on the stated areas before the certificate of making good the defects was issued and the 10% retention money owed to the contractor paid.

Rachuonyo Youth Empowerment Centre (YEC):

Rachuonyo Youth Empowerment Centre (YEC) was allocated a budget of one million, seven hundred and forty-five thousand and thirty-four shillings and forty cents (KSh.1,745,034.40) for the refurbishment of the building and fencing of the facility.

The Bill of Quantities did not cover the roofing of the said YEC. The State Department will prioritize the repair of the roof during the 2024/2025 Financial Year.

Committee Observations and Findings;

The Committee noted that subsequent inspection done by auditors on 7th & 8th March 2024 found that Mulot had cracks on one side of the verandah whicle Rachuonyo had indications of leaking roofs and stagnant waters in the compound.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures that defects are remedied within six (6) months of adoption of this report by the House.

1729.2. Irregular Renting of Kithimani Youth Empowerment Centre

Physical verification at Kithimani Centre revealed that three (3) rooms earmarked for Youth Centre Manager's office, Computer lab and hall were all rented out to Independence Electoral and Boundaries Commission (IEBC) and an individual. The lease agreement provided indicated that the agreement was signed by a Sub- County Youth officer and IEBC Returning Officer which was not approved by the State Department. No explanation was provided or authority given to the officer to enter into contract with the tenants on behalf of the State department.

Submission by the Accounting Officer

The Yatta Sub-County Service Delivery meeting held on 10th May, 2022, requested the State Department to provide space to the Independent Electoral and Boundaries Commission (IEBC) at the Yatta Youth Empowerment Centre (YEC). (See the copy of the minutes attached). Consequently, a Memorandum of Understanding (MoU) that was signed for three (3) rooms on 31st, May, 2022 indicated that IEBC would not pay for the space but only pays for electricity bills for the Centre. (See a copy of the MoU attached). Due to the urgency in election management, this was temporary and a stop gap measure to mitigate the election event only and with no financial

implications. After expiry of the period, the State Department requested for its space back since there was no lease agreement but just an M.O.U.

Committee Observations and Findings;

The Committee noted that;

i. **Subsequent inspection done by auditors on 5th March 2024 found that the IEBC indeed used two rooms during the elections and their equipment were still within. The other room reported as hired to an individual was found vacant but had previously been used by an AP officer;**

ii. **The State Department had no business donating space to IEBC which had a budget for its operations. Moreover, the explanation of 'urgency in election management' was unsatisfactory since the MoU spanned three years. This denied youth of Kithimani benefits of the centre.**

Committee Recommendation;

The Committee reprimands the Accounting Officer, and directs that the IEBC immediately vacates premises, and the Accounting Officer avails a status report on youth activities being carried out at the centre, within three (3) months of adoption of this report.

1729.3. Delayed Installation of LAN and CCTV in Youth Empowerment Centres

Note 7 to the financial Statements reflects Kshs.109,926,285 in respect to purchase of specialized plants and equipment and machinery. The expenditure relates to installation of Local Area Network (LAN) and Closed-Circuit Television in twenty-five (25) Youth Empowerment Centres (YECs). However, physical verification carried out in the month of September 2022 in seventeen (17) out of twenty-five (25) YECs revealed that: -

i. CCTV and LAN in four (4) Youth Empowerment Centres could not be confirmed to be working due to lack of electricity connection,

ii. Although LAN was installed in seventeen (17) centres, only two (2) were operational. The remaining fifteen (15) could not be confirmed as computers had not been installed at the centres.

In the circumstances, value for money may not have been obtained.

Submission by the Accounting Officer

Some YECs were not connected to the power grid. Some of the YECs such as Naivasha were in the process of being connected to the mains. The State Department paid two hundred and twenty-three thousand, six hundred and sixty-one shillings (KSh.223,661) towards the connection of the YEC to the electricity grid. (See the attached statement of Account indicating the transfer of funds).

The electricity connection at the Tana Delta Youth Empowerment Centre (YEC) was disconnected over arrears that have since been paid to the service provider at the end of FY 2022/2023.

The Ragati (Mathira East) YEC had an incident of vandalism and the electricity installation were also destroyed (See attached the crime report dated 12th April 2022 to County Director, Nyeri County-OB No. 36/11/4/2022).

The State Department undertook the procurement for the supply of computers to the twenty-five (25) YECs that had been installed with LAN during the financial year 2021/2022. (See the Requisition Memo dated 31st August 2021). However, the computers could not be purchased as planned due to Development Budget cut ofKSh.100million during the supplementary budget of March, 2022. (See the attached supplementary budget hereby attached). Annex 1729.3However, the State Department purchased one (1) Laptop for each of the 25 YECs in the financial year 2022/2023.

The following YECs were equipped in the FY 2022/23.

NO.	COUNTY	SUB-COUNTY/ CONSTITUENCY	NAME OF THE YEC	REGION
1.	Mombasa	Likoni	Likoni	Coast
2.	TaitaTaveta	Voi	Voi	
3.	Lamu	Lamu West	Mokowe	
4.	Tana River	Garsen	Minjila	
5.	Kilifi	Kilifi North	Kilifi North	
6.	Narok	Narok West	Mulot	South Rift
7.		Transmara West	Kilgoris	
8.		Transmara East	EmuruaDikirr	
9.	Nakuru	Naivasha	Naivasha	
10.	Kajiado	Kajiado North	Ngong	
11.	Bomet	Sotik	Sotik	
12.	Nyeri	Mathira East	Ragati	Central
13.	Kirinyaga	Kirinyaga Central	Kirinyaga Central	
14.	Kirinyaga	Kirinyaga West	Kirinyaga West	
15.	Kiambu	Kiambaa	Muchatha	
16.	Murang'a	Kiharu	Kahuro	
17.	Makueni	Nzaui	Mutyambua	Lower Eastern
18.	Machakos	Yatta	Kithimani	
19.	Kitui	Mwingi North	Mwingi North (Kyuso)	
20.	Busia	Budokomi/ Matayos	Mundika	Western
21.	Siaya	Bondo	Bondo	Nyanza
22.	Homa Bay	Karachuonyo	Karachuonyo	
23.	Nairobi City	Makadara	Makadara	Nairobi
24.		Embakasi North	Njiru	
25.		Embakasi Central	Embakasi Central	

The laptops were delivered between Friday 21st, October and Friday 11th, November, 2022.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures connection and supply of utilities to all the centres, and provision of adequate equipment within the financial year, and the Auditor General to confirm status in subsequent audit.

1730. Incomplete Fixed Assets Register

Annex 2 to the financial statements reflects Kshs.228,514,544 in respect to fixed assets. Review of the fixed assets register provided for audit revealed that information such as date of acquisition, cost of purchase, serial numbers of electronic equipment and values of all assets were not indicated in the register. Further physical verification revealed that the assets were not tagged for ease of identification and tracking.

In the circumstances, it could not be confirmed that preventive mechanisms were in place to eliminate theft, security threat, losses, wastage and misuse of Assets required by regulation139(1) and (2) of the Public Finance Management (National Government) Regulation, 2015.

Submission by the Accounting Officer

The fixed assets register for State Department in place was not comprehensive enough as some details such as date of acquisition, cost of purchase, serial numbers of electronic equipment and values of all assets may not have been updated in the register. The missing details have since been updated in the register except for old assets and those inherited from other Ministries and agencies of Government whose records are not available. Attached is the updated asset register.

All the assets of the State Department have been tagged.

Committee Observations and Findings;

The Committee noted despite the country gearing for accrual accounting where value for assets was paramount, some assets had no value assigned to them.

Committee Recommendation;

The Committee recommends that the Accounting Officer seeks guidance from the National Treasury on valuing of old (and all other) assets, within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1731. Lack of Risk Management Policy

Review of the State Department's internal control revealed that the department did not have an approved risk management policy. Further, the Management has not identified and documented risk and controls to respond to the risk identified contrary to Regulation 165 of the Public Finance Management (National Government) Regulation 2015. The regulation stipulates that the Accounting officer shall ensure that the National Government entity develops risk management strategies, which includes fraud prevention mechanism and system of risk management and internal control that builds robust business operations.

In the absence of risk management policy, it was not possible to determine the effectiveness of controls implemented by the state department to mitigate the potential risks.

Submission by the Accounting Officer

The State department was in the process of developing the risk management policy which has now been finalised. The Risk Management Policy framework has been ratified and was currently being implemented.

Committee Observations and Findings;

i) **The Committee deemed the submission satisfactory as the policy was availed.**

ii) **The Committee found that the matter was resolved.**

DONOR FUNDED PROJECTS

KENYA YOUTH EMPLOYMENT AND OPPORTUNITIES PROJECT (IDA CREDIT NO. 5812- KE)

REPORT ON THE FINANCIAL STATEMENTS

1732. Variance between amounts in the Financial Statements and Special Account Statement

The statement of receipts and payments and as disclosed under Note 1 to the financial statements reflects loan from external development partners of Ksh. 3,270,287,713, which differs with the amount of Kshs. 3,273,340,882 (USD29,090,939.58) withdrawn from the special account maintained at the Central Bank of Kenya, resulting to unexplained variance amounting to Kshs. 3,053,169.

In the circumstances, the accuracy of the loan from external development partners of Kshs. 3,270,287,713 could not be confirmed.

Submission by the Accounting Officer

The receipts from special account was received in four different periods which had different exchange rates as follows:

ACTUAL AMOUNTS WITHDRAWN FROM SPECIAL ACCOUNT FY 2021/22				
Date	**Reference**	**Usd**	**Exchange rate**	**Ksh**
24-08-2021	FT21236SW158	8,991,172.00	109.49	984,443,422.25
21-10-2021	FT21294WZYY6	7,226,104.19	110.91	801,447,215.70
1/3/2022	FT22060P6WZD	7,773,263.02	113.74	884,130,935.85
29-06-2022	FT22180MSZ31	5,100,400.37	117.69	600,266,119.50
		29,090,939.58		**3,270,287,693.30**
ANALYSIS OF THE DIFFERENCE				
		Usd	**Exchange rate**	**Ksh**
		29,090,939.58	**112.520975**	**3,273,340,882**

Date	Reference	Usd	Difference in exchange rate (112.520975-Actual)	Ksh
24-08-2021	FT21236SW158	8,991,172.00	3.030975	27,252,017.55
21-10-2021	FT21294WZYY6	7,226,104.19	1.610975	11,641,073.20
1/3/2022	FT22060P6WZD	7,773,263.02	-1.219025	-9,475,801.95
29-06-2022	FT22180MSZ31	5,100,400.37	-5.1690294	-26,364,119.46
		Difference		**3,053,169.33**

Therefore, the variance of Kshs 3,053,191.77 was as a result of documenting the funds received in different exchange rates at different periods within the financial year instead of the average rate used of 112.520975.

Committee Observations and Findings;

i) **The Committee deemed the submission satisfactory.**

ii) **The Committee found that the matter was resolved.**

1733. Unsupported Expenditure

The statement of the receipts and payments and as disclosed in Note 2 to the financial statements reflects payments for purchase of goods and services totaling Kshs. 2,480,743,498 which includes payments of Kshs. 1,036,219,396 relating to hospitality supplies and services out of which an amount of Kshs. 8,660,000 was not supported with documentary evidence.

In the circumstances, the accuracy and completeness of the expenditure of Kshs. 8,660,000 could not be confirmed.

Submission by the Accounting Officer

The referred amount of Kshs. 8,660,000 relates to innovation challenge which is sub-component 2.2 (Catalytic intervention for job creation) as per Project Appraisal Document (PAD).

The management of Innovation challenge and selection of winners was conducted by an independent firm [Intellecap] through a competitive process.

The independent firm identified and managed the process. Afya Research Africa (ARA) was one of the Organizations identified to receive a grant to advance the interventions in this sub-component having met the set requirements of successful completion of pre-grant, due diligence and signing of grant agreement, which formed 30% of the grant amount totaling Ksh 9,000,000.

After receiving the first tranche of the Grant award as per the Financing Agreement, Afya Research Africa was unable to meet the milestones required to get the remaining disbursements, despite several reminders, Monitoring and Evaluation visits by both field and Coordinating Unit officers, hence subsequent disbursements were stopped.

The State Department wrote a demand letter to ARA to explain how they utilized the funds meant for Youth Empowerment. The firm has provided the breakdown of expenditure in all their operation areas.

Committee Observations and Findings;

The Committee observed that;

i. **Despite Afya Research Africa (ARA) being the manager of the process, the State Department engaged with another consultant identified by ARA, Intellscape Ltd., as per financing agreement;**

ii. **The Auditor General had conducted a performance audit on the project in which several structural challenges were identified.**

Committee Recommendation;

The Committee recommends that the Accounting Officer implements all recommendations contained in the performance audit report of the Auditor General, and submits a status report to the Committee within three (3) months of adoption of this report.

1734. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects budgeted receipts and actual on comparable basis of Kshs. 3,297,267,232 and Kshs. 3,270,287,713 respectively resulting in underfunding of Kshs. 26,979,519 or 1% of the budget. Similarly, the project expended Kshs. 2,503,609,024 against an approved budget of Kshs. 3,297,267,232 resulting to under expenditure of Kshs. 793,658,208 or 24% of the budget.

This under performance affected the implementation of the project activities and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The under expenditure was caused by late release of the exchequer which was received on 1st July 2022 when the financial year had been closed. This led to low absorption of funds because planned programmes could not be processed for payment.

Further, delay in disbursement of Business Plan Competition (Mbelena Biz) funds as indicated in the response to Paragraph 1737 below resulted in low absorption. The applicants met the required conditions and the disbursements were made though at a slow pace.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1735. Unresolved Prior Year Issues

The project's audit report of the previous year highlighted several issues under the Report on Financial Statements, Report on Lawfulness and Effectiveness in Use of Public Resources and Report on Effectiveness of Internal Controls, Risk Management and Governance. However, the Management has not resolved the issues or given any explanation for failure to adhere to the

provisions of the Public Sector Accounting standards Board templates and The National Treasury's Circulars.

Submission by the Accounting Officer

The State Department appeared before the Public Accounts Committee on 23/05/2023 and responded to the report of the Auditor General on its Financial Statements for the financial year ended 30th June 2021.

Committee Observations and Findings;

The Committee notes that its report for FY 2020/21 has since been adopted by the House.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails status of implementation of its recommendations within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1736. Incomplete Fixed Assets Register

The financial statements reflect summary of fixed assets register with total assets valued at Kshs. 221,414,758 as at 30th June 2022. Review of the asset register provided for audit revealed lack of critical information such as date of purchase, asset number, serial numbers and cost of the assets in the register. Further, the assets were not recorded distinctly, but instead a block amount was captured in the register hence it was not possible to trace and verify each asset.

In the circumstances, the completeness of fixed assets balance of Kshs. 221,414,758 could not be confirmed.

Submission by the Accounting Officer

The assets register has since been updated.

Committee Observations and Findings;

The Committee noted despite the country gearing for accrual accounting where value for assets was paramount, some assets had no value assigned to them.

Committee Recommendation;

The Committee recommends that the Accounting Officer seeks guidance from the National Treasury on valuing of old (and all other) assets, within three (3) months of adoption of this report.

1737. Non-compliance with Project Work Plan Implementation

Review of the project work plan revealed that the Project had planned to disburse to youth an amount of Kshs. 1,350,000,000 by 15th July 2021 through component two; Business Plan Competition dubbed "MbeleNaBiz" to support awardees to start or expand businesses that would create employment Opportunities. However, examination of Project records revealed that funds totaling Kshs. 1,287,219,750 had been disbursed as of 30th June, 2022 against a target amount of Kshs. 1,350,000,000. This indicates that the project did not meet the set target as per the agreement

between the awardees and the State Department for Youth Affairs. Further, no evidence was provided by the Project Management indicating the success of the business operated by youth who received the grants.

In the circumstances, the Project may not have achieved its intended objectives.

Submission by the Accounting Officer

The delays were occasioned by the design of Business Plan competition, which required beneficiaries to obtain Clearances from Kenya Revenue Authority, Higher Education Loans Board, Credit Reference Bureau, and Certificate of Good Conduct from the Directorate of Criminal Investigation (DCI).The applicants met the above conditions (though at a slow pace) and the disbursements were made.

The current status of payment report and Business Plan Competition protocols have been availed.

As a result of the disbursement of grants to 741 Business Plan Competition Award winners, 3731 jobs were created.

Committee Observations and Findings;

The Committee observed that the Auditor General had conducted a performance audit on the project in which several structural challenges were identified.

Committee Recommendation;

The Committee recommends that the Accounting Officer implements all recommendations contained in the performance audit report of the Auditor General, and submits a status report to the Committee within three (3) months of adoption of this report.

YOUTH EMPOWERMENT PROGRAMME GRANT/CREDIT NO. B4210

REPORT ON THE FINANCIAL STATEMENTS

1741. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects budgeted receipts and actual on comparable basis of Kshs. 14,000,000 and Kshs. 7,801,980 respectively resulting in underfunding of Kshs. 6,198,020 or (44%) of the approved budget. Similarly, the programme spent Kshs. 6,776,343 against approved budget of Kshs. 14,000,000 resulting to an under expenditure of Kshs. 7,223,657 or (52%) of the budget.

In the circumstances, the under-performance affected the implementation of the project activities and may have impacted negatively on service delivery to the public.

Submission by the Accounting Officer

The budget under-utilization was due to inability of the Donor to disburse the full amount budgeted for. The Development partner funds the programme based on the resources mobilized during the period. The State Department had budgeted to receive kshs. 14 Million but the amount received from the development partner was only USD 70,000 which realized Kshs. 7,801,980.

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

VIJANA VUKA NA AFYA YOUTH PROGRAMME (GRANT NO.201367465)

REPORT ON THE FINANCIAL STATEMENTS

1745. Unsupported Expenditure

The statement on receipts and payments reflects purchase of goods and services expenditure of kshs.145,115,875, which as disclosed under note 3 to the financial statements, includes Kshs. 118,702,692 payments made by third parties relating to domestic travel and subsistence, training expenses, other operating expenses and printing, advertising, information, supplies and services. However, the payments were not supported with details and requisite documentation such as invoices, receipts, work tickets, program of activities and signed attendance schedules. Further, included under the expenditure is communication, supplies and services balance of Kshs. 705,200 were payment totalling to Kshs. 50,000 for which supporting documents and records were not provided for audit review.

Submission by the Accounting Officer

The VIVA project has 3 funding components i.e. GOK, AIA and Revenue whose sources of funding are denoted as 00001001(Exchequer);11014073 (Revenue) and 12014073(AIA) respectively.

The Kshs. 118,702,692 payments made to third parties relates to the sum total of AIA Donor component for VIVA Youth Programme whose source of funding is denoted as item 12014073 in the budget. Ideally, this budget should not have been categorised into various economic/ budget line items i.e. domestic travel and subsistence, training expenses, other operating expenses, printing, advertising, information, supplies and services as had been captured in the IFMIS Vote book during loading of the budget into Ifmis system; but into two economic/expenditure items that should be used to pay the service providers i.e. Contracted Professional Services and Contracted Technical Services.

This was an anomaly in the loading of the donor component of the budget. The State Department had requested for correction of the anomaly by the National Treasury.

The payment voucher of Ksh. 50,000 had been mixed up and could not be traced but later retraced. The payment voucher and supporting documentation have been provided for Audit review.

The FY 2021/2022 Vote Book for VIVA Youth Programme, Consultant Contracts for German foundation for world population (DSW) and Triggerise Stichting showing the quarters paid in the Financial Year 2021/2022, Copies of payment vouchers for DSW and Triggerise Stichting of kshs. 43,925,075 and Kshs. 74,777,617 respectively, totalling to Kshs. 118,702,692, the Financing agreement and letter to the National Treasury requesting correct capture of budget economic items for direct disbursements to consultants, have all been availed.

Committee Observations and Findings;

The Committee observed that;

(i) **There were numerous seemingly uncoordinated youth related interventions with no clearly identifiable performance indicators, including the Youth Fund, Kenya Youth Employment and Opportunities Project, Youth Empowerment Programme, Vijana Vuka na Afya Youth Programme and the current Financial Inclusion Programme.**
(ii) **The Committee further observed that the misplacement of the Kshs. 50,000 voucher was unacceptable.**

Committee Recommendation;

(i) **The Committee recommends that the State Department avails to Cabinet a concept paper that merges all programmes with the same desired youth empowerment outcomes for a coordinated approach within six (6) months of adoption of this report.**
(ii) **The Committee further reprimands the Acocunting Officer for failure to keep proper accounting records.**

1746. Budgetary Control and Performance

The statement of comparison of budget and actual amounts for the year ended 30 June 2022 reflects budgeted receipts an actual on comparable basis amounting to Kshs.280,720,892 and Kshs.146,783,000 respectively resulting in a revenue shortfall of Kshs.133,937,892 or 48% of the budget. The programme's expenditure was limited to the receipts realized.

In the circumstance, the underfunding implies that some of the planned activities were not implemented which could impact on the achievement of the overall programme's goals and objectives.

Submission by the Accounting Officer

The underfunding and under expenditure were due to delays in finalising and signing of the service level agreements between the State Department for youth Affairs and the County Governments to allow Sexual Reproductive Health (SRH) to be offered to the Youth. This led to delays in implementation of the planned activities.

The State department has since adopted Rapid Results Initiative (RRI) to fast track the implementation of the planned activities and the services have effectively been offered by the 40 public health facilities and SRH education, entrepreneurship and market specific technical skills training and sporting are going on.

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**
ii) **The Committee found that the matter was resolved.**

4.43 VOTE 1221: STATE DEPARTMENT FOR EAST AFRICAN COMMUNITY

Mr. Abdi Dubat, CBS, the Principal Secretary and Accounting Officer for State Department for East African Community Affairs, appeared before the Committee on 22nd April 2024, accompanied by the following officers:

i.	Ms. Lucy Kamau	-	Head of Accounting Unit
ii.	Mr. Joseph Njagi	-	Head of Supply Chain Management
iii.	Mr. Jonam Kinama	-	Director Administration
iv.	Ms. Grace Kimitei	-	Director CPPMD
v.	Mr. Julius Mwabu	-	Director Regional Integration
vi.	Ms. Grace Mogoi	-	Snr Deputy Secretary
vii.	Mr. Geoffrey Gichuhi	-	Snr. Asst. Internal Auditor
viii.	Mr. Victor Mugendi	-	Principal HR

and submitted as follows;

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1751. Failure to comply with Public Finance Management Regulation, 2015- Pending Bills

As disclosed in Note 13.1 and Annex I to the financial statements, the State Department had Pending Bills amounting to Kshs. 13,818,936.00 that were not settled during the year under review but were instead carried forward to 2022/2023 financial year. The pending bills balance includes an amount of Kshs. 1,242,797 which relates to 2020/2021 and earlier financial years.

No explanations was provided for non-payment of the pending bills before the end of the financial year. Failure to settle pending bills in the year for which they relate to adversely affects the implementation of the subsequent years budget programs as pending bills form a first charge to that year's budget provision.

In the circumstance, management was in breach of the law.

Submission by the Accounting Officer;

It is true that the State Department had Pending Bills totaling to Kshs. 13,818,936.00. Most of the Pending Bills relate to foreign air tickets expenses incurred to facilitate Regional integration diplomacy in the East African Community (EAC).

Regional diplomacy is a central and obligatory role that Kenya, through the State Department for EAC undertakes with regard to regional integration within the Region. This is due to the fact that the Republic of Kenya is a partner State to the East African Community (EAC) by virtue of her being a signatory to the EAC Treaty. As a partner State, Kenya is therefore required to fulfil the obligations under the Treaty.

The Bills could not be paid due to Budget Cuts/ austerity measures as per the Government Directives. Some of the Bills did not have adequate supporting documentation as shown on Table No. 2. During the FY 2022/23, the State Department had a Budget rationalization by the National Executive which resulted to a net decrease of Kshs. 62 million.

In addition, the management undertakes to seek adequate budget provision with the increased EAC activities so as to ensure goods and services procured have adequate allocation for commitments to be done as per approved procurement plans and for effective service delivery in line with the mandate of the State Department.

The State Department could not process the bills immediately since the bills had to be subjected to a thorough verification process in order to determine bills that are Payable and Not Payable. Meanwhile, the State Department continued to participate in all EAC negotiations.

This therefore made State Department to incur more expenses on DSA alongside the necessary air tickets. It is worth noting that the payment for both air tickets and DSA are charged to the same budget line items i.e. 2210401-404 (Travel costs, Accommodation, Daily Subsistence and Airport Tax and Taxis). In some instances IFMIS System is shutdown to implement Government Directives e.g during Budget Cuts or Quarterly Uploading yet the office functions have to continue as per the State Department's Mandate. Some of the key documents that are required for payment can only be generated through the IFMIS System.

Out of the historical pending bills (2020/2021 and earlier years) Kshs. 1,242,797.00, an amount of Kshs. 916,980.25 was found to be payable and the same was paid.

Pending bills amounting to Kshs. 4,585,610.00, which relates to the financial year 2021/2022 have been cleared. Bills amounting to Kshs. 6,925,200.00 are among those forwarded to the Pending Bills Verification Committee (PBVC) appointed through the Gazette Notice No 13355 of 30/09/2023. However, claims totalling to Kshs. 1,390,362.00 have not been supported and therefore are not payable.

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1752. Late Exchequer Releases

The statement of receipts and payments reflect exchequer releases of Kshs. 608,257,880 which as disclosed in Note 1 to the financial statements, includes an amount of Kshs. 52,869,956 received on 6th July, 2022. This is contrary to Section 17(2) b of the Public Finance Management Act 2012, which states that, payment from National Exchequer Account should be done without undue delay on all amounts that are payable for public services.

The delayed exchequer releases may have affected the State Department's ability to implement its planned programmes and possible underutilization of the budget, resulting to negative impact on delivery of services to the public.

In the circumstances, The National Treasury was in breach of the law.

Submission by the Accounting Officer;

As stated in the observations, the State Department received an exchequer issue totaling Kshs. 52,869,959.00 released by The National Treasury on 6th July, 2022.

The State Department submits exchequer request for processed payments to the National Treasury on a timely basis. The exchequer request that was funded on 6th July 2022 was requested on 27th June, 2022 as an amount of Kshs. 54,887,960.55. The request was received on the same day by the Exchequer Department in The National Treasury. The exchequer received on 6th July, 2022 by this State Department however was Kshs. 52,869,959 against this request.

The State Department has no control on the timing of exchequer issues from The National Treasury.

However, Management is committed to engage and follow up with the National Treasury to ensure funding of the budget is released before the 30th June.

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

4.44 VOTE 1221: STATE DEPARTMENT FOR REGIONAL AND NORTHERN CORRIDOR DEVELOPMENT

Mr. Kello Harsama, the Principal Secretary and Accounting Officer for State Department for Regional Development, appeared before the Committee on 16th April 2024, accompanied by the following officers:

i.	Mr. Hared Adar	-	CEO NDMA
ii.	Mr. Wycliffe Ochiaga	-	MD, LBDA
iii.	Mr. James Sakwa	-	Deputy Accountant General
iv.	Ms. Lucy Wangari	-	Principal Finance Officer
v.	Mr. Paul Muraya	-	Secretary Administration
vi.	Mr. Ndungu Kiarie	-	Chief Finance Officer
vii.	Ms. Wanjiku Manyatta	-	Ag. Director Regional Development
viii.	Mr. Charles Mwaura	-	Head Internal Audit
ix.	Mr. Fred Nyakundi	-	KDRDIP IA

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1754. Misallocation of Expenditure

The statement of receipts and payments reflects an expenditure of Kshs.32,055,898 under acquisition of assets which, as disclosed in Note 8 to the financial statements includes amounts of Kshs.3,745,721 and Kshs.28,310,177 for the purchase of office furniture and general equipment and rehabilitation of civil works respectively. However, examination of supporting documents for rehabilitation of civil works revealed that expenditure totaling to Kshs.17,894,477 which constitutes amounts of Kshs.2,197,343, Kshs.11,536,199 and Kshs.4,160,935 incurred on payment of wages, field allowances and motor vehicle repairs and fuel respectively, which were not related to the rehabilitation of civil works. This was contrary to Regulation 43(b) of the Public Finance Management (National Government) Regulations, 2015 which provides that an Accounting Officer shall ensure that public funds entrusted to their care are properly safeguarded and are only applied for purposes for which they were intended and appropriated by Parliament.

In the circumstances, the regularity of the expenditure amounting to Kshs.17,894,477 could not be confirmed.

Submission by the Accounting Officer;

The Accounting Officer submitted that budget estimates for the Project KOSFIP during that FY was in two lines, one line under development estimates and another under the recurrent estimates. The budget line in the development estimates was expected to cater for operations and maintenance cost as well as civil works. The budget line was described as Rehabilitation of Civil Works.

The Accounting Officer informed the Committee that the amount of Kshs 2,197,343 was used to for payment of wages for casual labourers at the project site as part of the operations and maintenance cost. Other operation and maintenance cost on the project budget line included desilting, security of the infrastructure and project labour costs.

The amount of Kshs 11, 536,199 was utilized for payment of field allowances and motor vehicle repairs at the project site as part of the operations and maintenance cost.

The amount of Kshs 4, 160,935 was used for payment of fuel at the project site as part of the operations and maintenance cost. The costs were incurred in line with KOSFIP work plan.

Committee Observations and Findings

The Committee observed that the Accounting Officer paid for expenses not related to rehabilitation of civil works.

Committee Recommendation

The Committee reprimands the Accounting Officer for acting contrary to Regulation 43(b) of the Public Finance Management (National Government) Regulations, 2015.

1755. Budgetary Control and Performance

The statement of comparison of budget and actual amounts reflects actual receipts of Kshs.4,711,026,537 against budgeted receipts of Kshs.5,504,562,275 resulting to an underfunding of Kshs.793,535,738 or 14% of total budget. Similarly, the statement reflects budgeted payments of Kshs.5,504,562,275 against actual payments of Kshs.4,710,034,185 resulting to under expenditure of Kshs.794,528,090 or 14% of total budget.

In the circumstances, the State Department has not implemented all the planned and approved programmes, resulting to delayed provision of services to the citizens.

Submission by the Accounting Officer;

The shortfall of Kshs. 794,528,090 does not represent the under expenditure in budget performance. The Kshs. 794,528,090 or 14% of total budget is related to the Appropriation in Aid (A.I.A) - other sources of financing that was expected to be raised by the Regional Development Authorities. Of the above amount, Kshs.460,000,000 represents Appropriation in Aid (A.I.A)- sale of assets budgeted under the respective Regional Developments Authorities which is collected and utilized at the source. Kshs. 60,000,000 represents proceeds from domestic and foreign grants under LAPSSET Corridor Authority being financing from African Development Bank out of which certificates for Kshs. 10,691,553 were presented and paid, Kshs. 17,500,000 represents proceeds from disposal of assets budgeted and accounted for under the respective Regional Developments Authority. The balance of Kshs.126, 000,000 represents undisbursed foreign borrowing meant for the Sigor Wei Wei phase II project implemented by Kerio Valley Development Authority from Artigiancassa S.p.A as administrator on behalf of the Ministry of the Economy and Finance of the Italian Republic, the amount was not disbursed due to disagreements over exemption of tax on the project activities between Kenya Revenue Authority and KVDA as provided in the financing agreement. This other sources of financing had been captured in the budget as Appropriation in Aid (A.I.A).

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1756. Pending Bills

As disclosed in Annex 1 and Note 18 to the financial statements, the State Department had pending bills amounting to Kshs.2,451,916,061 chargeable to both the recurrent and development votes that were not settled during the year under review but were instead carried forward to the 2022/2023 financial year. The pending bills balance includes an amount of Kshs.2,448,920,483 which relates to 2020/2021 and earlier financial years. No plausible explanation was provided for non-payment of the pending bills before the end of the financial year. This is contrary to Regulation 42(1)(a) of the Public Finance Management (National Government) Regulations, 2015 which states that debt service payments shall be a first charge in 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.

Failure to settle bills during the year in which they relate to adversely affects the budgetary provisions for the subsequent year to which they have to be charged.

Submission by the Accounting Officer;

The State Department for Regional Development had pending bills totaling to Kshs. 2,451,916,061.00 out of which Kshs. 8,545,663 was paid on 1st charge in the financial year as per the National Treasury guidelines leaving a balance of Kshs. 2,443,370,398.00 Out of this figure Kshs. 2,442,640,748.03 represented Historical Pending Bill. The pending bills during the year remained outstanding due to budget cuts during the financial year while the historical bills were not considered for budget allocation during the budget appropriation for the FY 2021/2022 due to fiscal constraints.

The State Department had an engagement with The National Treasury for budgetary support to clear the historical pending bills since the amount is too huge to be accommodated within the department budgetary provisions. The State Department has made efforts to clear the same from its constrained budgetary provision as it awaits positive response from The National Treasury to enable the Department to clear the outstanding historical pending Accounts Payables.

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1757. Unresolved Prior Year Matters

In the audit report of the previous year, several issues were raised under the Report on Lawfulness and Effectiveness in Use of Public Resources. However, although Management has indicated that the issues have been responded to, the issues remained unresolved as the State Department has not appeared before the Parliamentary Accounts Committee (PAC) to deliberate on the same.

Submission by the Accounting Officer;

The Accounting Officer submitted that following the tabling and adoption by the National Assembly and release for information and implementation of recommendation vide Letter Ref: NA/DLP/TB0/RES. 001/13TH/2024 dated 15th March, 2024, the State Department was already

reviewing the committee recommendations for the Financial Year 2020/2021 on the Auditor General's Report with view of forwarding the status of implementation to the National Treasury.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendations;

The Committee recommends that the Accounting Officer submits a status report on implementation of its recommendations within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1759. Inactive Audit Committee

Review of records for the State Department revealed that an Audit Committee was appointed on 15 July, 2020. However, the Committee Members have not performed any duties since their appointment. This is contrary to Regulation 175 of the Public Financial Management (National Government) Regulations, 2015 which states that the main function of the Audit Committee shall be to support the Accounting Officers with regard to their responsibilities for issues of risk, control and governance and associated assurance but the responsibility over the management of risk, control and governance processes remains with the management of the concerned entity; and also to follow up on the implementation of the recommendations of internal and external auditors. No explanation was provided for failure to operationalize the Audit Committee.

In the circumstances, the existence of an effective oversight mechanism to ensure efficient system of internal controls could not be established.

Submission by the Accounting Officer;

The Accounting Officer submitted that the State Department for Regional Development experienced budget cuts in the first supplementary estimates for the FY 2021/22 and among the affected items were the budget lines for Boards, Committees and Conferences budget items 2210300 and 2210800 under which the Audit Committee expenses are met. As a result, the Audit Committee quarterly meetings were not held due to insufficient resources to meet the audit committee expenses.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendations;

i. **The Committee reprimands the Accounting Officer for failing to operationalize the audit committee as provided for under Regulation 175 of the Public Financial Management (National Government) Regulations, 2015.**
ii. **The Committee recommends that the Accounting Officer operationalizes the audit committee and give a status report within 3 months of adoption of this report by the house.**

DONOR FUNDED PROJECT

KIMIRA OLUCH SMALLHOLDER FARM IMPROVEMENT PROJECT (ADF LOAN NO. 2100150012296)

REPORT ON THE FINANCIAL STATEMENTS

1760. Inaccuracies in the Financial Statements

1760.1. Unsupported Transfers from Government Entities

The statement of receipts and payments and as disclosed under Note 11.1 to the financial statements reflects an amount of Kshs.62, 763,831 being transfer from other government entities. The amount was received and expended by the State Department for Regional and Northern Corridor Development on behalf of the Project. The Management indicated that financial records in respect of these amounts were maintained at the State Department Headquarters with the field office just processing. Further, the ledger and other support documents for these receipts were not provided for audit review. In the circumstances, the completeness and accuracy of the amount of Kshs.62, 763,831 under transfer from other government entities could not be confirmed.

Submission by the Accounting Officer;

The amount of Kshs 62,763,831 was administered from the State Department for Regional Development Headquarters. This constituted Kshs. 34,453,654 from the recurrent vote to cater for contracted employees and Kshs 28,310,177 from the development vote to cater for other infrastructure and civil works. The two budget line estimates were appropriated as the budget provision under the State Department to implement the activities under the project but not as transfers to other levels of government. The expenditures were incurred under the budgetary line items of other infrastructure and civil works under KOSFIP. The project's financial statements were prepared from the records maintained at the State Department headquarters relating to the project.

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1760.2. Unreconciled Fund Balance

The statement of receipts and payments reflects a cumulative deficit balance of Kshs. 230,900 while the statement of financial assets reflects a fund balance of Kshs.311 resulting in unexplained variance of Kshs.231, 211. In addition, the Management did not explain how the deficit was funded. In the circumstances, the accuracy, completeness of the fund balance of Kshs.311 could not be confirmed.

Submission by the Accounting Officer;

In the previous financial year 2020/2021 the project reported a cumulative surplus of Kshs 2,286,268 however, in that same year the balance in cash and cash equivalents was Ksh 2,517,477 a variance of Ksh 231,211. The variance spilled over to the year under review where the project

had a deficit of Ksh 6,889 leading to the cumulative deficit of Ksh 238,100 that is reported in the financial statements.

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1760.3. Unconfirmed Cumulative Balances

The statement of receipts and payments reflects total cumulative receipts of Kshs. 4,362,826,464. However, the cumulative amounts do not include cumulative receipts from the financers of Kshs. 2,993,408,349 as disclosed in the Project Information and Overall Performance Table A on source of funds. The cumulative balance reflected in the statement of receipts and payments is therefore inaccurate. In addition, Table A on source of funds reflects an amount of UA 7,676,071 (Kshs. 825,171,548) as being the undrawn balance from the Government of Kenya (GOK) Counterpart Funds. However, the financial statements for the previous year, (2021) showed a similar amount of UA 7,676,071, which translated to Kshs. 890,005,390. The Project received Kshs. 62,763,831 from GOK in the year under review. Further, the statement of receipts and payments reflects cumulative payments of Kshs. 4,363,057,364, which differs with the Table B on application of funds which reflects accumulated balance of Kshs. 7,356,234,812 as at 30 June, 2022. The cumulative amount shown on the statement of receipts and payments does not include cumulative amounts paid by financiers of Kshs. 2,993,408,349. Management did not explain how the cumulative payments were financed as they exceeded receipts by Kshs. 230,900. In the circumstances, the accuracy of the financial statements could not be confirmed.

Submission by the Accounting Officer;

Table A on source of Funds has been amended in the final set of accounts that was submitted alongside with the ML response and received by OAG Kisumu hub on 30th November 2022. The observations are explained in the table below;

Omission	Financier	Remarks
Drawn balance from the Government of Kenya (GOK) Counterpart Funds for the year under review	GoK	Table A on source of funds previously reflected an amount of UA 7,676,071 (Kshs.825, 171,548) as being the undrawn balance from the Government of Kenya (GOK) Counterpart Funds. This has since been amended to reflect the correct amount of UA 7,170,319.00 (Ksh 762,407,716.95) and presented to OAG Kisumu.
The statement of receipts and payments reflects cumulative payments of Kshs.4, 363,057,364, which differs with the Table B on application of funds which reflects	ADF	The Kshs.7,356,234,812 constitutes of Ksh 4,363,057,364 relating to The GoK component of the project for the FY under review and Ksh 2,993,408,349 being the ADF component, which was fully drawn in FY 2015/2016.

accumulated balance of Kshs.7,356,234,812 as at 30 June, 2022.		

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1761. Unconfirmed Project Fixed Assets

The statement of receipts and payments reflects cumulative amount on acquisition of non-financial assets of Kshs.2, 484,137,711. However, Annex 4 to the financial statements on summary of fixed assets reflects total project assets of Kshs.57, 325,434 while the schedule provided for audit shows assets totaling to Kshs.68, 604,515 resulting into unexplained difference of Kshs.11, 279,081.

Further, as was reported in the previous year, the consultant who was supervising the project procured two motor vehicles with registration numbers KBS 681Z and KBS 682Z at a total cost of Kshs. 7,200,000. However, the vehicles were not handed over to the Project Management after the completion of the consultancy services. This is contrary to Paragraph 10.0(IV) of the Service Contract No. KOSFIP/C/2 2020-2011 on consultant fees and payments, which states that after completion of the project, the consultant shall hand over equipment and vehicles to the project.

In addition, two other vehicles GKA 099Y and GKA 100Y whose log books are currently in custody of KOSFIP were released to Kenya Agricultural & Livestock Research Organization (KALRO), Kisii Centre in November, 2011. The KOSFIP Management has made no effort to recover the two vehicles.

The value of the two vehicles, which technically belong to the project have not been recorded in the fixed assets register and are therefore not part of the Kshs. 57,325,434 disclosed in Annex 4 to the financial statements. Further, the two other vehicles, currently under the control of KALRO cannot be said to belong to the Project.

Submission by the Accounting Officer;

At the time of the audit, the Asset Register had not been updated to remove obsolete assets and those issued to dispensaries. The value of the issued assets and obsolete assets totaled to Kshs 11, 279,081. The Asset Register has since been updated and the amount reconciled to Kshs57, 325,434.The two vehicles Reg. No. KBS 681Z and motor vehicle Reg. KBS 682Z used by the consultants have not been surrendered and therefore the matter remains unresolved. We are unable to add the assets into our register since we do not have the ownership documents for the two vehicles. We have followed up with KALRO (KARI) Kisii on return of two vehicles GKA 099Y & GKA 100Y.

Committee Observations and Findings;

i) **The Committee noted that KARI was the implementing agency for conservation of the upper catchment area and hence retained the two vehicles.**

ii) **The Committee found that the matter was resolved.**

1762. Pending Bills

Analysis of Pending Bills disclosed in the financial Statements as annex 3 reveals that two main service providers to KOSFIP have not been paid a total of Kshs 700,656,527 for a period of more than two years. This is contrary to section 53 (8) of the Public Procurement and Asset Disposal Act, 2015 which provides that the project manager should not commence any procurement proceedings until satisfied that sufficient fund to meet the obligations of the resulting contracts are reflected in approved budget estimates.

Submission by the Accounting Officer;

At the time of commencement of the procurement procedure there was sufficient budgetary provision. However, budget rationalizations over the years have negatively impacted our capacity to settle these bills and the matter has been raised with the National Treasury.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendations;

The Committee recommends that the Accounting Officer liaises with National Treasury and settles pending bills promptly as first charge.

1763. Handing Over/ Taking Over Assets and Liabilities

Between 26th June, 2000 and 29th June 2022, the Project Management spent Kshs 2,400,000 on travelling back and forth between Homa-Bay and Kisumu for the purpose of preparing handing over report. An assessment/handling over report was thereafter prepared which involved 4 parties: Lake Basin Development Authority, State Department for Regional and Northern Corridor Development, the project contracted team whose term had lapsed and the new team appointed to take over the management of the Project.

It was however noted that there was no official handing over report signed by the four parties. The report provided during the audit was in soft copy which could easily be altered and therefore could not be relied on.

In the circumstances, the status of the assets and liabilities of the Project as at 30th June, 2022 could not be ascertained.

Submission by the Accounting Officer;

There was delay to handover the management of the project from the former management unit to LBDA, thus there was no handing over report from the management. However, the status of assets and liabilities as at 30th June 2022 can be availed for verification.

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1764. Late Submission of the Financial Statements

The Project Management presented the financial statements for audit on 21st October, 2022 three weeks past the statutory deadline. This delay was occasioned by the fact that most of the project's expenditure were incurred at the parent ministry and the project management therefore did not envisage any need to prepare financial statements. However, there has been no formal handover of the project activities, assets and any existing liabilities to the Ministry or any other relevant authority.

In the circumstances, management was in breach of the law.

Submission by the Accounting Officer;

In the year under review the project expenses were incurred under the State Department because the project operated as a Department under the State Department for Regional and Northern Corridor Development.

The delay was attributed to the fact that the State Department had consolidated KOSFIP in their financial statements. However, the office of the Auditor General wrote a later requesting for separate financial statements, that's when the statements were prepared and submitted.

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1765. Unbudgeted Expenditure

The Statement of receipts and payments and as disclosed under Note 11.4 to the financial Statements reflects total expenditure amount of Kshs 62,763,831 which includes an amount of Kshs 27, 750,177 relating to purchase of goods and services. Review of the schedules provided to support the expenditure revealed an amount of Kshs 7,363,824 being payments for field allowances, salary deduction, meal allowances, security and wages which were budgeted for under compensation of employees but actual expenditure made under purchase of goods.

In the circumstance, management was in breach of the law.

Submission by the Accounting Officer;

The budget estimates for the Project KOSFIP during that FY was in two votes, one line under development estimates and another under the recurrent estimates. The budget line in the development estimates was expected to cater for operations and maintenance cost as well as civil works.

The amount of 7,363,824 being payments for field allowances, salary deduction, meal allowances, security and wages were paid from development vote and related to casual workers and security who had not been budgeted for under the recurrent vote. This constituted the capitalized operations cost of the project.

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1766. Irregular Engagement of Security Officers

Included in the total expenditure on compensation of employees of Kshs 34,453,654 is Kshs 3,017,324 paid as wages to project security officers during the period under review. However, there was no formal engagement or contract between the Project Management and the security officers as provided under section 76(2) of the Employment Act, 2007 which requires that an employer shall notify every vacancy occurring in the establishment, business, or work place in a prescribed form giving the following details;

a) The employer's name and full address
b) Details of the vacant post
c) Minimum qualification required of the person seeking to be employed
d) The place of work and
e) Such other information as required.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer;

During the construction of the Major conveyance system the security of the critical infrastructure sites were handled by the contractor. After completion of the main conveyance system (Major works) and subsequent discharge of the contractor from the site, critical infrastructure sites were unmanned and were vulnerable to vandalism. The project had to ensure that these critical sites were secure. This necessitated the Irrigation Water Users Associations (IWUAs) both Kimira & Oluch which are part of the project governance structure to engage locals farmers who live close to the sites to guard the sites but to be paid by the PMCT because construction works was still ongoing and leading the expenditure of kshs 3,017,324. Currently the Project management is regularizing the same with an intention to engage security through CBOs.

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1767. Delayed Project Completion

The protocol of agreement and the loan agreement between the Republic of Kenya and the African Development Bank (AFD) for the Project was signed on 14th July, 2006 and its implementation commenced in February, 2007. The final disbursement for the loan was to be September, 2013. The loan had a grace period of ten years after signing of the loan agreement. It has been observed that it is now four years (4) years since the loan repayment started and nine years since the last disbursement by the Fund was supposed to be made. The Project is therefore past approved timelines and its current operation structure is not supported by an original or any subsequent agreements.

No reasons have been given for the failure to hand over the project and its activities, assets and any existing liabilities to the Ministry or any other relevant authority as earlier envisaged.

The management is therefore in breach of the financing agreements since lapse of the project timelines have not been documented by any extension.

Submission by the Accounting Officer;

According to the aide memoire, KOSFIP had two main financiers that is The African Development Bank (ADB) and The Government of Kenya (GoK). The African Development Bank (ADB) completed its financing obligation as per the contract in 2015 and exited when the main conveyance system was completed. The remaining works such as the construction of the infield canals were to be financed by the Government of Kenya. This has been partly funded and also is incomplete hence the extensions in project completion dates.

From inception, the Project was managed by a Project Management and Coordination Team (PMCT) headed by a Project Manager and supervised by Project Steering Committee Chaired by the Principal Secretary. Most of the contracted staff who were working in the project exited when their respective contracts ended. This coincided with time the management and supervisory roles of the project was being transferred to LBDA. LBDA is overseeing the completion of the remaining works with funding from the Government of Kenya.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendations;

The Committee recommends that the Accounting Officer ensures completion of the project within requisite timelines and submits a status report to the Committee within six (6) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1768. Lack of an Audit Committee

The Project had not established an Audit Committee to assist management with responsibilities for issues of risk, internal controls, governance and associated assurances and follow-up on the implementation of the recommendations of internal audit and external auditors.

Submission by the Accounting Officer;

During the financial year the project was expected to be oversighted by the Audit committee of the State Department but as earlier explained the state Department for regional development experienced budget cuts in the first supplementary estimates for the FY 2021/22 and in particular on the lines for Boards and Conferences ordinarily facilitates the meetings of different committees. As results the Audit Committee quarterly meetings were not held

The GoK and ADF in the appraisal report envisaged that the Project was to be audited annually by independent consultants supervised by Office of the Auditor General. However, the budget line for the consultants was not provided resulting to the Project being continuously audited by the Office of the Auditor General. As a measure to strengthen the audit functions, the internal auditor's

functions were integrated to support the internal controls as part of GoK human resource contribution. Since then the project has been handed over to the Lake Basin Development Authority that has functional Audit Committee.

Committee Observations and Findings;

i) **The Committee noted the submission from the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1769. Lack of Staff Establishment

During the year under review, the Project incurred an expenditure of Kshs 34,453,654 on compensation of employees. However, it was observed that it did not have an approved establishment and a human resource plan to support achievement of goals and objectives in the strategic plan.

Submission by the Accounting Officer;

The project did not have its own human resource establishment but sought and obtained guidance on human resource matters from the State Department. The project's activities required different levels of manpower depending on the level of the project's phase.

The project obtained approvals for the required staff as and when needed depending on the level of the project activity cycle.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendations;

The Committee recommends that the Accounting Officer ensures the implementing authority has an approved staff establishment within three (3) months of adoption of this report.

4.45 VOTE 1252: STATE LAW OFFICE AND DEPARTMENT OF JUSTICE

Hon. Shadrack Mose, the Solicitor General and Accounting Officer for the State Law Office & Department of Justice, appeared before the Committee on 30th September 2024, accompanied by the following officers:

i.	Mr. Samuel Mugambi	_	Senior Chief Finance Officer
ii.	Mr. Erastus Mbahi	_	Deputy Director, Finance And Accounting
iii.	Mr. Kenneth Gathuma	_	Director General Business Registration Service
iv.	Ms. Marry Mutaaru	_	Registrar of Marriages

And submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1772. Pending Bills

Note 16.1.C and Annex 1 to the financial statements reflects pending accounts payable balance of Kshs.53,634,452 as at 30 June, 2022 which were not settled during the year but were instead carried forward to the 2022/2023 financial year.

Failure to settle bills in the year to which they relate distorts the financial statements for the year and affects the budgetary provisions for the subsequent year.

Submission by the Accounting Officer

It is true there was a Pending bill of Kshs. 53,634,452 incurred due to lack of adequate exchequer released during the year under review. The Pending Bills were appropriately captured in the financial statements. The budget for the subsequent financial year was rationalized to accommodate payment of carryovers/pending bills in accordance to the National Treasury circulars that require MDAs to settle pending bills as a first charge to the approved budget.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1773. Compensation of Employees

1773.1. Unsupported 3% Commission on Payroll Deductions

During the year under review, the State Law Office and Department of Justice deducted from staff payrolls an amount of Kshs. 1,754,844 in respect of 3% payroll commission charge but did not record the amount in the books of account as revenue or support the same with an official receipt. This was contrary to Regulation 81(1) of the Public Finance Management (National Government) Regulations, 2015 that provides that the receiver of revenue shall promptly deposit into National Exchequer Account all receipts due to the Consolidated Fund.

In the circumstances, the Management was in breach of the law.

Submission by the Accounting Officer

It is true that the State Law Office, under the statement of receipts and payments for the year ended 30th June, 2022, recognized a deduction on the payroll an amounting to Kshs. 1,754,843.20 in respect of 3% payroll commission charge but did not record the amount in the books of account as revenue or support the same with an official receipt.

The Office deducts 3% on recoveries on third party made and remits the same to the National Treasury as revenue to the government on monthly basis. The same is reflected in the bank statements showing that the accrued amounts are credited to the relevant bank account.

This is a payment and not revenue, which is accounted for by the National Treasury for all Ministries Departments and Agencies (MDAs).

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer recognizes the movement of the funds in the financial statements and obtains Treasury acknowledgement going forward.

1773.2. Non-Compliance with One Third of Basic Salary Rule

During the year under review, two hundred and forty-four (244) employees were paid net salary which was less than one third (1/3) of their basic salary contrary to Section 19(3) of the Employment Act, 2007 which provides that without prejudice to any right of recovery of any debt due, and notwithstanding the provisions of any other written law, the total amount of all deductions which under the provisions of subsection (1), may be made by an employer from the wages of his employee at any one time shall not exceed two-thirds of such wages or such additional or other amount as may be prescribed by the Minister either generally or in relation to a specified employer or employee or class of employers or employees or any trade or industry.

In the circumstances, Management was in breach of the Law.

Submission by the Accounting Officer

As noted, during the year ended 30th June, 2022, two hundred forty-four employees earned a net salary that was less than a third (1/3) of their basic salary contrary to section 19(3) of the Employment Act, 2007 and section C.1(3) of the Human Resource Policies and Procedures Manual for the Public Service, 2016.

The employees were affected by the change in the monthly pension contribution introduced by the National Government in 2021 that increased from two percent (2%) to five percent (5%) in 2022. This affected their position with regard to the one-third rule. However, the management has addressed this issue by requesting the affected officers to re-adjust their financial commitments.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures all staff incrementally comply.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1774. Lack of an Approved Enterprise Risk Management Process and Information Technology Strategic Committee

As previously reported, the State Law Office and Department of Justice did not have an approved well documented enterprise wide risk management process and policies in place to effectively guide the risk management processes. Further, there was no Information Technology (IT) Strategic Committee or IT Strategic Plan that supports business requirements. In addition, a formally approved IT Security Policy to ensure data confidentiality, integrity and availability, documented and tested emergency procedures, and IT continuity and disaster recovery plan was not in place.

In the circumstances, the policy, strategies and procedures put in place to assess, identify, measure, prioritize and mitigate risks in the State Law and Department of Justice could not be confirmed.

Submission by the Accounting Officer

It is true that at the time of the audit, the State Law Office and Department of Justice (SLO&DOJ) did not have an enterprise-wide risk assessment framework. Currently, SLO&DOJ is in the process of attaining ISO 27001, an International Standard for Information Security Management System (ISMS), which caters for Enterprise-wide risk assessment framework. Currently, we have carried out a risk assessment. The ISO 27001 Standard will form a framework for an enterprise-wide risk management process in the entire SLO&DOJ. The Standard will provide for policies, procedures and other controls involving people, processes and technology.

The IT Strategic Committee was appointed to confirm with ISO 27001 Standard and we have an approved ICT Policy.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures full implementation and operationalization of the risk management process and strategic committee within three (3) months of adoption of this report.

1775. Asset Management

The summary of fixed assets register under Annex 3 to the financial statements reflects assets with a historical cost of Kshs. 226,896,753 as at 30 June 2022. However, the State Law Office and Department of Justice did not maintain a detailed up to date assets register to keep track of the assets procured and held. This was contrary to Regulation 143(1) of the Public Finance Management (National Government) Regulations, 2015 which requires an Accounting Officer to maintain a register of assets under his or her control or possession as prescribed by the relevant laws.

In addition, the State Law Office and Department of Justice did not dispose any assets during the year although fifty-nine (59) motor vehicles were grounded at various locations. Further, logbooks for ten (10) motor vehicles bought and delivered by The National Treasury to the State Law Office and Department of Justice were not provided for audit verification.

In the circumstances, the State Law Office and Department of Justice lacked an effective system for safeguarding, recording, controlling and accounting for its fixed assets.

Submission by the Accounting Officer

It is true that at the time of the audit the asset register had not been fully updated. However, the asset register has since been fully updated.

There were also inconsistencies between the motor vehicle register and the list as provided by the Procurement Department. The asset register has since been updated to include all the motor vehicles.

In addition, the concerns of the Auditor General with regard to the new motor vehicles received by the State Law Office are noted. The 10 motor vehicles (Peugeot 508 Allure) were bought by Treasury and allocated to us delivered by the dealer Urysia using delivery notes. The Solicitor General acknowledged receipt vide letter Ref: AG/68/25/Vol. II/151 dated 11th January 2022 and we have received copies of their log books from the National Treasury.

During the FY 2022/23, the office carried out the disposal of the grounded Motor vehicles through public auction and a total of Kshs 7,081,000 was realised.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer obtains all relevant valuations, ownership documents and avails a complete asset register within three (3) months of adoption of this report.

REVENUE STATEMENTS OF STATE LAW OFFICE AND DEPARTMENT OF JUSTICE

REPORT ON THE REVENUE STATEMENTS

1776. Discrepancies between Revenue Statements and Integrated Financial Management Information System (IFMIS) Amounts

The following discrepancies were noted between amounts in the revenue statements and amounts in the Integrated Financial Management Information System (IFMIS) trial balance as indicated below;

Description	Revenue Statements(Kshs.)	IFMIS-Trial Balance(Kshs.)	Variance(Kshs.)
Bank Balances	125,937	867,454,964	867,329,027
Cash in Transit	0	96,267,432	96,267,432
Consolidated Fund	0	740,706,215	740,706,215

In the circumstances, the accuracy and completeness of the above account balances as reflected in the revenue statements could not be confirmed.

Submission by the Accounting Officer

These variances relate to historical balances for which clearance is currently ongoing with the National Treasury and soon the variances will be settled.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer liaises with the National Treasury and reconciles the variances within three (3) months of adoption of this report.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1777. Balance Due for Disbursement

As disclosed in Note 2 to the revenue statements, the statement of receipts and disbursements reflects a balance due for disbursement of Kshs. 168,902,437, which includes an amount of Kshs. 168,776,500 collected through Huduma Centres and relating to prior years but not transferred to the Receiver of Revenue for subsequent remittance to the Exchequer. This was contrary to Regulation 64(1) (a) of the Public Finance Management (National Government) Regulations, 2015, which requires an Accounting Officer and a Receiver of Revenue to be personally responsible for ensuring that adequate safeguards exist and are applied for the prompt collection and proper accounting for all National Government revenue and other public moneys relating to their Ministries, Departments or Agencies.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

It is true that the balance of Kshs. 168,776,500 held by Huduma Kenya is long outstanding. This matter was taken up by the Public Accounts Committee (PAC) of the National Assembly, which directed that the Chief Executive Officer (CEO) of the defunct Postal Corporation of Kenya transfer the balance to Revenue Account at Central Bank of Kenya (CBK).

Committee Observations and Findings;

The Committee noted that its previous recommendation remains unimplemented.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the Accounting Officer makes concrete steps towards actualizing the Committee's recommendation and avails evidence of the same within three (3) months of adoption of this report.

1778. Failure to Prepare and Submit Marriage Fees Periodical Reports by the Deputy County Commissioners (DCCS) and Assistant County Commissioners (ACCS) Offices

Review of documents provided for audit revealed that revenue amounting to Kshs. 129,673,594 was collected from registration of marriages in 2021/2022 financial year. However, only four (4) of the thirty-four (34) gazetted Deputy County Commissioners (DCCS) and Assistant County Commissioners submitted quarterly and consolidated reports as at 30 June, 2022. Another thirty (30) Deputy County Commissioners (DCCS) and Assistant County Commissioners did not submit the monthly reports as provided in the Registrar General circular dated 10 May, 2020 on guidelines of marriage services.

In the circumstances, the existence of effective internal controls that ensures all revenues are collected and reported on a timely manner could not be confirmed.

Submission by the Accounting Officer

It is true that revenue statements revealed that revenue amounting to Kshs. 129,673,594 was collected from registration of marriage services. Further, out of the 34 county offices, only four had submitted quarterly consolidated reports. This was during the covid recovery period. The Office liaised with relevant county offices and the records were availed for perusal.

Moreover, the Accounting Officer has further endeavored to promote compliance with the provisions of the Marriage Act, 2014, Public Finance Management Act, 2012 and Registrar's Circular of Revenue Reporting. Notably, in this financial year, the Accounting Officer approved monitoring, inspection programmes under Performance Contracting Targets, and respective officers are in identified regional and county offices monitoring and training county officers on compliance. Reports on the inspection programme shall be availed at the end of this financial year. Moving forward, the Accounting officer undertakes to keep and upon request, readily avail for inspection all marriage revenue records for regional and county offices.

As a lasting solution, on 27th June 2023, Cabinet approved a Memorandum to fast track and facilitate the decentralization process by establishing the State Law Offices in all 47 counties. A committee is in place and plans to open our own offices are at an advanced stage. We submit that once we decentralize, revenue reporting compliance will be top notch.

Committee Observations and Findings;

The Committee noted that the submission by the Accounting Officer was unsatisfactory.

Committee Recommendation;

The Committee recommends that the Accounting Officer obtains all pending/ unsubmitted quarterly and consolidated reports from all the gazetted Deputy County Commissioners (DCCS) and Assistant County Commissioners, within three (3) months of adoption of this report.

DONOR FUNDED PROJECT

PROGRAMME FOR LEGAL EMPOWERMENT AND AID DELIVERY (GRANT/CREDIT NUMBER KE/FED/2018/397-591)

REPORT ON THE FINANCIAL STATEMENTS

1779. Presentation and Disclosure of the Financial Statements

Review of the Project's financial statements revealed the following anomalies:

i. The financial statements are indicated as having been signed on 30 June 2022 a date before the date the original financial statements submitted which were signed on 29 September 2022.
ii. The page headings and tables in the financial statements are not aligned to the page margins.
iii. The statement of financial assets reflects cash balance of Kshs. 25,000 while Note 11 to the financial statements reflects a nil balance.
iv. The heading of the statement of comparative budget and actual amounts presented does not include the phrase, "for the year ended 30 June, 2022".
v. The statement of comparative budget and actual amounts reflects net budget utilization difference of Kshs. 38,047,627 and percentage utilization difference of negative 494%, which were not supported or explained with any documentary evidence.
vi. The budget utilization differences reflected in the statement of comparative budget and actuals amounts are not consistent with Annexure 1 to the financial statements explaining the variances and hence not comparable.
vii. The financial statements were not supported with signed confirmations from beneficiaries on transfers to other government entities, bank reconciliation statements, and a register of contingent liabilities and a board of survey report.
viii. The financial statements were not supported with a trial balance as at 30 June 2022.
ix. An annexure of summary of fixed assets register as at 30 June 2022 was not attached to the financial statements.

In the circumstances, the accuracy, completeness and fair presentation of the financial statements for the year ended 30 June 2022 could not be confirmed.

Submission by the Accounting Officer

The PLEAD project is a donor project supported by European Union which according to the signed financing agreement had a different financial reporting system. The Auditors of the project are appointed and approved by the donor.

The financial year of the project ends on 31st March of every year while the GOK financial year ends on 30th June of each year. By the time of the GOK audit, documents had not been fully prepared.

The project has no GOK counterpart funding, is budgeted as a donor grant revenue, and is ending in this Current financial year. The project uses approved donor procedures and templates for financial accountability, which are prepared in accordance to the signed financing agreement.

Committee Observations and Findings;

The Committee noted that the adjustments had been made.

Committee Recommendation;

The Committee recommends that the Auditor General confirms the adjustments in subsequent audit.

1780. Unsupported Cash and Cash Equivalents Balance

The statement of financial assets reflects cash and cash equivalents balance of Kshs. 43,421,845 as at 30 June 2022. However, the balance was not supported with bank reconciliation statements, bank confirmation certificate and a board of cash survey certificate.

In the circumstances, the accuracy and completeness of the cash and cash equivalents balance of Kshs. 43,421,845 as at 30 June 2022 could not be confirmed.

Submission by the Accounting Officer

All the Balances in the financial statements are supported with payment vouchers and relevant support documentation for each activity. The bank Certificates as at 30th June 2022 for the Kshs. 43,396,845.90 is availed. Any differences relate to the reporting time differences, as the programme year is different from GoK financial year.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1781. Unsupported Counter Funding Receipts

The statement of receipts and payments reflects transfers from government entities (counterpart funding) amounting to Kshs. 4,000,000 as disclosed in Note 1 to the financial statements. However, the project's bank statement reflects receipt of Kshs.1,500,000 resulting to an unexplained and unreconciled difference of Kshs. 2,500,000.

In the circumstances, the accuracy and completeness of the transfers from government entities of Kshs. 4,000,000 could not be confirmed.

Submission by the Accounting Officer

The balance of Kshs. 1,500,000 was transferred to the PLEAD project after the financial year had been closed which was on 5th July 2022 due to delay in receipt of exchequer on the part of the OAG&DOJ. This amount was used during the reporting period for staff costs for the PMFU.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1782. Irregularities in the Compensation to Employees

The statement of receipts and payments reflects an expenditure of Kshs.4,304,933 on compensation to employees as disclosed in Note 5 to the financial statements. However, the following anomalies were noted:

i. A review of supporting schedules and analysis of the sub-items under compensation of employees revealed an expenditure of Kshs.462,441 relating to purchase of office toner, petty cash disbursed and purchase of staff airtime, which was charged to compensation to employees without requisite approvals and re-allocation.
ii. The expenditure on compensation of employees includes Programme Management and Facilitation Unit (PMFU) staff airtime allowance amounting to Kshs.308,000, which was not supported with authorization by the accounting officer for payment.

In the circumstances, regularity of the expenditure on compensation to employees could not be confirmed.

Submission by the Accounting Officer

According to the projects financing agreement, purchase of toner, petty cash disbursement and purchase of staff airtime are classified under one budget item.

Staff airtime is part of the contract of Programme Management and Facilitation Unit (PMFU) employees.

Committee Observations and Findings;

i) The Committee noted the submission by the Accounting Officer.

ii) The Committee found that the matter was resolved.

1783. Late Remittance and Non-remittance of Statutory Deductions

The Project Management did not remit monthly P.A.Y.E deductions from the project Manager's salaries for seven (7) months totaling to Kshs. 964,425 contrary to Section 72(d) of the Income Tax Act Cap 470 (revised 2017). In addition, the NHIF deductions for October 2021 amounting to Kshs. 5,100 were not remitted which is contrary to NHIF Act, which requires that deduction be remitted by 9th of the next month following the deduction after which a penalty becomes due.

Consequently, Management was in breach of the law.

Submission by the Accounting Officer

NHIF; There was a delay on the part of NHIF in issuing registration number to PLEAD to enable the programme remit the deductions. Secondly, although PLEAD Staff member were in Place from December, 2020, there were delays in approving account signatories by the EU occasioning delays in payment of their salaries. This means that PMFU staff members were paid their December, January and February salaries cumulatively.

NSSF; All NSSF deductions were remitted in lump sum upon receipt of registration number from NSSF.

PAYE; Although staff members were in place from December 2020, there were delays on the part of KRA on issuing PIN Number for the PLEAD Programme based on their internal procedures. Secondly, December, January and February Salary was paid in lump sum due to lack of signatories to sign of payments in December and January. KRA had issued an invoice with penalties but after pursuing the matter with them, they produced an invoice that did not contain any penalties. PLEAD programme therefore never paid any penalties to KRA. All PAYE deductions have been paid to KRA since inception and prove of payment exists.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1784. Failure to Prepare and Submit Monthly Bank Reconciliations

Further, the Project Management did not prepare and submit monthly bank reconciliations to The National Treasury with a copy to the Auditor-General by 10th of the subsequent month as required under Regulation 90(1) of the Public Finance Management Act (National Government) Regulations, 2015.

In the circumstances, the Management was in breach of the law.

Submission by the Accounting Officer

The PLEAD Project has always adhered to the relevant laws on financial reporting.

The Accounting officer prepared financial statements that were submitted to the following institutions: Auditor General, National Treasury, Controller of Budget and Commission for Revenue Allocation.

Committee Observations and Findings;

The Committee noted that the Accounting Officer submitted final year end accounts and not monthly.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to submit monthly reconciliations contrary to Regulation 90(1) of the Public Finance Management (National Government) Regulations, 2015.

1785. Failure to Maintain a Project Asset Register

Note 7 to the financial statement reflects expenditure on acquisition of assets totaling Kshs. 14,376,612. However, the Project Management did not maintain a comprehensive project asset register, which is contrary to Regulation 143(1) of the Public Finance Management (National Government) Regulations, 2015 that requires the Accounting Officer to be responsible for maintaining a register of assets under his or her control or possession as prescribed by the relevant laws.

In the circumstances, the Management was in breach of the law.

Submission by the Accounting Officer

PLEAD programme has an Approved Asset Register that includes all the assets the project has bought since its inception. In year 1 the programme did not have assets as the procurements were underway.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a complete asset register within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1786. Lack of Internal Audit Review

During the financial year 2021/2022, there was no internal audit review of the Project's activities contrary to Section 73(3)(b) of the Public Finance Management Act, 2012 which requires that the Internal Auditor shall conduct internal auditing which includes risk-based, value-for-money and systems audits aimed at strengthening internal control mechanisms that could have an impact on achievement of the strategic objectives of the entity.

In the circumstances, the effectiveness of the Project's internal controls could not be confirmed.

Submission by the Accounting Officer

The programme does not have internal staff tasked with auditing, as the governance structure did not foresee that. According to the Program Estimate (PE), the expenditure verification or internal review shall be carried out by a qualified professional auditor who is a member of a recognized auditing body. These contracts financed through specific commitments, are concluded and managed by the European commission for and on behalf of the partner country.

Committee Observations and Findings;

The Committee noted that the submission by the Accounting Officer was unsatisfactory.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to utilize the department's internal audit function.

1787. Delayed Project Implementation

Following the signing of the project financing agreement in the year 2017, the project was to be implemented over a duration of sixty (60) months with a closure period of twenty four (24) months after the implementation phase. The project has been in the operational implementation phase for a period of sixty (60) mnths while the total amount disbursed as of 30 June 2022 was EUR 751,341 (Kshs. 83,487,209) out of the total donor commitment of EUR 7,250,000 (Kshs. 806,927,175). The disbursed amount represents 10% while the lapsed project implementation period as at 30 June 2022 was at 100%.

In the circumstances, there is risk of not achieving the project objectives due to expiry of the agreed deadlines.

Submission by the Accounting Officer

The PLEAD programme delayed due to the following challenges;

i. Resignations of team leader and finance manager without prompt replacement;
ii. Delay in fund disbursements;
iii. Frequent changes of bank account signatories due to interministerial transfer of staf;
iv. Covid-19 pandemic.

The Solicitor General has written to Treasury requesting for extension of the project.

Committee Observations and Findings;

The Committee noted that the project was mismanaged as the reasons cited by the Accounting Officer were summountable. This led to the loss of grant of Kshs. 723 million.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to ensure effective project management and recommends that the Accounting Officer actively seeks extension of the project and attains its objectives, and submits a status report within three (3) months of adoption of this report.

BUSINESS REGISTRATION SERVICE

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1789. Failure to Open County Offices

Audit review of Business Registration Service (BRS) records on regional offices revealed that operational branches are only in Kisumu and Mombasa Counties. However, strategic plan for the period 2021-2026 did not consider opening of regional offices in other Counties in Kenya contrary to Section (3) of Business Registration Service Act, 2015 which provides that; The headquarters of the Business Registration Service shall be in the capital city but the Business Registration Service shall establish branches in every County in Kenya to ensure reasonable access of its services.

In the circumstances, the Management was in breach of the law.

Submission by the Accounting Officer

Management acknowledges the audit finding that operational branches are currently only located in Kisumu and Mombasa Counties, and that the strategic plan for 2021-2026 did not include provisions for opening regional offices in other counties. This is due to resource constraints or budgetary limitations that have affected the implementation of the requirement.

The Service sought from Huduma Centre on pilot phased to have its services housed on their centres vide the BRS/CCU/Huduma/VOL. 1(10) dated 31st October 2022 where the Secretary/CEO responded to the Service vide Ref: HKS/BPR/007/1 dated 1st December, 2022

where the CEO advised the service to be paying a monthly cost of Kshs.100,000 per Huduma Centre which the Service found to be way far much from its budget.

However, BRS has on boarded all its services to the E -citizen platform for the public to enable them enjoy the services at their convenience.

Currently, the BRS draft strategic plan is under way for the year 2023-2027, which will incorporate the opening of the regional offices in other counties.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer prioritizes physical presence in major regions in the country.

1790. Failure to Submit Compliance Reports to State Corporations Advisory Committee (SCAC)

Audit review of records provided revealed that the Business Registration Service did not submit compliance reports for approval to State Corporations Advisory Committee (SCAC) as guided by the Office of the President Circular Ref. OP/CAB.9/1A dated 11 March 2020. The circular requires all State Corporations to file with SCAC their Human Resource Compliance Reports, including payroll reports for all cadres of staff and other stated Human Resource Instruments for approval by 31 July of each year.

The Management was in breach of the law.

Submission by the Accounting Officer

It is true the service did not submit to SCAC Human Resource Compliance Reports in the year under review. The Management takes note on the oversight in implementation of the OP circular for annual filing of payroll returns by 31st July and has filed the returns for the year ended 30th June 2022 and will endeavour complying to the same requirement.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer.

1791. Non-Compliance with Laws and Guidelines by the Board

A review of the records revealed that the Board Members were engaged in more than two Board Committees without approval of the respective Cabinet Secretary in consultation with State Corporations Advisory Committee. Further, the Board Committee Members had served in the same committees without rotations after every 12 months. This was contrary to Section B part 4 of the Management of State Corporation Circular Ref No OP/CAB.9/1A dated March 11, 2020, which stipulates that members can only sit in a maximum of two committees.

In the circumstances, the Board committee composition and operations did not comply with Mwongozo Code, which may adversely affect the effective implementation of the Board's resolutions.

Submission by the Accounting Officer

It is true in the year under review, the service did not comply with laws and guidelines under the State Corporation Circular Ref No OP/CAB.9/1A dated March 11 .2020 due to the fall in board membership from 8 to 6 because of retirement of two members.

On the 7th October 2021, through a letter Ref No. BRS/ADM/1 alerted the appointing authority on the term of Business Registration Service board.

The Chairpersons of Committees are encouraged to be independent Board members and the Board only had 3 independent Board members and 4 Committees. The skills and expertise of each Board member are important considerations in the appointment of Board members to various Board Committees.

During the Board meeting held on 10th February 2022, the term of service for the Chairpersons of the Compliance and Risk, as well as Technical and Strategy Committees was set to expire on 2nd May 2022. After careful deliberations, it was deemed necessary to retain certain Board members in specific Committees due to their invaluable contributions. As a result, not all Committee members could be rotated, and due to the limited number of Board members and the need for business continuity, some members had to serve in multiple Committees.

Currently, after reorganization the Service board members are now serving a maximum of two committees.

Committee Observations and Findings;

The Committee noted that the submission by the Accounting Officer was unsatisfactory as the appointing authority had been alerted on time.

Committee Recommendation;

The Committee recommends that the appointing authority henceforth ensures prompt board member appointments.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1792. Non-Compliance with the Current Approved Staff Establishment

Review of the staff establishment as at 30 June 2022 revealed that, the Business Registration Services had 108 employees out of the recommended staff establishment of 162 resulting to an understaffing of 54 staff (or 32%) of the approved establishments. No approved recruitment plan or budget was in place to address the staffing deficit in the near future, which may adversely affect the efficiency and effective service delivery.

In the circumstances, the Management did not comply with the Public Service Commission Human Resource Policy and Manual 2016.

Submission by the Accounting Officer

It is true BRS has not achieved its maximum capacity of staff establishment. Due to the budgetary constraints, the Management has endeavoured to provide an efficient and effective quality service delivery to the public using the available resources in the service. Recruitment of officers in the service has been implemented in phases on need basis since its inception and the variance of staff establishment will be undertaken in the coming financial years to complement the BRS's corporate Strategy.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer liaises with National Treasury to facilitate incremental recruitment of key personnel.

REPORT ON THE REVENUE STATEMENTS

1793. Unsupported Transfer of Collected Revenue

Note 2 to the revenue statements reflects transfers to exchequer totalling to Kshs.972,935,504 from a revenue collection account to exchequer account. However, supporting documents such as bank reconciliation, certificate of bank balance, bank statements, Central Bank account details, Board approval and bank signatories, were not provided for audit review. In addition, official receipt from The National Treasury to acknowledge receipt of revenue was also not provided contrary to Regulation 81(3) of Public Financial Management Regulations, 2015 which provides that The National Treasury shall issue a receipt to a receiver of revenue to acknowledge the receipt of revenue thereof.

In the circumstances, the accuracy, validity and completeness of the revenue transfer of Kshs. 972,935,504 could not be confirmed.

Submission by the Accounting Officer

Business Registration Service board in its meeting of 13th September 2016 resolved to open and operate Business Registration Service at Central Bank of Kenya Account Nairobi as per the extract minutes of the board that was provided during audit

The Service sought authority from National Authority to open and operate Central Bank account Vide letter Ref. No. BRS/GEN/NT/001 dated 18th November 2016

Central Bank Kenya letter Ref No. CBK/BD/KRA/PMG-ACCTS/16 dated 13th December 2016 responding to National Treasury letter ref AG/CONF.17/01 VOL.6/77 of 13th December 2016 opened Account No. 1000319739 under Account tittle - Business Registration Services Account-E-Citizen Revenue.

The Service has since provided to the Audit team the bank statement for the account under Central Bank of Kenya (Account No. 10003197739 - Business Registration Service E-Citizen Revenue) for the period from 1st July 2021 to 20th June 2022.

It is true BRS did not produce an official receipt from the National Treasury to acknowledge the receipt of revenue which used to be a practice on the manual revenue collection before the government went digital in the revenue collection.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the National Treasury aligns the Regulations with current practice.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1794. Non-Provision of Service Providers' Contracts

As reported in the previous year, the Business Registration Service contracted service providers to collect revenue on its behalf. The service providers include E-Citizen and by extension Safaricom and Kenya Commercial Bank among others. However, the respective contract agreements were not provided for audit review.

In the circumstance, it was not possible to establish the legality and performance of the service providers. Further, in the absence of supporting contracts, it was not possible to confirm the basis of the revenue collected.

Submission by the Accounting Officer

The Government vide Gazette Notice Number 2725 dated 24th April,2014 appointed a task force to implement the Government Digital Payments with the mandate to implement the Government Payment Gateway and ensure that individuals and businesses are enabled to make payments into Government electronically through all available channels.

The mandate of the task force was captured in the Kenya Gazette special Issue no.9290 of 30th December 2014 through which the Cabinet Secretary, National Treasury introduced the Government Services Digital Payments Programme.

At its 6th meeting held on 25th October 2016, the board approved Business Registration Service management's request to move to the e-Citizen platform to stop revenue leakage at the companies' registry.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1797. Irregular Operation of Bank Accounts

Review of financial records revealed that the Official Receiver maintained bank accounts at National Bank of Kenya Limited. This was contrary to the Section 708(1) of the Insolvency Act,

2015 which provides that the Official Receiver shall establish in the Central Bank of Kenya an account, to be called the "Insolvency Account". Further, the Act provides that the Official Receiver shall pay into the Insolvency Services Account all money received or recovered by the Receiver in the performance and exercise of the Official Receiver's functions and powers under this Act.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

It is true the Official Receiver has not established in the Central Bank of Kenya an Insolvency Services Account. The Official Receiver has prepared the Insolvency Amendment bill, which deletes section 708-sub section (1, 2 and 3) since the section as it is, and is not practical in the official receiver's day-to-day management of its operations.

Committee Observations and Findings;

The Committee noted that the submission by the Accounting Officer was unsatisfactory.

Committee Recommendation;

The Committee reprimands the Accounting Officer for non-adherence to the law and recommends that the Accounting Officer presents the proposed amendments to Parliament within three (3) months of adoption of this report.

PUBLIC TRUSTEE OF KENYA

REPORT ON THE FINANCIAL STATEMENTS

1799. Cash and Cash Equivalents

The statement of financial position and disclosure Note 11 to the financial statements reflects cash and cash equivalents balance of Kshs. 4,608,766,739. However, review of the bank reconciliation statements for the Public Trustee Administration bank accounts held at the Headquarters revealed receipts in bank statements not in cashbooks of Kshs. 46,154,194, which includes long outstanding receipts totaling to Kshs. 24,568,642. Further, the bank reconciliation statements for Nyeri regional office reflects receipts in bank statements not recorded in cash book totaling Kshs. 1,927,311 which were outstanding as at 30 June, 2022.

In the circumstances, the accuracy and completeness of the cash and cash equivalents balance of Kshs. 4,608,766,739 as at 30 June 2022 could not be confirmed.

Submission by the Accounting Officer

It is true that as at the time of audit there were outstanding receipts in bank statement not in the cashbook amounting to Kshs. 46,154,194. The long outstanding receipts in bank statement not in cashbook of Kshs. 24,568,642 have all been cleared.

It is also true that the bank reconciliation statement for Nyeri Regional Office reflected receipts in bank statement not in the cashbook amounting to Kshs 1,927,311 which has now been fully cleared.

A circular has been sent to all institutions depositing funds into the Public Trustee Bank Accounts on a regular basis requesting them to ensure that all deposits are accompanied by details of the deceased persons and contact details of the next of kin.

Committee Observations and Findings;

The Committee noted the admission by the Accounting Officer.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to keep proper accounting records.

1800. Deposits

As previously reported, the statement of financial position reflects a balance of Kshs.109,400,000 under deposits which, as disclosed in Note 14 to the financial statements, includes an amount of Kshs. 72,000,000 held in Imperial Bank Limited. The bank was placed under receivership by the Central Bank of Kenya on 13 October 2015 and the Kenya Deposit Insurance Corporation appointed as receivers. However, Imperial Bank Limited (In Receivership) informed the Public Trustee of Kenya through a letter dated 07 July 2021 that an amount of Kshs. 4,072,732 had been transferred to the Kenya Commercial Bank for transmission to the Public Trustee of Kenya leaving a balance of Kshs. 67,927,268 held at Imperial Bank Limited. Although, the transfer was confirmed by the Kenya Deposit Insurance Corporation, the amount of Kshs. 4,072,732 had not been remitted to the Public Trustee of Kenya as of 30th June 2022. Consequently, recoverability of the balance of Kshs. 67,927,268 held at Imperial Bank Limited remains doubtful.

In the circumstances, the accuracy and existence of deposits balance of Kshs. 109,400,000 as at 30th June 2022 could not be confirmed.

Submission by the Accounting Officer

It is true KDIC vide their letter dated 7th July 2021 confirmed that they had transferred a sum of Kshs. 4,072,732.10 to KCB Bank Ltd as at 20th June 2020 for payment to the Public Trustee. However, as at the time of the audit, the amount had not been forwarded to the Public Trustee.

On 4th August 2021, representatives from Public Trustee held a meeting with the appointed Receiver Manager of Imperial Bank at IPS Building to follow up on the outstanding payments.

Out of a sum of Kshs. 4,072,732.00 KCB has deposited a sum of Kshs. 1,018,183.00 to the Public Trustee Bank Account.

In their reply to our letter dated 8th May 2023, KCB wrote to the Office indicating that the 3rd tranche payable to depositors equivalent to 25% has been held in abeyance due to shortfall of assets available for onboarding from Imperial Bank Ltd to match the outstanding liabilities. The Office will continue to engage KCB Bank and KDIC to recover the outstanding balance of Kshs. 3,054,549.00 as confirmed by Imperial Bank Receiver Manager and the entire outstanding balance of the deposits.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee reiterates its recommendation in the previous financial year that the Accounting Officer obtains the already approved balance of Kshs. 3,054,549.00 and pursues the balance with the receiver manager.

1801. Investments

As reported in the previous year, the statement of financial position reflects a balance of Kshs. 231,159,644 under investments, which, as disclosed in Note 15 to the financial statements, includes an amount of Kshs. 144,097,597 described as deposits in financial institutions under the management of the Kenya Deposit Insurance Corporation (KDIC) and the Official Receiver. However, no sufficient explanation was provided for failure to seek refund of the dormant deposits.

Further, the dormant deposits of Kshs. 144,097,597 includes investments totaling Kshs. 29,693,938 held in two (2) financial institutions as detailed below;

Institution	Investment Balance (Kshs.)	Managing Institution
Central Finance Kenya	22,750,356	Kenya Deposit Insurance Corporation (KDIC)
Allied Credit Limited	6,943,582	Kenya Deposit Insurance Corporation (KDIC)
Total	**29,693,938**	

The two financial institutions were placed in liquidation on 19th May 1993 and 19th August 1993, respectively when the Central Bank of Kenya appointed the Deposit Protection Fund Board as the liquidator. Subsequently, the liquidator applied for release due to lack of funds but since no objection had been raised at the expiry of 21 days' notice inviting the creditors to inspect the final accounts, the process of winding up continued.

The winding up and dissolution of the Central Finance Kenya Limited and the Allied Credit Limited was completed on 13 September, 2012 and 15 November, 2007, respectively when the Court ordered for the release of the Liquidator and a certificate of release was granted. The Kenya Deposit Insurance Corporation communicated this decision to the Public Trustee on 8th April 2019 stating that the balances held in their account could not be paid since the institutions had been dissolved indicating irrecoverability and therefore loss of funds.

In the circumstances, the accuracy and existence of the balance of Kshs. 231,159,644 could not be confirmed.

Submission by the Accounting Officer

A formal request has been made to the Cabinet Secretary, National Treasury, to grant authority for write off. The Office is following up the matter with the National Treasury.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Cabinet Secretary National Treasury considers the request to write off the amounts within three (3) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1803. Failure to Automate Beneficiaries Financial Records

As previously reported, review of financial records and business processes revealed that the Public Trustee of Kenya maintained its records in a manual form and had over 50,000 ledgers and average annual disbursements of Kshs.3,000,000,000 to beneficiaries in the Headquarters and twelve (12) regional offices. However, the records had aged over the years despite reasonable precautions to guard against damage and the task of updating them was challenging.

Consequently, Public Trustee did not perform periodic risk assessments in relation to beneficiaries' financial records so as to identify threats, assess vulnerability, and design automated systems that could help in keeping up to date beneficiaries' financial records.

Submission by the Accounting Officer

It is true that Public Trustee services are not automated. The Office of the Attorney General and Department of Justice is undertaking a comprehensive digitization and automation to enhance efficiency in service delivery.

ICT Department and the ICT Strategy Committees have completed re -engineering of Public Trustee processes, appraising manual records and process mapping. The Office of Attorney General and Department of Justice requested Ministry of ICT to deploy ICT officers with digitization expertise to provide technical support on automation of processes. Three (3) ICT officers have already been deployed to this office and they have embarked on the automation process.

The administration of estate payment process is complete. The team is currently working on the Trust payment module.

The Department is also working with the State Department for Immigration and E-Citizen Services to automate the front-end and backend processes. The System is at the user-testing phase and can be accessed at publictrustee.ecitizen.go.ke.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer rolls out full automation within three (3) months of adoption of this report.

1804. Understaffing of Key Staff Positions

As previously reported, Public Trustee of Kenya has its operation at the Headquarters and twelve (12) regional offices with operational bank accounts and other accounting records for estates. However, review of the staffing level revealed that the Headquarters has two accountants against the required number of five accountants while eight (8) regional offices did not have accountants after the previous ones exited from service without replacement. In addition, four posts of records management staff and a post for a property manager were vacant as of 30th June 2022.

This compromised maintenance of effective internal control measures and posted the risk of error and misstatements in the accounting records.

Submission by the Accounting Officer

It is true that 8 out of the 12 Public Trustee Regional Offices did not have accountants at the time of audit as a result of natural attrition without replacement. It is also true that the Office did not have a Property Manager and enough Record Management Officers. The Record Management Officers retired and were not replaced in consecutive years.

The Office has received 6 accountants. Two (2) of the accountants have been deployed to Head Office and 4 in the Regional offices.

The Office is making follow up on the retention of officers re-designated to the cadre of accountants to be retained in the Office of the Public Trustee to ease the shortage.

An Estate Management Officer and an Assistant Building Surveyor have been posted to the Department to discharge the property management function. During the period under review, One Record Management Officer III was deployed to Public Trustee Nakuru Office.

On 25th November 2021, the Office received 6 legal clerks to undertake duties related to management of legal records in the Office of the Public Trustee. Two of the officers were deployed at the Public Trustee Headquarters to manage the records.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1805. Lack of an Operational and Approved Enterprise Risk Management Strategy

The Public Trustee of Kenya did not have an operational and approved Enterprise Risk Management Strategy contrary to the provisions of Regulation 165(1) of the Public Finance Management (National Government) Regulations, 2015, which requires Heads of Public Institutions to develop Risk Management Strategies, which include fraud prevention mechanism, system of risk management and internal control that build robust business operations.

Consequently, the policies, strategies and procedures put in place to assess, identify, measure, prioritize and mitigate risks in the Public Trustee of Kenya could not be confirmed.

Submission by the Accounting Officer

It is true the Office did not have an approved Enterprise Risk Management Strategy at the time of audit. The Office has established the Enterprise Risk Management Committee which is currently formulating the Enterprise Risk Management Policy. Heads of Departments have been sensitized on risk management and Risk Champions have been nominated from the Departments to steer the process. The Office has undertaken a risk assessment survey. A draft Enterprise Risk Management Policy has been prepared and it is awaiting validation to complete the process.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures operationalization of the Enterprise Risk Management Strategy within three (3) months of adoption of this report.

4.46 VOTE 1261: THE JUDICIARY

Ms. Anne A. Amadi, CBS, the Chief Registrar of the Judiciary and Accounting Officer for the Judiciary appeared before the Committee on 17th October 2023, accompanied by the following officers:

i.	Ms. Winfrida Mokaya	Registrar JSC
ii.	Mr. Maxwell Suero	Deputy Director
iii.	Mr. Paul Maina	Deputy Chief Registrar Judiciary
iv.	Mr. Wycliffe Wanga	Director Accounts
v.	Mr. Ronald W. Wanyama	Director Audit and Risk Mgt
vi.	Ms. Sharon Mwayuli	Personnel Manager
vii.	Ms. Rebecca Kipwigut	Deputy, Finance and Admimistration

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1806: Bank Balances

1806.1: Bank Reconcilliation Statement for General Deposits

The statement of assets and liabilities reflects cash and cash equivalents balance of Kshs.6,718,069,286 as disclosed in Note 8 to the financial statements. The balance includes general deposits held in the Central Bank of Kenya and various commercial banks of Kshs.581,300,657 and Kshs.6,113,568,283, respectively totaling Kshs.6,694,868,940. Bank reconciliation statements for deposits in respect of fifty-eight stations reflects long outstanding reconciling items. The items include receipts in the cash books not yet reflected in bank statements totaling Kshs.404,881,546 and payments in the bank statements not yet recorded in cash books totaling Kshs.125,806,926.

No explanation was provided for delay in recording the payments in the cash books and the receipts in the bank statements.

Submission by the Accounting Officer

The receipts in cashbook not in bank statements of KShs 404,881,546 for the 58 court stations consisted KShs 307,588,676.93 that related to deposit funds not transferred upon de-linking from the subcounty Treasuries to Judiciary. The balance of KShs 97,292,869.07 related to receipts not reconciled against the receipts in bank.

The payments in the bank statements not yet recorded in cash books of KShs 125,806,926; included an amount of KShs 47,305,185.02 due to Makadara, Milimani Commercial and Milimani law courts from the Judiciary headquarters related to period when deposits were centrally managed at headquarters for refunds settled at the courts that are reimbursable. KShs 34,140,188.45 relates to staff loss in Molo Law Courts which is still under investigations. The balance of KShs

36,378,445.15 were taxes on interest earned on deposit not posted and KShs 8,166829.72 were bank charges reimbursed to the court stations.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation
The Committee recommends that the Accounting Officer follows up on investigations to ensure criminal prosecution is taken against those responsible for the loss of KShs 34,140,188.45 at Molo Law Courts, and submits a status report on this within three (3) months of adoption of this report.

1806.2: Loss of Cash Deposits

As reported in the previous year, deposit records maintained by The Judiciary headquarters and Molo Court station reflects losses of Kshs.47,840,030 and Kshs.34,219,651, dating back to 2013/2014 and 2017/2018 financial years, respectively through theft by staff members who have since been dismissed. The matter was referred to the Director of Criminal Investigation and the Asset Recovery Agency and is still outstanding.

In addition, bank reconciliation statements for the month of June, 2022 for the bank accounts for Embu, Nakuru and Malindi court stations reflected losses amounting to Kshs.2,682,152, Kshs.84,588,258 and Kshs.1,455,800 respectively. However, as previously reported, the nature of the loss, recovery strategies and court proceedings on the matter have not been disclosed.

In the circumstances, the accuracy and completeness of the cash and cash equivalents balance of Kshs.6,718,069,286 could not be confirmed.

Submission by the Accounting Officer

The loss of KShs 47,840,030 in Judiciary headquarters related to a fraudulent (cybercrime) payment in deposit account in the financial year 2013/2014. The matter was filed in court, concluded and the suspects convicted. Further, the Accounting Officer issued demand letters to Banks that received the monies on 9th February 2021. A refund of KShs 10,462,967 was received from Guardian bank on 15th May 2023 reducing the amount to KShs 37,377,063. In a letter dated 14th February, 2022, the Accounting Officer also requested the Attorney General to take up the matter and initiate civil recovery proceedings against the responsible persons and banks. The Accounting Officer also sent a reminder to the Attorney General as a follow up on 29th March 2023.

The loss at Molo Law Courts was filed with of the Director of Criminal Investigation (DCI) and Asset Recovery Agency (ARA) on 8th January, 2021 and the staff involved were dismissed. Further, the matter was forwarded to the Attorney General to institute legal proceedings to recover the lost funds. The matter has also been taken up by the Ethics and Anti-Corruption Commission (EACC). In a letter dated 13th February 2023 Ref: EACC/7/10/1 VOL VII(29), the EACC wrote to Judicial Service Commission (JSC) requesting to facilitate investigations into the former

accountant at Molo Law Courts. The JSC responded via letter dated 1st March 2023 forwarding the information and documents requested by EACC.

The Judiciary reported the losses noted in Embu and Malindi Law Courts, resulting in the arrest and prosecution of the suspects in Runyenjes Law Courts Criminal case Number 267 of 2020 and Malindi Law Court Criminal Case Number 1961 of 2006, respectively. The suspect charged in Runyenjes was acquitted on 14th November 2022 while the Malindi case was withdrawn by the prosecution.

The Kshs.84,588,258 reported as losses in Nakuru Law Court related to amounts not transferred from the National Sub-County Treasuries after de-linking. This was cashbook entry to recognize deposits transferred to Judiciary but funds related to the same was not transferred from the National Subcounty Treasury. However, the joint reconciliation exercise established that the actual amount not transferred was KShs 52,427,008.06.

Committee Observations and Findings;

The Committee noted that the Judiciary was negligent in controls and reconciliations, resulting in avoidable loss of funds.

Committee Recommendation
The Committee recommends that the Accounting Officer immediately initiates civil recovery proceedings against all responsible persons and banks, and submits a status report within three (3) months of adoption of this report;

1807: Accounts Receivables

1807.1: Long Outstanding District Suspense and Clearance Accounts

The statement of assets and liabilities reflects accounts receivables – outstanding imprests and clearance accounts balance of Kshs.64,099,750 as disclosed in Note 9 to the financial statements. The amount includes Kshs.49,669,434 (2020/2021 - Kshs.26,306,566) relating to district suspense and clearance accounts. However, no reconciliation was provided or proof of effort being made to clear the increasing district suspense and clearance account balances.

In the circumstances, the accuracy, completeness and validity of the balance of Kshs.64,099,750 could not be confirmed.

Submission by the Accounting Officer

The amount of KShs 49,669,434 (2020/2021 - Kshs.26,306,566) related to unspent AIEs surrendered after closure of the financial years. The stations remitted back the unspent funds which are currently being held in the old Judiciary recurrent account No. 1000181915 at the central bank of Kenya.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;
The Committee recommends that the amounts be surrendered to the Consolidated Fund within three (3) months of adoption of this report.

1807.2: Outstanding Imprests

Included in the account receivables balance of Kshs.64,099,750 and as reflected in Note 9 to the financial statements, are outstanding Government imprests totalling Kshs.14,180,234 which were due for surrender on or before 30 June, 2022. No explanation was provided why the imprests were not surrendered or recovered on time. In addition, the Government imprests balance includes an amount of Kshs.3,108,300 which was issued to non-staff members seconded from Other Government Agencies with some dating back to the financial year 2015/2016. Management did not explain why the long outstanding imprests have not been recovered fully to date.

In the circumstances, the recoverability of the long outstanding imprests of balance of Kshs.14,180,234 could not be confirmed.

Submission by the Accounting Officer

The outstanding imprest amounting of KShs 14,180,234 was recovered/cleared in FY2022/2023. The delay in surrender/recovery was due to late submission of proof of travel documents that were however subsequently submitted. The recovery was also affected through the payroll for some staff. The Kshs.3,108,300 which was issued to non-staff members seconded from Other Government Agencies was held by police drivers attached to judges who subsequently submitted their surrender documents and cleared.

Committee Observations and Findings;

The Committee observed that the Accounting Officer failed to ensure timely surrender of issued imprests.

Committee Recommendation;
The Committee reprimands the Accounting Officer for failure to enforce provisions of section 93 (5) of the PFM (National Govt.) Regulations.

1808: Accounts Payables

1808.1: Long Outstanding Accounts Payables

The statement of assets and liabilities reflects accounts payable balance of Kshs.6,694,868,940. As disclosed in Note 10 to the financial statements, the balance includes deposits held by various Court stations out which an amount of Kshs.866,827,061 has been outstanding for over 10 years and above and should have been surrendered to the Unclaimed Financial Assets Authority.

Submission by the Accounting Officer

The Unclaimed Financial Assets (UFA) Act, requires the Judiciary to remit all assets held for more than one year after becoming payable *(case concluded and refund order issued by the court)* to the Unclaimed Financial Assets Authority (UFAA). The long outstanding deposits that have not been surrendered to UFAA await appraisal of court files to determine the eligibility for transfer to UFAA. The Chief Registrar of the Judiciary appointed a joint team that co-opted members from UFAA to develop mechanisms for the Judiciary to comply with the UFA Act provisions, including appraisal of financial records across court stations to determine assets that are under the ambit of the Act.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;
The Committee recommends that the Accounting Officer ensures eligible long outstanding deposits are surrendered within three (3) months of adoption of this report.

1808.2: Unconfirmed Accounts Payables

As disclosed in Note 10 to the financial statements, the accounts payable balance of Kshs.6,694,868,940 includes general deposits for various Court stations totalling Kshs.6,113,568,283 out of which an amount of Kshs.348,091,889 relates to deposits for fifty-eight (58) Court stations held by the former District Treasuries that have not been paid to The National Treasury. Although the Judiciary had written to the Principal Secretary for The National Treasury vide letter Ref. CRJ/14 of 29 December, 2021 to confirm the liability, The National Treasury has not acknowledged the same to date.

In the circumstances, the accuracy and validity of the account's payables balance of Kshs.6,694,868,940 could not be confirmed.

Submission by the Accounting Officer

The Kshs.348,091,889 that related to deposits for fifty-eight (58) Court stations held by the former District Treasuries upon conclusion of second phase of joint reconciliation and submission of the Interim Report to PS Treasury in letter dated 29th December 2021. A third and final joint reconciliation was carried out where KShs 352,938,472.50 was established as having not been transferred from the Sub-County Treasuries to Judiciary upon de-linking.

Further to the Judiciary letter to the NT dated 29th December, 2021 as noted by the Auditor General, a further correspondence thereafter on 29th August 2022, to the NT Ref CRJ/14 was done after the final joint reconciliation that established a total of KShs 352,938,472.50. The National Treasury acknowledged the Kshs 352,938,472.50 vide letter dated 14th November, 2022 Ref AG.3/10 Vol 11/(10).

Committee Observations and Findings;

The Committee noted that National Treasury had admitted liability.

Committee Recommendation;
The Committee recommends that the National Treasury remits the full amount of Kshs. 352,938,472.50 to the Judiciary within three (3) months of adoption of this report.

1809: Pending Bills

Notes 15.1 and 15.2 to the financial statements on Other Important Disclosures reflects pending accounts payable of Kshs.207,946,790 and pending staff payables of Kshs.223,235,174 both totaling Kshs.431,181,964 which were not settled during the financial year 2021/2022 but were instead carried forward to 2022/2023 financial year.

Failure to settle bills in the year to which they relate distorts the financial statements for the year and also affects the budgetary provisions for the subsequent year.

Submission by the Accounting Officer

The pending accounts payables of KShs 207,946,790 included development pending bills of KShs 113,095,261 and KShs 94,851,529 for supply of goods and services in recurrent budget. All the pending bills for supply of goods and services were settled in FY2022/2023. The KShs 113,095,262 included JPIP pending bills of KShs 39,956,711.38 out of which KShs11,233,707.87 were certified and paid leaving a balance of KShs 28,723,003 are awaiting final account.

The balance of KShs 73,138,549.36 related to GoK projects out of which an amount of KSh 58,470,700.90 was settled in FY2022/2023. The balance of KShs 14,667,848.46 due to Embu, Forodha and Malindi projects will be settled in FY2023/2024 budgetary allocation.

The pending staff payables of KShs 15,288384.25 for FY2022.2023 was subsequently settled.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation
The Committee recommends that the Accounting Officer settles all pending bills as first charge in compliance with Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

1810: Contingent Liabilities

Disclosed in Note 15.3 to the financial statements are contingent liabilities totaling Kshs.1,088,021,644 as at 30 June, 2022 (2021 - Kshs.1,138,713,450) which relates to courts and

arbitration awards as result of disputes between The Judiciary and various contractors who had been awarded contracts for construction of court buildings.

Further delay in settling the awards is likely to result in interest on the outstanding amounts and nugatory expenditure.

Submission by the Accounting Officer

The pending bills for court award had remained unpaid due to inadequate budgetary provision. In subsequent year FY 2022/2023, the court awards were settled leaving a balance of KShs 272,734,349.32 to be settled in FY2023/2024 as shown in table below.

	Supplier	Balance FY2021/22	Amount Settled	Balance FY2022/23
		Kshs.	Kshs.	Kshs.
1	N.K. Brothers	631,132,567.67	527,643,076.83	103,489,490.84
2	Land Mark Holdings	391,494,858.48	222,250,000.00	169,244,858.48
3	Riley Security Services	59,527,958.30	59,527,958.30	-
4	Avtech Systems	4,726,746.23	4,726,746.25	(0.02)
5	Yusuf Elmi	1,139,513.30	1,139,513.30	-
	TOTAL	1,088,021,643.98	815,287,294.68	272,734,349.30

Committee Observations and Findings;

The Committee noted that the amounts owing were not disputed by the Judiciary, hence not contingent.

Committee Recommendation

The Committee recommends that the Accounting Officer settles all pending bills as first charge in compliance with Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1811: Delayed Completion of Development Projects

Review of the project status reports and field inspections for various court stations revealed that construction works for eight (8) projects with a contract sum of Kshs.505,496,668 had not been completed. Some projects have delayed for over seven (7) years and no evidence was provided to show when The Judiciary intends to complete the projects.

In the circumstances, it was not possible to confirm whether the public will obtain value for money on the delayed construction of these projects.

Submission by the Accounting Officer

The reason for non-completion of the projects on the due dates was due to insufficient budgetary allocation, budget cuts coupled with delays in development exchequer release. In addition, with passage of time the contract rates that were fixed were no longer tenable with most contractors abandoning sites and not willing to implement the works at the initially agreed contract rates as it would expose them to losses. To mitigate the fluctuation of contract rates, there have been meetings with the contractors on revision of the rates and where agreeable, the addendum to the contract were to be issued upon evaluation. However, in instances where no agreement was reached on the new rates, the contracts will be terminated, and outstanding works repackaged for tender. Below is the current status of the eight projects;

Contract	Contractor	Comments
Refurbishment of Murang'a Law Courts	N/A	*Retendered awaiting tender evaluation and award*
Construction of Marsabit Judges Residence	Wordlink Construction Ltd	*New contract awarded*
Construction of Malindi High Court	Dame Group Africa Ltd	*Completed*
Construction of Habasweini Law Courts	Canaries Holdings Ltd	*New Contractor awarded)*
Construction of Port Victoria Law Courts	Halogen Enterprises	*Completed*
Construction of Githongo Law Courts	Makam Technical Services	*New contract awarded*
Construction of Mandera Law Courts	Soltek Builders	*New contract awarded*
Refurbishment of Forodha House	Amber Construction	*Completed*

Committee Observations and Findings;

The Committee noted that the projects had taken inordinately long to complete.

Committee Recommendation

The Committee recommends that the Accounting Officer ensures completion within the new contract durations and avails a status report on the outstanding works within three (3) months of adoption of this report.

DONOR FUNDED PROJECT

JUDICIAL PERFORMANCE IMPROVEMENT PROJECT (IDA CREDIT NO. 5181-KE)
REPORT ON THE FINANCIAL STATEMENTS

1817: Budgetary Control and Performance

The statement of comparison of budget and actual amounts for the year ended 30 June, 2022 reflects final revenue budget and actual amounts on comparable basis of Kshs.997,323,723 and Kshs.702,383,663 respectively, resulting in an underfunding of Kshs.294,940,059 or 30% of the budget.

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

Submission by the Accounting Officer

It's true the JPIP budget funding for the FY2021/2022 was under funded by 30%. The project came to an end on 31st October 2021 with a grace period of three months to 28th February 2022. The closure of the project within the financial year posed a challenge with contractors delaying in submission of certificates. Some contractors managed to submit certificates totaling KShs 39,956,711.38 that were time barred and the liability was recommended to be taken over by the Judiciary upon closure of the project.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation
The Committee recommends that the Accounting Officer settles all pending bills as first charge in compliance with Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1818: Delayed Implementation and Completion of Projects

Review of records and status reports for various construction works being undertaken by the Judicial Performance Improvement Project revealed that seven (7) projects with a total contract sum of Kshs.826,329,820 and total amount paid of Kshs.644,229,158 remained incomplete as at 30 June, 2022.

In the circumstances, the public have not obtained value for money from the amount of Kshs.644,229,158 already incurred on these projects.

Submission by the Accounting Officer

The seven (7) projects had a total contract sum of Kshs.826,329,820 out of which total amount paid was Kshs.644,229,158 leaving unpaid balance of KShs 162,100,662. The contracts were re-evaluated and terminated as at Project closure. Their remaining works were handed over to Judiciary to be factored into the Judiciary's Development budget for the subsequent years. Any liability that was unsettled at the time of the project closure was reported at the Interim Closure Report (ICR) forwarded to the Accounting Officer.

The Judiciary undertook to complete the projects after the project closure.

Committee Observation

The Committee noted that the projects had taken inordinately long to complete.

Committee Recommendation

The Committee recommends that;

(i) **The Accounting Officer ensures completion of outstanding works and avails a status report on the outstanding works within three (3) months of adoption of this report;**

(ii) **The Judiciary prioritizes on completion of ongoing/ stalled projects before embarking on new ones.**

4.47 VOTE 1271: ETHICS AND ANTI-CORRUPTION COMMISSION

Mr. Twalib Mbarak, CBS, the CEO and Accounting Officer for the Ethics and Anti-corruption Commission appeared before the Committee on 5th October 2023 accompanied by the following officers:

i.	Mr. Joel Mukumu	Director Finance and Planning
ii.	Mr. Edwin Mugo	Ass. Director Finance and Planning
iii.	Mr. Stephen Karuga	Snr. Legal Officer
iv.	Mr. Gerald Mumo	Snr. Accountant

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1821: Poor Financial Performance

During the year under review, the Commission reported a deficit of Kshs. 61,647,104 (2020/2021-Kshs. 64,475,692). The Management has disclosed in Note 28 to the financial statements that the deficit arose mainly due to depreciation and accrued expenses resulting from unfunded exchequer. The persistent underfunding is likely to lead to financial difficulties which might affect the full implementation of the Commission's planned activities in future. The existence of the Commission is therefore dependent on exchequer releases from national government.

Submission by the Accounting Officer

The Commission's deficit of Kshs 61,647,104 was mainly caused by non-cash flow items that is amortization and depreciation which totaled to Kshs 90,545,278 in the year under review.

When preparing the financial statements the Commission uses accrual accounting method. This means that revenues mainly inform of exchequer from the National Treasury are recognized when received while costs are recognized when probable. Therefore, accrued expenses have a negative impact on the deficit.

The National Treasury usually funds the Commission's exchequer requests promptly and there has been no indications of relenting on the same in the foreseeable future. Further, the Commission engages the National Treasury every Financial Year for budgetary enhancement during supplementary budget process.

Additionally, the Commission leverages on donor support and other partnerships to support its programs as well as other multiagency co-operations.

Committee Observations and Findings;

i) **The Committee observed that the agency used accrual accounting which recognized depreciation and amortization cited in the query and explained by the Accounting Officer amounting to Kshs. 90 million.**
ii) **The Committee found that the matter was resolved.**

4.48 VOTE 1291: OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Mr. Renson M. Ingonga, OGW the Director of Public Prosecution/Accounting Officer for the Office of The Director of Public Prosecution appeared before the Committee on30th November 2023, accompanied by the following officers:

i.	Mr. Nkaduda Hiribae	Deputy Director Central Facilitation Services
ii.	Mr. Mediatrix Rapando	Ag. Director Human Recourse Management
iii.	Ms. Dorcas Oduor	Secretary Public Prosecution
iv.	Ms. Zurera Zainabu	Senior Principal Accountant
v.	Mr. Victor Alenga	Senior Principal Prosecution Counsel
vi.	Mr. Kioko Maundu	Senior Accountant

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1830: Discrepancies Between the Trial Balance and Financial Statements

The financial statements reflect account balances which were at variance with Integrated Financial Management Information System (IFMIS) ledger and trial balance as detailed below:

Category	IFMIS Trial Balances Amount (Kshs.)	Financial Statements Amount (Kshs.)	Variance (Kshs.)
Compensation of Employees	5,600	2,103,170,166	2,103,164,566
Use of Goods and Services	3,452,700	1,124,600,383	1,121,147,683
Transfer to Other Government Entities	0	40,000,000	40,000,000
Acquisition of Assets	113,712,470	158,161,048	44,448,578
Bank Balances	2,046,504	17,576,228	15,529,724
Cash Balances	1,285,272,500	653,144	1,284,619,356
Imprests and Advances and District Suspense	11,964,893	7,076,806	4,888,087
Third-Party Deposits and Retention	6,153,920	4,949,389	1,204,531

In the circumstances, the accuracy and completeness of the above account balances included in the financial statements for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the ODPP adopted a one-line budget from the itemized budget in 2021/22 financial year. The previous system had the respective

economic items (nature and functions) e.g., Compensation of employees, use of goods, Acquisition of Assets among others, charged to their specific line budgets.

The Accounting Officer further submitted that the balances that were reflected from the trial balance were historical figures which have now been rectified as per Trial balance that was provided.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

1831: Unsupported Balances

The statement of receipts and payments reflects amounts of Kshs.3,437,992,049 and Kshs.3,425,931,597 in respect to receipts and expenditure for the year respectively. However, receipts and expenditure amounting to Kshs.2,807,204 and Kshs.14,553,496 were not supported by requisite receipts and by way of explanations to variances and training and expenditure schedules respectively.

In the circumstances, the accuracy and completeness of the receipts and expenditure reflected in the statement of receipts and payments could not be confirmed. Further, thepropriety of the unsupported expenditure amounting to Kshs.14,553,496 for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that as at June 30, 2021, the balance under UNFPA Programme- Gender Based Violence and Reproductive Health Rights Project was Kshs. 4,036,300which rolled over to the FY 2021/2022 because the FY for UNFPA runs from January to December, whereas the GoK FY runs from July to June. Further, unspent imprest amount of Kshs. 33,600 was received during the FY 2021/2022 totaling the balance to Kshs. 4,069,900. The balance of Kshs. 2,807, 204 was arrived at after refunding Kshs. 1,262,696to the UNFPA.

The Accounting Officer also submitted that during the year under review, the total compensation of employees amounted to Kshs. 2,103,170,166.

On use of goods and services-training expenses, the supportive schedule of expenditure under the UNFPA OF Kshs. 5,205,496 was provided. Kshs. 1,262,696 was part of the other receipts which was returned to the donor (UNFPA) as unspent balance.

On Acquisition of assets-Purchase of office furniture and general expenses-Supportive document was provided to support the expenditure of Kshs. 120,000.

On acquisition of assets-purchase of specialized plant, Equipment and machinery supportive document for the purchase and delivery of desktop computers was supplied by the Derby Techno systems.

On unspent imprest, a schedule tabulating the balance was provided.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

1832: Unsupported Adjustments to the Financial Statements

The financial statements for the year ended 30 June, 2022 includes adjustments of Kshs.41,973,353 and Kshs.82,645,890 in respect of use of goods and services and imprest, advances and district suspense respectively. However, the adjustments were notsupported by respective journal vouchers and schedules.

Consequently, the accuracy and completeness of the use of goods and services and forimprest, advances and district suspense balance could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the difference was because some of the expenditures were not recognized in the financial statements submitted on 30th September 2022 and the schedules showing expenditure movement between the statements was provided.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

1833: Prior Year Adjustments

The statement of assets and liabilities reflects a balance of Kshs.33,202,199 in respect to prior year adjustments which included an amount of Kshs.2,093,718 relating toreceivables – Government imprests as disclosed in Note 11 to the financial statement. However, a balance of Kshs.2,959,850 remained uncleared as at 30 June, 2022. Further,district suspense account reflects a balance brought forward of Kshs.2,887,383 of whichKshs.1,587,175 was adjusted leaving a balance of Kshs.1,300,208 uncleared. No explanations or reconciliations were provided for the uncleared balances.

In the circumstances, the accuracy and validity of the prior year adjustment balance of Kshs.33,202,199 could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the reconciliation relating to the district suspense and remaining uncleared imprest was in progress.

Committee Observations and Findings;

The Committee noted that the Accounting Officer belatedly availed requisite documentation and explanation.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failing to provide support documents in the prescribed format and on time, as required by section 81 of the PFM Act 2012 and section 9 (i) (e) of the Public Audit Act, 2015, respectively.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1834: Non-Compliance with the One-Third of Basic Salary Rule

During the year under review, at least one hundred and sixty-three (163) employees earned a net salary of less than one third ($^1/3$) of their basic salaries. In addition, two (2)employees earned negative net salaries in the months of July, 2021 to May, 2022 while five (5) employees earned a negative salary in the month of June, 2022. This is contraryto Section 19(3) of the Employment Act, 2007 and Section C.1(3) of the Public Service Commission (PSC) Human Resource Policies, 2016. The Management has not given explanation for failure to comply with the policy.

Consequently, the Management contravened Section C 1(3) of the Public ServiceCommission (PSC) Human Resource Policies, 2016 and this may expose the staff to pecuniary embarrassment.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

Before deductions from the third parties for an officer is effected in the payroll, eligibilities are checked in the Payroll System to determine an officer's eligibility. Once recommended by the system, it is assumed the officer is eligible and therefore compliant with a third rule.

To note the State Department for Public Service (IPPD Section) is the Administrator of the System. However, going forward, the Office will liaise with the payroll administrators in order to be compliant with a third rule.

Further:

(a) Three of the Officers in all of the months are on disciplinary cases i.e., two on interdiction and one on salary stoppage as per the pay slips which were provided.

(b) It is observed that by June 2022, the cases had reduced as follows:

i. Three (Serial No. 139,143 & 162) are due to disciplinary cases;
ii. Seventeen (Serial No.140-142, 144-146, 148-153, 155-157, 159-161) are due to Imprest Recovery, which was effected in the Month of June.
iii. One of them was due to salary overpayment recovery (Serial No. 154) as per the schedule of the summary of the imprest recovery which was provided.

The Accounting Officer further submitted that:

During the Covid-19 pandemic period, the Government outlined various tax interventions to cushion the country against economic effects of the pandemic. The interventions among others included 100% tax relief for persons earning gross monthly income of up to KES 24,000 and a reduction of highest PAYE rate from 30% to 25%. It is noted that employees borrowed loans during the tax reprieve period which ended on 30th December, 2021 and their salaries became committed beyond the one third.

Current Status and Way forward

There are employees who are earning a net salary of less than a third of their basic salary. This has been occasioned by the recent statutory deductions when the Finance Act, 2023 was implemented.

The Office has also established the ODPP Staff Retirement Benefits Scheme and deductions commenced in the Month of September 2023. Employees contribute 7.5% of their basic salary towards the pension Scheme. To note, ODPP Staff have not been granted a Salary increment since 2019.

That notwithstanding, the Office vide a letter Ref. No. ODPP/4/14 dated 25th October, 2023 addressed all staff who have committed their salaries beyond the stipulated one third of basic salary informing them to restructure their salary commitments in order to be compliant.

Committee Observations and Findings;

i) **The Committee observed that the explanation given by the Accounting Officer was satisfactory.**
ii) **The Committee found that the matter was resolved.**

1835: Employees Acting Capacity Beyond Stipulated Period

Review of the payroll and human resources records revealed that seven (7) employees appointed in an acting capacity and paid acting allowances totalling to Kshs.1,665,358 acted for more than six (6) months. This exceeded the statutory duration provided for in the Public Service Commission Act, 2017 which states that an officer may be appointed in an acting capacity for a period of at least thirty days but not exceeding a period of six months.

In the circumstances, the Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that the office was experiencing staff shortages in the affected cadres before and during the period under review. Qualified officers were therefore appointed to act against some posts for a period of six (6) months pending recruitment.

The officers have since been appointed to the posts they acted against through a competitive recruitment process.

Committee Observations and findings;

i) **The Committee observed that the explanation and documents provided by the Accounting Officer was satisfactory.**
ii) **The Committee found that the matter was resolved.**

1836: Non-Compliance with Staff Establishment Ceiling

Review of the staff establishment for the Office of Director of Public Prosecutions for theyear ended 30 June, 2022 revealed that four (4) job designations exceeded the approvednumber of staff in the staff establishment with a total of seven (7) staff as shown below:

S/No.	Designation	Grade	Job Group	Authorized Establishment	In post	Variances
1	Senior Principal Accountant	DPP 5	P	0	1	(1)
2	Principal Finance Officer	DPP 6	N	1	2	(1)
3	Accountant II/I/Senior. II	DPP 10/9/8	J/K/l	9	12	(3)
4	Supply Chain Management Assistant III/II/I/Senior	DPP 11/10/9/8	H/J/K/L	2	4	(2)

Consequently, the Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

The audit report for the period under review indicated that employees in four (4) job designations exceeded the recommended number of staff in the staff establishment with a total of seven (7) staff.

It is observed that the Office was experiencing staff shortages in the said cadres. A request was made to the National Treasury to deploy additional staff to the ODPP in the fields of Finance, Supply chain Management and Accounts. In their response, the National Treasury posted officers. The issue has since been addressed as some officers in the Accounts and Supply chain Management Division have been re-deployed back to their parent ministries. The office also has a

new organizational structure which has expanded the staff establishment thus the in post is within the ceiling.

Committee Observations and Findings;

i. **The Committee noted that the staff establishment has since been regularized.**

ii. **The Committee found that the matter was resolved.**

1837: Irregular Expenditure on Overtime Allowances

Expenditure on use of goods and services amount of Kshs.1,124,600,383 disclosed in Note 4 to the financial statements included an amount of hospitality supplies and servicesamount of Kshs.83,656,968. The expenditure included an amount of Kshs. 1,150,000 paidas overtime allowances to various officers above group J contrary to Section C.19 (1) of Public Service Commission Human Resource Policies and Procedures Manual 2016. In addition, the expenditure was not supported with a work program, supervision report, a schedule of hours worked and the approval of the departmental head or the accounting officer.

Consequently, the Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

Approval was done under delegated authority by heads of department for facilitation for lunches and supper as officers were working during lunch time and late in the evening including weekend.

The divisions were under staffed and recruitment for additional staff was ongoing within the financial year.

The activities were scheduled within the work plan and the total AIEs for stations across the 47 counties were processed and funded in the financial year.

The work programme, supervision report, approval of the departmental head and schedules of hours worked have been provided.

Committee Observations and findings;

i. **The Committee noted that the Accounting Officer paid Kshs. 1,150,000 as overtime allowances to various officers above group J contrary to Section C.19 (1) of Public Service Commission Human Resource Policies and Procedures Manual 2016.**

ii. **The Committee further noted that the explanation given by the Accounting Officer was not satisfactory.**

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends recovery of Kshs. 1,150,000 irregularly paid to various officers and submit a status report to the Committee within 3 months of adoption of this report.

1838: Underutilized Leased Office Space

Use of goods and services expenditure of Kshs.1,124,600,383 disclosed in Note 4 to the financial statements also includes Kshs.231,452,790 incurred on rentals of produced assets. The Office of the Director of Public Prosecution leased space at a commercial building in Mombasa located along Moi Avenue/Tewa Road at a total annual rent of Kshs.13,029,744 for five (5) years effective from 1 April, 2020 with a capacity of thirty-two (32) staff. However, an audit verification revealed that three quarters (¾) of the office space was not occupied resulting to an estimated annual loss of public funds of Kshs.9,772,308 and totalling Kshs.48,861,540 in five years. Further, an internal memo dated 8 June, 2022 addressed to the Deputy Director of Public Prosecutions indicating that there was no value for money on rental space had not been acted on by the time of the audit.

In addition, review of the Lease of rental space for a building in Machakos Town to accommodate nineteen (19) staff at an annual rent of Kshs.6,451,200 for six (6) years effective from 1 April, 2017 revealed that three quarter (¾) of the office space was not occupied resulting to an annual loss of public funds of Kshs.4,838,400.

In the circumstances, the value for money on the expenditure incurred on rental of the above offices could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that in order to efficiently and effectively execute the ODPP mandate, the office developed a model office plan that was projected to have provisions for the following offices: Head of station, Deputy head of station, Prosecutors pool, reception, secretarial pool, library, central intake office, children friendly room, pre-trial room, kitchen, waiting area and registry. Plans are underway to partition and optimize the space as aforementioned.

The Accounting Officer also submitted that the office is currently reviewing all existing leases to align them with the staffing levels. In reference to the letter from Mombasa on alternative space, it was noted that the space that had been offered at NSSF Mombasa was inadequate to accommodate the existing staff establishment of 32 in Mombasa. In two of the mentioned buildings (Sea view Plaza and Kenya Maritime Authority Building) the current occupants are yet to vacate in spite of an earlier indication that they would vacate by December 2022.

The Accounting Officer further submitted that current lease for Mombasa office runs from 1st April, 2020 to 31st March, 2025.The office went into fresh negotiations with the land lord and new terms were agreed on as presented in the table below.

	Previous	Revised
Total Leased space (Sq Ft)	12,350	12,350
Rate per sq. ft (excl. v.a.t)	61.25	56.25
Service Charge per sq. ft (incl. v.a.t)	16.87	
Monthly rent (Ksh)	1,085,812.00	805,837.50

As per the revised lease agreement, the monthly service charges that was previously charged separately is now inclusive in the monthly rent. This has resulted in the office saving Kshs. **279,945** monthly (Kshs. **3,359,340** annually).

A letter has since been addressed to the Principal Secretary, state department of Housing for preparation of an addendum to the current lease factoring the new terms.

In the long term, the Accounting Officer submitted that the office is also exploring the possibility of securing office space within the County Commissioner's Building which would translate to a big saving for the office.

The lease agreement for Machakos office expired in April 2023. The office went into fresh negotiations with the Land lord. The leased space was scaled down from 8,400 square ft to 5,000 square ft. This translates to:

	Previous	**Revised**
Total Leased space (Sq Ft)	8,400	5,000
Rate per sq. ft (excl. v.a.t)	64.00	64.00
Monthly rent (Ksh)	537,600.00	320,000

As per the new lease agreement, the office is saving Kshs. **217,600** monthly (Kshs. **2,611,200** annually).

Both parties have since executed the lease and the same forwarded to the Principal Secretary, State Department of housing for registration.

Committee Observations and Findings;

i) **The Committee observed that the explanation provided by the Accounting Officer was satisfactory.**
ii) **The Committee found that the matter was resolved.**

4.49 VOTE 1311: OFFICE OF THE REGISTRAR OF POLITICAL PARTIES

Ms. Anne Nderitu, CBS, the Registrar of Political Parties and Accounting Officer for the Office of the Registrar of Political Parties appeared before the Committee on 2nd October 2023 accompanied by the following officers:

i.	Mr. Douglas Wanzula	Principal Accountant
ii.	Mr. Joshua Kimulu	Senior Chief Finance Officer
iii.	Mr. Tatech Kewin	Finance Officer
iv.	Ms. Veronica Muasya	Assistant Director, Internal Audit

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1845: Pending Bills

As disclosed in Note 11 and Annex 1 to the financial statements, the Office of the Registrar of Political Parties had pending bills totaling Kshs. 39,151,275 as at 30 June 2022, which were not settled in 2021/22 financial year but were instead carried forward to the 2022/23 financial year.

Failure to setle bills during the year to which they relate adversely affects the budgetary provisions of the subsequent year to which they are charged as they form a first charge.

Submission by the Accounting Officer

It is true that the Office had pending bills amounting to Kshs. 39,151,275 which arose as a result of lack of exchequer. The pending bills were cleared as the first charge during the FY2022/2023 in line with Treasury Circulars on clearance of pending bills.

The pending bills had been communicated to the National Treasury and the Office of the controller of budget through letter Ref. No. RPP/ORG./38 VOL. V (8) dated 15th July 2022.

The Office cleared all the pending bills amounting to Kshs. 39,151,275 during the FY2022/2023.

Committee Observations and Findings;

i) **The Committee observed that the pending bills resulted from lack of exchequer, a cross-cutting issue, but had since been settled.**
ii) **The Committee found that the matter was resolved.**

4.50 VOTE 1321: WITNESS PROTECTION AGENCY

1. **Ms. Jedidah Waruhiu**, the CEO and Accounting Officer for the Witness Protection Agency appeared before the Committee on 5th October 2023 accompanied by the following officers:

i.	CPA K.A. Tanui	Deputy director
ii.	Ms. Julie Wahonya	Principal Legal Officer
iii.	Mr. John Mwangi	Finance Manager
iv.	Mr. Charles Mwale	Principal HRM

and submitted as follows;

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1853: Understaffing

As reported in the previous year, the Agency's Human Resource Policy Manual, 2016 provides for two hundred and ninety-six (296) staff members. However, only one hundred and nine (109) staff members were in post, resulting in a shortfall of one hundred and eighty-seven (187) staff members across the various staffing cadres as at 30 June, 2022. Further, the shortage was on various job cadres including core departments like operations, internal audit, IT, and administration.

In the circumstances, the under staffing may hinder effective delivery of services by the Agency.

Submission by the Accounting Officer

Understaffing at the Agency is a historical issue since 2011. Management has continuously sought for budget and authority to recruit vide letters; Reference WPA/ADM/BUDGET/003K dated 29th July 2015, Reference WPA/ADM/BUDGET/003K dated 28TH November 2016, Reference WPA/ADM/BUDGET/003K dated 13th November 2017 and Reference WPA/ADM/BUDGET/003K dated 5th July 2018.

Following these requests, the National Treasury gave authority to recruit 39 No. staff in 2018 vide their letter referenced RES 1321/18/01/A/3 dated 11th September 2018 who were recruited in 2019. However, this did not address the understaffing and Management continued to sought budget and authority to recruit.

Specifically, the Agency sought authority from the National Treasury to recruit vide letter referenced WPA/ADM/BUDGET/003/K dated 23rd September, 2021. The National Treasury responded vide letter referenced TNT/ZZ 253/032/ "A" dated 9th November, 2021 by advising the Agency to secure the necessary funding through the budgetary process before seeking the National Treasury's approval for recruitment. The same was unsuccessfully sought through the Sector Working Groups budget process.

On 29th August 2022, the Agency further wrote to the National Treasury vide letter referenced WPA/HR/REC/))4/C VOL.XII seeking authority to recruit additional staff after the approval to open new offices in the North Rift Valley and South Valley and the Central and Eastern region with their headquarters in Eldoret and Embu respectively. The request was staggered in three (3) phases with the FY 2022/2023 budget request of Kes. 66,175,840 (29No.), FY 2023/2024 budget request of Kes. 52,905,920 (22No.) and FY 2024/2025 (17No.) budget request of Kes43,224,000.

The National Treasury responded vide letter referenced RES/1321/22/01 'A'(6) dated 6th September 2022 advising the Agency to present the budget proposals for funding consideration during the Sector budgeting process. After presentation of this guidance at the GJLO Sector budget, the Agency was allocated an amount of Kes. 46,405,920 for purposes of recruiting additional staff in the FY 2023/2024. This was further scaled down by the National Treasury to Kes. 15 million.

The Agency wrote to the National Treasury vide letter referenced WPA/ADM/BUDGET/003/K dated 18th May 2023 requesting for authority to start the recruitment exercise. The Agency is waiting for the response of the same but has been notified of additional Kes36 million in the 2023/2024 Supplementary Estimates 1.

Committee Observations and Findings;

The Committee observed that there was incremental improvement in recruitment with Kshs. 51 million provided for in the current financial year for the exercise.

Committee Recommendation

The Committee recommends that the Accounting Officer prioritizes hiring of key personnel including protection officers with the approved allocation.

1854: Weaknesses in Grading Structure

A review of the payroll versus the approved salaries structure as per Memo referenced WPA/S/SRA/002/B of 23rd January, 2013 revealed that the entry points of two job groups, Grades 2 and 3 had wide salary differences even after the maximum increment of salary in Grade three (3) in which salary should overlap to Grade 2. This was occasioned by having officers in Job Grades 1 and 2 on permanent basis while those in Grades 3 and below were on deployment by then and their salaries were to be reviewed by SRC after job evaluation. Although the Agency sought the SRC evaluation on 22nd February 2020, no advice on effecting the results had been received at the time of audit.

In the circumstances, the existence of an effective human resource management tool could not be established.

Submission by the Accounting Officer

The Witness Protection Act, 2006 under Section 3F (5) provides that 'in determining the terms and conditions of service for the Director and staff, the Minister (Attorney General) and the Commission (SRC) shall be guided by the following principles:

a) that witness protection falls in a strategic sector in the administration of justice process of the country and the nature of the service entailed requires commensurate compensation;
b) that the nature of the operations of the Agency requires probity, integrity and incorruptibility; and
c) that the remuneration and conditions may differ from those applicable in the public service.

The principles are meant to ensure that staff are adequately compensated for handling the risky mandate of the Agency and to prevent high rate of staff attrition which increases chances of putting the covert operations of the Agency in jeopardy.

The Agency was operationalized in 2011 by staff who were deployed from various Ministries, Departments and Agencies (MDA's). In 2011, the State Corporations Advisory Committee (SCAC) issued the Agency with a Salary Structure. The Agency implemented the Structure on the existing staff who were on secondment. The Agency commenced the recruitment process of its own staff in 2011 and by March 2012, the positions of Director/Chief Executive (Grade 1), Deputy Director Operations and Deputy Director Corporate Services (Grade 2), were substantively filled on terms and conditions anchored on SCAC Salary Structure.

However, the Salaries and Remuneration Commission (SRC) drastically scaled down the Salary Structure in 2012 for Job Grades 3 to 12 since they were on secondment. Subsequently, SRC issued WPA with the revised interim salaries which were implemented henceforth and have not been reviewed to date despite having filled the positions on grades 3 to 12 with substantive permanent staff. On further engagement, SRC intimated that the interim salary structure in 2012 was temporary and a revised Salary Structure for the Agency staff would be issued upon successful recruitment of substantive staff in job grades 3 to 12. The interim Salary Structure of 2012 maintained the salaries of Job Grades 1 and 2 since the incumbents were the only permanent employees of the Agency while all the others from Job Grade 3 downwards were on secondment.

As a result of the SRC downward review of the salary structure, there was a huge salary gap between Job Grade 2 and Grade 3 that was eminent upon recruitment of officers. This gap has existed from then to date and the various job evaluations undertaken by SRC have not addressed the anomaly.

In efforts to enhance remuneration of the Agency owing to the very risky mandate they articulate and in line with the provisions of the Witness Protection Act 2006 Section 3F(5)(C) that lists the principles which should guide the determination of the terms and conditions of service for WPA staff, the Agency has undertaken to harmonize the Salary Structure of its staff anchored on the salary of positions at Job Grades 1 and 2. This is aimed at reducing the big gap that currently exists in the current Structure to enhance the remuneration of staff in lower cadres. This will address the issue of staff morale, motivation, performance and the desired transformation of the people to envisaged level in tandem with the security and risky nature of the operations of the Agency

Consequently, the Agency has engaged the Salaries and Remuneration Commission vide letter referenced WPA/ADM/SRC/003/BY dated 21st September, 2023 requesting for harmonization of the salary structure of the Agency among other requests and is currently awaiting response.

Committee Observations and Findings;

The Committee observed that the Salaries and Remunerations Commission had taken inordinately long to align the grading structure, commencing 2012 to date. This had invariably disadvantaged staff, especially those seconded, by losing the top-up initially paid by the agency over and above their salaries.

Committee Recommendation;

The Committee recommends that the SRC expedites harmonization of the grading structure within three (3) months of adoption of this report.

1855: Delay in Establishment of the Victims Compensation Fund (VCF)

Review of the Agency's records shows that a letter from The National Treasury Ref:AG.3/155 Vol.1/33ES/126/13 dated 3 March, 2017 on Victims Compensation Fund (VCF) advised the Management to develop and align the policies for operationalizing the Victims Compensation Fund with the requirements of Section 24 of the Public Finance Management Act, 2012 and Regulation 207 of the Public Finance Management (National Government) Regulations, 2015. In response, Management submitted the revised Draft Regulations to The National Treasury through the Office of the Attorney General on 7th November, 2019 for approval. However, although Management has subsequently written to the National Treasury seeking for approval of the same, the Regulations have not been approved to date. This has led to delay in establishing the Victims Compensation Fund for sixteen (16) years from 30th June 2006 to 30th June, 2022 contrary to Section 3 (i) of Witness Protection Act, 2006 (Revised 2018) which requires establishment of a Victims Compensation Fund.

In the circumstances, the existence of a proper governance structure to execute the establishment of the Fund could not be confirmed.

Submission by the Accounting Officer

It's true that the Victims Compensation Fund has not been established to date. The Management has since inception made efforts towards the establishment of the Fund and has continued to relentlessly advocate for the same as evidenced by the following correspondence;

i. Reference WPA/ADM/BUDGET/003/K dated 4th December, 2013 the Agency wrote to National treasury for allocation of Kshs 50 million for VCF.

ii. Reference ES 126/13/01 (10) dated 23rd January 2014 the National Treasury responded advising the Agency to develop regulation and policies to manage the fund as per PFMA 2012.

iii. Reference WPA/ADM/BUDGET/003/K dated 11th November 2014 the Agency forwarded proposed draft regulations to the Treasury for review and approval.

iv. Reference AG; 3/155 Vol. 1/15 dated 2nd December 2014 the National Treasury responded and forwarded their comments regarding the regulation.

v. Reference WPA/ADM/BUDGET/003/K dated 22nd March 2016. The Agency forwarded to the National Treasury revised Regulations for comments and gazettment.

vi. Reference RES 1321/15/01 'A' (26) dated 16th May 2016 the National Treasury responded requiring the Agency to incorporate some comments it had not made in the draft.

vii. Reference WPA/ADM/VCU&F/003/CB dated 10th June 2016. The Agency responded to the National Treasury forwarding the Revised Regulation as per the Treasury comments.

viii. Reference AG.3/155 Vol. 1/33 dated 3rd March 2017 the National Treasury responded noting that the Agency had not developed internal policies for the Management of the Fund.

ix. Reference WPA/ADM/VCU&F/003/CB dated 21st March 2017 the Agency responded requesting the National Treasury to revisit the issue.

x. Reference WPA/ADM/VCU&F/003/CB dated 28th May 2018. The Agency wrote to the National Treasury requesting nomination of an officer to provide technical guidance to the Agency.

xi. Reference AG.3/155 Vol. 1/33 dated 12th June 2018 the National Treasury responded about the Agency request to nominate an officer, it also raised issues that the Agency had not complied with their comments and guidance.

xii. Reference WPA/ADM/VCU&F/003/CB dated 27th June 2018. The Agency wrote a letter to AGs office requesting them to Review the Regulations and have it submitted for gazettement.

xiii. Reference WPA/ADM/VCU&F/003/CB dated 23rd October 2018 The Agency wrote to the National Treasury clarifying that the Agency was not pursuing any claim in court and requesting finalization of the Regulations to enable the Agency operationalize the same.

xiv. Reference WPA/ADM/VCU&F/003/CB dated 17th September 2019 the Agency wrote to AGs office reminding of the 27th June 2018 letter.

xv. Reference 5209/2/1 on dated 7th November 2019 The AGs office wrote a letter to the National Treasury forwarding the draft Regulations.

xvi. Reference WPA/ADM/VCU&F/003/CB dated 3rd July 2020 the Agency wrote a reminder letter to the National Treasury.

xvii. Reference 5209/2/1 dated 11th April 2023 the AG office wrote a reminder letter to the National Treasury on the letter dated 27th June 2018.

xviii. Reference WPA/ADM/VCU&F/003/CB dated 3rd May 2023 the Agency wrote another reminder letter to the National Treasury. The response to this letter is yet to be received by the Agency.

xix. Reference WPA/ADM/VCU&F/003/CB dated 30th March 2023 on Appointment of Victims Compensation Fund Policy and Rules Internal Committee.

xx. Reference WPA/ADM/VCU&F/003/CB/VOL.1 dated 13th July 2023 Preliminary Report on Victims Compensation Fund Internal Policy and Rules for the administration of the Fund. The Internal Committee will issue its final report by 30th October 2023.

xxi. Draft Witness Protection (Victims Compensation Fund) (Administration) Regulations, 2019.

Committee Observations and Findings;

The Committee observes that the agency and Treasury had taken inordinately long to submit regulations to operationalize the fund, engaging in numerous back and forth documentation for 16 years.

Committee Recommendation;

The Committee recommends that Treasury and the agency submits regulations to operationalize the fund within three months of adoption of this report by the House.

4.51 VOTE 2011: KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

Dr. Bernard Mogesa, the CEO and Accounting Officer for the Kenya National Commission on Human Rights appeared before the Committee on 2nd October 2023 accompanied by the following officers:

i.	Dr. Raymond Nyeris	Vice Chairperson
ii.	Mr. Joseph Ndiku	Director Co-orporate Services
iii.	Mr. John Wamwange	Financial Manager

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1863: Pending Bills

According to Annex 1 to the financial statements, the Commission had pending bills totaling Kshs. 13,242,693 as at 30June 2022, which were not settled in 2021/22 financial year but were instead carried forward to 2022/23 financial year due to inadequate exchequer allocations.

Failure to setle bills during the year to which they relate adversely affects the budgetary provisions of the subsequent year to which they are charged as they form a first charge.

Submission by the Accounting Officer

The pending bills of Kshs.13,242,693 as at 30 June, 2022 caused by budget cuts. The Commission paid Kshs12,954,558 by the 7th of July 2023 leaving a balance of Kshs. 288,135 unpaid due to supplier's inability to upload the invoices in IFMIS.

Committee Observations and Findings;

The Committee observed that effective calendar year 2023, suppliers/ vendors uploaded their invoices themselves on IFMIS to facilitate payments. The subject vendor owed Kshs. 288,135, Safaricom, had faced challenges doing so but had been prompted by the agency vide letter dated 12th May 2023 to do so, but had only uploaded part of the due invoices.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures the invoice is uploaded and paid within three (3) months of adoption of this report by the House.

4.52 VOTE 2021: NATIONAL LAND COMMISSION

Mrs. Kabale Tache Arero, the CEO/ Commission Secretary and Accounting Officer for the National Land Commission appeared before the Committee on 8th August 2023 accompanied by the following officers:

i.	Mr. Ben Cherutich	Director, Finance and Corporate Planning
ii.	Mr. Ben Bett	Ag. Director, Human Resource & Administration
iii.	Dr. Samuel Nthuni	Deputy Director
iv.	Mr. Walter Menya	Head, Corporate Communication
v.	Mr. Daniel Mwakio	Principal Finance Officer
vi.	Mr. Moses Laibuta	Principal Accountant
vii.	Mr. Abdullahi Haiji	Principal Accountant

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1869. Unsupported Prior Year Adjustments

The statement of assets and liabilities reflects prior year adjustments of Kshs. 6,587,878,307 as disclosed in Note 14 to the financial statements. However, Management did not provide any evidence to support the prior year adjustments.

In the circumstances, the validity, accuracy and completeness of the prior year adjustments of Kshs. 6,587,878,307 could not be confirmed.

Submission by the Accounting Officer

The statement of Assets and Liabilities reflects prior year adjustments of Kshs. 6,587,878,307 as disclosed in Note 14 to the financial statements. Prior year adjustments are arising as a result of changes in payments movements during the Financial Year.

Kshs. 6,587,878,307 as disclosed in Note 14 to the Financial Statements is made up of Current year acquisition funds receipts, Interest earned on the balances, Accounts payables for the current year under review, Payment paid and bounced back during the year under review. This is so since the Commission prepares its financial statements by use of Cash Basis Accounting system (IPSAS) as opposed to Accrual Accounting system.

Committee Observations and Findings;

The Committee observed that despite the reconciliations having since been done.

Committee Recommendation;

The Committee recommends that the Accounting Officer henceforth complies with accounting standards.

1870. Pending Bills

Note 14.2 to the financial statements reflects pending bills balance of Kshs. 531,496,362 comprising of Kshs. 17,424,210, Kshs. 487,150,361 and Kshs. 26,921,791 in respect of supply of goods, supply of services and staff payables, respectively. These bills were not paid during the year under review but were instead carried forward to the financial year 2022/2023.

Further, pending bills totaling Kshs. 6,279,400 were not adequately supported with the necessary documentation.

In the circumstances, the existence of the pending bills of Kshs. 6,279,400 could not be confirmed and failure to settle bills during the year to which they relate distorts the budget implementation of the subsequent year as the outstanding bills form a first charge on resources available.

Submission by the Accounting Officer

The Commission did not provide a comprehensive status report on the pending bills balance that were disclosed in the previous Audited financial statement as at close of Audit exercise.

The Commission did its best within the budgetary constraint environment to settle some of the pending bills. Attached is movement schedule of pending bills indicating amount paid as a first charge and the outstanding balance.

Pending bills totaling Kshs 6,279,400 has been fully supported.

Committee Observations and Findings;

The Committee observed that pending bills of Kshs. 6,279,400 had been belatedly supported.

Committee Recommendation

The Committee reprimands the Accounting Officer and recommends that the Accounting Officer henceforth complies with Section 68(2)(k) of the PFM Act 2012, by providing supportive documentation and explanations on time.

1871. Contingent Liabilities

Note 14.2 and Annex 7 to the financial statements reflect contingent liabilities totaling Kshs. 490,961,706 arising from legal fees, court cases and awards against the Commission. Further, the contingent liabilities balance includes an amount of Kshs. 11,000,000 in respect of legal fees out of which an amount of Kshs. 9,021,651 has remained outstanding since certification by the court on 4 January, 2019.

In the circumstances, the non-payment of the outstanding amounts may attract further avoidable expenses through interest and penalties charged on late payments.

Submission by the Accounting Officer

The nonpayment of kshs 9,021,651.00 is due to non-availability of the budget allocation by the National Treasury, However, with the allocated amounts in the subsequent Financial Year 2022/23 the Commission managed to pay the stated claim and attached is the pending bill movement schedule and bank statement extract.

Committee Observations and Findings;

i) **The Committee observed that the matter had since been settled as payment was done in the subsequent financial year.**
ii) **The Committee found that the matter was resolved.**

1872. Non-compliance with the One-third Basic Pay Rule

Review of the Commission's staff payroll revealed that, during the year under review, there were twenty-six (26) employees whose salary deductions exceeded two-thirds of their basic salaries. This was contrary to Section 19(3) of the Employment Act, 2007 which requires that deductions made by an employer from the wages of his employee at any one time shall not exceed two thirds of such wages

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Commission did not Comply with One Third Basic Pay Rule because of the following reasons;

a) Tax incentives by the government during the Covid 19 period gave staff more room for facility negotiations and hence after the reversal of the incentives several staffs were affected. However, moving forward, the Commission has ensured full compliance with section 19 (3) of the employment Act, 2007.
b) There were some staff also who have been affected by court cases involving family matters where the court has issued a decree and failure to implement court orders will lead to contempt proceedings against the Commission.

Committee Observations and Findings;

i) **The Committee observed that the matter had since been resolved as the violating employees had since regularized their payslips. Four officers were affected by court declarations.**
ii) **The Committee found that the matter was resolved.**

1873. Officers on Acting Capacity Beyond the Stipulated Time

Review of the payroll and other staff records revealed that eight (8) employees serving as County coordinators continued to serve in acting capacities and receive acting allowances beyond six (6) months. This was contrary to Section 5.6 of the Commission's Human Resource Policy Manual which provides that acting appointments will be made for a minimum of thirty (30) days and maximum of six (6) months duration.

In the circumstances, the Management was in breach of the Human Resource Policy Manual.

Submission by the Accounting Officer

The officers were holding acting position for more than Six Months. The acting position has remained so because of the ongoing court cases on the affected positions. The situation will be normalized as soon as the cases are determined.

The CEO position has been competitively filled and the six of the rest of the positions are currently being advertised for competititve filling. One other position was still before courts.

Committee Observations and Findings;

The Committee observed that the CEO position had been substantively filled while the rest which were subject to court cases were being filled as soon as court process was done. Six positions were due for advertisement within the next week of the Accounting Officer's appearance, leaving out one still before court.

Committee Recommendation

The Committee recommends that the Commission fills the six positions competititvely within one month of adoption of this report by the House, and the remaining one within three months of court resolution.

1874. Irregular Engagement of Legal Services

The statement of receipts and payments reflects expenditure totaling Kshs. 589,814,663 in respect of use of goods and services, as disclosed in Note 5 to the financial statements, which includes other operating expenses of Kshs. 261,982,324. The latter amount includes an expenditure of Kshs. 91,816,642 that was paid to a law firm on 21 June, 2022 due to various miscellaneous civil applications. However, review of records revealed that the Attorney General did not authorize the engagement of the law firm. This was contrary to Section 17(1) of the Office of the Attorney General Act, 2012 which provides that no Ministry or Department shall engage the services of a consultant to render any legal services relating to the functions of the Attorney General without the approval of the Attorney General.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Commission initially did not honor the Lawyers' fees given that procurement process for the same was not duly followed to the latter. However, the Lawyers went to Court and got judgements requiring the Commission to settle their bills. Non-compliance with such Court orders would result to the Commission facing contempt of court proceedings. The Commission diligently defended the bills of costs with the costs going down to a great extent.

Arising from these circumstances the Commission resolved that the CEO seeks legal advice from the Office of the Attorney General on how the Commission should handle the adjudged orders and decrees in view of the gaps in the procurement process. Vide a letter Ref. No. NLC/LEGAL.GEN.VOL.III/49 dated 8th April, 2022. The Attorney General responded vide letter Ref. No. AG/CONF/21/72/2 Vol. II dated 25th April, 2022 and advised that the payments could be effected for cases without pending court cases and those that have pending appeals should be considered by the Court of Appeal. Further, vide letter Ref. No. AG/CONF/21/72/2 Vol. II dated 24th May, 2022 the Attorney General also issued another advisory advising the Commission to settle the pending bills.

Committee Observations and Findings;

The Committee observed that the then Accounting Officer breached Section 17(1) of the Office of the Attorney General Act, 2012 by engaging in legal services without the Attorney General's consent. Subsequent advisories from the office of the Attorney General to pay some of the bills to the law firm, and court awards in favour of the firm, do not sanitize the breach post facto. Indeed the Commission had withheld certain payments in recognition of this breach.

Committee Recommendation;

The Committee reprimands the then Accounting Officer and recommends that he be surcharged of the amounts expended on the law firm by the Commission, subject to Article 226(5) of the Constitution.

1875. Unavoidable Interest Expense on Legal Fees

Review of court records in relation to Civil Application No. 363 of 2014, between an Investment Company and the Commission, revealed that the court awarded the plaintiff a sum of Kshs. 20,679,403 which comprised of the decretal amount of Kshs. 15,318,382 and interest of Kshs. 5,361,021 at a rate of 12% from 19 December, 2017. The interest expense of Kshs.5,361,021 was an avoidable charge to public funds which arose from the delay by the Commission in settlement of the payment due to the Company.

In the circumstances, value for money on the expenditure of Kshs. 5,361,021 incurred on the interest expense could not be ascertained.

Submission by the Accounting Officer

The Commission has continued to lobby for budget allocation in order to settle such expenditure. However, non-availability of the budget allocation by Parliament and the National Treasury citing budget constraints on the resource envelope has hampered the efficient dispensing of the matters. Attached is a demonstration of the Commission continuous engagement with GoK on funding the Commission to enable it settle the bills in time to avoid accrual of interest.

Committee Observations and Findings;

The Committee observed that despite inadequate exchequer, the Commission ought to pro-actively negotiate with court awardees payment plans to avoid accrual of interests.

Committee Recommendation;

The Committee recommends that the Accounting Officer henceforth negotiates payment plans with court awardees to avoid interest accruals. Further, the commission should settle pending bills based on first-in-first-out basis.

1876. Failure to Update Fixed Assets Register

Annex 4 to the financial statements on summary of fixed assets register reflects a balance of Kshs. 744,537,853 as at 30 June, 2022 as the historical cost of assets. However, the fixed asset register provided for audit lacks critical information like the cost of the assets as well as other requisite

disclosures contrary to the requirements under the guidelines on assets and liabilities by The National Treasury.

In the circumstances, the effectiveness of controls relating to management of fixed assets could not be confirmed.

Submission by the Accounting Officer

The fixed asset register submitted for audit by the Commission did not comply with the Treasury template in its reporting as it was not updated on some items like the cost and depreciation as well as other requisite disclosures. However, moving forward, the Commission has prepared a comprehensive assets and liabilities register in a prescribed template as issued by the National Treasury. It is also worth noting that the Commission prepares the financial statement in accordance with IPSAS cash basis of accounting method under IPSAS. The revised register is attached.

Committee Observations and Findings;

i) **The Committee observed that the matter had since been settled as the complete register had now been availed.**
ii) **The Committee found that the matter was resolved.**

1877. Staffing Levels Below Approved Staff Establishment

Review of human resource records revealed that the Commission has an approved staff establishment of one thousand two hundred and sixteen (1,216) staff against five hundred and forty-eight (548) staff members in post thus resulting in an overall under establishment of six hundred and sixty-eight (668) staff as at 30 June, 2022. This was contrary to Section 2 of the Commission's Human Resource Policy Manual which provides that in order to attract and retain competent employees required for efficient and effective service delivery, appointments shall be made with the approval of the Commission and shall be within the approved establishment.

In the circumstances, failure to recruit and retain the optimal number of employees may hinder the effective delivery of services by the Commission.

Submission by the Accounting Officer

The Commission has an approved staff establishment of one thousand two hundred and sixteen (1,216) staff against five hundred and forty- eight (548) in post resulting in an overall under establishment of six hundred and sixty-eight (668) personnel. This is due to low budgetary allocation from the National Treasury. The situation will be normalized as soon as the budget for recruitment of additional staff is allocated by the National Treasury. It is worth noting that the same has been gradually been implemented upon continuous budgetary provision by Parliament and the National Treasury.

Committee Observations and Findings;

The Committee observed that the agency was gradually addressing the shortfall, with fifty-one (51) additional staff being recruited as at the time of their appearance.

Committee Recommendation;

The Committee recommends that the Accounting Officer establishes critical departments that need staffing and liaises with Treasury to fund the same within the next two fiscal years.

NATIONAL LAND COMMISSION HOUSING SCHEME FUND

1878. Unreconciled Long-Term Receivables from Exchange Transactions

The statement of financial position reflects long-term receivables from exchange transactions balance of Kshs. 48,993,645 as disclosed in Note 5 to the financial statements. However, the loan statements from the bank reflects a total amount of Kshs. 41,875,799 resulting to an unexplained variance of Kshs. 7,117,846.

Further, the current amount receivable in the next twelve (12) months was not separated from the long-term receivables from exchange transactions balance of Kshs. 48,993,645 contrary to the requirement of the reporting template.

In the circumstances, the accuracy and fair presentation of the long-term receivables from exchange transactions balance of Kshs. 48,993,645 could not be confirmed.

Submission by the Accounting Officer

There were variances of the long-term receivables, we have since provided and explained the variance with balances of each beneficiary tied to the bank balances of the individual beneficiaries to eliminate the variances. The variances is as a result of payroll ledger using straight-line method of amortization and the bank using reducing balance method of amortization on the beneficiary account. The Commission has since adopted reducing balance method to eliminate any future variances.

Going forward the Commission will take into account and separate in the next subsequent financial year's receivables from exchange transaction as per the reporting templates.

Committee Observations and Findings;

i) **The Committee observed that the matter had since been settled as the reconciliations had been done.**
ii) **The Committee found that the matter was resolved.**

1879. Failure by the Steering Committee to Hold Requisite Meetings

Perusal of the Steering Committee meetings minutes revealed that during the year under review, the Committee held three (3) meetings. This was contrary to Regulation 6(5) of the National Land Commission Housing Scheme Fund Regulations, 2016 which states that, the Committee shall meet at least four times in a year and the period between one meeting of the Committee and the next shall not exceed four (4) months.

In the circumstances, the Management was in breach of the Regulations.

Submission by the Accounting Officer

The steering committee held three meetings during the year under review, going forward we have placed mechanisms in place to ensure compliance with regulation 65 i.e. quarterly meetings to ensure full compliance with the requisite meetings number annually.

Committee Observations and Findings;

The Committee observed that despite the Accounting Officer submitting that they had no funds to dispense, the steering committee had an obligation of actively administering and overseeing operations of the fund.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures that the steering committee holds requisite meetings.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

NATIONAL LAND COMMISSION STAFF CAR LOAN SCHEME FUND

REPORT ON THE FINANCIAL STATEMENTS

1881. Long Term Receivables from Exchange Transactions

The statement of financial position reflects long-term receivables from exchange transactions balance of Kshs. 2,792,520 as disclosed in Note 5 to the financial statements.

However, the schedule of receivables provided for audit review reflected a balance of Kshs. 2,419,673 resulting in an unexplained variance of Kshs. 372,847.

In the circumstances, the accuracy and completeness of the long-term receivables from exchange transaction balance of Kshs. 2,792,520 could not be confirmed.

Submission by the Accounting Officer

There were variances of the long-term receivables, we have since provided and explained the variance with balances of each beneficiary tied to the bank balances of the individual beneficiaries to eliminate the variances.

The variances is as a result of payroll ledger using straight-line method of amortization and the bank using reducing balance method of amortization on the beneficiary account. The Commission has since adopted reducing balance method to eliminate any future variances

Committee Observations and Findings;

i) **The Committee observed that the matter had since been settled as the reconciliations had been done.**
ii) **The Committee found that the matter was resolved.**

4.53 VOTE 2031: INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

CPA Marjan H. Marjan, the Principal Secretary and Accounting Officer for Independent Electoral and Boundaries Commission, appeared before the Committee on 29th July and 26th August 2024, accompanied by the following officers:

i) Ms. Ruth K. Kulundu	_	Deputy Chief Executive Officer
ii) Mr. Obadiah Keitany	_	Deputy Chief Executive Officer
iii) Mr. Osman Hassan Ibrahim	_	Director Finance
iv) Mr. Chrispine Owiye	_	Director Legal Services
v) Mr. Patrick Nyakira	_	Ag. Manager Financial Accounting
vi) Mr. Shadrack Kibet	_	Ag. Supply Chain Manager
vii) Mr. Michael Ouma	_	Deputy Director, ICT

And submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1884. Long Outstanding Receivables

As previously reported, the statement of financial position reflects balances of Kshs.11,160,000 and Kshs.26,193,000 in respect of accounts receivables and car loan accounts receivables, respectively which have been outstanding for more than fifteen (15) years. As disclosed in Notes 10 and 11 to the financial statements, the amounts relate to imprests and salary advances held by staff and outstanding car loans to Commissioners of the defunct Electoral Commission of Kenya. The funds were recovered from the Commissioners final dues but were retained by The National Treasury. Management has indicated that the Commission is engaging The National Treasury with a view of getting the money refunded or obtaining approval to write off the accounts receivables from the Commission's accounting records.

In the circumstances, the recoverability of the long outstanding accounts receivables totaling Kshs. 37,353,000 could not be ascertained as at 30th June, 2022.

Submission by the Accounting Officer

The Commission appeared before this Committee on 13th March 2023 and comprehensively responded to this matter during the deliberations on the examination of the Report of the Auditor General on the accounts of IEBC for the year ended 30th June 2021.

The Committee recommended thus "the Accounting Officer to follow up with the National Treasury and provide evidence of the Settlements of the dues regarding liabilities recovered in form of imprest, car loan and advances from former ECK staff within three (3) months after adoption of this report".

To this end, the Commission made a follow up with the National Treasury as highlighted below:

i. Requested a meeting with the Cabinet Secretary to the National Treasury on 23rd January 2024 to discuss the issue and find a mutually agreeable resolution to bring these matters to a successful conclusion

ii. Sent a reminder to the CS National Treasury on 16th August 2023 requesting the National Treasury to refund the monies to the Commission or grant authority to write off the amount from books of accounts as per Section 69(1)-(4) of the PFMA, 2012 and Regulations, 2015. The Commission received a Letter Ref. MOFCA/69(13) dated 9th February,2024 requesting IEBC to provide more information/details of ECK Accounts Receivables to enable National Treasury take necessary action.

iii. Despite the various efforts, the Commission is yet to receive any response and hence no progress has been made.

This issue, which has been unresolved for over fifteen (15) years, pertains to the now-defunct Electoral Commission of Kenya (ECK). The Commission was involved in the National Treasury Taskforce's resolution of old balances as of 30 June 2013. As a result, a portion of the Commission's ECK Old Balances, initially amounting to Kshs 4,409,551,000, was reduced to Kshs 37,353,000. This balance comprises Kshs.11,160,000 (salary advances of Kshs. 9,214,000 and temporary imprests of Kshs. 1,946,000) and Kshs. 26,193,000 related to accounts receivables and car loan accounts receivables, respectively."

The Commission has written to the Attorney General office to get confirmation that the then Ministry of Justice, National Cohesion and Constitutional Affairs made recoveries from the final dues of the ex –ECK staff for balance of Kshs.11,160,000.

The accounts receivable of Kshs. 26,192,965.00 relates to funds recovered from final dues of ECK Staff and Commissioners by the Ministry of Justice and National Cohesion & Constitutional Affairs and forwarded to the National Treasury. The recoveries were on account of car loan balances.

The Commission expects the total amount to be refunded to the IEBC since the IEBC Car Loan Scheme has been fully operationalized by the Commission and is being administered by Housing Finance Corporation.

The Commission would like to present the following additional information:

a) The salary advances amounting to Kshs. 9,214,000 were explicitly approved/cleared by the taskforce to pass adjustments in the Financial Statements.
b) The outstanding imprest schedule for ECK as of 30th June 2008, amounting to Kshs.1,945,359.05.
c) A schedule detailing the amounts deducted/recovered from the EX-ECK Commissioners for the GK Car loans liability of Kshs. 26,192,965.

Based on the preceding information and a thorough review of the communications between the Ministry of Justice, Ministry of Finance and the Report of the National Treasury Taskforce on Resolution of Old Balances it is evident that all dues were settled prior to the final payments to the staff and Commissioners of ECK. Consequently, we kindly request the Committee to consider endorsing our appeal to the Cabinet Secretary/National Treasury for approval to adjust and clear the long outstanding receivables from the financial statements. This will definitively address the longstanding issue in accordance with Section 69 (3) of the PFMA, 2012, and the PFM Regulation 148(6). It's worth noting that these account receivables constitute less than 1% of the Commission's budget of Ksh.4.5 billion.

The Commission has been proactive in seeking approval to adjust and/or reverse the amounts, as evidenced by our numerous correspondences with the Ministry of Finance, the National Treasury, Ministry of Justice and National Cohesion and Constitutional Affairs, and the Clerk of the National Assembly.

Additionally, we requested for a meeting with the Cabinet Secretary to the National Treasury on 23rd January 2024 to discuss the issue and find a mutually agreeable resolution to bring these matters to a successful conclusion and also sent a reminder to the CS National Treasury on 16th August 2023 for the refund of the monies to the commission or to be granted authority to write off. These efforts have, however, not yet yielded the desired results.

Committee Observations and Findings;

The Committee observed that the matter had taken inordinately long to settle despite numerous correspondences on the same and the Committee's previous recommendation.

Committee Recommendation;

The Committee recommends that the Accounting Officer liases with the Principal Secretary National Treasury and resolves the matter within three (3) months of adoption of this report.

1885. Inaccurate Inventory Balance

The statement of financial position and disclosure Note 12 to the financial statements reflects an inventory balance of Kshs. 907,560,000 which relates to the August, 2022 General Elections. The Commissions held significant quantities of strategic and non-strategic election materials in various stores in its national, county and constituencies offices. However, as reported in the previous years, the disclosed amount does not include items of undetermined values inherited from the defunct Electoral Commission of Kenya and some purchased by the Independent Electoral and Boundaries Commission which have not been valued. In addition, there was no stock taking carried out to determine the value of stocks held as at 30 June, 2022.

In the circumstances, the accuracy and completeness of inventories balance of Kshs. 907,560,000 reflected in the financial statements could not be confirmed as at 30 June, 2022.

Submission by the Accounting Officer

The Commission appeared before this Committee on 13th March 2023 and comprehensively responded to this matter during the deliberations on the examination of the Report of the Auditor General on the accounts of IEBC for the year ended 30th June 2021.

The Committee recommended as follows;

i. Within three (3) Months of the tabling and adoption of the report, the Accounting Officer avails a status report on the inventory management system to the Committee.
ii. The Accounting officer to ensure that inventories are properly valued and disclosed in the FY2022/2023.

To this end, the Commission is glad to report that the inventory management system has been developed and currently being rolled out at the counties.

Further, we submit our response with the latest developments and progress as below.

i. In the FY 2021/2022 and FY2022/2023, the Commission managed to establish the values of inventory and incorporated them in the financial statements as part of the implementation of Public Accounts Committee recommendation. The amounts, so far, disclosed in the statements as at 30th June 2023 were Kshs. 907,560,000 and Kshs. 995,724,000 for FY 2021/2022 and FY2022/2023 respectively.

ii. The inventory items that the Commission inherited from the now-defunct ECK were not assigned any value due to the unavailability of ECK's records. A significant portion of these items are now obsolete. The Commission has undertaken a comprehensive disposal of obsolete inventory, which has resulted in decreased inventory levels in our warehouses.

iii. The Commission was unable to conduct the planned stock taking at the end of the financial year due to the pressing demands of the 2022 General Election activities. The end of the financial year coincided closely with the General Election held on 9th August 2022, which led to a constant flow of materials and consumables from suppliers into the warehouses. As such, maintaining a static inventory balance was impractical without halting warehouse operations, which would have adversely affected the election process.

iv. The Commission has developed an Inventory Management System (IMS) which is currently being used to manage and determine the quantity and the value of the Commission inventory at any time. The system has since been rolled out to all Commission warehouses and stores at the National, County and constituency warehouses.

v. The Commission also undertakes annual stock taking by 30th June of every year to ascertain quantities and the values to be included in the financial statements. In the financial year 2022/2023, the Commission used the stock taking report. The system was then used to generate the inventory report and determine the value used in the preparation of the 2022/2023FY financial statements.

vi. In the year 2022/2023FY, the Commission used the stock taking report to reconcile and update the Inventory Management System. The system was then used to generate the inventory report and determine the value used in the preparation of the 2022/2023FY financial statements.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General inspects the inventory report in subsequent audit.

1886. Property, Plant and Equipment

The statement of financial position and disclosure Note 13 to the financial statements reflects property, plant and equipment balance of Kshs.2,966,356,000. However, review of the balance revealed the following unsatisfactory matters;

1886.1. Untitled Land and Buildings

As reported in the previous years, the balance excludes the cost of fifty-six (56) parcels of land on which the Commission's office blocks have been constructed in the counties. Further, the Commission had not obtained ownership documents for eighty-four (84) parcels of land allocated by the National and County Governments and whose values were not included in the financial

statements. The financial statements also exclude the value of a parcel of land located in Mandera whose value has not been determined and is subject to ownership dispute between the Commission and the County Government of Mandera.

Submission by the Accounting Officer

The Commission appeared before this Committee on 13th March 2023 and comprehensively responded to this matter during the deliberations on the examination of the Report of the Auditor General on the accounts of IEBC for the year ended 30th June 2021.

The Committee recommended; thus, the Accounting Officer to liaise with the National Lands Commission to acquire the title documents for the parcels of land and report to the Committee within three (3) months of adoption of this report.

To this end, the Commission is currently engaging with the National Land Commission and other government institutions to facilitate the issuance of title deeds and undertake comprehensive valuation of the properties.

However, we submit our response with the latest developments and progress as below.

a) Ownership Documents for eighty-six (86) parcels of land allocated:

The Commission recognizes that it lacks ownership documents for certain parcels of land and the valuation of some properties for inclusion in the financial statements. This issue arises from the fact that the ownership and registration of lands and buildings, inherited from the now-defunct ECK, were not transferred to the Commission upon the establishment of the IEBC. However, the Commission has initiated the processes that will result in ascertaining the value of the lands and buildings as follows: -

i. The Commission is collaborating with respective government agencies to obtain allotment letters and Partial Development Plans (PDPs) where the Commission has been allocated land. So far, the Commission has obtained 20 allotment letters and 8 PDPs.
ii. The acquisition of title deeds for all parcels of land allocated to it irrespective of whether the land is developed or not.
iii. The process will culminate in valuation of all Commission's parcels of land and buildings in collaboration with the Ministry of Lands, Public Works, Housing and Urban Development
iv. Upon registration and valuation of the Commission's properties inherited from ECK, the determined values will be, therefore, included in the financial statements.

Further, the Commission would like to submit that it has a total of 86 parcels of land and buildings with the following status:

a) Twenty-six (26) parcels of land have been developed by the IEBC. The developments include IEBC Constituency offices, IEBC County offices, warehouses, refurbished containers, and multipurpose halls. These assets have been capitalized and their values included in the financial statements at the historical cost of construction.
b) Thirty-Five (35) parcels of land contain buildings inherited from ECK whose values have not been included in the financial statements. Registration and valuation of these parcels of land are required to determine their values to be incorporated in the financial statements as soon as valuation budget is secured.

c) Twenty-Five (25) undeveloped parcels of land are in various national and/or county government establishments. These parcels of land require registration and valuation to determine the values to be included in the financial statements.
d) The status report of the registration and processing of ownership documents/title deeds of all the Eighty –Six (86) parcels of land is provided.
e) The Commission has, further, demonstrated the efforts it has made in the registration process by obtaining two (2) title deeds for Lamu West Constituency and Mandera county offices.
f) The Commission inherited 4 incomplete projects in Ijara, Nyando, Kasipul constituencies and Nyanza South Region-Kisii. These projects were later completed by the IEBC and their costs included in the Financial Statement.
g) It is important to also note that the parcels of land located in Mandera County is not a subject of ownership dispute between the Commission and the County Government of Mandera as reported. The county government had only indicated that they would prefer to allocate the Commission another parcel of land instead of the particular one. This is due to the very close proximity of the land to the County Government offices.
h) Regulation 143(2) of the Public Finance Management (National Government) Regulations, 2015 provides that a register of land and buildings shall record each parcel of land and each building and the terms on which it is held with reference to the conveyance, address, area, dates of acquisition, disposal or major change in use, capital expenditure, lease hold terms, maintenance contracts and other pertinent management details. The Commission is in compliance with the clause save for the ownership and valuation to determine the book value to be included in the financial statements and register of land and buildings.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures completion of valuation and acquisition of land ownership documents within six (6) months of adoption of this report.

1886.2. Unconfirmed Ownership and Valuation of Motor Vehicles

Included under property, plant and equipment balance of Kshs.2,966,356,000 as at 30th June, 2022 are motor vehicles with a carrying amount of Kshs.56,447,000. However, examination of the motor vehicles status report as at 30th June 2022 and field inspection revealed the Commission had two hundred and fifty-six (256) motor vehicles, three (3) motor boats and two (2) folk lifts. However, only the cost of one hundred and fifty-nine (159) motor vehicles was included in the property, plant and equipment balance of Kshs.2,966,356,000. Further, two hundred and ten (210) motor vehicles were still registered under the defunct Electoral Commission of Kenya and have not been transferred to the Independent Electoral and Boundaries Commission while eighty-five (85) motor vehicles, three (3) motorboats and one (1) folk lift were grounded with some being unserviceable and have been idle for over three (3) years.

In addition, four (4) motor vehicles grounded in private garages in Mombasa and Meru counties have accumulated storage costs of Kshs. 3,202,600.

In the circumstances, the accuracy, completeness and ownership of the property, plant and equipment balance of Kshs.2,966,356,000 reflected in the financial statements as at 30th June, 2022 could not be ascertained.

Submission by the Accounting Officer

The Commission appeared before this Committee on 13th March 2023 and comprehensively responded to this matter during the deliberations on the examination of the Report of the Auditor General on the accounts of IEBC for the year ended 30th June 2021.

The Committee recommended; thus, the Accounting Officer to liaise with the NTSA to acquire the ownership documents for the motor vehicles and report to the Committee within three (3) Months after adoption of the report.

To this end, the Commission wishes to report that the commission has identified 28 vehicles without logbooks and whose records are not in the NTSA's system and not registered in Transport Information Management System (TIMS). The Commission has requested NTSA for tape lifting, a process through which the office of the Directorate of Criminal Investigation (DCI) verifies the car's chassis number, engine number and number before issuing the duplicate logbooks. This will facilitate their registration under IEBC name.

Nonetheless, the Commission acknowledges that the value of some of its vehicles had not been included in the financial statements. This situation is attributed to the fact that some of the motor vehicles which were inherited from the defunct ECK had no purchase, ownership, and registration documents. Their values could not be ascertained since there was no official hand over from the defunct ECK to IEBC.

However, the Commission has, over the period, made deliberate steps to remedy the situation as follows;

a) The Commission has applied for the logbooks through TIMS for 28 vehicles whose records are in the NTSA database, and the applications are in progress.
b) Further, the vehicles whose records are not in the NTSA system and not registered in Transport Information Management System (TIMS), The Commission has requested NTSA for tape lifting, a process through which the office of the Directorate of Criminal Investigation (DCI) verifies the car's chassis number, engine numbers and number before issuing the duplicate logbooks. This will facilitate their registration under IEBC name.
c) The Commission wrote to the National Transport and Safety Authority (NTSA) regarding transfer of ownership of vehicles that had not been issued with logs books. The NTSA advised that the Commission needs to be created as user in their digital registration platform for the registration of the unregistered motor vehicles. The Commission experienced challenges in opening the TIMS Digital Registration Platform but finally managed to open the TIMS account to enable the registration process. This delayed the progress of obtaining the logbooks.
d) The Commission has continued to dispose of grounded, obsolete, and unserviceable vehicles to minimize the cost of maintenance. The first phase of this process was implemented in the FY2021/22. The Commission is also undertaking cost benefit analysis to determine whether to dispose or repair the vehicles given the magnitude of the storage

charges. The Commission will also consider engaging the garages with a view to waiving the storage costs.

e) These vehicles are more than 10 years old and have near zero book values. Therefore, their impact on valuation on the financial statements are minimal to merit funds allocation for valuation process for the purpose of financial reporting. Also, IEBC legally inherited ECK assets and liabilities.
f) The Commission currently has a total of 272 (as at 30th June 2023) motor vehicles, 2 forklifts and 3 boats.
g) One hundred and sixty-two (162) vehicles were purchased by the Commission and are included in the Commission's fixed asset register.
h) One Hundred and ten (110) vehicles were inherited from ECK without proper ownership documents and their historical cost values. Their carrying amount values are not included in the Fixed Asset Register and in the financial statements since they are over 14 years old and their net book values are zero. The Commission has earmarked sixteen (16) of them for disposal. The remaining vehicles are earmarked for valuation to determine their fair values for inclusion in the in the Commission's Financial statements.
i) The Commission has written to National Transport and Safety Authority (NTSA) requesting for the ownership documents to facilitate the valuation process.
j) The two (2) forklifts and three boats are earmarked for valuation to either determine their fair values to be included in the Fixed asset register and in the financial statements or to be considered for disposal depending on the valuation outcome.
k) The Commission inherited the Assets and Liabilities of the defunct ECK and has continued to operate as a going concern. This implies that all assets of the ECK including vehicles were deemed to have been vested to IEBC in line with section 34 of IEBC Act, 2011. However, the Commission has engaged the NTSA and has received the quotations that would enable the transfer of the logbooks to IEBC.
l) Consequently, the Commission received 12 Additional new logbooks on 2nd March 2023.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures completion of valuation and acquisition of motor vehicle logbooks within three (3) months of adoption of this report.

1887. Pending Bills

Note 15 to the financial statements indicates that the Commission had pending bills totaling Kshs.2,051,567,000 as at 30 June 2022 that were not settled during the financial year 2021/2022 but were instead carried forward to 2022/2023 financial year. Some of the pending bills date back to more than ten (10) years. Further, the amount includes legal pending bills totaling Kshs.1,733,343,356 which have increased from Kshs.1,316,180,629 reported as at 30 June 2021. The Commission risks legal actions since the debt has been outstanding for the past ten (10) years.

Failure to settle bills during the year in which they relate to adversely affects the provisions of the subsequent year to which they have to be charged.

Submission by the Accounting Officer

The Commission appeared before this Committee on 13th March, 2023 and comprehensively responded to this matter during the deliberations on the examination of the Report of the Auditor General on the accounts of IEBC for the year ended 30th June 2021.

The Committee recommended thus "the Accounting Officer in liaison with the Attorney General provides guidelines of appointment of law firms representing the Commission, including parameters for the compensation, and avails this to the National Assembly within six (6) months of adoption of this report.

The Commission will engage the Attorney General upon the constitution of the Commission on the possibility of developing guidelines for appointment of law firms including parameters for compensation. The Commission has however, developed its own guidelines on payment of Advocates indicating the ceilings/capping as approved by the Commission.

Nonetheless, we submit our response with the latest developments and progress as below;

1. The Commission confirms that it had outstanding/pending bills amounting to Kshs. 2,299,626,000 as at the period ended 30th June 2022. These pending bills related to the 2017 General and Fresh Presidential Elections.
2. The Commission hereby submits schedules of pending bills for the 2020/2021, 2021/2022 and 2022/2023 Financial Years and the pending bills movement schedule for respective financial years up to the financial period ending 30th June, 2023.
    a) As at 31st March, 2024, the Commission's outstanding bills amounted to Kshs. 3,894,676,880
    b) The Commission has settled pending bills totaling Kshs. 2,523,830,008 for the last four financial years to 31st March 2024. Payment as first charge on voted provision amounted to Kshs. 1,473,830,008 while those related to funding by the government as additional budgetary allocation for the payment of pending bills amounted to Kshs. 1,050,000,000.
    c) The total outstanding bills as at 31st March 2024 amounted to Kshs.3,894,676,880 as per Annex V on IEBC Pending Bills schedules as at 31.3.2024.
    d) The total outstanding bills as at 30th June 2023 amounted to Kshs.4.86 Billion as per Annex V (a) on IEBC Pending Bills schedules as at 30.6.2023.
    e) The total outstanding bills as at 30th June 2022 amounted to Kshs.2.05 Billion as per Annex V (b) on IEBC Pending Bills schedules as at 30.6.2022.
    f) The outstanding bills as at 30th June 2021 being the period under review was Kshs.2.30 billion as per Annex V(c) on IEBC Pending Bills schedules as at 30th June 2021.
    g) Notably, in the 2023/2024FY, the Commission was not allocated any funds for the settlement of the pending bills in the budget despite various appeals for additional funding as demonstrated in Annex V(d) on Letters dated 3rd and 8th August,2023 to the National Treasury request for additional funding to settle pending bills.
    h) The budgetary allocations in any non-election year are limited and mainly consists of operations and maintenance expenditure. Therefore, pending bills cannot be absorbed as first charge. A large portion of the pending bills as at 30th June 2023 were election petition legal fees amounting to Kshs.3.3 billion and Kshs 1.0billion owed to Postal Corporation of Kenya for logistics and transport services offered during the 2022 General Election. The Commission has since paid Kshs.550m to PCK and Kshs 121m Legal fees.
3. The pending bills were accrued due to:

a) Lack of exchequer for payments which had been planned for and processed to exchequer requisition level. The Commission was consequently forced to reverse the payments from the IFMIS.
b) Budgetary deductions occasioned by government austerity measures which resulted in total deduction of Kshs 1.82billion.
c) Lack of budgetary provision especially legal fees for defending election petitions, which cannot be avoided, were indeterminate during budgeting.

4. The Commission confirms that the existence of the pending bills continues to adversely affect the budgetary provisions for subsequent periods because some of them have to be paid as first charge in accordance with the National Treasury's directive on the treatment of pending bills.
5. The Commission has made several efforts to secure budgetary provision to facilitate settlement of the said bills in addition to settling them as first charge. The efforts include:
   a) Presented several times to Parliament (JLAC) on the need for allocation of additional funds to settle the pending bills.
   b) Secured several meetings with National Treasury to resolve pending bills issues.
   c) Carried out Internal validation of the pending bills to ascertain their eligibility.
   d) Payment of the bills as first charge in some instances.
   e) Made several requests to the National Treasury for additional funding.
   f) Written to the office of the Attorney General for advisory on some pending bills.
   g) Appeared before the Multi-Agency Committee on Pending bills chaired by the National Treasury to secure funding for the bills.
   h) Continuous engagement with relevant stakeholders including the National Treasury to facilitate funding

Committee Observations and Findings;

The Committee noted that the Accounting Officer committed the institution to bills not budgeted for.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the Accounting Officer builds internal capacity of the legal department to handle litigation.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1888. Failure to Carry Out County Accounting Functions in IFMIS

The statement of financial performance indicates that the Commission incurred an expenditure totaling Kshs.15,801,962,000, out of which an amount of Kshs.4,576,896,665 related to county offices. Although the Accounting Officer had appointed the County Election Managers as Authority to Incur Expenditure (AIE) Holders, the county offices were not linked to IFMIS even though internet infrastructure required for use of IFMIS existed in the county offices.

Further, the AIE disbursements were made through IFMIS but the expenditure at the County offices was done manually. As a result of County budgeting, expenditure management and control, accounting and reporting functions were manual and implemented outside IFMIS contrary to Chapter 3.0 of the Commission's Finance and Accounts Policies and Procedures Manual.

In the circumstances, the Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that the Commission in collaboration with the National Treasury has initiated the process of rolling out IFMIS to all the counties.

The National Treasury has appointed two technical officers to work with the IEBC team with a view of exploring the possibility of installation and operationalization of IFMIS in all the counties. This was after the Commission requested for installation of IFMIS and e-procurement in the 47 IEBC Counties. The Accounting Officer has since appointed Technical Working Group to operationalize IFMIS and e-procurement in the IEBC County offices.

The Commission has planned to roll out the IFMIS to the counties in two phases as follows.

Phase One - November 2023 – March – 2024

- To roll out the AIE transfers module from HQ to Counties.
- Setup of all County offices as cost centers for receipt of funds from Headquarters in the system.
- The new 47 sub heads to be factored in the budget/vote book to cater for the County offices in terms budget allocation and disbursements for each county.
- Setup of County Election Managers (CEM) and County/Regional accountant as GL user and GL Supervisor in IFMIS to facilitate real time capture of data in General Ledger- Proposed piloting in the following counties- Nairobi, Kajiado, Kiambu, Muranga, Machakos, Makueni and Kitui
- Training of the General Ledger users and approvers on the roles to be conducted to facilitate roll out.

Phase two: December 2024- March 2025

- Roll out of Accounts and e-procurement modules in the regional offices.
- Capture procurement plans in system.
- Create procurement head, accounting head and County Election Managers to manage transactions and approvals at the counties.
- Sensitize other IEBC staff on e- Procurement roles.
- Sensitize suppliers in the regions on IFMIS e-Procurement mandate and their roles.

In the meantime, the Commission has put in place measures and controls to ensure accountability and prudent use of public resources which includes development and implementation of policy and procedure manuals including work instructions as well as periodic internal auditing.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a report on completion of the roll out to the Committee by 30th April 2025.

1889. Failure to Use E-Procurement System

Examination of the Commission's records revealed that an expenditure totaling Kshs.856,993,800 was incurred at the County offices for budget items that involved procurement. The expenditure was authorized by the County Elections Managers who were appointed AIE Holders by the Accounting Officer. However, examination of the payment vouchers, local purchase orders and local service orders supporting the expenditure revealed that the procurement was implemented outside e-Procurement system and manual returns sent to the Head office for further processing. This was contrary to Regulation 54 of the Public Procurement and Asset Disposal Regulations, 2020 which require procuring entities to use the e-Procurement system.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that the Commission in collaboration with the National Treasury has initiated the process of rolling out IFMIS to all the counties.

The National Treasury has appointed two technical officers to work with the IEBC team with a view of exploring the possibility of installation and operationalization of IFMIS in all the counties. This was after the Commission requested for installation of IFMIS and e-procurement in the 47 IEBC Counties. The Accounting Officer has since appointed Technical Working Group to operationalize IFMIS and e-procurement in the IEBC County offices.

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- Setup of County Election Managers (CEM) and County/Regional accountant as GL user and GL Supervisor in IFMIS to facilitate real time capture of data in General Ledger- Proposed piloting in the following counties - Nairobi, Kajiado, Kiambu, Muranga, Machakos, Makueni and Kitui.
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- Roll out of Accounts and e-procurement modules in the regional offices.
- Capture procurement plans in system.
- Create procurement head, accounting head and County Election Managers to manage transactions and approvals at the counties.
- Sensitize other IEBC staff on e- Procurement roles.
- Sensitize suppliers in the regions on IFMIS e-Procurement mandate and their roles.

In the meantime, the Commission has put in place measures and controls to ensure accountability and prudent use of public resources which includes development and implementation of policy and procedure manuals including work instructions as well as periodic internal auditing.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a report on completion of the roll out to the Committee by 30th April 2025.

1890. Outstanding Court Awards

The statement of financial position reflects a balance of Kshs.20,813,000 in respect of receivables from non-exchange transactions which, as disclosed in Note 9 to the financial statements, includes an amount of Kshs.5,396,000 described as Court awarded costs. As reported in the previous years, the balance relates to Appropriations-In-Aid (AIA) receivables from court cases decided in the year 2013 and for which costs had been awarded to the Commission. However, Management did not demonstrate the measures taken to collect the amounts awarded or collect the revenue due as required under Regulation 64 (1) of the Public Finance Management (National Government) Regulations, 2015.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted that the Commission appeared before the Committee on 13th March 2023 and comprehensively responded to this matter during the deliberations on the examination of the Report of the Auditor General on the accounts of IEBC for the year ended 30th June 2021.

The Committee recommended thus "the Accounting Officer to submit a status report to the Committee within three (3) months after adoption of this report on the long outstanding amounts for review and reporting in subsequent audits"

To this end, the commission has initiated the process of procuring the services of licensed Auctioneers as advised by the office of the Attorney general. The auctioneers will help in the recovery of the costs awarded in favor of the Commission.

The Commission has put in place mechanisms to recover costs awarded in its favor from the various petitioners as follows: -

a) Appointing Auctioneers to collect Awarded Costs: The Commission is in the process of appointing auctioneers to facilitate the recovery of the costs awarded in favor of the Commission. Letter to Auctioneers Licensing Board and approvals to procure the services of the Licensed Auctioneers across the 47 counties was provided to the Committee.

b) Filing bills of costs against persons adjudged by the Court to be liable to pay costs. This has however been hampered by the fact that taxation of costs in court takes long. Recovery of costs is dependent on successfully securing certificates from taxing officers in Court followed by

appropriate execution proceedings. During the period under review the Commission managed to collect Kshs.3.2 million.

c) Instructions to Law Firms: The Commission contracted and expressly gave instructions to the law firms during engagement to file and collect the taxed amounts to recover costs awarded to the Commission by the courts and remit the same to the Commission.

d) Reminders: The Commission has on several occasions reminded the law firms acting on behalf of the Commission of their obligation to recover and remit the costs awarded to the Commission as per the instruction letters issued to them.

e) The Commission and the advocates have adopted the following additional measures to recover the costs:

- Issuance of demand letters in respect of ascertained costs.
- Filing Bill of Costs where the amount of costs ordered is not ascertained.
- Taxation and execution to recover the costs.

f) Regular Updates: The law firms have been updating the Commission on progress made in recovery of the costs.

g) Most of the law firms have made progress including tracing of the assets of the judgment debtors for purposes of execution, filing of the respective bills of costs and some have been taxed already and the actual process of recovering the costs has commenced while others have fixed dates at the court registry for assessment of the bills of costs.

h) In some matters, the courts have issued Notice to Show Cause to judgment debtors to pay the costs or be committed to civil jail.

i) The Commission has since written to the Attorney General's office for assistance in recovery of the costs.

Challenges the Commission is facing in the Recovery of Court Awards:

The recovery process has been hampered by:

i. Lethargy in pursuing costs resulting to non -payment of pending bills since recovering costs needs funding. Without adequate payment of pending fees, the firms are unable to pursue the awarded costs.

ii. Some petitions were filed by indigent litigants acting as surrogates for politicians out to cushion themselves against award of costs. Recovery of costs thus becomes a challenging endeavor.

iii. Where the Commission has been awarded costs, and the same has not been taxed, it cannot therefore, indicate the exact amounts awarded. It can only indicate that an order for costs has been made in its favor.

iv. The process of execution is lengthy, and the Commission must obtain necessary documents from the court which include Certificate of Costs, Warrants of Attachment, Warrants of Arrests among others to enable it to execute lawfully. Obtaining this document requires time and funds

and more often, the judgment debtors are afforded an opportunity in court to be heard, hence delaying the process.

v. The whereabouts of some of the parties (judgment debtors) to whom the Commission is to recover the costs from is unknown hence difficult to serve them with the necessary documents. This requires tracing by way of investigations which requires additional funding thereby making the process costly.

The Commission will however do a report as required by Regulation 64(2) of the PFM Regulations, 2015, when it will become clear that all the efforts and mechanisms being put in place are not yielding the desired results.

Committee Observations and Findings;

The Committee noted that the Accounting Officer failed to enforce court awards to the institutions favour.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the Accounting Officer ensures total recovery of the amounts due within three (3) months of adoption of this report.

1891. Status of Construction of County Warehouses

Field inspection carried out in the counties revealed that all the Commission's warehouse construction projects lagged behind schedule as indicated below;

County	Project cost Kshs.	Project Cost Paid as at 30 June, 2022 – Kshs.	Project Period	Expected Completion Date
Machakos	39,996,999	28,127,526	24 weeks	16 September, 2021
Garissa	40,503,510	34,707,318	30 weeks	30 July, 2021
Wajir	40,000,000	34,275,861	30 weeks	30 November, 2021
Isiolo	37,106,200	33,925,872	30 weeks	31 August, 2021
Kakamega	42,000,000	42,783,076	40 weeks	18 December, 2021
Renovation of ICT Warehouse – Nairobi	93,898,250	56,110,235	52 weeks	12 May, 2022

Further, a contract for the proposed phased refurbishment of a go-down at Supplies Branch Industrial area was awarded at a total cost of Kshs.93,898,250 for a project period of 52 weeks and completion date of 12 May, 2022. However, the contractor had not completed the works as at the

time of the audit in December, 2022. In addition, the Contract Implementation Team (CIT) report to support payments of Kshs.15,354,155 to the contractor was not provided.

In the circumstances, the delayed completion of the project casts doubt on the value for money on the expenditure incurred on the project.

Submission by the Accounting Officer

The Accounting Officer submitted that delays in completion of the warehouses were occasioned by budgetary constraints and delay in the release of the exchequer by the National Treasury. Further, it was not practically possible to complete the projects within the contract period since the budgetary allocations were spread across two financial years which was not envisaged during contracting. This was beyond the control of the Commission.

The above situation notwithstanding, there has been a lot of progress made as indicate below;

S/No	Project Name	Status of Construction
1.	Construction of County Multipurpose Warehouses – Kakamega.	- Handing over report and minutes attached - Certificate of Completion issued - Put into use since June 2022. - Value reflected in the 2022/2023FY financial statements
2.	Construction of County Multipurpose Warehouses – Isiolo.	- Certificate of practical completion issued - Budget for additional works available in 2023/2024FY. - Ready for occupation
3.	Construction of County Multipurpose Warehouses – Machakos.	- Budget to completion is available. - Works currently at 80%. - The Contractor is on site. - Projected to be completed by 30th June 2024.
4.	Construction of County Multipurpose Warehouses – Wajir.	- Certificate of Practical Completion issued. - Budget available for additional works - Ready for occupation - Handing over report available
5.	Construction of County Multipurpose Warehouses – Garissa.	- Certificate of practical completion issued. - Value reflected in the 2022/2023FY financial Statement - Occupied by the Commission. - Budget for additional works contract available. - Handing over report available

On the proposed phased refurbishment of a go down at Supplies Branch Industrial area, the Accounting Officer submitted as follows;

1. The contract for the phased refurbishment of the go down (IEBC warehouse) was signed on 26th February 2021. The contract was organized into six phases. Phase 1 of the project was to be carried out in the FY 2020/2021 at a cost of Kshs. 12,017,800 which was the available budget for the financial year. The subsequent phases were to be implemented as and when funds were

available. The delay was majorly occasioned by budgetary constraints. The Commission was not funded on time to enable the implementation within the timelines.

2. In the subsequent Financial Year 2021/2022, the Commission received an approved budget of Kshs. 16,000,000 for the renovation and maintenance of the warehouse against a requirement of Kshs. 85,366,850 for the completion of the project. This implied that the contractor could only be engaged to undertake the works equivalent to the available budget. Subsequently, the Commission sought budget reallocation of Kshs. 60,000,000 from the National Treasury to cater for the budget deficit. There were delays in obtaining approval from the National Treasury that impacted on the overall project timelines.

3. The Commission used the state department of public works to design, develop the bills of quantities and to supervise the implementation of the project. The project was assigned a project manager, project Quantity Surveyor (QS) and project engineer to oversee the works since the Commission has no capacity to supervise. The Commission, therefore, relied on the valuation as certified by the project team to process all the payments which is the standard practice in the public projects' implementation and not the payment schedule as in the contract. The valuations, certificates and payment vouchers are available for audit review.

4. The CIT report is was provided to the Committee for review.

5. As the 2022 General Election approached, the Commission was required to re-prioritize and identify the bare minimum requirement in consultation with the KIEMS Vendor to ensure the warehouse is ready for the production of KIEMS kits for the voter verification exercise, Simulation and for the General Election. This re-prioritization led to some activities being brought forward.

6. The delay in Construction was occasioned by the involvement of all the Commission staff in the general election activities. Furthermore, the heightened level of election activities could not allow the contractors to continue with the construction works.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures completion of outstanding works in Machakos in the current financial year and provides a status report within three (3) months of adoption of this report.

1892. Lack of Career Progression Guidelines

During the year, the Commission filled eighty-eight (88) vacancies by promoting employees to various grades. However, career progression guidelines as stipulated in Section 3.26.2 of the Commission's Human Resource and Administration Manual (Policies and Procedures) were not provided for audit review.

In the circumstances, Management was in breach of the guidelines and the considerations that were put into account for the promotions could not be confirmed.

Submission by the Accounting Officer

The Accounting Officer submitted that the Commission embarked on the development of the Commission's Career progression guidelines but could not carry out the task to completion since the existing structure was being reviewed. The Commission's organization structure has since been reviewed and approved in July 2021 and the process of developing career progression guidelines initiated.

The scheme of service has also been developed currently at zero-draft stage. The zero draft will be subjected to stakeholder participation and consultation and approval by the commission before implementation.

Committee Observations and Findings;

The Committee noted that the submission by the Accounting Officer was unsatisfactory since the Commission's structure was approved in July 2021, with no substantial progress on the career progression guidelines.

Committee Recommendation;

The Committee reprimands the Accounting Officer and recommends that the career progression guidelines be submitted within three (3) months of appointment of commissioners.

1893. Lack of a Comprehensive Asset Register

As reported in the previous years, the Commission did not maintain a comprehensive asset register. This was contrary to Regulation 143(2) of the Public Finance Management (National Government) Regulations, 2015 which states that the register of land and buildings shall record each parcel of land and each building and the terms on which it is held, with reference to the conveyance, address, area, dates of acquisition, disposal or major change in use, capital expenditure, lease hold terms, maintenance contracts and other pertinent management details.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

Section 143(2) states that 'The register of land and buildings shall record each parcel of land and each building and the terms on which it is held, with reference to the conveyance, address, area, dates of acquisition, disposal or major change in use, capital expenditure, lease hold terms, maintenance contracts and other pertinent management details''.

The Commission is in compliance with the clause save for the land ownership titles and valuation processes to determine the book value to be included in the financial statements and register of land and buildings.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures completion of valuation and acquisition of land ownership documents and a complete fixed assets register within six (6) months of adoption of this report.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1894. KIEMS Kit Status

Review of the Commission's ICT status report dated 30 June, 2022 showed that the Commission had a total of 59,100 Kiems kits which comprise of 45,000 Morpho kits and 14,100 VIU kits. However, 124 Morpho kits were missing and 3,376 Morpho kits had become faulty leaving a balance of 41,500 Morpho kits functional and ready for use during the August, 2022 General Election and pre-general election activities. The remaining kits were not enough to cover the 46,229 polling stations and an additional 14,100 kits were procured for the increased stations and cover for contingencies making a total of 55,600 functional Kiems kits.

Further, examination of records provided revealed that, the Kiems Kits and related accessories distributed to various counties for the General Election were retrieved back to the Central warehouse but the following items were missing as indicated below;

Item	Opening Balance/ Procured Kits	Available Kits	Difference Kits
Power Banks_ Morpho	41,500	38,331	3,169
Power Banks_ VIU	30,000	29,439	561
32 GB SD cards	120,700	119,083	1,657
Sim Cards - Safaricom	49,564	34,772	14,792
Sim Cards - Airtel	28,551	17,662	10,889
Sim Cards Telkom	24,312	16,090	8,222

In the circumstances, the Commission appears to lack strategies to mitigate the risks associated with loss or damage of its critical election equipment.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

a) Power Banks_ Morpho (Variance of 3,169 Units)

The average lifespan of a Li-ion power bank is between one and half (1 1/2) and three and half (3 1/2) years after which they become obsolete. The Morpho Power banks were procured by the Commission in the 2016/2017 financial year which means that they are over five (5) years old and therefore became obsolete with increased functional failure hence the difference. The Commission is planning to dispose all the Morpho Power banks.

b) Power Banks_ VIU (Variance of 561 units)

The Power bank being an accessory to the KIEMS Kit was part of the items retained by the IEBC county offices due to on-going court cases/petitions and were not returned to the ICT Warehouse in Nairobi County where the audit exercise was being conducted.

A total of 300 power banks are held in counties due to on-going court petitions. A total of 261 power banks were left in the warehouse as contingency/backup. The power banks are available for audit verification.

c) 32GB SD Cards (Difference 1,657 SD Cards)

A Secure Digital (SD) card is a tiny flash memory card designed for high-capacity storage of KIEMs Kit voter register data. An SD Card being an accessory of the KIEMS Kit was part of the items retained by the counties due to court cases/petitions that were going on during the audit period and were therefore not returned to the ICT Warehouse.

A total of 903 SD cards were held at the IEBC County due to ongoing court petitions. A total of 754 SD cards were retained in the warehouse as contingency/backup.

d) Sim Cards (Safaricom (14,792), Airtel (10,889) and Telkom Sim cards (8,222).

During the 2021/2022 financial year, the Commission acquired sim cards for the purpose of transmitting August 2022 Presidential Election results.

SIM CARDS are non-inventory items meaning an ICT item that the Commission purchased for a one-time use and cannot be re-used since they have an expiry period. The Commission preloaded the Sim Card with internet data volume bundle of 50MB that was to expire after three (3) months as per the contract (page 46). The plastic cards of the SIMCARD cannot be re-used and therefore have no useful value in any subsequent General Election.

The Contract with the MNOs provides that the SIM cards shall expire after three (3) months from the date of acquisition.

Further, the Commission sent email to All MNOs advising that unused SIM Cards be deactivated from their network.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General confirms status in subsequent audit.

1895. Failure to Fill Existing Vacancies

The approved staff establishment indicated that there were two hundred and thirty-two (232) vacancies in various cadres of staff which were not filled by the time of the audit in November, 2022. The posts included twenty (20) County Accountants in the Directorate of Finance, twenty-six (26) County Supply Chain Management Assistants in the Directorate of Supply Chain Management, sixteen (16) Senior Elections Officers and five (5) Assistant Elections Officer in the

Directorate of Voter Registration and Electoral Operation, among others. In addition to failure to fill these posts, there was lack of segregation of duties at County offices and the casual staff discharged key roles and were privy to Commission's confidential information and documentation.

In the circumstances, the confidential data at IEBC were put at a risk of being disclosed to outside parties.

Submission by the Accounting Officer

The Accounting Officer submitted that the Commission had initiated the process of filling the vacant positions on January 2022. However, due to competing election activities the process was temporarily halted to give way for election related activities.

The recruitment process will resume once the Commission is fully constituted.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures filling of existing vacancies within three (3) months of appointment of commissioners.

4.54 VOTE 2041: PARLIAMENTARY SERVICE COMMISSION

Mr. Jeremiah Nyegenye, CBS, the Secretary and Accounting Officer for Parliamentary Service Commission, appeared before the Committee on 23rd September 2024, accompanied by the following officers:

i.	Mr. Antony Njoroge	_	Director, Litigation and Compliance
ii.	Mr. Daniel Ngumbao	_	Deputy Director, Finance & Accounting
iii.	Mr. Antony Ndubi	_	Senior Accountant
iv.	Mr. Stephen Tayari Meri	_	Procurement Officer II

And submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1900. Pending Bills

As disclosed in Annex 1 to the financial statements, the Parliamentary Service Commission had pending bills amounting to kshs.152,814, 517 which were not settled as at 30 June 2022 but were carried forward o 2022/2023 financial year.

Failure to settle pending bills in the year they relate distorts the financial statement sand adversely affects the budgetary provision for the subsequent year as they form a first charge.

Submission by the Accounting Officer

Pending bills arose mainly due to lack of Exchequer releases towards closure of the financial year. In addition, there were parliamentary activities which were still ongoing during the period and as a result, expenditures continued to accrue and could not be settled since some of the Procurement Modules in IFMIS had been disabled by Treasury. However, the Commission made an extensive and deliberate effort to ensure all pending bills were cleared in the subsequent Financial year (2022/23) since they formed the first charge.

It is the hope and expectation of the Parliamentary Service Commission that Treasury will be able to release exchequer issues on time and avail the IFMIS platform in order to eliminate or minimize the pending bills.

Committee Observations and Findings;

i) **The Committee noted that all bills were settled as first charge in the subsequent financial year.**

ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1901. Irregular Procurement of Office Supplies and Services, Accomodation and Transport Service at County Offices

The statement of receipts and payments reflects use of goods and services expenditure of Kshs.3,205,134,436 as disclosed in Note 4 to the financial statements. The expenditure includes an amount of Kshs.572,707,027 relating to other operating expenses out of which Kshs.10,499,838 was incurred on office supplies and services, food and accommodation and transport services at

the County Offices. The goods and services were procured using low-value procurement method despite being above the allowable threshold of kshs.50,000 per item per financial year for goods and services as provided for in the second schedule threshold matrix of the Public Procurement and Asset Disposal Regulations, 2020.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

County Offices are regulated by the provisions of the Parliamentary Service (Constituency Offices) Regulations, 2005

The Parliamentary Service Commission provides funds for the operations of County offices. However, the staff in the County offices are appointed by the respective Senators to the offices in which they serve and are headed by a County Office Manager, who is responsible for administration of finances and therefore responsible for ensuring compliance with the procurement laws.

Regulation 15 provides as follows:

The constituency office Manager shall ensure that the money available to the constituency pursuant to regulation 14 is spent in conformity with existing Government financial regulations to facilitate quick, efficient and effective delivery of services.

As part of its mandate of facilitating Members of Parliament, the Parliamentary Service Commission operates a County Liaison Office which provides compliance guidelines and best practices to the County offices in the use of public funds entrusted to these offices. The County Liaison Office provides extensive training to the County Office Managers in order to ensure and enhance adherence to set procurement guidelines. It is however noted that there are instances of staff turnover in these offices which poses a challenge in creating awareness and sensitization on financial matters.

The Regulations currently provide for the following staff to be recruited at the County level:

A constituency office shall have the following staff—

(a) a constituency office Manager;

(b) a Secretary;

(c) a constituency office Assistant;

(d) a driver; and

(e) two guards.

Due to the governance challenges noted at the County and Constituency office levels, the Parliamentary Service Commission is considering draft amendment Regulations to provide for the following staffing at these offices:

(a) a constituency or county office manager;

(b) an accounts assistant;

(c) a procurement assistant;

(d) At least two security guards; and

(e) such other staff as the Member may require for the effective functioning of the constituency or county office.

There are therefore proposals before the Commission pending approval for amendment to the law on County/Constituency offices requiring that it be mandatory for hiring of qualified professional staff to handle procurement issues at the county offices.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer incrementally builds capacity of the constituency offices staff towards adherence to the law on matters procurement and expenditure.

1902. Lack of Assets Register and Ownership Documents

As disclosed in Annex 2 to the financial statements, the summary of fixed assets register reflects assets with historical cost brought forward and additions during the year of kshs.8,272,797,462 and Kshs.30,945,127 respectively, totalling to Kshs.8,303,742,589 as at 30 June, 2022. However, the Commission did not maintain an asset register to keep track of the assets. This was contrary to Regulation 143 of the Public Finance Management (National Government) Regulations 2015. In addition, the assets held by the Commission were not tagged for ease of identification and traceability.

Further as previously reported, ownership documents for the parcels of land holding; the Main Parliament Building, Center for Parliamentary Studies and Training, Juvenile Court House, County Hall and Protection House were not provided for audit.

In the circumstances, existence and ownership of assets held by the Commission could not be confirmed.

Submission by the Accounting Officer

There have been a series of changes with respect to the Accounting Officers for the Parliamentary Service Commission with, firstly in 2015 the Clerk of the National Assembly being made the Accounting Officer in respect of National Assembly matters and in 2019 the Director General being made an Accounting Officer in respect of Parliamentary Joint Services affairs. A new Vote 2044 was also created in the last financial year to provide for the Parliamentary Service Commission as an independent Commission as required by the Constitution.

The upshot of the above is that the Commission has undergone considerable transition with regard to the issue of its Accounting Officers and subsequently is still in transition with regard to the division of the assets between the Accounting units and the Accounting Officers.

The Parliamentary Service Commission is further in the process of considering a draft Asset Management Policy with a view to adopting the same. It is expected that the Policy will be in

place shortly. The Policy will provide clarity as to which accounting officer of the Commission shall be responsible for which assets of the Commission, the asset registers to be kept by each accounting officer, asset tagging and other related matters relating to the assets of the Commission.

In the meantime, the Commission has a register of all the non-movable assets of the Commission which are as follows-

1. Parliament Stores and Parking- NAIROBI/BLOCK 28/23
2. Speaker National Assembly residence – NAIROBI/BLOCK 218/428
3. CPST New Block – NAIROBI/BLOCK 148/990
4. Imani House – NAIROBI/BLOCK 28/604
5. Continental House – NAIROBI/BLOCK 28/376
6. Bunge Tower – NAIROBI/BLOCK 28/656
7. Speaker Senate residence – NAIROBI/BLOCK 148/1656
8. Red Cross Building - NAIROBI/BLOCK 28/606
9. County House – NAIROBI/BLOCK 28/601
10. Main Parliament Buildings – L.R 209/4991/13
11. Main Parliament Grounds (mausoleum) - L. R. No. 209/544
12. Juvenile Court Building – L.R 209/4316
13. County Hall – L.R 209/4335
14. Protection House – L.R 209/4314

The Commission has secured ownership documents and converted the Title Deeds pursuant to section 6 of the Land Registration Act, 2012 for the following properties: -

1. Speaker National Assembly residence – NAIROBI/BLOCK 218/428
2. CPST New Block – NAIROBI/BLOCK 148/990
3. Imani House – NAIROBI/BLOCK 28/604
4. Continental House – NAIROBI/BLOCK 28/376
5. Bunge Tower – NAIROBI/BLOCK 28/656
6. Speaker Senate residence – NAIROBI/BLOCK 148/1656
7. Red Cross Building - NAIROBI/BLOCK 28/606
8. County House – NAIROBI/BLOCK 28/601
9. CPST Karen – NAIROBI/BLOCK 192/340
10. Parliament Stores and Parking- NAIROBI/BLOCK 28/23

The following properties are in control of the Commission but are currently registered in the name of the Commissioner for Lands as has been traditionally the case for properties belonging to Government Institutions. However, under the new laws, specifically, section 53 of the Parliamentary Service Act, 2019, the properties are required to be registered in the name of the Commission: -

1. Main Parliament Buildings – L.R 209/4991/13
2. Main Parliament Grounds (mausoleum) - L. R. No. 209/544
3. Juvenile Court Building – L.R 209/4316
4. County Hall – L.R 209/4335

The Commission has written severally to the Ministry of Lands and National Land Commission, requesting for the issuance of the title documents for the aforementioned properties. A meeting was to be held between the Commission and the Ministry of Land in November 2023, but the same was postponed to a mutually convenient date to be set. The Commission is therefore following up on the issuance of title documents for the above-mentioned properties from the Ministry of Lands and National Land Commission.

Protection House - L.R 209/4314 is currently registered in the name of the Permanent Secretary to the Treasury of Kenya pursuant to the Permanent Secretary to the Treasury (Incorporation) Act, CAP 101. The Permanent Secretary, National Treasury is currently in possession of the title deed. The property was allocated to the Parliamentary Service Commission by the Office of the President. However, the National Treasury is reluctant to transfer the property in favour of the Commission. The National Treasury insists that the Commission ought to acquire the property at Market value. Negotiations are ongoing to have the property transferred to the Commission at peppercorn consideration.

Committee Observations and Findings;

The Committee observed that;

(i) There was commendable progress in securing land ownership documents by the Commission;

(ii) Assets held by the different Accounting Officers in Parliament should be easily identifiable;

(iii)The Commission was in possession and use of Protection House (L.R 209/4314) despite National Treasury holding the title document.

Committee Recommendation;

The Committee recommends that;

(i) The Commission completes acquisition of title documents for Main Parliament Buildings (L.R 209/4991/13), Main Parliament Grounds (mausoleum) (L. R. No. 209/544), Juvenile Court Building (L.R 209/4316) and County Hall (L.R 209/4335), within six (6) months of adoption of this report;

(ii) The Committee recommends that the Parliamentary Service Commission completes allocation of property held by Accounting Officers of the National Assembly,

Parliamentary Service Commission and Parliamentary Joint Services and each to prepare an assets register and tag assets, within three (3) months of adoption of this report;

(iii) The National Treasury relinquishes the title document for Protection House (L.R 209/4314) to the Commission for registration in the Commission's name, within six (6) months of adoption of this report.

4.55 VOTE 2042: THE NATIONAL ASSEMBLY

Mr. Samuel Njoroge, CBS, the Clerk and Accounting Officer for the National Assembly, appeared before the Committee on 23rd September 2024, accompanied by the following officers:

i) Mr. Irungu Kigundu _ Director, Finance and Accounting
ii) Mr. Ankaine P. Meikoki _ Deputy Director, Finance and Accounting
iii) Ms. Agnes Kamoni _ Head of Consituency Liaison Office
iv) Ms. Susan Maritim _ Principal Clerk Assistant/ PA to the Clerk

And submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1911. Pending Bills

The financial statements reflects pending bills totaling Kshs.290,665,300 as at 30 June, 2022, which were not settled in 2021/2022 but were instead carried forward to the 2022/2023 financial year. Further, these pending bills include an amount of Kshs.239,117,226 relating to 2021/2022 financial year and Kshs.51,548,074 for the previous financial years. Failure to settle bills during the year to which they relate adversely affects the budgetary provisions of the subsequent year to which they form first charge.

Submission by the Accounting Officer

The amounts were pending bills for goods and services supplied and rendered but remained unpaid at the close of the Financial Year. The amount included Ksh. 51,548,074 incurred in previous years dating back to 2016, while Ksh. 239,117,226 was incurred during 2021/2022. The outstanding amounts were broken down as follows—

(i) Goods supplied - Ksh. 78,719,893.20; and

(ii) Services rendered - Ksh. 211,945,407.70.

These pending bills were occasioned by: -

a) Challenges relating to the processing of payments occasioned by IFMIS connectivity towards the end of the financial year leading to the inability to process payments

b) and make remittances to the Central Bank through Internet banking before the end of the financial year.

c) Although the exchequer requisition was done on time, it was only received during the last days of June 2022. This, coupled with system downtime and clogging, made remittance of payments very slow and at times processing to internet banking could not be done.

d) Some of the aged pending bills are historical and were incurred during the period before splitting of the initial Parliamentary Service Commission vote into Vote 2041 and Vote 2042 resulting in challenges on how to settle the expenditure between the two Votes.

e) Additionally, some pending bills lacked enough supporting documentation while others required reconciliations with service providers since some were being disputed.

These pending bills take precedence over other payments in the subsequent financial years. Ksh. 285,040,300 was paid during the 2022/2023 and 2023/2024 financial years leaving a balance of Ksh. 5,625,000 which will be considered for settlement during the current Financial Year. Any pending bill that meets the threshold of payment will be settled as soon as funding from the National Treasury is received.

The process of retiring most of these pending bills is being catered for within the current exchequer releases and budget limits.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the balance of Ksh. 5,625,000 be settled in full in the prevailing financial year.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1912. Compensation of Employees

The statement of receipts and payments, as disclosed in Note 2 to the financial statements, reflects an amount of Kshs.11,223,868,346 in respect to compensation of employees. The expenditure includes an amount of Kshs.4,187,307,576 relating to basic wages of temporary employees at the Constituencies Offices. However, the amount was not supported with any documentary evidence on the terms of employment and approved salary scales of the Constituency Offices staff.

Further, Likoni and Kilifi Women Representative Constituencies Offices did not remit Pay As You Earn (PAYE) and National Social Security Fund (NSSF) deductions resulting in arrears of Kshs.3,860,363 and Kshs.2,510,251 respectively. This was contrary to Section 19(3) of the Employment Act, 2007 which provides that an employer who deducts an amount from an employee's remuneration in accordance with subsection (1)(a), (f), (g) and (h), shall pay the amount so deducted in accordance with the time period and other requirements specified in the law.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The recruitment of the Constituency Office staff is done in compliance with Regulation 22 of the Parliamentary Service (Constituency Offices) Regulation, 2005. Regulation 22(1) states that—

"Members shall initiate recruitment of all the constituency office staff and determine their terms of employment and salary scales".

Hon. Members are the sole employers who identify the cadre and calibre of staff to engage and determine the salaries payable and enter into a contract with the respective employees.

The Parliamentary Service Commission, by a resolution dated 14th October 2022, set a salary structure for the Constituency/ County staff with salaries ranging from a minimum of Ksh. 15,000 and a maximum of Ksh. 200,000 depending on the posts held by the staff. Management, in

consultation with the MPs, has been endeavouring to have all the staff employed by Members to be within the approved salary structure of the Parliamentary Service Commission.

Additionally, majority of the defaults in payment, remittance, filing and under payment of PAYE, NHIF and NSSF by respective Constituency Managers were occasioned by the following:-

a) The Constituency/County Offices are funded on a reimbursement basis. A delay in disbursement from the National Treasury leads to late disbursement to Constituency/ County Offices, resulting in penalties and interest. Notably, KRA has granted amnesty for penalties and interest; and
b) Reconciliation issues on paid amounts, especially with regard to advance payment, remittance using mixed PINs (e.g. NGCDF) and use of wrong definition (e.g. 'office' defined as 'partner company') by KRA leading to attachment of wrong obligations.

With respect to Kilifi Women Representative's office, we note that the arrears have since been settled.

For Likoni Constituency, there an ongoing reconciliations with KRA, NHIF, NSSF aimed at settling the matter. The Office has made commitments to settle the outstanding amounts in instalments.

National Assembly has instituted comprehensive measures to address the issue of non-compliance by Constituency/County offices with regards to filing remittances and payment of statutory dues such as PAYE, NHIF, NSSF, NITA and related fees by—

a) Releasing salaries every month to ensure the deductions are remitted on time to avoid interest and penalties;
b) Engaging KRA, NSSF, NHIF and Constituency Managers to facilitate reconciliation and establish the accuracy of outstanding/previous amounts of penalties and interest as demanded by the respective government agencies. The exercise has resulted in the granting of waivers and agreements on payment plans for outstanding amounts;
c) Facilitating training of managers by resource persons sourced from KRA, NSSF and auditors to ensure Constituency/County Offices adhere to relevant laws;
d) Withholding payment and release of terminal benefits due to former managers until they are cleared by relevant entities in cases of non-remittance or non-payments;
e) Withholding the salary of managers and operations expenses until confirmation of payment of outstanding PAYE, NSSF, NHIF;
f) Requiring Constituency/County Offices to submit compliance certificates from KRA, NSSF, and NHIF before processing of salaries and quarterly operating expenses;
g) Deducting unremitted PAYE obligations from Office Operations funds for defaulting Offices and resubmitting the same to KRA.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that all outstanding dues are settled as first charge as provided for by Regulation 42 of the Public Finance Management (National Government) Regulations, 2015.

1913. Procurement of Office Supplies and Services, Accomodation and Transport Service at Constituency Offices

The statement of receipts and payments, and as disclosed in Note 3 to the financial statements, reflects an amount of Kshs.8,620,229,140 in respect to use of goods and services. The amount includes Kshs.2,584,634,240 relating to other operating expenses out of which an amount of Kshs.72,099,479 was incurred on office supplies and services, accommodation and transport at the Constituency Offices. Documents available revealed that the Management of the constituency offices procured goods and services directly through cash purchases although in various cases the threshold for low value procurement method was exceeded. This was contrary to Section 91 of the Public Procurement and Asset Disposal Act, 2015.

Further, included in the other operating expenses balance of Kshs.2,584,634,240 is Kshs.21,783,431 relating to travel and subsistence expenses which were not supported by approved guidelines on the standard rates for subsistence allowances.

In the circumstances, the regularity and value for money on the expenditure of Kshs.72,099,479 incurred on office supplies and services, accommodation and transport and Kshs.21,783,431 incurred on travel and subsistence for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The Clerk of the National Assembly manages offices in three hundred and thirty-seven (337) Constituencies/Counties.

During the financial year 2021/2022, the National Assembly reported expenditures amounting to Ksh. 72,099,479 under the Constituency Offices on office supplies services, accommodation, transport expenses and office rent. The amounts were procured without considering the maximum threshold of Ksh. 50,000 for low-value procurement method/cash purchase per item. The expenditure of Ksh 72,099,479 was incurred as follows—

(a) Procurement of office supplies - Ksh. 26,239,171; and

(b) Other operating expenses - Ksh. 45,860,308.

Procurement of Office Supplies and Services

It is true that funds were disbursed to the Constituency Offices as operating money to incur and account for as expenses on office expenses, travel accommodation and rent. This was to ensure the offices of the Hon. Members at the constituency level are suitable for use to offer services to citizenry. The respective/concerned Constituency Managers were guided on:

(i) Adherence to the Public Procurement and Asset Disposal Act, 2015 while procuring goods and services;
(ii) Use of lists of registered suppliers from any public procuring entity or County Assembly or County Government in their areas of jurisdiction as long as the registered list has been prepared in accordance with provisions of the Public Procurement and Asset Disposal Act, 2015. In the absence of any such list, the Parliamentary Service Commission list should be used;
(iii) Importance of seeking at least three (3) quotations in strict adherence to provisions of the Public Procurement and Asset Disposal Act, 2015; and

(iv) Funds would only be released upon meeting the above criteria.

In mitigation of the issues raised, the following measures have been instituted—

(i) Constituency Office Managers continue to be trained on financial management of public funds under the Public Procurement and Asset Disposal Regulations which form the legal framework on the subject. Further, a training session was carried out in collaboration with the Kenya Revenue Authority (KRA) on taxation matters.

(ii) To ensure compliance, Managers have been advised to use NG-CDF prequalified suppliers in procuring services and/or goods and to always seek guidance from our office whenever they need support noting that we have had a high turnover of Managers which has had a negative impact on compliance. To address this challenge, additional training was held in October 2021 on public procurement, and tax compliance among other office matters to enhance accountability of government resources at the constituency/county level.

(iii) Further, we are reviewing the Constituency/County operations manual and regulations for use during this financial year and the current Parliamentary term. This will enhance capacity building for all staff at the Constituency/County level in the management and accountability of public resources. We are also developing a policy on per diem allowances to guide on the transport, accommodation and subsistence allowances for the constituency/county officers who travel outside their duty stations.

Other Operating Expenses: Unsupported Operating Expenses

The Constituency Offices are now required to prepare quarterly/annual work plans for activities to be undertaken during the year. This will enhance the quality of management standards at the Constituency Offices which is a continuous process. Further, the Accounting Officer plans to train Constituency staff to ensure that Constituency Office Managers can prepare work plans and ensure all payments are properly supported. Additionally, Quarterly and Annual Work Plans form the basis for the release of funds to the offices.

The Constituency Office Managers were issued with guidelines on the importance of strict adherence to the Public Procurement and Assets Disposal Act, 2015 and Regulations, the use of registered suppliers from a public procuring entity or County Assembly in their respective areas of jurisdiction as long as the list was prepared in accordance with the provisions of law regarding procurement of goods and services. The guidelines also advocate for the use of at least three quotations in strict adherence to provisions of Public Procurement and Assets Disposal Act, 2015 and Regulations.

Further, we are in the process of engaging the Public Procurement Regulatory Authority (PPRA) to support us in establishing an efficient procurement system at the Constituency and County Offices.

Travel and Subsistence Expenses- Unsupported Travel and Subsistence Expenses: Ksh. 21,783,431

Following a Resolution of the Parliamentary Service Commission, the National Assembly management has already taken measures to address concerns relating to affecting the accounting for travel and accommodation expenses by introducing per diem rates for Constituency Office Managers who travel outside their duty stations. The Constituency Offices are now required to prepare quarterly/annual work plans for activities to be undertaken during the year and an approval

by the respective Member forms part of the supporting documents for these expenditures since commencement of 13th Parliament.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer incrementally builds capacity of the constituency offices staff towards adherence to the law on matters procurement and expenditure.

1914. Accounts Receivables- Outstanding Imprest

The statement of assets and liabilities, and as disclosed in Note 9 to the financial statements, reflects accounts receivables balance of Kshs.12,094,409. The balance includes an amount of Kshs.11,113,945 relating to outstanding imprests which ought to have been accounted for on or before 30 June, 2022. This was contrary to Regulation 93(5) of the Public Finance Management (National Government) Regulations, 2015 which provides that a holder of a temporary imprest shall account or surrender the imprest within seven (7) working days after returning to duty station.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Statements of Assets and Liabilities reflected an outstanding imprest amounting to Ksh. 11,113,945 as at 30th June 2022 by both Members and staff of the National Assembly. The amounts were paid as per diem allowances to undertake various Parliamentary duties and activities within and outside the country. The period of some of the activities crossed over the end of financial year thus were not due for surrender. Most of these imprests were accounted for on maturity. Un-surrendered amounts were recovered through salary and other allowances.

The outstanding amount of Kshs. 11,113,945 as at 30th June 2022, was fully surrendered and accounted for during 2022/2023 Financial Year.

Committee Observations and Findings;

i) **The Committee noted that all outstanding imprest had been recovered.**

ii) **The Committee found that the matter was resolved.**

1915. Lack of Asset Register

Annex 3 to the financial statements on summary of fixed asset register reflects total assets value of Kshs.639,443,203 made up of historical cost brought forward and additions during the year of Kshs.543,736,778 and Kshs.95,706,425 respectively.

However, The National Assembly did not maintain an asset register during the year under review to keep track of its assets contrary to Regulation 143(1) of the Public Finance Management (National Government) Regulations, 2015 which requires an accounting officer to maintain a register of assets under his or her control or possession as prescribed by the relevant laws. Further, the assets were not tagged contrary to The National Treasury Guidelines on Asset and Liability Management in the Public Sector (issued in March, 2020).

In the circumstances, Management was in breach of the law and The National Treasury Guidelines.

Submission by the Accounting Officer

The National Assembly purchased fixed assets worth Ksh.95,706,425 during the financial year 2021/2022. The cumulative figure of Ksh.543,736,778 comprises of all assets acquired since 2015/2016 financial year when the National Assembly vote was created. The Parliamentary Service Commission is in the process of developing an Assets Management Policy which will help in tracking all the assets owned by the National Assembly. In the meantime, we have collated data of all assets purchased by the National Assembly since the 2015/2016 financial year when the vote was established for the development of a comprehensive asset register.

The management has constituted an Assets and Liabilities Management Committee in line with Paragraph 4.8 of the National Treasury Policy on Asset and Liability Management in the Public Sector (June 2020). The National Assembly has also procured a solution for asset tagging in the 2024/2025 financial year for all assets purchased since 2015/2016. The asset tagging process will commence soonest.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Parliamentary Service Commission completes allocation of property held by Accounting Officers of the National Assembly, Parliamentary Service Commission and Parliamentary Joint Services and each to prepare an assets register and tag assets, within three (3) months of adoption of this report.

4.56 VOTE 2043: PARLIAMENTARY JOINT SERVICES

Mr. Clement Nyandiere, MBS, the Director General and Accounting Officer for the Parliamentary Joint Services, appeared before the Committee on 24th September 2024, accompanied by the following officers:

i.	Mr. Irungu Kigundu	–	Director of Finance & Accounting Services
ii.	Eng. John K. Nguru	–	Director of Engineering & Maintenance Services
iii.	Ms. Joan Awinja	–	Ag. Director of Human Capital & Administration
iv.	Shem Obaigwa	–	Ag. Chief Accountant

And submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1918. Pending Bills

As disclosed in Note 9(c) and Annex 1 to the financial statements, the Parliamentary Joint Services had pending bills totalling Kshs.558,027,648 as at 30 June, 2022, which were not settled in 2021/2022 but were instead carried forward to the 2022/2023 financial year. Failure to settle bills during the year to which they relate adversely affects the budgetary provisions of the subsequent year to which they are charged.

Submission by the Accounting Officer

It is true that the financial statements disclosed pending bills amounting to Kshs.558,027,648.70 which were not settled as at 30th June, 2022 but were carried forward to 2022/2023 financial year.

Given that pending bills form the first charge, they were all subsequently settled.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1919. Incomplete Assets Register

The summary of fixed assets register under Annex 2 to the financial statements reflects assets with a historical cost of Kshs.5,980,464,502 as at 30 June, 2022. However, the Parliamentary Joint Services did not maintain a detailed and up to date assets register to keep track of the assets procured and held. This is contrary to Regulation 143(1) of the Public Finance Management (National Government), Regulations, 2015 which requires an Accounting Officer to maintain a register of assets under his or her control or possession as prescribed by the relevant laws. Further, the assets did not have unique identification or tag numbers for ease of traceability and accountability.

In the circumstances, the Management was in breach of the law and accuracy and completeness of the fixed assets balance of Kshs.5,980,464,502 could not be confirmed.

Submission by the Accounting Officer

It is true the summary of fixed assets register under Annex 2 to the financial statements reflects assets with a historical cost of Kshs.5,980,464,502 as at 30 June, 2022. This was comprising of Kshs.5.17 billion for building and structure and Kshs.0.8 billion for other classified assets. The management has prepared a draft Fixed Assets Management Policy which outlines how the assets of the Parliamentary Service Commission will be acquired and managed across its four votes. The policy was considered during the Commission's 316th Meeting held on 16th February, 2024 and resolved that the Fixed Assets Management Policy to incorporate an inventory with full particulars of all the fixed assets currently owned by the Parliamentary Service Commission and to take into account the four Votes of the Parliamentary Service. The said inclusions have been handled and the draft Policy presented to the Commission for considerations. Once approved, the fixed asset register will be implemented and the tagging of assets will be done as per the direction of the policy. This will ensure that assets procured and owned by PJS will be distinct from the assets procured and owned by the other Votes. This will also enhance tracking and location of the assets through the assets register.

Committee Observations and Findings;

The Committee noted the submission of the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Parliamentary Service Commission completes allocation of property held by Accounting Officers of the National Assembly, Parliamentary Service Commission and Parliamentary Joint Services and each to prepare an assets register and tag assets, within three (3) months of adoption of this report.

1920. Construction of Proposed Multi-Storey Office Block

The statement of receipts and payments reflects an expenditure of Kshs.1,807,571,564 on acquisition of assets which, as disclosed in Note 6 to the financial statements, included an amount of Kshs.1,044,811,964 in respect to construction of buildings. The construction of buildings expenditure relates to payments for the proposed multi-storey office block whose contract period was estimated to take 42 months from 1 July, 2014 to 31 December, 2017. Review of contract documents revealed that the contractor was granted first, second and third extensions of time varying the completion date to 16 January, 2018, 23 August, 2020 and 30 November, 2021, respectively. 628 However, as at the time of audit inspection in November, 2022, the construction of the office block had not been completed. In addition, and as previously reported, the contractor had sought the services of an arbitrator over a dispute to determine when to start charging interest on delayed payments and payment certificates rates/ratios of 80:20 in US dollars and Kenya shillings, which may increase the total cost of the project significantly. Further, due to non-completion of the project, the Parliamentary Joint Service paid rent amounting to Kshs.381,390,606 for the leased offices during the year under review.

In the circumstances, delay in completing construction of the multi-storey office block building may result in the escalation of total costs in the long run due to inflation.

Submission by the Accounting Officer

It is true that the statement of receipts and payments reflects an expenditure of Kshs.1,807,571,564 under acquisition of assets which, as disclosed in Note 6 to the financial statements, includes an amount of Kshs.1,044,811,964 in respect of construction of buildings which related to payments for the proposed multi-storey office block. It is also true that the project was estimated to take 42 months from 1st July, 2014 to 31st December, 2017, but was granted the first and second extensions with completion dates of 16th January, 2018 and 23rd August, 2020, respectively. However, by the time of audit inspection in November, 2022, the construction of the Office Block had not been completed.

The first extension was granted on the account of delays which were occasioned by the need to carry out underpinning works on Continental House to strengthen the building which was weakened during the excavation. As the works had not been anticipated, they were treated as additional works which then attracted a variation to the cost. The delay in approval of underpinning works prompted an additional 139 days to the original contract period. Upon approval to continue with excavation and underpinning, the contractor on request was granted 31 days to procure underpinning equipment. An additional 31 days were granted to the contractor as Ex-Gratia (without cost) award on application. The contractor relied on clauses 17.1 and 22.2 of the conditions of the contract, on grounds that there were delays in issuance of approval for relocation of water and sewerage pipes cutting across the site by the Nairobi Water and Sewerage Company. The tender committee therefore approved an extension of the contract period by a total of 201 days.

The second extension was granted from 16th July, 2019 for a total of 404 days. This was occasioned by the delays in the procurement of Interior fit out works. The scope of the project includes interior fit-out works for which a prime cost of Kshs. 400 Million was provided in the Bills of Quantities by the main contractor at the time of tender. The procurement law requires that such works are tendered for competitively. The works were tendered for three times as follows:

i. The works were first tendered in year 2016 and there were no responsive bids. The bid that was closest to being responsive was for Kshs. 800 Million which was twice the provision in the contract and above the budgetary provision of the PSC.

ii. The works were tendered for the second time and the bids obtained were above Kshs. 980 Million which still exceeded the budget.

iii. The works were retendered for the third time in September 2018, after an appraisal of the whole project was done by the Project Manager and the lead Consultant. The appraisal revealed that the provisions in the contract were based on year 2010 estimates that were not realistic due to inflation. They therefore advised the Commission to provide an estimate of Kshs. 766 Million before retendering the interior fit out works. The tender was awarded to M/S Nightigale Enterprises Ltd in December, 2018 for Kshs. 665 Million. On award, M/s China Jiangxi International Kenya Ltd, who were the second responsive bidders appealed to the Public Procurement Administrative Review Board (PPRB) against the award. The appeal was denied by PPARB. They subsequently declined to enter into contract with M/S Nightigale Enterprises Ltd which occasioned a further delay in the implementation.

The sub-contract was executed in August 2019 and was to be completed in one year. The sub-contract works were therefore extended by one year to allow for completion of the project.

iv. Due to the Covid-19 outbreak in China, the delivery of the materials that were ordered for Interior fit out was affected and most of them were delivered in April 2020. This caused a slowdown of the progress of works and necessitated an extension of contract to accommodate the delays caused by the procurement process.

The main contractor applied and was granted a third extension of 486 days on the following grounds:

i. Delayed Tunnel Access Building Connection

ii. Delays due to Covid -19 Virus outbreak and the lock-down that ensued caused a delay in the implementation of the works,

iii. Delays by the Kitchen Equipment Sub-contractor in regard to positioning of equipment made it impossible for the main contractor to commence finishes on 23rd floor.

iv. Delays caused by the electrical sub-contractor installations, approval of sample office design changes and the approval of the carpet.

The third extension lapsed on 30th November 2021. From 1st December 2021, the commission started levying liquidated damages on the main contractor's payment certificates in line with the contract terms Clause 27.1 for failure to complete the works within the specified time.

The main contractor filed arbitration proceedings against the Parliamentary Service Commission over the dispute of the payments in the ratio of 80:20 USD: Kshs. The Commission filed a response to the Claim on the basis that the contract does not give the main contractor a blanket opportunity to claim for payment of all the amounts in the ratio of 80:20, and the foreign currency component is limited to the cost of imported components and materials as per the advisory from Public Procurement Regulatory Authority (PPRA).

The Commission has filed a counter claim against the main contractor on grounds of compensation of monies incurred by the commission on rent for alternative office space, damages for negligence in handling sub-contractors and breach of duty of care. The arbitration is on-going at the Nairobi Centre for International Arbitration.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the outcome of the arbitration be awaited.

4.57 VOTE 2051: JUDICIAL SERVICE COMMISSION

Ms. Anne A. Amadi, CBS, the Chief Registrar of the Judiciary and Accounting Officer for the Judicial Service Commission appeared before the Committee on 17th October 2023, accompanied by the following officers:

i.	Ms. Winfrida Mokaya	Registrar JSC
ii.	Mr. Maxwell Suero	Deputy Director
iii.	Mr. Paul Maina	Deputy Chief Registrar Judiciary
iv.	Mr. Wycliffe Wanga	Director Accounts
v.	Mr. Ronald W. Wanyama	Director Audit and Risk Mgt
vi.	Ms. Sharon Mwayuli	Personnel Manager
vii.	Ms. Rebecca Kipwigut	Deputy, Finance and Admimistration

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1923: Pending Bills

According to Annex 1 to the financial statements, the Commission had pending bills totaling Kshs.18,781,934 as at 30 June, 2022, which were not settled in 2021/2022 financial year but were instead carried forward to 2022/2023 financial year due to inadequate exchequer allocations. Failure to settle bills during the year to which they relate adversely affects the budgetary provisions of the subsequent year to which they are charged as they form a first charge.

Submission by the Accounting Officer

It is true the Commission had pending bills of Kshs. 18,781,934 as at 30th June 2022. However, the Commission has settled the same in full in the subsequent year (2022/23 FY) as per the availed bank statements.

The same have been submitted to the Office of the Auditor General for review and verification.

Committee Observation

i) **The Committee observed that the pending bill was settled as first charge.**
ii) **The Committee found that the matter was resolved.**

4.58 VOTE 2061: COMMISSION FOR REVENUE ALLOCATION

Mr. James Katule, the Chief Executive Officer /Accounting Officer for the Commission on Revenue Allocation appeared before the Committee on 23rd November 2023, accompanied by the following officers:

i.	CPA Mary Wanyonyi Chebukati	Chairperson, CRA
ii.	Dr. Isabel Waiyaki	Commissioner, CRA
iii.	Ms. Hadija Juma	Commissioner, CRA
iv.	Ms. Angela Kariuki	Director Cooperate Services
v.	Ms. Karen Muka	Deputy Director Internal Audit
vi.	Mr. William Birech	Manager Human Resource and Administration
vii.	Ms. Caroline Kinyulusi	Manager, CKM

and submitted as follows;

REPORT ON LAWFULNESS AND EFFECTIVENESS OF USE OF PUBLIC RESOURCES

1927: Irregular Promotions of Staff Based on an Unapproved Salary Structure

As previously reported, the Commission on Revenue Allocation (CRA) implemented a new salary structure in 2020/2021 financial year and accorded direct promotion to fourteen (14) staff members without the necessary approval from the Salaries and Remuneration Commission (SRC). This was contrary to Article 230 Clause 4(b) of the Constitution of Kenya which provides that the power and function of SRC shall be to advise the National and County Governments on the remuneration and benefits of all other public officers.

Although Management explained that the CRA had sought approval from The National Treasury on the structural reorganization of the budget which was granted, The National Treasury had advised that the changes in salary structure be approved by SRC. Although,the CRA sought for the advisory opinion on structural reorganization and staffing from SRC, it went ahead and implemented the unapproved structure before receiving the advisory. CRA claimed that SRC was only to provide advisory services and that they wereat liberty to accept or reject the advisory.

Management also indicated that review and development of a new Strategic Plan of the Commission will align the current approved organization and salary structures with the results of the Job Evaluation undertaken by the Salaries and Remuneration Commissionfor 2021/2022-2024/2025 remuneration review cycle. This is aimed at realizing the mostupdated and optimum structures for the Commission. However, the SRC advisory opinionon structural reorganization and staffing was not provided for audit review.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Accounting Officer submitted as follows;

CRA's Act Section 16 provides that; *The Commission shall, pursuant to Article 252(1) (c) of the Constitution, employ its own staff through a competitive and transparent process.* This informed the basis on which the first Commission approved an organogram for purposes of implementation of the salary structure and the promotions that the second Commission approved. Upon the appointment of the second Commission, they embarked on developing the second Strategic Plan (2017 – 2022) that would guide on the implementation of the mandate of the Commission.

In view of the query, in March 2020 the Commission engaged the State Department for Public Service (DPSM) for technical support to view its organization structure to make the Commission "fit for purpose" to deliver its mandate. Upon review of the feedback from the DPSM, the Commission wrote to the National Treasury seeking approval of its revised Organogram and salary structure an 19th November 2020. The National Treasury in its letter dated 28th December 2020 responded noting that the Commission had adequate budgetary provision to cater for the Commission's structural reorganization in its budget for FY2020/2021. It further requested the Commission to seek concurrence of the Salaries and Remuneration Commission (SRC) on the same. The second Commission vide letter dated 19th January 2021 proceeded to seek an advisory from the SRC on the CRA's structural reorganization. The SRC by their letter dated 10th March 2021 guided that in view of the timelines of the Job evaluation for 2021/2022 – 2024/25 remuneration cycle, the Commission was requested to await the outcome of the job evaluation exercise. It was the considered position of the Commission that further delays in the reorganization would negatively affect the efficiency of the Commission and consequently the ability to deliver on the constitutional mandate. The Commission therefore, guided by Article 230(4)(b) of the Constitution of Kenya that states that the Salaries and Remuneration Commission ***"shall advise the national and county governments on the remuneration and benefits of all public officers"***; resolved to proceed with the staff reorganization and restructuring to ensure that the staff complement would effectively and efficiently deliver and fulfil its constitutional mandate as it awaited the completion of the SRC process. The SRC thereafter vide letter dated 16th December 2021 sent the report on job evaluation grading results. It is to be noted that the Commission revised its structure within the original structure which had no huge financial implications for staff whose remuneration were way below their counterparts.

The Commission is cognizant of results of the Job evaluation undertaken by the Salaries and Remuneration Commission on remuneration review cycle for FY 2021/22 – 2024/25.

The aforementioned audit query was raised at the tail end of the 2nd Commission whose tenure ended on 31st December 2022. We then received the 3rd Commission effective January 2023. The Chairperson was later appointed on 11th July 2023. The Commission embarked on the development of the 3rd Strategic Plan which is complete save for the finalization of the Organization structure which is currently under consideration. One of the documents that will serve to guide the Commission on the alignment of the organization structure and salary structure is the SRC's report on job evaluation grading results for the 2021/22 – 2024/25 Remuneration Review Cycle dated 16th December 2021. Furthermore, the SRC vide letter dated 29th August 2023 following the 3rd remuneration review cycle that comprises of setting a four-year review cycle for remuneration and

benefits in the public service advised the Commission to retain the current basic salary in its remuneration structure. The Commission envisages that the Strategic Plan will be complete by 31st December 2023.

Committee Observations and Findings;

i. **The Committee noted that the Commission sought the concurrence of the National Treasury and an advisory from the Salaries and Remuneration Commission.**
ii. **The Committee also noted that the Commission proceeded to promote and review salaries without the approval of the Salaries and Remuneration Commission, a breach of the law.**
iii. **The Committee also noted that the Accounting Officer admitted that the Commission was in breach of the law in his oral submissions.**
iv. **The Committee further observed that the Commission continues to apply the unapproved salary structure to date.**

Committee Recommendation;

i) **The Committee reprimands the Accounting Officer and recommends that the structure is regularized with the SRC within three (3) months of adoption of this report;**
ii) **The Accounting Officer recovers all irregularly paid amounts within six (6) months of adoption of this report.**

4.59 VOTE 2071: PUBLIC SERVICE COMMISSION

Mr. Paul Famba, MBS, the CEO/ Commission Secretary and Accounting Officer for the Public Service Commission, appeared before the Committee on 22nd August 2024, accompanied by the following officers:

(i) Amb. Anthony Muchiri	–	Chairperson
(ii) Mr. Joseph Njoroge	–	Deputy Director
(iii) Mr. Remmy Mulati	–	DCS/CS
(iv) Mr. Maina Njoroge	–	D/FP&RM
(v) Mr. Simiyu Njalale	–	Deputy Director, Finance
(vi) Ms. Caroline Kiget Management	–	Deputy Director, Human Resource
(vii) Mr. Mustapha Ibraham	–	Deputy Director

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1935. Unsupported Expenditure on Leave Commutation

The statement of receipts and payments and as disclosed under Note 4 to the financial statements reflects compensation to employees amount totaling Kshs.1,711,821,368.The expenditure includes an amount of Kshs.22,214,479 in respect of personal allowances paid as part of salaries, out of which,Kshs.8,548,038 was paid as leave commutation for officers who were unable to proceed on leave due to exigencies of service. However, the authority, justification and approval or basis of paying leave commutation was not provided for audit.

In the circumstances, the accuracy and validity of the leave commutation expenditure of Kshs.8,548,038 could not be confirmed.

Submission by the Accounting Officer;

During the year under audit review, the Commission commuted leave for cash in the month of June, 2022 for Commission staff totalling to Ksh. 8.5m . Annual leave is provided for in Section 28 (1) of the Employment Act 2007 which states that employees are entitled to annual leave after every twelve consecutive months of service with their employer, and not less than twenty-one working days of leave with full pay.

Annual leave for the Commission staff is guided by Section E.3 (1) of the Human Resource Policies and Procedures Manual (2016) which provides that 'Annual leave is granted by the Authorized Officer, subject to exigencies of service'. Commutation of leave under Section E.4 is 'allowable under exceptional circumstances under the authority of the Authorized Officer where leave is not taken due to exigencies of service'.

In line with the above provisions guiding staff annual leave, the Commission approved commutation of leave for staff who had not fully utilized their entitled leave days due to exigencies of duty caused by a huge workload backlog post Covid-19 pandemic period. The huge backlog was as a result of country wide lockdown and movement restrictions to the workplace.

Going forward, Management has put in place and communicated measures to encourage staff to proceed on their annual leave to avoid recurrence of commutation of leave. The measures are also aimed at avoiding accumulation of leave days during each year that may lead to forfeiture.

Committee Observations and Findings;

i) **The Committee noted that the explanation by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

1936. Pending Bills

Note 16.2 to the financial statements reflects pending bills amounting to Kshs.58,733,175 that were not settled in the year under review but were carried forward to the 2022/2023 financial year. However, Management did not provide an explanation for the failure to settle the bills. The Commission is therefore at risk of incurring significant interest costs and penalties with the continued delay in payment.

Failure to settle bills during the year in which they relate to distorts the financial statements and adversely affects the budgetary provisions of the subsequent year as they form a first charge.

Submission by the Accounting Officer;

The Financial Statements for the year 2021-2022 reflected an amount of Kshs. 58, 733,175.00 as pending bills. These were payments that were processed up to exchequer request level but actual funding was not received from the National Treasury, resulting into pending bills. In addition, the IFMIS downtime during the last quarter of financial year 2021/2022 delayed processing of transactions which also resulted to accumulation of pending bills. It is noted that the second supplementary estimates was released late leading to minimal time for implementation of some programs and processing of payments.

However, it is worth noting that the total pending bills of Kshs.58, 733,175.00 reported in the Financial Statements for year ending 30th June, 2022 were processed and fully paid in the financial year 2022/2023.

Committee Observations and Findings;

i) **The Committee noted that the explanation by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

1937. Unresolved Prior Year Matters

In the Audit report of the previous year, several paragraphs were raised under the Report on Financial Statements, Other Matter and Report on Lawfulness and Effectiveness in Use of Public Resources. Although, the Management has indicated that some of the issues have been responded to, the matters have remained unresolved.

Submission by the Accounting Officer;

The Accounting Officer, Public Service Commission was invited to appear before the Public Accounts Committee on 23rd March, 2023 for consideration of Auditor General Report for the financial year 2020/2021. The issues that were raised by the Auditor; viz: Delay in Exchequer releases and Accounts payables (Retention Money) were discussed as indicated by PSC response letter Ref. PSC/ACCT/7/VOL.1/(37). Further clarification was sought for Accounts Payable by Members of PAC which was responded to by the Public Service Commission through the letter PSC/ACCT/7/VOL.1/(40).

However, we received the report from the Public Accounts Committee of November, 2023 on the Examination of the Report of the Auditor General on the Financial Statements of the National Government, Ministries, Departments and Agencies with the recommendations on audit queries of Public Service Commission Financial Statements for year 2020/2021.

In its report, the Committee made the following observations, findings, and recommendations:

i. Delay in Exchequer Releases

The Committee observed that the delay in exchequer releases were attributable to the National Treasury. The Committee recommended that the National Treasury ensures timely release of funds.

ii. Accounts Payable:

The Committee observed that there was inadequate communication between the PSC and the State Department for Public Works, resulting in inordinate delay in payment of contractors. It emerged that Public Works had not certified contractors for work done with no reasons adduced.

The Committee also noted that PSC had transferred Kshs. 6,928,970.95 owed to contractors to the National Treasury, as instructed by Treasury in line with the provisions of the Public Finance Management Act.

All the unresolved prior year matters were therefore cleared.

Committee Observations and Findings;

i) **The Committee noted that the explanation by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1939. Compensation of Employees

The Statement of receipts and payments and as disclosed under Note 4 to the financial statements reflects compensation to employees amount totalling Kshs.1,711,821,368.

Review of the expenditure records and human resource records revealed the following anomalies;

1939.1. Irregular Recruitment of Staff

During the year under review, the Commission appointed a Director-Finance, Planning and Resource Mobilization without any advertisement of the vacant position for fair competition. This is contrary to Article 232(1)(g) of the Constitution of Kenya,2010, which states that the values and principles of public service include fair competition and merit as the basis of appointments and promotions; representation of Kenya's diverse communities; and affording adequate and equal opportunities for appointment, training and advancement, at all levels of public service, of men and women, the members of all ethnic groups and persons with disabilities.

Further, the service contract for the senior driver was not provided for audit.

Submission by the Accounting Officer;

During the year under review, the Commission appointed Director - Finance, Planning and Resource Mobilization, and a Senior Driver attached to the Chairperson Public Service Commission.

On this matter, the powers and functions of the Commission under Article 234(2) (a) of the Constitution of Kenya, include: -

(i) Establish and abolish offices in the public service; and

(ii) Appoint persons to hold or act in those offices, and to confirm appointments.

Section 45 of the PSC Act, 2017 provide the conditions under which a person may be engaged on contract terms and allows the Commission to extend a term of contract. Further, Regulation 48(1) of the PSC Regulations, 2020 states that:

"The Commission shall determine the qualifications for all positions in the public service except where the Constitution has vested in another authority the function of determining qualifications attached to a public office."

Further, the Commission in exercising its powers in appointment of public officers can resort to use of its human resource database for purposes of making appointments based on earlier evaluations. The Commission may appoint an officer from within or outside the public service, provided it is satisfied with the competency, experience and skills of the identified individual.

- Appointment of Director, Finance, Planning and Resource Mobilization

The Public Service Commission had earlier shortlisted and interviewed the officer for other senior positions whose job requirements and specifications matched the job profile for the position of Director Finance Planning and Resource Mobilization. In this regard, the Commission in the exercise of its discretionary powers appointed the officer based on the evaluation for the aforementioned position as contained in the HR database without recourse to another competitive process. The individual profile (Academic, Professional qualifications and experience) of the officer rendered him qualified and suitable for the position in all aspects.

- Appointment of Senior Driver

The Senior driver who was attached to the Chairperson's office was appointed on a three (3) year contract was based on provisions of the Human Resource Policies and Procedures Manual, 2016 Section B. 20 and Section 45 of the Public Service Commission Act, 2017.

Committee Observations and Findings;

The Committee observed that;

i. **The Commission's reliance on provisions of the PSC Act was unsatisfactory since the Act neither prescribed such a narrow recruitment exercise nor did it usurp provisions of Articles 10(2) and 232 of the Constitution;**

ii. **The shortlisting of five candidates from a separate recruitment list for interview from which the eventual appointee emerged denied other qualified Kenyans an opportunity to apply;**

iii. **Recruitment of the senior driver was satisfactorily explained.**

Committee Recommendations;

The Committee recommends that;

i. **The Commissioners are reprimanded for failure to adhere to the strict provisions of Articles 10(2) and 232 of the Constitution;**

ii. **The position of Director, Finance, Planning and Resource Mobilization be competitively filled once the existing contract expires.**

1939.2. Retention of Retired Officers in Service

Review of Human Resource records revealed that the commission has three officers in service who were appointed and continued to be retained past the approved retirement age of sixty (60) years. This is contrary to Section 80 (1) (a) and (b) of the Public Commission Act, 2017 which states that where a public officer has attained the mandatory retirement age as may be prescribed in regulations-the public officer shall retire from the service with effect from the date of attaining the mandatory retirement age; and the Commission or other appointing authority shall not extend the service of such retired public officer beyond the mandatory retirement age.

Further, the Public Service Commission (PSC) Circular Ref. No: PSC/ADM/13(7) dated 19 November, 2020 stopped the approval of any extension of service to the officers who have attained mandatory retirement age.

In the circumstances, the Commission was in breach of the law and its guidelines.

Submission by the Accounting Officer;

Article 234 (2) (a) (ii) of the Constitution of Kenya (Appendix 21) gives the Public Service Commission powers and functions of appointing persons to hold or act in offices including offices of its own secretariat on either permanent and pensionable terms or contractual terms.

The specific powers relating to appointment of officers who have attained mandatory retirement age are provided for in Section 80 (1) and (2) of the Public Service Commission Act 2017. This provision should be read in totality to avoid misrepresentation of the powers as it provides for provision of extension of service beyond mandatory age for officers in exceptional cases where adequate justification has been provided. Section 80 (2) of the PSC Act, 2017 provides that where a public officer has attained the mandatory retirement age as may be prescribed in the regulations, the Commission or other appointing authority may engage the officer for service after the retirement upon on such terms of contract as may be agreed if the public officer possesses rare knowledge, skills and competencies for the time being required in the service.

Further, Section 45 of the PSC Act, 2017 provides the conditions under which a person may be engaged on contract terms and allows the Commission to extend a term of contract. Regulation 70(6) provides the conditions under which the Commission may engage an officer after attainment of retirement age and Regulation 70 (7)(a) define what "rare knowledge, skills and competencies" means.

On 19th November, 2020 the Public Service Commission issued Circular Ref. No. PSC/ADM/13/ (7) (Appendix 26) to the Public Service communicating that it shall not extend the service of retired officers on attainment of sixty (60) years. The intention of the Commission was to discourage frequent requests from the Public Service for extension of services for retired or retiring officers but was not intended to override the legislative powers vested in the Public Service Commission. under section 80(2) of the Public Service Commission Act 2017.

The Commission appointed three (3) officers on contractual terms based on Local Agreement Terms after they exited from service upon attaining mandatory retirement age during the year under audit review. The officers' contracts were renewed for varied periods since the officers serve in critical dockets.

- Deputy Commission Secretary (Corporate Services)

The Deputy Commission Secretary (Corporate Services) was appointed to this position on Local Agreement Terms for a period of three (3) years with effect from 1st August, 2019 and his contract renewed for a further term with effect from 1st August, 2022. The officer plays a key role as the Principal Deputy to the Commission Secretary/Chief Executive; coordinating the development of organizational policies, systems and procedures and providing liaison services for both internal and external public and establishing clients and stakeholders' engagements including initiatives for developing and nurturing a performance and results oriented culture in the wider Public Service. His over thirty years' experience in board management at the Commission has provided critical institutional memory to the PSC Board which is appointed every six years and requires technical advisory to manage seamless transitions.

- Deputy Commission Secretary (Technical Services)

The Deputy Commission Secretary (Technical Services) was appointed to this position on Local Agreement Terms with effect from 1st November, 2017. Her contract was renewed for a further term of five (5) years with effect from 1st August, 2019. The officer was granted extension of service on local agreement terms since she coordinated all the technical directorates in the Commission which in turn drives the mandate of the Commission as per the Constitution. The

officer's continued stay was considered crucial in view of her wide experience spanning over thirty-five (35) years in the Human Resource Management field in the public service.

The officer has since left the Commission after completing her five-year contract on 31st July, 2024.

The Commission has already advertised and received applications for the positions of Deputy Commission Secretary.

- Senior Accountant (PSC 4)

The Senior Accountant was first appointed to serve under Local Agreement Terms to the post of Senior Accountant (PSC 4) with effect from 7th July, 2019. The officer was granted extensions because the Accounting Unit had not yet filled vacancies arising from by natural attrition. Specifically, the Senior Accountant was responsible for, invoicing of IFMIS payments, Internet Banking and cash collection from Central Bank of Kenya. Due to the sensitivity of the Cash Transaction Business, the officer plays a key role as 1 of 3 endorsers of transactions with the Central Bank of Kenya. His rare knowledge, skills, commitment, and competencies in the accounting function made it necessary to retain his services at the Commission.

The Committee observed that;

i. **There was no effective succession planning at the commission;**

ii. **The retainment of officers beyond retirement age was in breach of the commission's own circular Ref. PSC/ADM/13(7) dated 19th November 2020;**

iii. **It was not demonstrated that services rendered by the three officers were of 'rare knowledge' as provided for under regulation 7(a) of the PSC Regulations 2020.**

Committee Recommendations;

The Committee recommends that;

i. **All employees unjustifiably above retirement age be immediately retired;**

ii. **The Commissioners are reprimanded for unjustifiably extending service for officers who have attained retirement age;**

iii. **The commission avails to the committee a succession planning policy for the commission and entire public service within six (6) months of adoption of this report;**

iv. **The Commission appends in its annual report to Parliament, list of all officers serving beyond retirement age with justification for each, subject to Article 254 of the Constitution.**

4.60 VOTE 2091: TEACHERS SERVICE COMMISSION

Dr. Nancy Macharia, the Commission Secretary and Accounting Officer for the Teachers Service Commision appeared before the Committee on 20th February 2024, accompanied by the following officers:

i.	Mr. Cavin Anyuor	Director Legal
ii.	Dr. William Maina	Deputy Director Accounts
iii.	Ms. Antoina Lentoijoni	Ag. Director Supply Chain
iv.	Mr. Njunge Njuguna	Deputy Director
v.	Ms. Mary Njau	Legal Officer
vi.	Mr. John Ochieng'	Accountant
vii.	Mr. Kenneth Kinyua	Accountant
viii.	Mr. Cheptumo Ayabei	Director Finance and Accounting

and submitted as follows;

REPORT ON THE FINANCIAL STATEMENTS

1947. Transactions in System Payments not Processed in Payment Details

Review of the Commission's financial statements and analysis of the IFMIS system payment reports processed against the payments made indicate that three hundred and ninety- one (391) transactions amounting to Kshs. 98,309,130 were paid but not captured in the IFMIS payment details as at 30 June, 2022. No Explanation was provided by the Commission Management for the anomaly.

In the circumstances, the accuracy, completeness, presentation, and disclosure of the financial statements for the year ended 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The three hundred and ninety- one (391) transactions amounting to Kshs. 98,309,130 related to payments initiated in July 2022 but related to 2021/2022 financial year. The National Treasury had allowed pending payments relating to 2021/2022 financial year to be processed in IFMIS in early July 2022 and backdated to 30th June 2022 before the system was closed. The IFMIS system recorded the transactions in July 2022.

Committee Observations and Findings;

i) **The Committee noted that the submission by the Accounting Officer was satisfactory as Treasury had granted them approval.**

ii) **The Committee found that the matter was resolved.**

1948. Unreconciled Variances in Cash and Cash Equivalents

The statement of assets and liabilities reflects bank balance of Kshs. 1.750,770,936 as disclosed in Note 8A to the financial statements. The balance includes National Bank of Kenya – Teachers account balance of Kshs. 262,946,281. Review of the bank reconciliation statement revealed a reconciling item of receipt in the cashbook not recorded in the bank of Kshs. 1,000,000,000. No explanation was provided as to how and when the Commission earned the cash which was a call deposit.

In the circumstances, the accuracy and completeness of cash and cash equivalents balance of Kshs. 1,750,770,936 as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The reconciling item of receipt in the bank not recorded in the cashbook of Kenya Shillings One Billion (Kshs. 1,000,000,000) was a payment from the Call deposit account to National Bank of Kenya - Teachers account made on 30th June 2022. This was a transfer between two bank accounts of the Commission. The amount was reported in the Call deposit bank reconciliation as a payment in the cashbook not in the bank statement and in the NBK Teachers bank reconciliation as a receipt in the cashbook not in the bank statement as at 30th June 2022.

Committee Observations and Findings;

i) **The Committee noted that the submission by the Accounting Officer was satisfactory as Treasury had granted them approval.**

ii) **The Committee found that the matter was resolved.**

1949. Unconfirmed TSC Car and Mortgage Fund

The statement of assets and liabilities reflects bank balance of Kshs. 1.750,770,936 as disclosed in Note 8A to the financial statements which includes TSC Car and Mortgage bank balance of Kshs. 520,999,796. During the year, the Fund reflected mortgage loan advances receivables balance of Kshs. 304,734,248 (2021- Kshs. 806,062,361) and mortgage/bank loans payables of Kshs. 271,233,343. However, documents to support the movement during the year were not provided for audit. Further, the management does not have regulations governing the management of the Car and Mortgage Fund. As such, it was not possible to confirm whether the Fund is a self- reporting entity or part of the Commission.

In the circumstances, the accuracy and completeness, of cash and cash equivalents balance of Kshs. 1,750,770,936 as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

Prior to 2021/2022 financial year, the TSC Mortgage was operated as cash backed where the Commission would deposit funds in a fixed deposit account in National Bank of Kenya and the bank would advance mortgage loans to staff with the amount in the fixed deposit account acting as security. The amount in the fixed deposit account grew by the amount of interest earned from the mortgage loans advanced and any additional funds deposited by the Commission. During 2021/2022 financial year, the mode of operating the mortgage was changed to a revolving fund where loan advances to staff are charged directly to the account. The movement in the balance in 2021/2022 financial year was as a result of the mortgage loan balance held by TSC staff of Kenya shillings Three hundred and four million seven hundred thirty-four thousand two hundred and fourty eight (Kshs. 304,734,248) being directly debited to the mortgage account and the interest earned during the year of Kenya shillings nineteen million six hundred seventy-one thousand six hundred and eighty-three (Kshs. 19,671,683). Further, the amount of Kenya shillings Two hundred seventy-one million two hundred thirty-three thousand three hundred and fourty three (Kshs. 271,233,343) reported as a payable relate to outstanding balance of payroll deductions in respect of loans advanced to staff by various financial institutions described in IFMIS chart of accounts as mortgage/bank loan.

The Car and Mortgage Fund is operated through a Memorandum of Understanding (MoU) between Teachers Service Commission and National Bank of Kenya which set-up the fund to be reported as part of the Commission and not a self- reporting entity. However, the Commission is developing regulations based on SRC guidelines which will make the fund to be self-reporting.

Committee Observations and Findings;

The Committee noted that the reconciliations had been done while the Regulations awaited board approval.

Committee Recommendation;

The Committee recommends that the Accounting Officer submits the Regulations to Parliament within three (3) months of adoption of this report.

1950. Accounts Receivables

1950.1. Unreconciled Domestic Debtors and Advances

As disclosed in Note 9 to the financial statements, the statement of assets and liabilities reflects an accounts receivables balance of Kshs. 852,488,748 which includes an amount of Kshs. 1,526,741 in respect of domestic debtors and advances. However, prior year closing balance of Kshs. 10,531,875 differ from the current year comparative balance of Kshs. 1,526,741 by unreconciled amount of Kshs. 9,005,134. Further, as previously reported, salary advances balances included an amount of Kshs. 2,125,414 described as undefined recoveries whose composition and supporting documents were not provided for audit.

In addition, advances of Kshs. 4,264,665 in respect one hundred and forty-five (145) staff had no movement over the last twenty-four (24) months while some of the staff with outstanding balances had received additional salary advances during the year ended 30 June, 2021. The management did not give an analysis of how the above balances were recovered or written off during the year under review.

Submission by the Accounting Officer

Unreconciled balance - Kshs. 9,005,134

From the closing balance of Kenya shillings Ten million five hundred thirty-one thousand eight hundred and seventy-five (Kshs. 10,531,875) in 2020/2021 financial year, an amount of Kenya shillings One million five hundred ninety-one thousand one hundred and six (Kshs. 1,591,136) was paid through cash refunds and payroll recoveries. The Commission expensed Kenya shillings Three million three hundred sixty- four thousand two hundred and two (Kshs. 3,364,202) for advances relating to medical ex-gratia assistance. Further, the Commission cleared Kenya shillings Four million two hundred sixty-four thousand six hundred and sixty-five (Kshs. 4,264,665) by reporting the expenditure in 2021/2022 financial year. This amount related outstanding advances for salary arrears on underpayment, reinstatement and promotion paid to teachers by payment voucher before adoption of Integrated Personnel and Payroll Database (IPPD) system. The details of the payment vouchers were not captured in then government payroll system Government Information Technology System (GITS) since in the month of computerization, the teachers were no longer on the payroll for various reasons including death, interdiction, retirement etc. With adoption of IPPD system, Commission is no longer facing this challenge due to the real time

processing of payments and all other advances are being recovered through the payroll. Attached is the reconciliation of the advances.

Undefined Recoveries

The amount of Kenya shillings Two million one hundred twenty-five thousand four hundred and fourteen (Kshs. 2,125,414) relates to Ex-gratia and medical advances that were recovered through the payroll from various staff from July 2020 to June 2021. The Ex-gratia and advances arose where the Commission settled residual hospital bills for teachers to allow for discharge of patients/release of bodies. The teachers were then granted ex-gratia ranging from 50% to 75% of the medical bill depending on availability of funds. The balance was then recorded as an advance against the teacher and recovered from payroll in installments.

Salary advances with no movement

The amount of Kenya shillings Four million two hundred sixty-four thousand six hundred and sixty-five (Kshs. 4,264,665) relates to salary arrears on underpayment, reinstatement on payroll and promotion paid to teachers in advance which occurred before adoption of Integrated Personnel and Payroll Database (IPPD) system. The details of the payment vouchers could not be captured in then government payroll system GITS since in the month of computerization, the teachers were no longer on the payroll for various reasons including death, interdiction, and retirement. The Commission is no longer facing this challenge due to the real time processing of payments through the IPPD system. This amount was expensed in financial year 2021/2022 since the payments were due to the respective teachers at the time the payment was made.

Committee Observations and Findings;

i) **The Committee noted that the submission by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

1950.2. Unexplained Increase in Salary Overpayment

As disclosed in Note 9 to the financial statements, the statement of assets and liabilities reflects an accounts receivables balance of Kshs. 852,488,748 which includes an amount of Kshs. 466,892,922 in respect of salary overpayment.

The amount is an increase of Kshs. 114,039,769 (or 32%) from last year's balance of Kshs. 352,853,153. However, the origin and build-up of the balance has not been explained. Further, ageing analysis was not provided for audit and as such, it is not possible to establish how long these balances have been outstanding. In addition, the management has not demonstrated efforts it has made to recover the salary overpayments, thus the recoverability of this receivable is doubtful.

Submission by the Accounting Officer

Salary overpayment occurred as a result of delay in stoppage of salary of employees upon death, desertion of duty, resignation, transfer of service, transfers, sick leave, interdiction and absenteeism. The overpayment has grown over the years due to reporting systems that were inefficient due to their manual nature. Once overpayment is recorded, recovery is progressive through:

(i) the payroll for teachers who are still in TSC employment.

(ii) Mechanisms set out in the Overpayment policy.

To address the issue of salary overpayment, the Commission:

i. Has developed and is implementing an overpayment policy and online services to improve efficiency in reporting mechanism between the Commission Headquarters, field offices and Schools in respect to death, desertion of duty, resignation, transfer of service, retirement, sick leave and absenteeism.

ii. Sensitizes head of school institutions, sub-county directors and county directors on overpayment.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer tightens system controls to ensure timely update of employee records whenever status' change.

1950.3. Unsupported Receivables Balances

As disclosed in Note 9 to the financial statements, the statement of assets and liabilities reflects an accounts receivables balance of Kshs. 852,488,748 which includes County disbursements amount of Kshs. 67,156,978. However, according to disbursement records, the Commission disbursed to the Counties an amount of Kshs. 1,428,212,926 during the year under review resulting in a total amount disbursed and not surrendered from the prior year of Kshs. 1,903,281,195. Management has not supported how the County expenditure returns difference of Kshs. 1,836,124,217 was accounted for.

In the circumstances, the accuracy, completeness, presentation, and disclosure of accounts receivables balance of Kshs. 852,488,748 as at 30 June, 2022 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

The Commission adopted the use of Integrated Financial Management Information System (IFMIS) in 2015/2016 financial year. The Commission issues AIEs to Regional/County directors for operations at the regional/county levels. The Regional/ County directors account for the AIEs by submitting summarized approved quarterly Expenditure returns to TSC headquarters for posting to IFMIS General Ledger and also surrender any unspent balances to TSC headquarters.

During 2021/2022 financial year, total disbursement to the field offices was Kenya Shillings One billion four hundred twenty-eight million two hundred twelve thousand nine hundred twenty-six (Kshs. 1,428,212,926) while total Expenditure was Kenya shillings One billion two hundred fourty seven million seven hundred twenty thousand three hundred twenty-three (Kshs. 1,247,720,323). Further, Kenya shillings Two hundred fifty-four million nine hundred twenty-three thousand eight hundred and fifty (Kshs. 254,923,850) in respect of payroll expenditure for June 2021 which had been reported under receivables in 2020/2021 due to insufficient budget for Compensation of employees was treated as a first charge in 2021/2022. In addition, expenditure at the field offices

that could not be posted in IFMIS due to budget cuts resulting from austerity measures was posted in IFMIS in 2021/2022 financial year. The county disbursements balance of Kenya shillings Sixty-seven million one hundred fifty-six thousand nine hundred seventy-eight (Kshs. 67,156,978) represents the un surrendered unspent AIEs as at 30 June 2022 which were surrendered in 2022/2023 financial year.

The Commission is exploring possibility of linking the county offices to IFMIS to ensure real time posting of financial transactions and enhance timely reconciliations.

Committee Observations and Findings;

i) **The Committee noted that the submission by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

1951. Unsupported Accounts Payables

The statement of assets and liabilities reflects the accounts payables balance of Kshs. 433,128,747 as disclosed in Note 10 to the financial statement. The balance includes clearance account balance of Kshs. 399,616,822 which further includes unexplained sundry creditors balance of Kshs. 43,042,122, unsupported returned salaries of Kshs. 10,209,284, returned EFT payments of Kshs. 278,871, and stale cheques amounting to Kshs. 2,037,905 which have been supported by listings showing outstanding transactions dating back to the financial year 2015/2016 and earlier years. Further, clearance account balance of Kshs. 399,616,822 indicated minimal movement over the last twelve months which was not supported or explained.

In the circumstances, the accuracy, completeness, and occurrence of the accounts payable balance of Kshs. 433,128,747 as at 30 June, 2022 could not be confirmed.

Submission by the Accounting Officer

Sundry Creditors

The amount of Kenya shillings Forty-three million and forty-two thousand one hundred and twenty-two (Kshs. 43,042,122) relates to monies deposited in TSC bank account being:

Payments made by TSC to various beneficiaries that have been returned as un-applied. This is as a result of incorrect bank details provided by the beneficiaries which include wrong bank accounts, bank account and names not matching and dormant bank accounts. The payments are returned by the paying banks without the details of the intended beneficiaries. The Commission liaises with the paying banks to obtain the details in order to contact the beneficiaries to provide correct bank details.

Payment to TSC by The National Treasury in respect of amounts recovered from pension of teachers with outstanding liabilities. The deposits are made in block amounts without the details of the specific teachers they relate to. The Commission liaises with the National Treasury to provide details of the teacher in order to apply the monies to offset the overpayment recorded against the respective teachers. Progressively, the Commission is continuing to clear the balance which currently stands at Kshs. 5,255,278.

Returned Salaries

The amount of Kenya shillings Ten million two hundred and nine thousand two hundred and eighty-four (Kshs. 10,209,284) represents monies deposited in TSC bank account for monthly payroll salaries paid to employees that are returned by the paying banks as un-applied. This result from incorrect bank details provided by the teachers such as wrong bank accounts, bank account and names not matching and dormant bank accounts. These payments are returned by the paying banks without the full details of the teachers. The Commission liaises with the paying banks to obtain details of the teachers so as to contact them to provide correct bank details. The Commission then releases the salaries once the correct details are provided.

The Commission is no longer facing this challenge as teachers are required to submit pay-point instructions accompanied by a copy of the bank plate/ copy of ATM card. We are progressively continuing to obtain correct details of the beneficiaries to clear the balance.

Returned EFT payments

The amount of Kenya shillings Two hundred seventy-eight thousand eight hundred and seventy-one (Kshs. 278,871) relates to monies deposited in TSC bank account being payments of 3rd party payroll deductions and payments of amounts due to teachers who have left service that are returned by the paying banks as un-applied. This is as a result of incorrect bank details provided by the beneficiaries which include; wrong bank accounts, bank account names not matching and dormant bank accounts. The payments are returned by the paying banks without the details of the intended beneficiaries. The Commission liaises with the paying banks to obtain details of the intended beneficiaries in order to contact them to provide correct bank details. We are progressively continuing to obtain correct details of the beneficiaries to clear the balance.

Stale cheques

The amount of Kenya shillings Two million and thirty-seven thousand nine hundred and five (Kshs. 2,037,905) relates to cheques for payments to various beneficiaries that were written back to the Commissions cashbook after remaining unpresented by the payees within six months. The payments were mainly made through the public trustees and law courts and failed to reach the intended beneficiaries or the beneficiaries fail to present the cheques to the bank for payment. The Commission usually issues replacement cheques once the beneficiaries are contacted. Some of these cheques have remained outstanding due to difficulties in establishing the beneficiaries who are the next of kin of the deceased teachers and beneficiaries from Court attachments for child support.

Minimal movement of clearance account balance

The minimal movement in the clearance account balance was as a result of clearing the outstanding balances of payroll remittances for 2020/2021 financial year in 2021/2022. This resulted in an almost equal balance of outstanding payroll deductions in 2021/2022.

Committee Observations and Findings;

i) **The Committee noted that the submission by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

1952. Unexplained Decrease in Employer Contribution to NSSF and Staff Pension Scheme

The statement of receipts and payments reflects an amount of Kshs. 286,687,983,132 in respect of compensation of employees as disclosed in Note 4 to the financial statements. Review of the compensation of employees reflects an unexplained decrease of Kshs. 483,437 and Kshs. 316,494,809 contributed by the employer to National Social Security Fund (NSSF) and staff Pension Scheme respectively despite a general increase in compensation of employees of Kshs. 9,296,034,959. An increase in basic pay and allowances should result in a proportionate effect on employer contributions to both N.S.S.F and Staff Pension Scheme.

In the circumstances, the completeness and accuracy of compensation of employees' balance could not be confirmed.

Submission by the Accounting Officer

The amount of Kenya Shillings Four hundred eighty-three thousand four hundred thirty-seven (Kshs. 483,437) and Kenya Shillings Three hundred sixteen million four hundred ninety-four thousand eight hundred and nine (Kshs 316,494,809) were budget balances of the allocation for NSSF and Staff Pension Scheme after paying the requisite Contributions. The same being the personnel emoluments items were applied to meet part of the payroll expenses which had budget shortfall. It should however be noted that the budget provision for personnel emoluments in 2021/2022 were adequate hence there was need to apply payroll expenditures to any balances in NSSF and Staff pension scheme. Further, the increase in basic pay and allowances did not result in commensurate increase in NSSF since NSSF is a fixed amount of Kenya shillings Two hundred (Kshs 200) per employee.

Committee Observations and Findings;

i) **The Committee noted the submission of the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

1953. Long Outstanding Accounts Receivables- Cash Losses

As previously reported, the statement of assets and liabilities reflects an accounts receivables balance of Kshs. 852,488,748 which includes cash losses amounting to Kshs. 2,928,398 that occurred between the years 1988 and 2000 and the matter was investigated whereby the Director of Public Prosecutions directed the suspect to be charged with the offence of stealing by servant contrary to Section 280 of the Penal Code. Review of the matter during the year under review indicates that all teachers are paid by electronic funds transfers through their respective bank accounts and the Commission has reported there are no longer cash losses reported. However, the lost cash had not been recovered at the time of the audit in November, 2022.

Submission by the Accounting Officer

The cash losses of Kenya shillings Two million nine hundred twenty-eight thousand three hundred ninety-eight (Kshs. 2,928,398) occurred in the period 1988-2000 and the Commission has followed up the matter in the Courts over several years culminating with the Investigating Officer's letter Ref: CID/IB/SEC/4/3/1/A/VOL.III/64 dated 5/9/2014 indicating the insurmountable challenges in charging the culprits. The Commission, during its meeting held on 24/9/2015 decided it was uneconomical to continue with the cases and recommended a write-off through the National Treasury.

After several correspondences between the Commission and the National Treasury in respect of the request for approval of a write-off, the National Treasury vide letter Ref: AG/3/149/Vol.1/ (54) dated 13th February 2019 gave guidelines the Commission needed to follow in order to conclude the matter. The Commission followed the guidelines and re-submitted the request vide letter Ref: TSC/FIN/60/VOL.V/20 dated 5th March 2019. We also sought Attorney General's legal opinion on the matter.

The Attorney General vide letter Ref: AG/CONF/9/29 Vol II (43) dated 10th May 2019, advised a waiver after all reasonable steps had been taken to recover the losses. This is similar to what the Commissioner's had recommended during their above cited meeting.

The Commission vide letter Ref: TSC/FIN/60/VOL.V/68 dated 18th February 2021 resubmitted a request to the National Treasury for authority to write-off the cash losses since it had been determined that reasonable steps were taken for recovery of the cash losses and to pursue the cases would be uneconomical.

The National Treasury vide letter Ref: AG/3/14/Vol.1 (66) dated 19th March 2021 advised the Commission to pursue further efforts as had been advised by the Attorney General. The Commission has analyzed the cases and isolated those that have been concluded by court in order to reapply for write-off from the National Treasury for the resolved cases.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer concludes the matter as advised by the Attorney General and National Treasury, and submits a report on the same within three (3) months of adoption of this report.

1954. Unconfirmed Property, Plant and Equipment

As reported in previous years, the property, plant and equipment balance of Kshs. 4,955,290,287 as disclosed in Note 19 on other important disclosures to the financial statements which includes one (1) motor vehicle procured in 2004 at a total cost of Kshs. 2,085,869. A review of the matter in November, 2022 revealed that the vehicle had earlier been auctioned by auctioneers after obtaining a duplicate log book No. 20063490279 from Kenya Revenue Authority. Although the Commission repossessed the vehicle, the case is still pending in court.

Submission by the Accounting Officer

The Motor Vehicle Registration No. KAR 246L- Nissan Urvan whose residual value is Kenya shillings Eighty-eight thousand and ninety-six (Ksh. 88,096) was repossessed from auctioneers. The original logbook was submitted to KRA on 30/6/2011 to verify the rightful owner upon their request vide letter ref: KRA/RTD/TRANS-DUP/10027/0-11 dated 13/6/2011.

This case has been ongoing and after court hearings on diverse dates judgement was delivered on 15th September 2020 where the court ruled that the motor vehicle registration No. KAR 246L be released to Ashford Tours and Travel Limited (hereinafter, the Respondent). A copy of the judgment is hereby attached. The Commission appealed the ruling vide a Memorandum of Appeal

dated 20th November 2020 and obtained stay of execution pending the hearing and determination of the Appeal.

The Appeal was heard, and judgment delivered on 5th October 2023 in favor of the Respondent. The High Court upheld the Magistrate court's finding that the Respondent was a bona fide purchaser for value of the motor vehicle KAR 246L. To this end the Commission was directed to release the motor vehicle to the Respondent.

Committee Observations and Findings;

i) **The Committee noted that the submission by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

1955. Prior Year Matters

In the audit report of previous year, several issues were raised under the Report on Financial Statements, Report on lawfulness, Effectiveness in Use of Public Resources and Report on Effectiveness of internal Controls, Risk Management and Governance. However, the management had not resolved the issues or given any explanation for failure to implement the recommendations.

Submission by the Accounting Officer

The Commission awaited PAC report.

Committee Observations and Findings;

The Committee notes that its report has since been adopted by the House.

Committee Recommendation;

The Committee recommends that the Accounting Officer avails a status update on implementation of its recommendations within three (3) months thereafter.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1956. Over-expenditure on Budget- Use of Goods and Services

The statement of receipt and payments reflects the use of goods and services expenditure of Kshs. 1,739,822,652 as disclosed in Note 5 to the financial statements. The expenditure includes over-expenditure of Kshs. 163,968,426 on various components for which approvals were not provided for audit.

Over-expenditure on budget may lead to unplanned expenditures, pending bills, and budget reallocations.

In the circumstances, the regularity and validity of the over-expenditure amounting to Kshs. 163,968,426 could not be confirmed.

Submission by the Accounting Officer

The amount of Kenya shillings one hundred sixty-three million nine hundred sixty-eight thousand four hundred twenty-six was attributed to:

i) Insurance Costs

The expenditure of Kenya shillings Forty-two million four hundred ninety-three thousand one hundred fifty-three (Kshs. 42,493,153) was as a result of increased WIBA claims by teachers and secretariat staff in 2021/2022 financial year.

ii) Fuel Oil and Lubricants

The expenditure of Kenya shillings Five Million Seven hundred thirty-five thousand three hundred seventy-eight (Kshs. 5,735,378) was as a result of county expenditure for 2020/2021 which were not expended due to budget cuts

iii) Domestic travel & subsistence

The expenditure of Kenya shillings Eighty million and eighty-six thousand eight hundred seventy-six (Kshs. 80,086,876) was as a result of county expenditure for 2020/2021 not expended due to budget cuts.

iv) Hospitality, supplies & services

The expenditure of Kenya shillings Three million four hundred fifty-three thousand two hundred thirty-one (Kshs. 3,453,231) was as a result of county expenditure for 2020/2021 not expended due to budget cuts.

Committee Observations and Findings;

The Committee notes that the Accounting Officer ought to have sought supplementary approval for increased insurance costs, and re-voted sums not expended in the previous financial year.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to observes section 40 of the PFM Regulations.

1957. Failure to Deduct and Remit PAYE from Employees

During the year under review, Management did not deduct Pay-As-You-Earn (PAYE) due from three thousand, two hundred and eighty-one (3,281) special needs staff, three thousand, seven hundred and eighty-four (3,784) non special needs staff and four (4) Secretariat staff with gross pay amounting to Kshs. 350,930,993, 14,965,126 and Kshs. 96,694 respectively.

Review of the Commission's payroll revealed that employees with special needs as prescribed under Section 11 (3) of Persons with Disabilities Act,2003 are denoted by codes 2-9 under the special needs field in the Integrated Payroll and Personnel Database (IPPD) but the above referenced employees code was zero (0) denoting that they are not people with special needs and had not been exempted from paying income tax by Kenya Revenue Authority. Failure to deduct and remit Pay-As-You-Earn tax is contrary to Income Tax Act CAP 470.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

Secretariat

The four (4) secretariat staff were on boarded on payroll on 2nd June 2022 as interns on a salary/ stipend of Kshs. 25,000 per month. The stipend for the month of June 2022 was prorated based on the days in the month the staff worked and the staff earned as shown below.

Payroll-Num	Full Name	Gross Pay
2022000018	Rotich Faith Jemutai	24,194
2022000020	Amulega Pavyn Osumba	24,167
2022000021	Wanjala Joseph Musawa	24,167
2022000022	Langat Amos Kiprop	24,167
Total		**96,694**

The prorated pay was further subjected to NSSF deduction which is tax allowable leaving a taxable pay of Kshs. 23,966.65 which when subjected to tax bracket of 10% resulted in PAYE of 2,396.65 which when monthly relief of Kshs 2,400 was applied, no tax was payable.

Teachers

The cases were analyzed and categorized as below;

i. The 3,281 teachers with special needs,

- 2570 were interns whose pay was Kshs. 15,000 per month and Kshs. 20,000 per month for primary school and secondary school respectively. The teaches were taxed but the tax payable was below the monthly relief of Kshs. 2,400.
- 5 were teachers with no special needs and tax was deducted.
- 706 were teachers with special needs and had been exempted from paying tax.

ii. The 3,784 non special needs,

- 2092 were interns whose pay was Kshs. 15,000 per month and Kshs. 20,000 per month for primary school and secondary school respectively. The teaches were taxed but the tax payable was below the monthly relief of Kshs. 2,400.
- 114 were teachers with special needs and had been exempted from paying tax
- 1578 were teachers with no special needs and tax was deducted.

Committee Observations and Findings;

i) **The Committee noted that the submission by the Accounting Officer was satisfactory.**

ii) **The Committee found that the matter was resolved.**

1958. Overpayment of Leave Allowance and Salary Arrears

Review of payroll data for the period under review revealed that twenty- one (21) teachers and seventy-five (75) Secretariat staff were paid leave allowance twice amounting to Kshs. 240,000 and Kshs. 740,000 respectively. Further, the payments were made to teachers and secretariat who were not in hardship areas.

In addition, one thousand eight hundred and seven (1,807) Teachers, and one hundred and thirty-five (135) Secretariat staff were paid salary arrears more than once during the year amounting to Kshs. 197,214,537 and Kshs. 15,509,930 respectively contrary to Article 201 (d) of the Constitution of Kenya, 2010 which states that public money shall be used in a prudent and responsible way.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

Leave allowance is paid to all teachers and secretariat staff in January of every year. However, teachers/secretariat staff who enter service or are reinstated back on payroll after January when the leave allowance has already been paid, they are paid the allowance as a one off payment (arrears) during the year or subsequent year. The cases referred to were for teachers /secretariat staff who were employed and on boarded or were reinstated back on payroll between February 2021 and December 2021 when the leave allowance for 2021 had already been paid. Considering that these teachers were due leave allowance for 2021, they were paid the allowance in the months between July 2021 and June 2022 and also paid the leave allowance for 2022 in January 2022. The payments were not double/overpayment.

The arrears payment to the teachers were for adjustments resulting from the Commission implementing the Career Progression Guidelines, promotion and transfers.

The arrears payment to the Secretariat staff were for salary adjustments, adjustments of house allowance, transfer allowance upon deployment from one station to another.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General conducts a comprehensive audit of the Commission's payroll system, in its next audit.

1959. Non-procurement of Group Life Cover

The statement of receipts and payments reflects an amount of Kshs. 1,739,822,652 in respect of the use of goods and services as disclosed in Note 5 to the financial statements which includes insurance costs amounting to Kshs. 156,993,158. Included in the expenditure is an amount of Kshs. 62,922,122 paid to a Financing institution as a group life cover. The Commission entered into a

contract for provision of group life cover with a Financing Institution on 13 May, 2021 for a period of one year, with an expiry date of 13 May, 2022. However, upon the expiry of the cover, the Commission did not procure another cover hence resulting in the Commission operating without a group life cover.

In the circumstances, Management was in breach of the law.

Submission by the Accounting Officer

The Commission Advertised for the Provision of Group Life Cover and the tender was terminated due to inadequate Budgetary Provisions. The Commission had a budget of Kenya shillings Twenty million (Kshs. 20,000,000) and the Lowest Evaluated bidder quoted Kenya shillings Fifty-seven million one hundred and six thousand seven hundred and sixty (Kshs. 57,106,760). The tender was subsequently awarded when the budget was enhanced.

Committee Observations and Findings;

i) **The Committee noted the submission by the Accounting Officer.**

ii) **The Committee found that the matter was resolved.**

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND GOVERNANCE

1960. Control Weaknesses in Human Resource Management

The statement of receipts and payments reflect an amount of Kshs. 286,687,983,132 in respect of employee costs as disclosed in Note 4 to the financial statements. However, the following internal control weaknesses over payroll management were noted;

(i) Comparison of the National Identification (ID) numbers in the Teachers' payroll against the Integrated Personnel and Payroll Database (IPPD) for MDAs reflects that there were twenty-four (24) employees earning salaries in two entities in the same month.

(ii) Examination of the IPPD reflects that one (1) Identification Number, was both in the Teachers' and Secretariat payrolls but with different name. the amount paid during the year was Kshs. 1,520,192 and Kshs. 485,545 for the Secretariat and Teachers' payrolls respectively.

(iii) Review of payroll for the month of June, 2022 revealed the existence of seventy-nine (79) employees with similar names, similar bank account numbers but different payroll numbers. The total gross paid amounted to Kshs. 4,263,212.

Further, three (3) teachers did not have ID numbers in the staff register.

In the circumstances, the internal controls over the management of employees' payroll are weak and susceptible to loss of TSC resources.

Submission by the Accounting Officer

(i) From Teacher Management Information system (TMIS) data, the Twenty-four (24) teachers are correctly on the Commission's payroll.

(ii) The Teachers and Secretariat reviewed and the error was corrected in November 2021.

(iii) Bank accounts of employees are entered in the payroll upon the Commission receiving instructions from the employee through;

- A duly completed prescribed bank form which is certified and forwarded by the head of institution;
- Certified copy of the bank plate and identity card. For the congregation a letter from the congregation head is attached as the account is registered in its (congregations') name.

The shared bank accounts identified are for;

- Brothers and sisters serving as teachers but are members of catholic based congregations where salary earned are directed into the congregations account.
- Spouses serving as teachers who are operating a joint account.

The teachers identified as not having ID numbers are foreigners who were employed using alien passport as the identification number. Their identification is captured in the IPPD staff Register.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Auditor General identifies the other state agencies where the 24 persons are also enrolled through the IPPD, within three (3) months of adoption of this report.

1961. Recovery of Salary Overpayment

Review of the detailed analysis of the payroll for the period under review revealed that there were eighty-five (85) teachers with outstanding overpayment balance amounting to Kshs. 47,352,946. Further, the outstanding repayment period for these officers will exceed their retirement age of sixty (60) of the end of the contract period. Therefore, recovery of the overpayment is in doubt. Further, the Commission Management did not provide for audit a strategy for the recovery of the overpayments beyond the retirement period.

In the circumstances, the existence of internal control to safeguard loss of public resources could not be confirmed.

Submission by the Accounting Officer

The monthly recovery rate for overpayment is a 1/3 of the basic salary of the employee as per Section 19 (3) of the Employment Act, 2007. In order to recover any outstanding overpayment when a teacher retires, the Commission has an agreement with the Secretary of pension to recover any government liability from pension of a retired teacher upon authorization by the teacher in writing. If any balance remains outstanding, recovery is pursued from the retired teacher personally or from estate of the deceased.

Committee Observations and Findings;

The Committee noted the submission by the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer ensures efficient system update of employee records to avoid such cases going forward and ensures full recovery of outstanding amounts through deductions, pension or estates of those owing within one financial year.

DONOR FUNDED PROJECT

SECONDARY EDUCATION QUALITY IMPROVEMENT PROJECT (IDA CREDIT NO. 6138-KE)

REPORT ON THE FINANCIAL STATEMENTS

1963. Budgetary Control and Performance

The statement of comparative budget and actual amounts reflects the final receipts budget and actual on a comparable basis of Kenya shillings four hundred fifty million (Kshs 450,000,000) and Kenya shillings two hundred seventy-two million three hundred seventy-six thousand two hundred eighteen (Kshs. 272,376,218) respectively resulting in an under- funding of Kenya shillings one hundred seventy-seven million six hundred twenty-three thousand seven hundred eighty-two (Kshs. 177,623,782) (or 39%) of the budget. Similarly, the Project expended Kenya shillings three hundred seventeen million eight hundred forty-one thousand five hundred forty-seven (Kshs. 317,841,547) against an approved budget of Kenya shillings four hundred fifty million (Kshs 450,000,000) resulting in an under-absorption of Kenya shillings one hundred thirty-two million one hundred fifty-eight thousand four hundred fifty-four (Kshs. 132,158,454) (or 29%) of the budget.

In the circumstances, the under-absorption of the approved budget is an indication of the activities not implemented by the project management leading to the non-provision of services to the stakeholders.

Submission by the Accounting Officer

The under-funding reflected in the statement of comparative budget and actual amounts resulted from the entire exchequer for 2021/2022 financial year not being requisitioned. This was due to the project having rolled over bank balances for financial year 2020/2021 which were utilized to fund the 2021/2022 budget.

The under-expenditure of the budget for 2021/2022 financial year resulted from various procurement processes not being concluded as scheduled due to their rigorous nature.

Committee Observations and Findings;

The Committee noted the submission from the Accounting Officer.

Committee Recommendation;

The Committee recommends that the Accounting Officer institutes effective project implementation plans to ensure attainment of project objectives.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

1964. Unsurrendered AIE Funds

The statement of financial asses reflects a balance of Kenya shillings fourteen million three hundred twenty-six thousand seven hundred nineteen (Kshs. 14,326,719) in respect of other receivables as disclosed in Note 11.4 to the financial statements. The balance represents AIEs issued to twenty-six (26) County Directors out of which an amount of Kenya shillings four hundred twenty-five thousand five hundred four (Kshs. 425,504) is in respect of unspent amount of Kenya shillings two hundred eighty-three thousand eight hundred fifty-four (Kshs. 283,854) and Kenya shillings one hundred forty-one thousand six hundred fifty (Kshs. 141,650) for Kisii TSC County Office and the TSC Headquarters respectively which had not been surrendered as at 30 June, 2022. This was contrary to the provision of Regulation 117 of the Public Finance Management (National Government) Regulations, 2015 which states that where an AIE holder observes that it will not be possible to utilize all the funds allocated for a particular project in a given financial year, the Accounting Officer will then surrender the resources to the National Treasury.

In the circumstances, the Project Management was in breach of the law due to the failure to surrender that amount as prescribed in law.

Submission by the Accounting Officer

The management will ensure strict compliance with the financial regulations in ensuring all unutilized AIEs balances at the counties are surrendered on or before 30 June each year. Additionally the amount was surrendered by TSC headquarters and the TSC County Director Kisii County in 2022/2023 financial year.

Committee Observations and Findings;

The Committee noted that the explanation was unsatisfactory since nothing stopped surrenders of the AIEs in time.

Committee Recommendation;

The Committee reprimands the Accounting Officer for failure to ensures surrenders in accordance with Regulation 117 of the Public Finance Management (National Government) Regulations, 2015.

4.61 VOTE 2131: THE COMMISSION ON ADMINISTRATIVE JUSTICE

Ms. Mercy Wambua, the CEO and Accounting Officer for the Commission on Administrative Justice appeared before the Committee on 12th September 2023 accompanied by the following officers:

i.	Hon. Florence Kajuju	Chairperson
ii.	Mr. Dan Karomio	Director
iii.	Mr. Beneard Nyariki	Ag. Director Finance
iv.	Mr. Justus Manyok	Assistant Admin Officer
v.	Ms. Daisy Kosgey	Personal Assistant

and submitted as follows;
REPORT ON THE FINANCIAL STATEMENTS

1980: Pending Bills

Annex 1 to the financial statements indicates that the Commission had pending bills totaling Kshs. 5,533,492 as at 30th June 2022, which were not settled during the 2021/2022 financial year but were instead carried forward to 2022/2023 financial year.

Failure to settle bills during the year to which they relate, adversely affects the budgetary provisions of the subsequent year to which they are charged.

Submission by the Accounting Officer

The Commission had pending bills amounting to Kshs. 5,533,492 during the 2021/2022 financial year. The Commission clarifies that the pending bills were occasioned by factors mainly beyond the control of the Commission as follows:

(i) Delay in release of the 2021/2022 financial year Supplementary II budget, which was released at the tail end of the financial year, resulting in engagement of Suppliers too close to the closure of the financial year. This made it difficult for them to provide the necessary documentation to facilitate payment for services rendered.

(ii) Disputed bills which the suppliers were unable to provide supporting documents on time. A good example was the Postal Corporation of Kenya, which took long to reconcile their accounts to enable the Commission make payments.

It is worthwhile to note that the Commission endeavoured to settle some of the outstanding bills in the first Quarter as a first charge on 2022/2023 financial year's budgetary allocation. However, other intervening factors as indicated below, inhibited the Commission's effort to settle all the bills within the quarter:

(i) Austerity measures

The austerity measures instituted by the Government where the Commission budget was reduced by Kshs.137,705,907. This affected some of the items with running contracts.

(ii) Deactivation of the IFMIS platform for a prolonged period

The IFMIS platform which is controlled by the National Treasury was deactivated from the second to third Quarter of the financial year, to facilitate the re-alignment of the 2022/2023 financial year's supplementary budget, in line with the presidential directive as per the attached Circular.

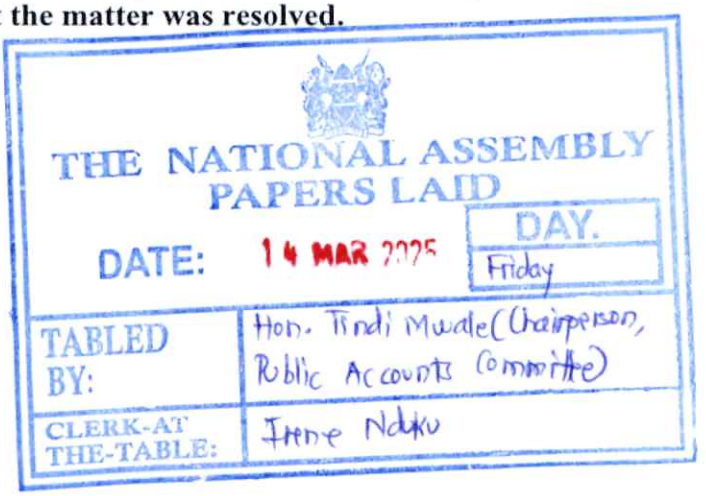
(iii) Delay in release of Supplementary Estimates

There was a delay in the release of the Supplementary Estimates for the financial year 2022/2023 which were released towards the tail end of Quarter three hence, some bills were settled within the third and fourth Quarter.

The Commission has since settled all the pending bills, as per the availed payment schedules.

Committee Observation

i) **The Committee observed that the explanation was satisfactory.**
ii) **The Committee found that the matter was resolved.**



HON. NICHOLAS S. TINDI MWALE, MP

CHAIRPERSON, PUBLIC ACCOUNTS COMMITTEE

DATE: 13th March 2025.

ADOPTION OF THE PUBLIC ACCOUNTS COMMITTEE'S REPORT ON THE EXAMINATION OF THE REPORT OF THE AUDITOR GENERAL FOR THE FINANCIAL YEAR 2021/2022

DATE.....13-3-2025.....**TIME**.....11:30 am.....

We, the Members of the Public Accounts Committee have, pursuant to Standing Order 199, adopted this Report and hereby affix our signatures to affirm our approval and confirm its accuracy, validity, and authenticity:

ADOPTION LIST

NO.	NAME	SIGNATURE
1.	**The Hon. Nicholas Tindi S. Mwale, MP (Chairperson)**	
2.	**The Hon. Amina Udgoon Siyad, MP (Vice-Chairperson)**	
3.	The Hon. Junet Sheikh Nuh, EGH, MP	
4.	The Hon. Lesuuda Josephine Naisula, OGW, MP	
5.	The Hon. (Dr.) Otiende Amollo, SC, EBS, MP	
6.	The Hon. (Dr.) Wilberforce Ojiambo Oundo, MP	
7.	The Hon. (Dr.) Edwin Mugo Gichuki, MP	
8.	The Hon. Emathe Joseph Namuar, MP	
9.	The Hon. Gabriel Gathuka Kagombe, MP	
10.	The Hon. Kitany Marianne Jebet, MP	
11.	The Hon. Mohamed Aden Adow, MP	
12.	The Hon. Nabwera Daraja Nabii, MP	
13.	The Hon. Ruku Geoffrey Kariuki Kiringa, MP	
14.	The Hon. Victor Kipng'etich Koech, MP	
15.	The Hon. Yakub Adow Kuno, MP	